that were not the case, how does the average patient select his physician? There are just two methods, either by sheer accident, the physician living in his neighborhood, or by recommendation of another patient. If the physician has lovable attributes, has a good sick-room manner, he will be just as beloved by the patient no matter how he gets to the patient. At any rate, the physician not motivated and irritated by the question of fees, not harassed by the fear of the loss of the patient, would find it much easier to be pleasant and could put on his best curative manner. Human beings would soon accommodate themselves to the thought that this doctor whom he did not select is as good as any other doctor. At the same time, of course, there would never be a law against the patient obtaining the private services of any other physician whom he might be able to retain.

In this paper I have emphasized abuse—poor practice, etc. It is necessary in discussing this topic to point out the weakness of our present system. Let it not be thought for one moment that the whole scheme of medical practice as it exists today is made up of weakness or that it has no bright side. As a matter of fact, there is at least as much to the bright side of medicine as to its questionable side, but it is because of the chaos and uncertainty in the profession that it becomes necessary to adopt commercial methods and commercialism in practice. The everlasting struggle for existence, the fight for clients from whom to collect fees, the fight for place in order to be recognized and of course to obtain patients, the necessity for living like the Joneses and for the window-dressing and the bluff and the endless round of entertainment to collect larger fees of necessity detract from the professional value of the services rendered.

No doubt the whole thought of socialization is revolutionary but it is one of those revolutions in which no one loses. A social revolution is generally in favor of one side as against the other. In socialization of medicine we overthrow no one. Both sides, the public and the physicians, are benefited. There are a handful of men and women in the profession whose income is above $25,000 annually, up to $300,000, but most fall far below the $10,000 level. The latest study fixes the average income among physicians and surgeons at $1,100. This is computed on the basis of the lowest—under $1,000, and those earning from $10,000 to $300,000 per annum. Therefore, fixing the average annual income from the State under socialized medicine at only $5,000, the average physician would benefit by $3,900 per annum. At the same time he would not have to spend his whole income putting up a front and driving a high priced car to command a decent fee. His salary would be his to spend for his needs and no splurge for added practice. The public would have health insurance and sick care as and when needed, without becoming impoverished.

The school system in the United States has socialized the teacher. In addition, of course, there are also private teachers and tutors who are not in the public or private school system but they generally are those who do not qualify or who could not obtain appointments for one reason or other. Thousands upon thousands are engaged in elementary and high schools and there are thousands engaged as instructors, teachers and assistants and professors in schools of higher education and in universities and colleges—all socialized. They all have a fixed income and economic security for old age through pension. In our universities and even in the public school systems of certain cities the professor and teacher have a sabbatical year with full pay. That year is supposed to be given up to study and rest, something for which the unsocialized physician never gets an opportunity.

The educator passes examinations for higher appointment, and in the university, depending on his academic work, papers, treatises, etc., he obtains promotion. The field is open alike to men and women and it is a free and enviable existence. They are a much better trained group, those engaged in the educational system, than those engaged in the free-for-all, scrambled medical profession in this country. On top of it all America has a system of compulsory education. We would require less teachers and eventually probably less professors if elementary education was not compulsory. The state not only pays the teachers and for all school equipment, buildings, etc., but it forces more people to use them and is therefore forced to engage more teachers than would be needed without compulsory education. Would any one want to go back to the archaic system of elementary education only for those who want it or could pay for it themselves? Not even those opposed to socialized medicine would agree to that step.

Let us call your attention to a report submitted to Governor Lehman of New York by his medical committee on Workmen's Compensation Insurance. The report appeared in the New York Times, December 31, 1933. I had read parts of this paper to a number of people to get their reactions and they were shocked at several of my statements. Yet among the twelve recommendations made by the Committee in New York under changes in compensation procedure appears, first—"Punishment for rebating, splitting or refunding of fees and for soliciting or advertising for work, practices which have been responsible for much of the racketeering." In the body of the report, under Standardization of Medical Fees the following paragraph appears, "Undercutting, rebating, splitting or refunding of medical fees will be eliminated by making such practices illegal. Advertising or soliciting medical work under this act will be punishable as a misdemeanor." In the preliminary statement appears the following, "In elaborating on the racketeering charge, the report makes a distinction between abuses due to defects in the law and beyond the reach of the medical profession and those due to the medical profession. In the latter category are included inefficient medical treatment, as for example, where a general practitioner undertakes to treat surgical cases or cases that should be referred to specialists; over-treatment and over-charging; prolongation of the period of compensation, sometimes due to a conspiracy between the workman and his physician; and medical advertising and racketeering to get compensation cases for treatment by physicians or commercial clinics."

