PALMER, J., concurring in part and in the judgment. I agree with and join part II of the majority opinion. I disagree, however, with the majority's analysis in part I of its opinion. Specifically, I disagree with its interpretation of the dangerous client exception to the social worker client privilege enumerated in General Statutes § 52-146q (c) (2),[1] and with its conclusion that that exception does not extend to testimony in a judicial proceeding. In my view, the majority's holding seriously and unnecessarily undermines the public safety purpose of the exception by limiting its applicability in such a way that fails to account for the very risk of danger that the exception was designed to address. I therefore would conclude that the trial court properly admitted Christopher Burke's testimony concerning the threats that the defendant, John Dean Orr, made against Kenneth Edwards, Jr.[2]

As the majority accurately states, in interpreting § 52-146q (c) (2), "[o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning [General Statutes] § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . . *State* v. *Jenkins*, 288 Conn. 610, 620, 954 A.2d 806 (2008) . . . ." (Citations omitted; internal quotation marks omitted.) Part I of the majority opinion. Applying these principles to the present case leads me to conclude, contrary to the determination of the majority, that the trial court properly permitted the state to introduce Burke's testimony into evidence.

My first point of disagreement with the majority is its refusal to acknowledge that § 52-146q creates an evidentiary privilege for communications between social worker and client. The majority insists that § 52-146q merely provides for the confidentiality of such communications. The majority reasons that, under § 1-2z, it must refrain from construing the statute to establish a privilege because of the absence of textual sup-

port for that construction. See footnote 10 of the majority opinion. In my view, the defendant's claim, which implicates the scope of § 52-146q and its dangerous client exception, requires us to decide that question. Furthermore, § 52-146q is not clear and unambiguous on the point, and resort to extratextual evidence convincingly establishes that § 52-146q does, indeed, create such a privilege.[3]

To appreciate fully the scope of § 52-146q, it is necessary first to recognize the distinction between confidential communications and privileged communications. See *State* v. *Kemah*, 289 Conn. 411, 417 n.7, 957 A.2d 852 (2008). "Unlike privileged information, confidential information generally may be disclosed under court order, over the objection of the information supplier, when a court deems it necessary to do so under a standard such as 'in the interests of justice' or 'necessity.' " C. Tait & E. Prescott, Connecticut Evidence (4th Ed. 2008) § 5.2, p. 220; see also 81 Am. Jur. 2d, Witnesses § 274 (2004) ("'[c]onfidentiality' and 'privilege' are not synonymous, and are two compatible, yet distinct, concepts; 'privilege' addresses a person's right not to have another testify as to certain matters as part of a judicial process, while 'confidentiality' addresses the obligation to refrain from disclosing information to third parties other than as part of the legal process"). Consequently, not all confidential communications are privileged.

It is true, of course, that § 52-146q (b) provides that "[a]ll communications and records shall be confidential . . . ." Another provision of the statute, however, expressly refers to the confidentiality rights created thereunder as privileges. See General Statutes § 52-146q (a) (5) ("'[a]uthorized representative' means . . . (C) if a person has been declared incompetent *to assert or waive his privileges under this section*, a guardian or conservator who is duly appointed to act for the person" [emphasis added]). Moreover, other closely related statutes that protect confidential communications between mental health professionals and their patients or clients give rise to a privilege. See, e.g., General Statutes § 52-146c (privileged communications between psychologist and patient); General Statutes § 52-146d (privileged communications between psychiatrist and patient); General Statutes § 52-146p (privileged communications between marital and family therapist and client); General Statutes § 52-146s (privileged communications between professional counselor and client). At the very least, therefore, § 52-146q is ambiguous as to whether it provides only for the confidentiality of communications between social worker and client or, instead, establishes a social worker-client privilege.

