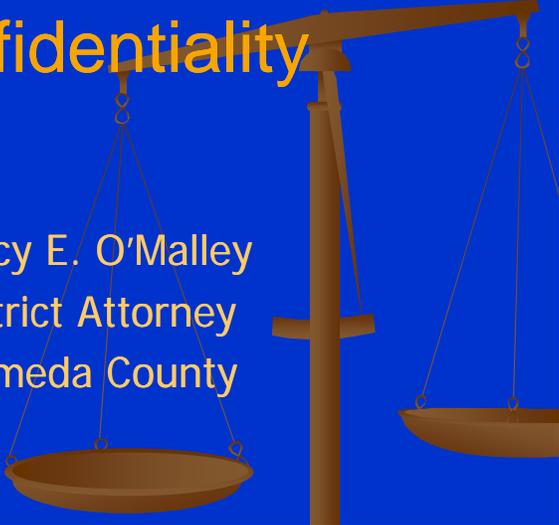
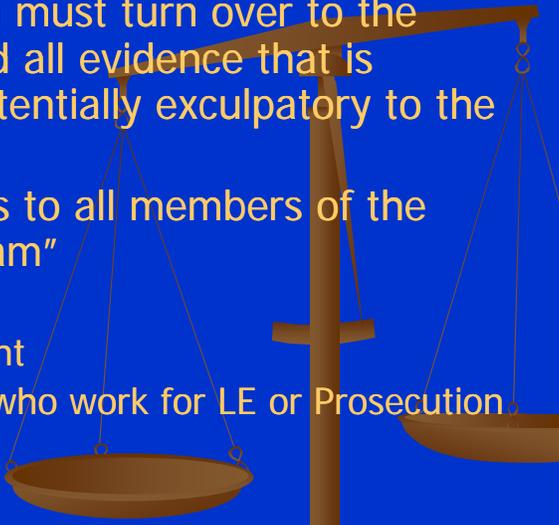


Confidentiality

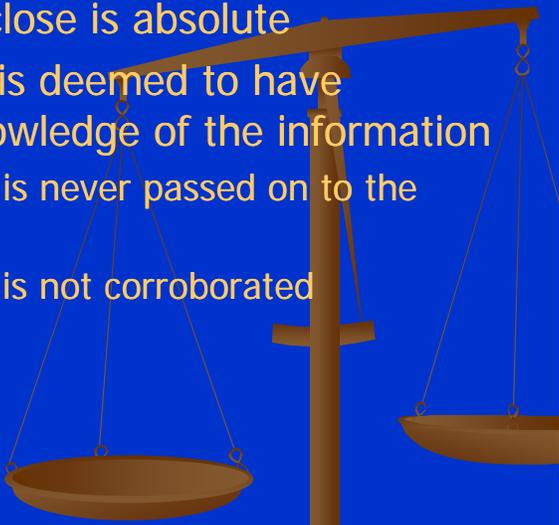
A stylized illustration of a wooden balance scale with two pans, set against a blue background. The scale is positioned on the right side of the slide, with the word 'Confidentiality' written in yellow text above it.

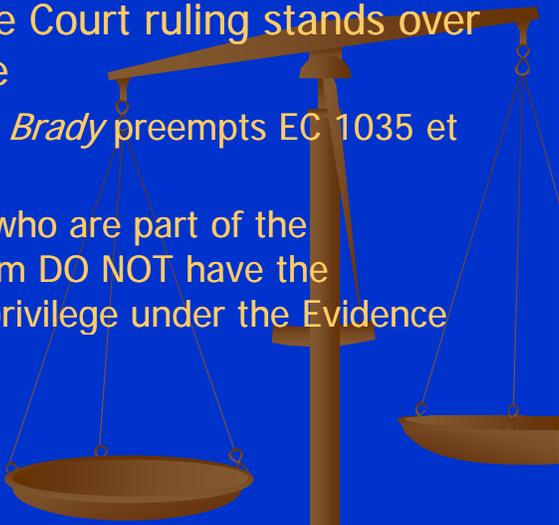
Nancy E. O'Malley
District Attorney
Alameda County