I want to again emphasize that I am bringing up the shady side only because physicians and surgeons through economic conditions have been forced to the practices that we complain of and yet insist that our present system of medical justice is good enough to be continued.

It was always my hope that physicians would be the ones to bring up the problem of socialization. They have not done it but the last profession in the world that should have brought up socialization is the Legal Association and they did it themselves. On December 28, 1933, the United States Lawyers Guild, at a meeting in Chicago, proposed a scheme for the socialization of law, making it a state body, operating very much along the lines suggested for the socialization of medicine, taking away from the private attorney the prerogative of a private practice, making the attorney a state officer in fact instead of in theory and giving the lawyer the opportunity to really be a lawyer rather than a schemer or the front or mouthpiece for the rackets.

Every conceivable kind of objection has been raised against socialization of medicine. Most are based on official and semi-official attempts that have been made in the past and which did not serve the purpose entirely. Even at the present time partial socialization is being attempted and apparently is not setting the example. The Panel System in England, and the Krankenkasse of Germany are no examples. We cannot yet look to Russia for perfection, although possibly from that country much will be learned. Socialization eventually, when it is the law, will be a boon to the physician. It will, for the first time, place him in the position where he not only will have satisfactory work, but where he will have time for study and opportunity for research; when he will find himself in a much more satisfactory financial condition and a much more satisfactory state of mind to face not only the problems of his profession, but the problem of general health and prevention. For the first time he will be able to render the best possible service and give all there is in him to the patient. He will lose only a professionally unprofessional standing and will become again side by side with the minister, the rabbi, and the priest, a community power.

Privileged, Confidential Character of Information Imparted to Social Workers

By MAX J. KOHLER

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AN INTERESTING question of law as to the confidential, privileged character of communications made to social workers has arisen very recently in connection with an offer to the Government Naturalization Bureau in this city made by the New York Committee on Naturalization to furnish gratis the services of members of the staff of the constituent naturalization aid organizations skilled in naturalization matters to aid in making out applications for first and second papers for applicants for naturalization. As a member of that Committee (which the Baron de Hirsch Fund subsidizes), I briefed this question recently, and as it is a matter of general interest to social workers, I take pleasure in embodying my view of the law herein for publication in the JEWISH SOCIAL SERVICE QUARTERLY, as requested. The plan was favorably discussed recently at a conference with the Government officers in charge in New York, and is more fully outlined herein. The social service workers are ready to afford their co-operation as a labor of love without any compensation, and the curtailment of the staff of naturalization examiners makes such co-operation all the more desirable and valuable to the Government.

A written understanding with the Government of a definite character becomes requisite in this case, because of this question of privilege, probably in the form of a departmental regulation, as to the privileged confidential character of any information thus secured by the social workers in question, which might possibly involve danger of deportation and even criminal prosecution of some of the *protegees*

of the social service workers involved. From the Government point of view, the matter is almost purely academic, as last year only a single case arose for deportation or criminal proceedings out of applications for naturalization in the Manhattan bureau. From the social service worker's point of view, the matter is fundamental, however, and any course which does not make such matter privileged and confidential would seriously impair the work and standing of the social agency involved. Their relations to their protegees—may I call them "clients"—is analogous to that of a lawyer to his client, and a lawyer disclosing confidential communication is, of course, subject to disbarment for dishonorable and unprofessional conduct (See U. S. vs. Costen, 38 Fed. 24, Brewer J. disbarring an attorney for this cause; Arant's Cases on Legal Ethics, 501-15, quoting Am. Bar. Ass'n, Canon No. 37 on p. 507; Sharswood's Legal Ethics 76-125).