Accordingly, we may consult extratextual sources to ascertain the statute's meaning in this respect. This evidence demonstrates convincingly that the statute was intended to create a privilege for social worker-

client communications.[4] See C. Tait & E. Prescott, supra, § 5.49.1, p. 266 ("[t]he statute makes statements to social workers 'confidential,' when the statute clearly intends privilege status"). Indeed, there is no reason to believe that the legislature would have established a privilege for communications between all other mental health care providers and their patients or clients, and fail to create one for communications between social workers and their clients. Furthermore, the fact that § 52-146q establishes a privilege finds support in the pertinent legislative history. Specifically, Jan Fontanella, then president elect of the Connecticut chapter of the National Association of Social Workers, testified before the judiciary committee in support of the statute concerning the need to establish a social worker-client privilege. See Conn. Joint Standing Committee Hearings, Judiciary, Pt. 4, 1992 Sess., pp. 1352–54. We have recognized that testimony before a legislative committee may be relevant to a statutory analysis because such testimony tends to shed light on the problems that the legislature was attempting to resolve in enacting the pertinent legislation. E.g., *Burke* v. *Fleet National Bank*, 252 Conn. 1, 17, 742 A.2d 293 (1999). It therefore is clear that § 52-146q establishes a social worker-client privilege rather than a rule preserving the confidentiality of social worker-client communications, as the majority asserts.[5]

The existence of a statutory privilege having been established, I next must consider the scope of that privilege in light of the statute's delineated exceptions to its prohibition on disclosure. General Statutes § 52-146q (b) provides in relevant part: "All communications and records shall be confidential and, except as provided in subsection (c) of this section, a social worker shall not disclose any such communications and records unless the person or his authorized representative consents to such disclosure. . . ." General Statutes § 52-146q (c) (2) provides: "Communications and records may be disclosed when a social worker determines that there is a substantial risk of imminent physical injury by the person to himself or others, or when disclosure is otherwise mandated by any provision of the general statutes." I disagree with the majority that these statutory provisions plainly and unambiguously provide that communications and records indicating that a client poses a substantial risk of imminent physical injury to himself or others may not be disclosed in court proceedings. Rather, § 52-146q (c) (2) plainly provides that such communications and records may be disclosed to third parties without the client's consent and, therefore, are not confidential. Cf. *PSE Consulting, Inc.* v. *Frank Mercede & Sons, Inc.*, 267 Conn. 279, 330–31, 838 A.2d 135 (2004) (when statements to attorney are made in presence of third party who has no obligation to keep statements confidential, there is no reasonable expectation of confidentiality).[6] The provision does not specify

one way or the other whether disclosable, nonconfidential communications and records are nevertheless privileged. In other words, the statute does not indicate to whom an appropriate disclosure under § 52-146q (c) (2) may be made, and it provides no indication with respect to the ramifications that such a disclosure will have on the communication. Section 52-146q (c) (2) also contains no language suggesting that the social worker's right to disclose threatening communications terminates upon the first disclosure of that threat; indeed, the statute provides no guidance whatsoever as to when, if ever, that right to disclosure is terminated. Because § 52-146q is silent on these issues,[7] and because the statute expressly provides for disclosure of communications to third parties—communications for which there could have been no reasonable expectation of confidentiality in the first place—§ 52-146q is not plain and unambiguous as applied to the present factual scenario, that is, with respect to the admissibility of Burke's testimony.[8] Accordingly, under § 1-2z, we may consider the legislative history and circumstances surrounding the enactment of § 52-146q (c) (2), the legislative policy underlying the provision, and its relationship to other statutory provisions and common-law principles governing the same general subject matter. See, e.g., *State* v. *Jenkins*, supra, 288 Conn. 620.

