

afforded to information received by a psychologist from his client. This statutory privilege does not, however, seem to extend to psychological research.⁶⁰

While statutes may be desirable, they may not always be necessary. A privileged status has been afforded by the common law to communications between husband and wife,⁶¹ and attorney and client;⁶² privilege also inheres in constitutional doctrine—as in the privilege against self-incrimination. Thus, it is conceivable that privilege could be extended by the courts to other situations—perhaps in a persuasive case, where a research scientist was willing to resist a subpoena and risk imprisonment, in order to protect the private research data in his possession. While there is a role for the martyr both in science and in law, privilege should not be viewed as a status symbol for the scientist.⁶³ It should, rather, be a protective shield for his informant. As the law now stands, however, it is apparent that the research scientist who probes in the realm of the private personality, without consent, bears a special and heavy responsibility to the subjects of his research. It is a responsibility for confidentiality which, at present, in the face of a subpoena he may find himself powerless to discharge.

Of crucial importance also to the protection of confidentiality is a sensitivity on the part of the scientist to the limited purpose for which the research data were originally obtained. It is generally accepted that research data should not be published by the investigator with identities of the individual

ANN. tit. 24, § 3534 (Supp. 1964); Georgia, GA. CODE ANN. § 84-3118 (1955); Idaho, IDAHO CODE ANN. § 54-2314 (Supp. 1965); Illinois, ILL. ANN. STAT. ch. 91½, § 406 (Smith-Hurd Supp. 1964); Kentucky, KY. REV. STAT. ANN. § 319.111 (Supp. 1965); Michigan, MICH. COMP. LAWS § 338.1018 (Supp. 1961); Nevada, NEV. REV. STAT. § 48.085 (1963); New Hampshire, N.H. REV. STAT. ANN. § 330-A:19 (Supp. 1963); New Mexico, N.M. STAT. ANN. § 67-30-17 (Supp. 1965); New York, N.Y. EDUC. LAW § 7611; Oregon, ORE. REV. STAT. § 44.040 (1963); Tennessee, TENN. CODE ANN. § 63-1117 (1955); Utah, UTAH CODE ANN. § 58-25-9 (1963); Washington, WASH. REV. CODE § 18.83.110 (1957).

60. A Montana statute does, however, seem to extend a limited privilege to certain types of behavioral research if conducted by a person teaching psychology in a school. The Montana statute reads as follows:

Any person engaged in teaching psychology in any school, or who acting as such is engaged in the study and observation of child mentality, shall not without the consent of the parent or guardian of such child being so taught or observed testify in any civil action as to any information so obtained.

MONT. REV. CODES ANN. § 93-701-4(6) (1964).

61. See generally 8 WIGMORE, EVIDENCE §§ 2332-41 (McNaughten rev. 1961).

62. See, e.g., *Hurlburt v. Hurlburt*, 128 N.Y. 420, 424, 28 N.E. 651, 652 (1891) (dictum). See also Louisell, *Confidentiality, Conformity and Confusion: Privileges in Federal Court Today*, 31 TUL. L. REV. 101 (1956). See generally 8 WIGMORE, *op. cit. supra* note 61, §§ 2290-2329. It is unlikely that testimonial privilege will be judicially extended to situations that do not fully satisfy Dean Wigmore's four conditions for the existence of a privilege: (1) the privileged communication must originate in a confidence that it will not be disclosed, (2) the element of confidentiality must be essential to the relationship of the parties to the communication, (3) the relationship is one which is to be assiduously fostered, and (4) the injury that would inure to the relationship by disclosure of the communication must be greater than the benefit to be gained from its contribution to the disposition of the litigation. *Id.* § 2285.

63. This, nevertheless, seems to be the situation in those eighteen states which accord the privilege only to licensed or registered psychologists. See Geiser & Rheingold, *Psychology and the Legal Process: Testimonial Privileged Communications*, 19 AMERICAN PSYCHOLOGIST 831 (1964).