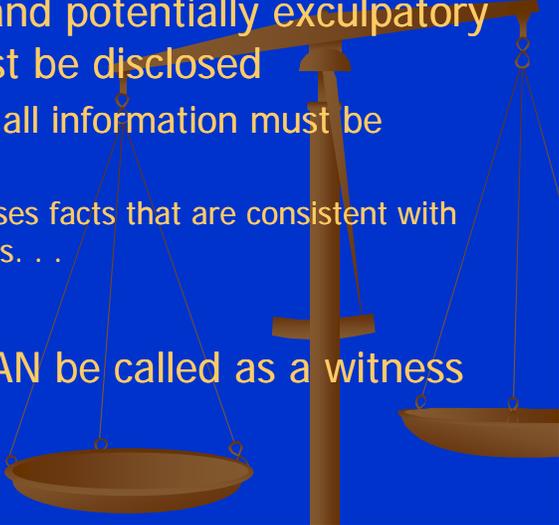
BRADY v MARYLAND

A stylized illustration of a wooden balance scale with two pans, set against a blue background. The scale is positioned on the right side of the slide, with the text 'BRADY v MARYLAND' and a list of bullet points to its left.

- The Prosecution must turn over to the defense any and all evidence that is material and potentially exculpatory to the defendant
- The Rule applies to all members of the "prosecution team"
 - Prosecution
 - Law enforcement
 - Victim-witness who work for LE or Prosecution

- 
- A stylized illustration of a wooden balance scale with two pans, set against a blue background. The scale is positioned on the right side of the slide.
- The duty to disclose is absolute
 - The prosecutor is deemed to have constructive knowledge of the information
 - Even if the info is never passed on to the prosecution
 - Even if the info is not corroborated

- 
- A stylized illustration of a wooden balance scale with two pans, set against a blue background. The scale is positioned on the right side of the slide.
- The US Supreme Court ruling stands over the state statute
 - In other words, *Brady* preempts EC 1035 et seq
 - Victim-witness who are part of the prosecution team DO NOT have the confidentiality privilege under the Evidence Code.

- 
- ONLY material and potentially exculpatory information must be disclosed
 - Does not mean all information must be disclosed
 - If victim discusses facts that are consistent with prior statements. . .
 - VW Advocate CAN be called as a witness in the case.

Confidential Communication

- 
- Evidence Code Section
 - Protections communications between the victim and identified professional / para professional individuals
 - Statute defines "scope of communication"
 - *Brady v. Maryland*
 - Applies to material, exculpatory evidence
 - Applies to the members of the "Prosecution Team"

Under what circumstances are the communications of the victim confidential?

and

Who holds the privilege of the confidential communication?

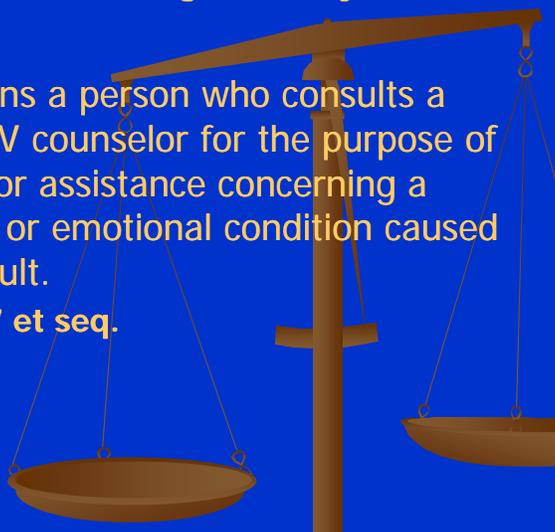
- The Evidence Code controls the types and methods of evidence that is admissible in Court.

- Evidence Code Section 1035 et seq.,
 - specifically carves out a protection regarding confidential communications between the Survivor and the Sexual Assault Counselor.
- Evidence Code Section 1037 et seq.
 - spe specifically carves out a protection regarding confidential communications between the Survivor and the Domestic Violence Counselor.

- Those for whom the confidential communication exists are guided by law

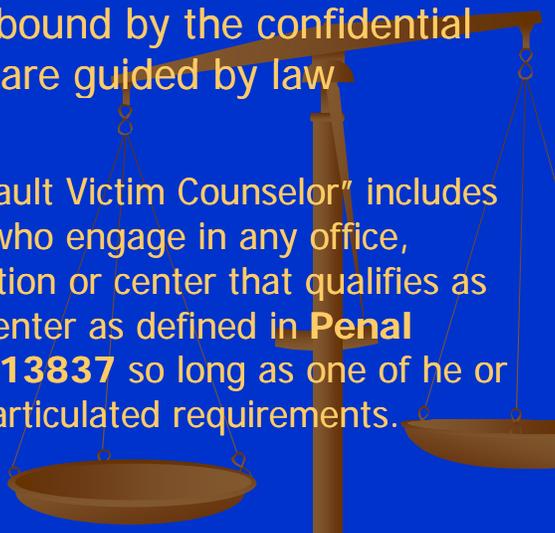
- Ie: "Victim" means a person who consults a sexual assault/DV counselor for the purpose of securing advice or assistance concerning a mental, physical or emotional condition caused by a sexual assault.