"The common-law principles underlying the recognition of testimonial privileges can be stated simply. For more than three centuries it has now been recognized as a fundamental maxim that the public . . . has a right to every man's evidence. When we come to examine the various claims of exemption, we start with the primary assumption that there is a general duty to give what testimony one is capable of giving, and that any exemptions which may exist are distinctly exceptional, being so many derogations from a positive general rule. . . . Exceptions from the general rule disfavoring testimonial privileges may be justified, however, by a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth." (Citations omitted; internal quotation marks omitted.) *Jaffee* v. *Redmond*, 518 U.S. 1, 9, 116 S. Ct. 1923, 135 L. Ed. 2d 337 (1996). This court has held that, because the exercise of an evidentiary privilege "tends to prevent a full disclosure of the truth in court"; (internal quotation marks omitted) *PSE Consulting, Inc.* v. *Frank Mercede & Sons, Inc.*, supra, 267 Conn. 330; evidentiary privileges should be strictly construed. Id.; see also *Herbert* v. *Lando*, 441 U.S. 153, 175, 99 S. Ct. 1635, 60 L. Ed. 2d 115 (1979) ("[e]videntiary privileges in litigation are not favored"); *United States* v. *Nixon*, 418 U.S. 683, 710, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974) (evidentiary privileges "are not lightly created nor expansively construed, for they are in derogation of the search for truth"). See generally *Viera* v. *Cohen*, 283 Conn. 412, 426–27, 927 A.2d 843 (2007) (statute in dero-

gation of common law "should receive a strict construction and is not to be extended, modified, repealed or enlarged in its scope by the mechanics of [statutory] construction," and "the operation of a statute in derogation of the common law is to be limited to matters clearly brought within its scope" [internal quotation marks omitted]). Finally, consistent with the rule requiring strict construction of evidentiary privileges and with the underlying purpose of evidentiary privileges, communications must be confidential to have privileged status.[9] See *PSE Consulting, Inc.* v. *Frank Mercede & Sons, Inc.*, supra, 330–31 ("[s]tatements made in the presence of a third party . . . are usually not privileged because there is then no reasonable expectation of confidentiality" [internal quotation marks omitted]); id., 331 (noting "fundamental requirement that the communication be confidential in order to qualify for the [attorney-client] privilege"); 81 Am. Jur. 2d, supra, § 274 ("[a] person may not claim an evidentiary privilege as to communications that do not originate in the confidence that they will not be disclosed").

As I have indicated, General Statutes § 52-146q (c) (2) plainly and unambiguously provides that communications that give rise to a belief that a client poses "a substantial risk of imminent physical injury . . . to himself or others" may be disclosed and, therefore, are not confidential.[10] Accordingly, under the general rule that communications must be confidential to qualify for privileged status, and consistent with the rule that evidentiary privileges must be strictly construed, I would conclude that such communications are not privileged. Because they are not privileged, the state was entitled to use them in its case against the defendant.

My conclusion is bolstered by the legislative history and genealogy of General Statutes § 52-146e, which governs the psychiatrist-patient evidentiary privilege, and General Statutes § 52-146f, which sets forth specific situations in which consent for disclosure of psychiatric records and communications is not required. Two members of the committee that drafted the original versions of these statutes authored an article[11] in which they stated that the committee members "deliberately chose not to write a 'future crime' exception into the [proposed] bill" that eventually was enacted as No. 529 of the 1961 Public Acts.[12] A. Goldstein & J. Katz, "Psychiatrist-Patient Privilege: The GAP Proposal and the Connecticut Statute," 36 Conn. B.J. 175, 188 (1962). The committee members "were persuaded that, as a class, patients willing to express to psychiatrists their intention to commit crime are not ordinarily likely to carry out that intention. Instead, they are making a plea for help. The very making of these pleas affords the psychiatrist his unique opportunity to work with patients in an attempt to resolve their problems. Such resolutions would be impeded if patients were unable to speak freely for fear of possible disclosure at a later date in

a legal proceeding." Id.