It requires no argument to show that the social workers in question are serving in that capacity and without pay. To do the work intelligently, they must know accurately details of the Naturalization Law, inquire as to all the facts, secure information as to prospective witnesses and occasionally write letters to the latter and others, institute various investigations and secure the confidence of the applicants, preferably even speaking to them in their own tongue. Obviously, they do not act as mere scriveners. If the matter they learn from them be not privileged, they might even be called to divulge them as witnesses in court, a procedure they correctly regard not merely as improper and unprofessional, but even as a despicable betrayal of supposed confidences to a social worker, analogous to those confided to a lawyer or priest. Moreover, even as concerns the Government officers themselves, serious questions of legality and propriety arise, if they continue to write further answers down and in asking further questions with a view to using them against the applicant when danger of deportation proceedings appears, without warning him in criminal proceedings and in deportation proceedings. The Wickersham Commission report on Deportation of Aliens adopted Mr. Reuben Oppenheimer's views, and insists that the aliens subject to deportation should be warned before Government questioning them even before they are under arrest. But other complications are also likely to arise in these naturalization proceedings. The alien may be subject to criminal proceedings for unlawful entry. He may and often will, try to protect himself on the spur of the moment by giving false answers, which he will be afraid to withdraw or disclose, so that a prosecution for perjury may lie. The Social Service Agency would certainly be embarrassed and its work crippled or at least impaired, if such consequences result in cases they are handling, if they testify against him, and on the other hand be involved in possible suspicion of collusion with the alien if they hide the facts and proceed with taking papers and having them signed and sworn to, containing statements they discovered to be false.

Even as to Government officers, such course dangerously approaches unethical entrapment, instigation and decoy-system, such as the U. S. Supreme Court and other courts strongly censured recently (16 Corpus Juris 88-9; Sorrells vs. U. S. 287 U. S. 435; Casey vs. U. S. 276 U. S. 413 at 418-9, 423 et seq. Brandeis, J.; also note 18 Am. Law Reports 146; Robinson vs. U. S. 32 F (2) 505 CCA).

Even as to a Government officer's course, however, the question is not merely one as to privilege, but whether it is not his duty to stop filling out the naturalization papers when he discovers the illegal entry from him, and warn him, and give him an opportunity to explain at once, and then decide whether to start deportation proceedings or criminal proceedings or not. It will be remembered that he is not a prosecuting officer, but an officer in the naturalization service, whose primary duty is not to prosecute or start deportation proceedings, but to aid in naturalization. In this aspect the case is very similar to one which the Committee on Ethics of the New York County Lawyers' Association—with unequalled experience in this field—has reported in its "Questions Respecting Proper Professional Conduct, Submitted to the Committee with Its Answers," published in 1929, Part II, Question and Answer No. 154, p. 143. That raised the question of the duty of a Government Attorney before the Draft Board during the Great War, a public officer, who took an oath of office, but served without pay; I myself was privileged to act in that capacity. The question was as to the duty of such attorney to disclose to the Local Draft Board information he obtained from a registrant in addition to or in conflict with the answer of the registrant to the questionnaire, tending to show that the registrant deliberately concealed or withheld information conflicting with the answer in the questionnaire. In the course of its answer, the Committee wrote:

"In the opinion of the Committee, the relation of attorney and client does not exist between the registrant and a member of the Legal Advisory Board; and it is not improper, but is indeed the duty of the latter, under his oath of office, to disclose to the Local Board all such information to enable the Board to judge the case in accordance with truth. *He may properly, and should inform the registrant that he (the lawyer) is designated by the Government to aid in securing accurate and complete information along the lines indicated by the questionnaire. But his duty to 'advise the registrant' does not contemplate his assisting the registrant to deceive the Local Board* as to the registrant's availability or exemption.