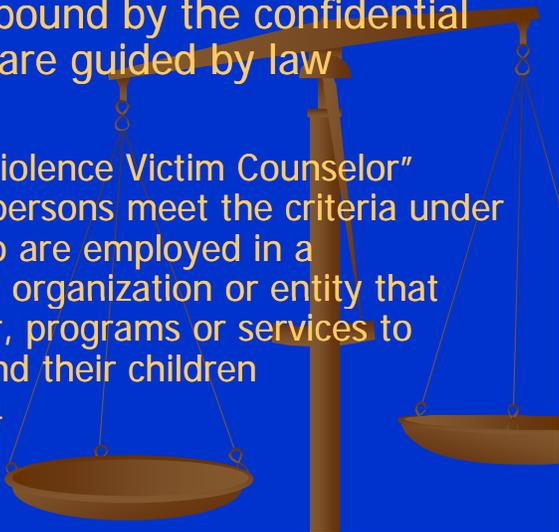
- **EC 1035; 1037 et seq.**

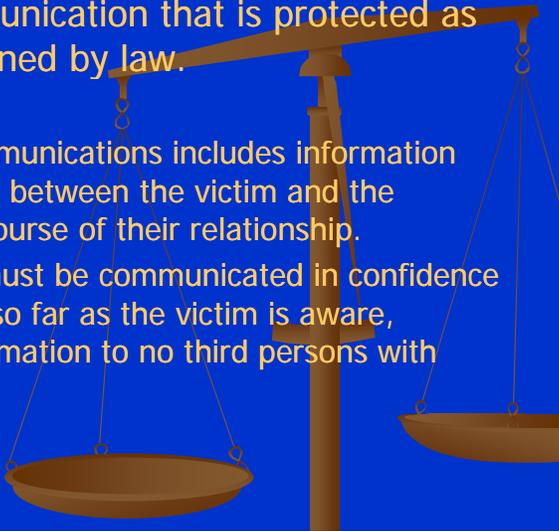


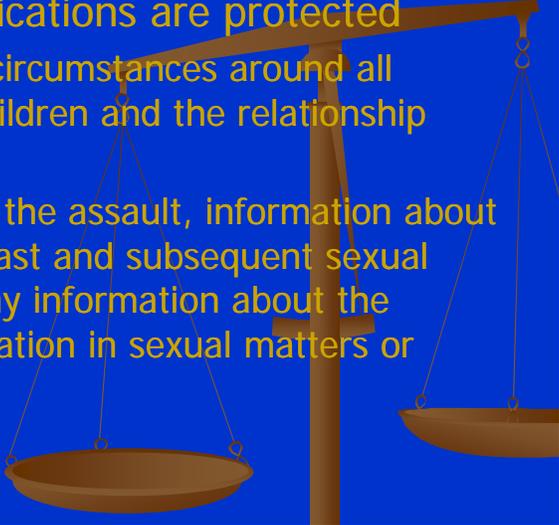
- Those who are bound by the confidential communication are guided by law

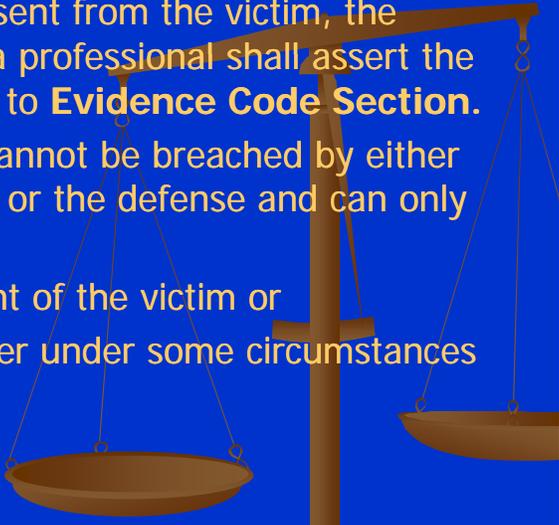
- Ie: "Sexual Assault Victim Counselor" includes those persons who engage in any office, hospital, institution or center that qualifies as a Rape Crisis Center as defined in **Penal Code Section 13837** so long as one of he or she meets the articulated requirements.