In 1969, however, the legislature amended General Statutes (Rev. to 1968) § 52-146a and created a new exception to the psychiatrist-patient privilege "when the psychiatrist determines that there is substantial risk of imminent physical injury by the patient to himself or others . . . ." Public Acts 1969, No. 819, § 4 (P.A. 819), now codified at General Statutes § 52-146f (2). The legislative history of P.A. 819 sheds no light on the reason for this legislative change of heart. The article by Goldstein and Katz makes it clear, however, that the exceptions originally listed in General Statutes (Cum. Sup. 1961) § 52-146a, now codified as amended at § 52-146f (1), (4) and (5), were intended to be exceptions to the evidentiary privilege, not merely exceptions to the nondisclosure requirement. See A. Goldstein & J. Katz, supra, 36 Conn. B.J. 186 ("[a]fter a great deal of discussion, and considerable compromise, our committee agreed upon three general situations in which the *privilege* was to be treated as terminated" [emphasis added]); see also Public Acts 1961, No. 529 (providing that, in three enumerated circumstances, now codified as amended at § 52-146f [1], [4] and [5], "[t]here shall be no privilege for any relevant communications under th[e] act").[13] This historical backdrop strongly suggests that the subsequently enacted exceptions to § 52-146e set forth in § 52-146f, including the dangerous patient exception, also were intended to create exceptions to the evidentiary privilege.

The relevant language of § 52-146q (c) was enacted in 1992; see Public Acts 1992, No. 92-225, § 2; and is substantially identical to the language of § 52-146f. Accordingly, it reasonably may be presumed that §§ 52-146e and 52-146f served as the pattern for § 52-146q. Moreover, I can conceive of no reason why a psychiatrist would be permitted to testify in a judicial proceeding regarding communications from a patient that gave rise to a reasonable belief that there was a substantial risk that the patient would cause serious injury to himself or others but a social worker would not. Accordingly, I believe that the exception set forth in § 52-146q (c) (2) was intended to have the same scope and meaning as the exception set forth in § 52-146f (2).[14]

The conclusion that § 52-146q (c) (2) creates an exception to the evidentiary privilege also is bolstered by the portion of the statute that permits disclosure of communications and records when "disclosure is otherwise mandated by any provision of the general statutes." General Statutes § 52-146q (c) (2). General Statutes § 17a-101 (b) provides that that social workers are mandated reporters under General Statutes § 17a-101a, which requires "[a]ny mandated reporter . . . who in the ordinary course of such person's employment or profession has reasonable cause to suspect or believe that any child under the age of eighteen years"

has been subject to abuse or neglect or is at risk of serious harm, to submit a report to the commissioner of children and families or a law enforcement agency. Under General Statutes § 17a-101e (a), employers are prohibited from discriminating against a person who makes such a report or who "testifies or is about to testify in *any proceeding* involving child abuse or neglect." (Emphasis added.) It is clear to me, therefore, that the legislature contemplated that social workers, as mandated reporters, may be called on to testify regarding communications from a client in judicial proceedings involving the client's past abuse or neglect of a child, even though the legislature did not expressly permit such testimony in § 52-146q (c) (2). I find it highly unlikely that the legislature would have a different expectation with respect to communications giving rise to a belief that a client poses a substantial risk of serious harm to himself or others and yet place that exception within the same subdivision, indeed, the same sentence, of § 52-146q (c) (2).

My conclusion that communications falling within § 52-146q (c) (2) are neither confidential nor privileged also is supported by the majority of jurisdictions that have concluded that the duty to warn third parties about threatening statements made to a psychotherapist gives rise to an exception to the psychotherapist-client evidentiary privilege.[15] See *San Diego Trolley, Inc.* v. *Superior Court*, 87 Cal. App. 4th 1083, 1091, 105 Cal. Rptr. 2d 476 (2001) ("[when] a patient is dangerous and disclosure of confidential communication is necessary to prevent harm, the psychotherapist-patient privilege has no application");[16] *Bright* v. *State*, 740 A.2d 927, 931–32 (Del. 1999) (recognizing exception to psychotherapist-patient privilege for threatening statements); *Guerrier* v. *State*, 811 So. 2d 852, 855–56 (Fla. App.) ("the goal of victim protection extends to eliciting from the psychiatrist relevant evidence . . . that will facilitate the prosecution of a crime committed against the victim by the dangerous patient"), review denied, 831 So. 2d 672 (Fla. 2002); *State* v. *Agacki*, 226 Wis. 2d 349, 363, 595 N.W.2d 31 (1999) ("[i]t would be absurd . . . to impose a testimonial privilege to prevent courts from considering the very communication leading to the responsible and lawful conduct of the psychotherapist"). But see *State* v. *Miller*, 300 Or. 203, 216, 709 P.2d 225 (1985) (public interest underlying dangerous patient exception "would rarely justify the full disclosure of the patient's confidences to the police, and never justify a full disclosure in open court, long after any possible danger has passed"), cert. denied, 475 U.S. 1141, 106 S. Ct. 1793, 90 L. Ed. 2d 339 (1986).[17]