In our opinion, *it is, however, unwise and impolite to make secret reports to the Local Boards, lest the registrants get false impression of the attitude and functions of the Legal Advisory Board and its members.*

While *we regard it as the duty of the members to prevent fraud upon the Government, we advise that the course which the member of the Legal Advisory Board may properly consider it his duty to pursue, in order to apprise the Local Board either of facts or his impressions, be disclosed to the registrant in fairness to him, and that the registrant be counseled, and thus afforded an opportunity, either to explain the situation, or to modify his answers to conform with the truth."*

In effect—apart from the possibility of being called as a witness against the applicant for naturalization, bringing up the question of privilege—that is little more than we ask. An interesting recent case of asserted privilege arose in connection with the contention of Judge Lindsey in Colorado, as a judge of the Juvenile Court, of right to refuse to divulge a confession of murder by a juvenile delinquent made to him, on his plea that though a judge of that court, the admission was privileged. The claim of privilege was overruled, but by a closely divided court, in Lindsey vs. People, 66 Colorado 343; 16 Am. Law Reports 1250. Judge Lindsey even carried the question to the U. S. Supreme Court, though clearly this involves no *federal constitutional question,* and the appeal was dismissed in 255 U. S. 560.

The Federal Courts are disposed to frown down upon obtaining evidence by questionable means, and recently the U. S. Supreme Court was quite closely divided even as to admitting evidence obtained by wire-tapping in Olmstead vs. U. S. 277 U. S. 438, Justices Holmes, Brandeis, Butler and Stone dissenting and claiming that such evidence is inadmissible.

But I have so far dealt with officials merely, who have special duties and obligations to the Government in the premises. Such social workers, aiding in the work of naturalization are, however, not public officials, but social workers, and do not cease to become social workers standing in confidential relations to the applicants for naturalization when aiding them in making out papers, even in the U. S. Bureau of Naturalization. In fact, I understand that this relationship is recognized at Ellis Island on the part of the same or similar social workers, and communications to them are concededly regarded as confidential.

On the precise question involved, the confidential, privileged, character of communications to social workers I know of only two rulings by courts, one *pro* and the other *con,* but the latter was not adequately briefed or argued, and decided at *nisi prius,* in the midst of an overwhelmingly large motion calendar. In both cases, the Jewish Social Service Association asserted the privilege, in order to avoid producing papers from its files, embodying confidential information secured from protegees ("Clients"). In one case, entitled "Rose Perlman vs. Nathan Perlman, in the New York Supreme Court, Bronx County (Index No. 5105 Year 1930), Mr. Justice Schmuck, in view of his great and long experience, sustained the claim of privilege and refused to order production of the papers demanded, though without opinion on June 30, 1930 (see N. Y. Law Journal of July 1, 1930, entry reading merely "motion denied"). A similar case arose before Mr. Justice McLaughlin in the same Court in a cause entitled "In the Matter of the Application of the City of New York for a Writ of Discovery and Inspection of certain records in possession of the Jewish Social Service Association, Inc." and the N. Y. Law Journal of Feb. 1, 1934 reports his opinion as follows:

"Motion is granted. To have records produced. The ultimate end in a legal controversy is truth. It would appear that an inspection such as sought may lead to obtaining the truth in this matter. Nothing is so confidential as to prevent bringing to light the facts in any case. I appreciate the stand taken but in the absence of a statutory prohibition the application must be granted. Settle order."

Obviously, the Court's claim that "nothing is so confidential as to prevent bringing to light the facts in any case" is erroneously too sweeping and comprehensive, for it would deny any privilege in any case. As to supposedly requisite legislation, including departmental regulations, more hereafter. It is submitted that Mr. Justice Schmuck's decision is the correct one.

The case is similar to the one that arose as to confessional statements to a priest, betrayal of which he regarded as dishonorable or despicable. In the absence of legislation, the opinions of the courts were divided, though concededly the numerical weight of authority was formerly against the privilege, due doubtless to anti-Catholic bias in many sections, which our religious liberty provisions, even without legislation, are overcoming, as shown in Brink vs. Stratton, 176 N. Y. 150 at 161. As to the privileged character of such confidences to a priest, see D. M. Cloude's article in 33 American Law Review 544-9; 7 Annotated Cases, Am. and English 109; 28 Ruling Case Law 520-1; 5 Wigmore on Evidence Sec. 2394 et seq. Prof. Wigmore, the great master of the law of evidence, argues in favor of the priest's privilege, even in the absence of statutes, which are now very general in this country, and where the question is not governed by any statute, his views are likely to be followed, unless the court is strongly committed to a different view by precedent.