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- Those who are bound by the confidential communication are guided by law
 - Ie: “Domestic Violence Victim Counselor” includes those persons meet the criteria under 1037.1 and who are employed in a nongovernment organization or entity that provides shelter, programs or services to victims of DV and their children
 - See W&I 18294

- 
- The type of communication that is protected as confidential is defined by law.
 - Ie: Protected communications includes information that is transmitted between the victim and the counselor in the course of their relationship.
 - The information must be communicated in confidence by a means that, so far as the victim is aware, discloses the information to no third persons with limited exception.

- 
- Not all communications are protected
 - DV: facts and circumstances around all assaults, the children and the relationship with the abuser
 - SA: facts about the assault, information about the survivors' past and subsequent sexual contacts and any information about the survivors' reputation in sexual matters or sexual conduct

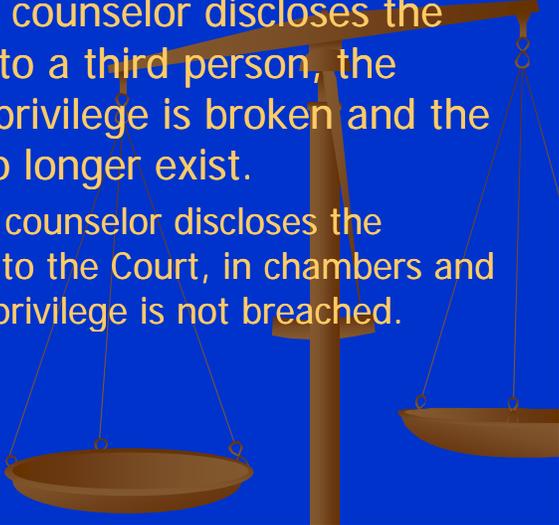
- 
- Absent actual consent from the victim, the professional / para professional shall assert the privilege pursuant to **Evidence Code Section**.
 - That privilege cannot be breached by either the Prosecution or the defense and can only be excused by
 - actual consent of the victim or
 - by Court Order under some circumstances

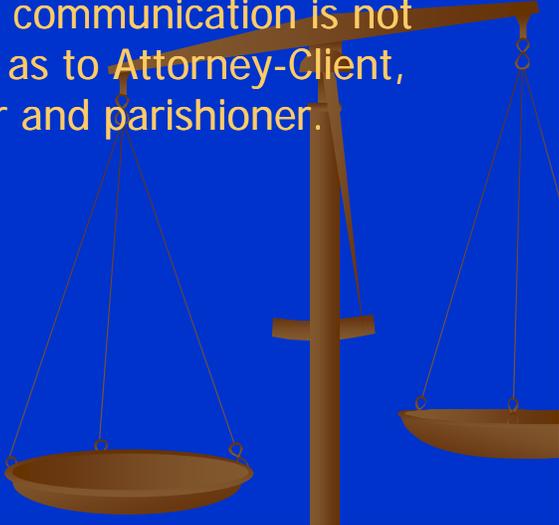
Third Party Disclosure

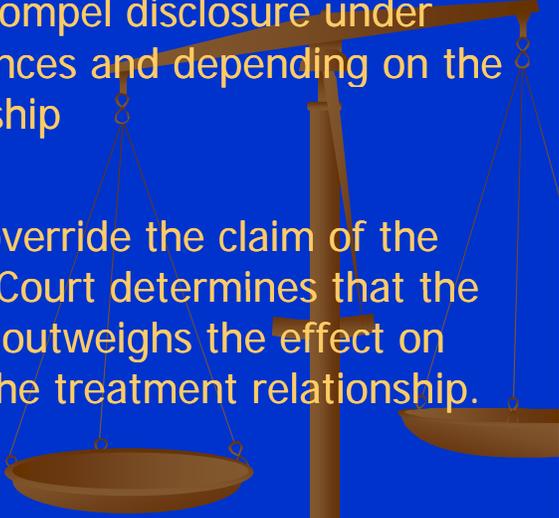
- Confidentiality is not destroyed by disclosure of the communication to third persons **IF (and only IF)**
 - "who are present to further the interests of the victim in the consultation