Two federal Circuit Courts of Appeals also have recognized the dangerous patient exception to the psychotherapist-patient privilege. See *United States* v. *Auster*, 517 F.3d 312, 320 (5th Cir.), cert. denied, U.S. , 129 S. Ct. 75, 172 L. Ed. 2d 67 (2008); *United States* v.

*Glass*, 133 F.3d 1356, 1359–60 (10th Cir. 1998) (recognizing dangerous patient exception to psychotherapist-patient privilege in cases in which threat is serious and disclosure is only means of averting harm). The court in *Auster* rejected the reasoning of two circuit courts that had concluded that there is no such exception because those courts failed to recognize that, under federal evidentiary law, the test for the applicability of an evidentiary privilege is "whether there was a reasonable expectation of confidentiality when the statement was made."[18] (Internal quotation marks omitted.) *United States* v. *Auster*, supra, 317 (rejecting reasoning of *United States* v. *Chase*, 340 F.3d 978 [9th Cir. 2003], cert. denied, 540 U.S. 1220, 124 S. Ct. 1531, 158 L. Ed. 2d 157 [2004],[19] and *United States* v. *Hayes*, 227 F.3d 578 [6th Cir. 2000]).[20] The court in *Auster* concluded that, when a patient is aware that his threats will be shared with the target of the threats, who has no obligation or incentive to keep the threats confidential, "[t]he marginal increase . . . in effective therapy achieved by privileging psychotherapist-patient communications at trial . . . is de minimis." *United States* v. *Auster*, supra, 319. Put differently, if, in accordance with a dangerous patient exception to the privilege, a therapist lawfully discloses a patient's communications to the police or to the person or persons placed at risk by the patient, the damage to the psychotherapist-patient relationship has been done, and in-court testimony by the therapist is likely to cause little, if any, additional harm to that relationship.[21] This is particularly true, as the court in *Auster* underscored, in view of the fact that neither the target of the threat nor the police have any obligation to keep the information confidential, and it is highly unlikely that they will do so. See, e.g., id., 318 ("there are likely mutual acquaintances between the target and the patient—e.g., friends, [coworkers], family—and the target will almost certainly tell them, if for no other reason than to let them know that there is a potentially serious problem with the patient and that everyone ought to be on the lookout for trouble").

The court further concluded in *Auster* that the "cost benefit scales" strongly favor an exception to the privilege in a criminal trial; id., 319; where the public's interest in the full disclosure of the truth is especially great. Indeed, there may be cases in which the psychotherapist or social worker is the *only* source of information concerning the threats made by the patient or client. There also may be cases, of course, in which the testimony of the psychotherapist or social worker is critical to the state's criminal case against the patient or client. When that person remains a threat, and when a criminal prosecution is the best way to protect against that danger, the core purpose of the statutory exception is defeated by barring the psychotherapist or social worker from testifying at trial. In sum, I find the court's reasoning in *Auster* persuasive and in accord with the

common-law principles governing evidentiary privileges.