Prof. Wigmore's general treatment of the subject in Vol. 5, Sec. 2285 of his work on Evidence (2nd Edition), is illuminating and on general principles sustains the privilege in such cases as the social workers; where the law has devel-

oped without dealing specifically with such a case. He urges that four elements should be present to sustain the privilege:

"(1) The communications must originate in a *confidence* that they will not be disclosed; (2) This element of *confidentiality must be essential* to the full and satisfactory maintenance of the relation between the parties; (3) The *relation* must be one which in the opinion of the community ought to be sedulously *fostered,* and (4) the *injury* that would inure to the relation by the disclosure of the communications must be *greater than the benefit thereby gained* for the correct disposal of litigation." (Adopted in O'Toole vs. Ohio G. F. Ins. Co. 159 Michigan 187; this case was just cited with approval by the United States Supreme Court in Wolfe vs. U. S. 78 U. S. S. C., L. ed. Advance Opinions 342, Wigmore's Conditions were adopted in 40 Cyclopedia of Law and Procedure 2353, and by various courts from there, as shown by the supplements.)

The third and fourth elements show that our law develops in this respect, as the importance of social service workers to society becomes more generally recognized. Similarly, the statutory prohibition against the disclosure of privileged communications between lawyer and client has been become enlarged, generally without any express statutory enlargement, so as to include (1) statements made to a lawyer *before* his retainer, with a view to retaining him, and also (2) to or in the presence of assistants of a lawyer, such as his clerks, interpreters, experts he retains, etc.

As to the social worker, in the early case of People vs. Monroe 40 N. Y. Miscellaneous Reports 286; 81 N. Y. Suppl. 972, Judge Leventritt pointed out in 1903 that the term "social settlement" or "social worker" had "not yet found its way into the dictionaries, nor do the legislative records and debates furnish a guide to the meaning intended." However, the terms required judicial construction, as the N. Y. Legislature in an amendment adopted in 1902 to our tax laws, granted an exemption from taxation to "any social settlement, whether incorporated or unincorporated, which shall own or lease for a term not less than three years a building or buildings devoted exclusively to the purposes of such *social settlement,* now existing, or hereafter established in the City of New York. Thanks to the services of such eminent social workers as Jane Addams, Lillian D. Wald, Sophonisba P. Breckenridge, Edith Bremer, Frances Perkins, Grace and Edith Abbott, Joseph P. Chamberlain, Read Lewis, Belle Moskowitz, Judge Julian W. Mack, Judge Lindsey, Lee K. Frankel, Homer Folks, William Hodson and Solomon Lowenstein, the people of this and other States and their legislatures have recognized in a developing extent, the scope and value of the work of the social workers and their services to the State and the law, and the value and importance of recognizing the importance of making communications to them confidential and privileged, in the interest of society and law enforcement itself. Particularly significant in this connection is the Law's recognition of the parole officer and the juvenile court worker.

Today we are therefore no longer in the position we were in when Judge Leventritt wrote, of not even finding these terms defined in the dictionary, but we have a long article on "Social Work" in the 14th Edition of the Encyclopedia Britannica by Percy Alden, Chairman, British Institute of Social Service and William Hodson, Executive Director of the Welfare Council, President, American Association of Social Workers and now Commissioner of Charities, N. Y., and we have long articles by distinguished authorities with extensive bibliographies, in the "Social Work Year Book"—I cite the edition of 1929—on such subject as "Catholic Social Work," "Jewish Social Work," "Protestant Social Work," "Child Welfare Activities of the Federal Government," "Conference of Social Work," "Domestic Relations Court," "Juvenile Courts and Probation," "Legal Aid," "Immigrants and Foreign Communities," "Naturalization" cross-referred to the preceding article, "Social Settlements," "Social Work as a Profession," "Social Work Uuder State Governments," "Social Welfare," cross-referred to "Public Welfare—State Agencies," "Family Welfare Societies," etc.

I have even found two able articles in recent legal periodicals on the relation of Social Work to the Law, quoting high judicial authorities among others, one entitled "Contribution of Social Work to the Law" by Isaac Pacht in 2 Brooklyn Law Review 180-8, and one entitled "Relationship Between Law and Social Work" by Mrs. W. T. Best in "North Carolina Bar Associations Reports" for 1932, pp. 148-161, especially at p. 154.