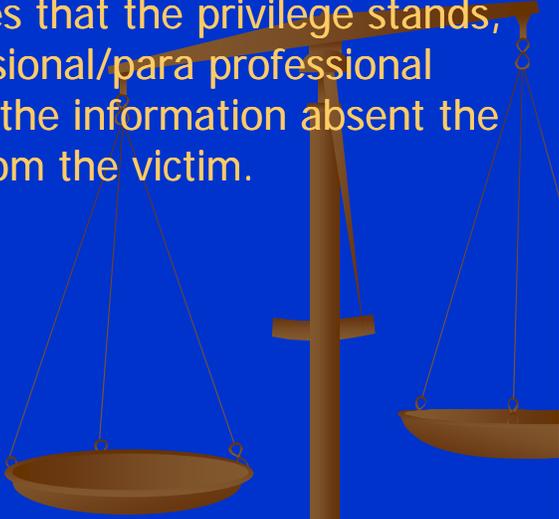
Third Party Disclosure

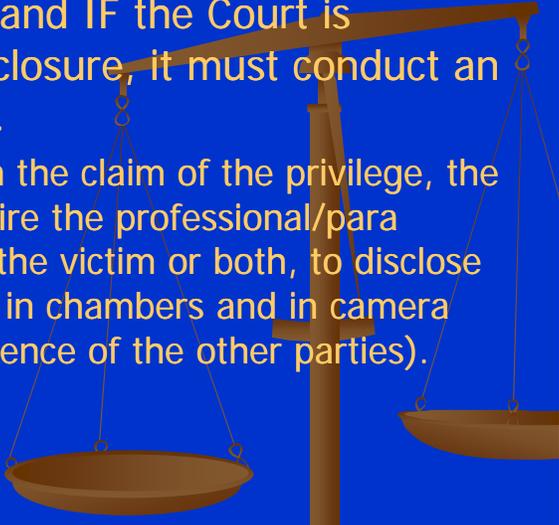
- **Confidentiality is not destroyed by disclosure of the communication to third persons**
 - **To whom disclosure is reasonably necessary for the transmission of the information**
 - **Accomplishment of the purpose for which the sexual assault counselor is consulted**

- 
- Generally, if the counselor discloses the communication to a third person, the integrity of the privilege is broken and the privilege may no longer exist.
 - However, if the counselor discloses the communication to the Court, in chambers and in camera, the privilege is not breached.

- 
- The confidential communication is not absolute except as to Attorney-Client, Religious Leader and parishioner.

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- The Court can compel disclosure under some circumstances and depending on the type of relationship
 - The Court can override the claim of the privilege, if the Court determines that the probative value outweighs the effect on the victim and the treatment relationship.

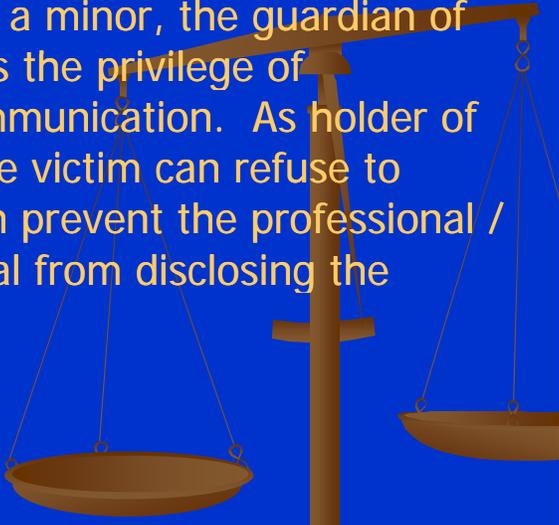
- 
- If the Court rules that the privilege stands, then the professional/para professional cannot disclose the information absent the authorization from the victim.

A golden scale of justice is positioned on the right side of the slide, with its pans hanging from a horizontal beam. The background is a solid blue color.

If the laws allow, and IF the Court is entertaining disclosure, it must conduct an EC 352 analysis.

- When ruling on the claim of the privilege, the Court may require the professional/para professional or the victim or both, to disclose the information in chambers and in camera (out of the presence of the other parties).

KEY POINT

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- A golden scale of justice is positioned on the right side of the slide, with its pans hanging from a horizontal beam. The background is a solid blue color.
- The victim, or if a minor, the guardian of the victim, holds the privilege of confidential communication. As holder of the privilege, the victim can refuse to disclose and can prevent the professional / para professional from disclosing the communication.

Constructive Knowledge

- If the VWAC is located in a DA's Office, or law enforcement, there is no "confidential communication protection."
- Advocate has actual knowledge of *Brady* material, the Prosecution may be deemed to have constructive knowledge

Actual / Constructive Knowledge

COMMUNICATION WITH YOUR
PROSECUTOR

The Prosecutor's Duty is YOUR duty