The majority's contrary conclusion is incorrect because its reasoning is flawed in a number of important respects. First, the majority states that, "[i]f the legislature wanted to make specific allowances for the disclosure of otherwise confidential communications between social workers and their clients in court proceedings, it could have done so . . . ." In support of this observation, the majority relies on subdivisions (3) and (4) of § 52-146q (c), which expressly permit disclosures of communications and records by social workers in court proceedings in certain situations. This reliance is misplaced for several reasons. First, those provisions pertain to court proceedings *only*, that is, the exception to the general rule of nondisclosure that is carved out under each of those subdivisions is expressly restricted to such proceedings. By contrast, the dangerous client exception of § 52-146q (c) (2) is an exception of general applicability that applies whenever its requirements are met. Because the dangerous client exception and the exceptions limited to court proceedings are materially different in this respect, they bear no logical connection to one another. Consequently, no inference reasonably can be drawn that the legislature expressly would have mentioned court proceedings in § 52-146q (c) (2) if it had intended that that provision would apply to such proceedings.

The majority's faulty reasoning in this respect may be demonstrated by applying it to the fee collection exception of § 52-146q (c) (5). See footnote 1 of this opinion. Under that exception, a social worker who makes a claim for collection of fees for services may provide certain otherwise privileged information to "individuals or agencies involved in such collection . . . ." General Statutes § 52-146q (c) (5). The provision, however, contains no express reference to court proceedings. Under the majority's reasoning, namely, that an exception to the privilege does not apply to judicial proceedings unless the language of the exception contains an express reference to such proceedings, the person or agency involved in the collection of the unpaid fee on behalf of the social worker would be unable to bring an action to recover those fees, if necessary, because § 52-146q (c) (5) contains no express reference to judicial proceedings. Having recognized the need for a limited exception to the privilege for fee collection purposes, the legislature cannot possibly have intended such an absurd result.

Finally, the purpose of § 52-146q (c) (3) and (4) is to *limit the scope of the disclosure* allowed by the exceptions, not to expand the forums in which disclosure may be made. Nothing in subdivisions (3) and (4) indicates that the legislature intended that some exceptions to the general rule requiring consent for disclosure were

for *confidentiality* purposes and some exceptions were for *privilege* purposes.

The majority also relies on General Statutes § 52-146o (a), which provides in relevant part that "in any civil action or any proceeding preliminary thereto or in any probate, legislative or administrative proceeding, a physician or surgeon . . . shall not disclose" communications or information made by a patient, in support of its contention that the legislature would have expressly allowed court testimony in § 52-146q (c) (2) if that is what it had intended to do. The majority further relies on General Statutes § 52-146c (b), which provides in relevant part: "[I]n civil and criminal actions, in juvenile, probate, commitment and arbitration proceedings, in proceedings preliminary to such actions or proceedings, and in legislative and administrative proceedings, all communications shall be privileged and a psychologist shall not disclose any such communications . . . ." Contrary to the majority's contention, however, these statutes tend to demonstrate that, if the legislature had intended to *prohibit* disclosures in court proceedings under the exception set forth in § 52-146q (c) (2), it knew how to do so expressly.

The majority also relies on the principle that statutory exceptions to statutorily created evidentiary privileges, like all statutory exceptions, "are to be strictly construed with doubts resolved in favor of the general rule rather than the exception . . . . [When] express exceptions are made, the legal presumption is that the legislature did not intend to save other cases from the operation of the statute." (Internal quotation marks omitted.) *Falco* v. *Institute of Living*, 254 Conn. 321, 330, 757 A.2d 571 (2000). The issue before us in this case, however, is not the scope of the communications and records to which § 52-146q (c) (2) applies, which, I acknowledge, would be subject to strict construction under *Falco*. Rather, the issue is whether the communications and records that undisputedly come within the scope of § 52-146q (c) (2) may be disclosed in judicial proceedings or, instead, are privileged. In my view, that question is governed by the principles that evidentiary privileges must be strictly construed and that only confidential information qualifies for privileged status. See, e.g., *PSE Consulting, Inc.* v. *Frank Mercede & Sons, Inc.*, supra, 267 Conn. 330 (because evidentiary privileges tend to prevent full disclosure of truth in court, they must be strictly construed).