Coming down even more closely to this very branch of the service, we find a relevant recommendation in the Report of the Ellis Island Committee recently appointed by Secretary Perkins, and including such representative members of our N. Y. Bar as Judge Thomas D. Thatcher, lately Solicitor General of the United States, Prof. Joseph P. Chamberlain, George W. Alger, Frederic R. Coudert, George G. Ernst, Hon. James W. Gerard, Read Lewis, Hon. Morgan J. O'Brien (and may I add my own name) in favor of establishing even among government immigration officials a "Division of Information and Immigrant Aid" (pp. 41-7; compare 21, 113-116).

In this connection, the committee recommended at p. 116:

"One of the problems which must be faced when the Government undertakes to establish or maintain such centers or bureaus is a conflict of responsibilities in the cases of aliens who voluntarily come to it for information or assistance and who reveal facts that indicate they are liable to deportation or punishment under the law. On the one hand the Immigration and Naturalization Service is charged with enforcing the immigration and deportation laws. On the other it may, in inviting the confidence of the alien, be considered to have assumed some of the obligations pertaining to the relationship of attorney and client. It is obvious that if this confidence is not respected, immigrants and foreign born will fear to come to the Bureaus and the latter will not accomplish the purposes for which they were established. The solution of the problem most likely to serve the best interests of the country must be left to the good sense of the Department of Labor. A regulation making communications to the proposed Bureau of Information and Immigrant Aid privileged, could be drawn, it is believed, following the precedent of the Internal Revenue regulation sustained in Boske vs. Comingore, 177 U. S. 459."

This clearly shows that the arrangement we advocate is proper ethically and for purposes of policy and utility.

While, as to Government officers as above indicated, the special regulation may be necessary to render communication obtained by the Welfare Division of the Government service itself confidential and immune, such information is *ipso facto* as above shown to be confidential as concerns the social workers. In order to avoid misunderstanding, however, and to prevent danger of such social workers being called upon to testify in court, a regulation covering both Government officers and the social workers along the lines of the one involved in Boske vs. Comingore 177 U. S. 459 ought to be adopted.

Progress and Problems in Social Work Education During the Depression*

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THE depression years brought to social work its greatest opportunity and its greatest challenge. Quantitatively social work has developed to an enormous extent. Municipal, state, and federal programs of relief and reconstruction have been undertaken on an unprecedented scale. Social workers have been called upon by municipal, state and federal governments to head activities and programs which formerly would have been turned over exclusively to politicians or at best "big business men." The press and governmental officials have paid tribute to social work and social workers as never before. Statements have been made to the effect that whereas the other groups in public life, such as industrialist, bankers, economists, statisticians, social and political scientists, and governmental officials had no program and were unequal to the tasks and problems which the depression brought, social work and social workers knew what they were about, knew what they wanted, and how to get it. Social work received an amount of recognition in the last four years which no like period in the past brought to it.

But this recognition was not an unmixed blessing. The huge tasks and relief burdens which social work was called upon to deal with during the last three or four years almost wrecked whatever standards social work, and particularly case work, had developed. The enormous expansion of public relief programs required a personnel which social work did not have. Untrained and inexperienced people were engaged to carry on social work activities, with the consequent danger of social work being blamed for the inadequate work which these neophytes were doing. Private social agencies contracted their own activities and were forced to abandon some of the most hopeful and promising aspects of their work. While they loaned some of their experienced and trained personnel to the public agencies, it was not always the best people who were released. Some of them unloaded the weakest members of their staffs on the public agencies. The lack of an adequately trained personnel, the huge numbers that required attention, and the absence of clearly defined programs and standards in public agencies threatened to undermine the standards that had been developed.

The danger would not have been so great if social workers and others responsible for the policies in public and private agencies had clearly recognized the difference between emergency work, such as the various municipal relief bureaus and some private agencies were obliged to do, and the kind of case work which had developed during the last decade or two. Unfortunately, social workers of reputation and standing seemed to make a virtue of the necessity and argued that a new era had dawned on social work requiring new

*Presidential Report to the Annual Meeting of the American Association of Schools of Social Work, December 29, 1933.