Finally, the majority's interpretation has potentially dangerous consequences that are antithetical to the purpose of § 52-146q (c) (2). One such example, which I previously described, is the case in which the social worker's testimony is critical to the state's criminal prosecution of the client—a course of action that will be most prudent when the client remains a danger to the target of his threat. The following additional exam-

ple also is illustrative of the serious adverse consequences of the majority's holding. A social worker, S, learns from her client, C, that C intends to cause immediate and serious physical injury to a third person, T. Because the communication falls within § 52-146q (c) (2), S relays the information to T. Like S, T takes the information seriously and goes to court to obtain a restraining order barring C from having any contact with T. Under the majority's interpretation of § 52-146q (c) (2), however, S cannot testify at the court hearing on T's application for a restraining order. Because S's testimony is the only evidence that T has to establish that C poses an immediate and serious danger to T, and because T's testimony regarding S's disclosure to T would consist of inadmissible hearsay, the court has no basis on which to issue the restraining order. In such circumstances, the obvious objective of § 52-146q (c) (2), that is, to make it possible for T to protect herself from C, is thwarted.[22] I do not believe that the legislature reasonably could have intended such an unfortunate and potentially harmful result. In fact, the ramifications of the majority's decision are far broader than they may appear. There is nothing in the language of the exceptions to the statutory provisions governing other similar privileges, including the psychiatrist-patient privilege; see General Statutes § 52-146d et seq.; the psychologist-patient privilege; see General Statutes § 52-146c; the marital and family therapist-client privilege; see General Statutes § 52-146p; and the professional counselor-client privilege; General Statutes § 52-146s; or the public policy underlying those exceptions, that would result in an interpretation of those provisions that is different from the interpretation that the majority has adopted for purposes of the dangerous client exception to the social worker-client privilege.

For all the foregoing reasons, I would conclude that, because the communications and records that are subject to § 52-146q (c) (2) are not confidential, they are not privileged, and, therefore, the trial court properly admitted Burke's testimony about the defendant's threatening statements.

[1] General Statutes § 52-146q provides in relevant part: "(b) All communications and records shall be confidential and, except as provided in subsection (c) of this section, a social worker shall not disclose any such communications and records unless the person or his authorized representative consents to such disclosure. Any consent given shall specify the individual or agency to which the communications and records are to be disclosed, the scope of the communications and records to be disclosed, the purpose of the disclosure and the expiration date of the consent. A copy of the consent form shall accompany any communications and records disclosed. The person or his authorized representative may withdraw any consent given under the provisions of this section at any time by written notice to the individual with whom or the office in which the original consent was filed. The withdrawal of consent shall not affect communications and records disclosed prior to notice of the withdrawal, except that such communications and records may not be redisclosed after the date of the notice of withdrawal.

"(c) Consent of the person shall not be required for the disclosure or transmission of such person's communications and records in the following situations as specifically limited:

"(1) Communications and records may be disclosed to other individuals

engaged in the diagnosis or treatment of the person or may be transmitted to a mental health facility to which the person is admitted for diagnosis or treatment if the social worker in possession of the communications and records determines that the disclosure or transmission is needed to accomplish the objectives of diagnosis or treatment, or when a social worker, in the course of evaluation or treatment of the person, finds it necessary to disclose the communications and records for the purpose of referring the person to a mental health facility. The person shall be informed that the communications and records have been so disclosed or transmitted. For purposes of this subdivision, individuals in professional training are to be considered as engaged in the diagnosis or treatment of the person.

"(2) Communications and records may be disclosed when a social worker determines that there is a substantial risk of imminent physical injury by the person to himself or others, or when disclosure is otherwise mandated by any provision of the general statutes.

"(3) Communications and records made in the course of an evaluation ordered by a court may be disclosed at judicial proceedings in which the person is a party provided the court finds that the person has been informed before making the communications that any communications and records may be so disclosed and provided further that communications and records shall be admissible only on issues involving the person's mental condition.

"(4) Communications and records may be disclosed in a civil proceeding in which the person introduces his mental condition as an element of his claim or defense or, after the person's death, when his condition is introduced by a party claiming or defending through or as a beneficiary of the person. For any disclosure under this subdivision, the court shall find that it is more important to the interests of justice that the communications and records be disclosed than that the relationship between the person and the social worker be protected.

"(5) If a social worker makes a claim for collection of fees for services rendered, the name and address of the person and the amount of the fees may be disclosed to individuals or agencies involved in such collection, provided written notification that such disclosure will be made is sent to the person not less than thirty days prior to such disclosure. In cases where a dispute arises over the fees or claims or where additional information is needed to substantiate the fees or claims, the disclosure of further information shall be limited to the following: (A) That the person did in fact receive the services of the social worker, (B) the dates and duration of such services, and (C) a general description of the types of services."

[2] Because the majority ultimately determines that the admissibility of Burke's testimony, although improper under § 52-146q (c) (2), was nevertheless harmless, it affirms the judgment of conviction. I therefore concur in the judgment.

[3] Indeed, as I explain more fully hereinafter; see footnote 4 of this opinion; in light of the majority's conclusion that Burke's testimony was barred by § 52-146q, it is apparent that the majority necessarily treats that statutory section as establishing a privilege.

[4] The state claims that this is the proper interpretation of the statute.

[5] Despite its care in characterizing § 52-146q as a "confidentiality" statute; see footnote 10 of the majority opinion; the majority *treats* § 52-146q as establishing a privilege. This is so because if § 52-146q did not create a privilege, a disclosure of communications authorized under the statute's dangerous client exception necessarily would constitute a waiver of its confidentiality provisions, and, as a consequence, Burke would not be barred from testifying about those communications under well established waiver principles. In light of the majority's conclusion that Burke cannot so testify, however, the majority necessarily is treating § 52-146q as creating more than a rule of confidentiality with respect to those communications. As I explain more fully hereinafter, however, I disagree that the privilege bars Burke's testimony.

[6] The majority contends that "[c]onfidentiality is not destroyed by disclosure to prevent injury . . . ." The majority cites no authority, however, for the proposition that information that has been disclosed to a third person who has no obligation to keep the information confidential nevertheless can be considered "confidential" in any sense of the word. If "confidential" does not mean "not subject to disclosure to third persons," what does it mean?

[7] The majority criticizes this assertion, claiming that " '[t]he fact that . . . relevant statutory provisions are silent . . . does not mean that they are ambiguous.' *Carmel Hollow Associates Ltd. Partnership* v. *Bethlehem*, 269

Conn. 120, 133, 848 A.2d 451 (2004) . . . .” (Citation omitted.) To the extent that this statement purports to indicate that statutory silence *cannot* render a statute ambiguous, the statement simply is incorrect as a matter of law and logic. “[Statutory] silence does not . . . *necessarily* equate to ambiguity”; (emphasis added) *Manifold* v. *Ragaglia*, 272 Conn. 410, 419, 862 A.2d 292 (2004); but silence may well give rise to ambiguity depending on the context in which it arises.

[8] I disagree with the majority that merely because § 52-146q (c) (2) contains no reference to court proceedings, it plainly and unambiguously does not apply to court proceedings. The dangerous client exception is entirely different from the exceptions under § 52-146q (c) (3) and (4), which, by their very nature, *necessarily* are limited *only* to court proceedings. Because § 52-146q (c) (2) is not necessarily so limited, the fact that it contains no indication one way or the other as to whether it extends to court proceedings does not lead to the conclusion that it cannot apply to such proceedings.

[9] Professor Charles McCormick states that the traditional conditions for the establishment of a privilege are:

“(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.” 1 C. McCormick, Evidence (6th Ed. 2006) § 72, p. 340 n.7.

[10] “[T]he common-law rule [is] that everyone is presumed to know the law . . . .” *State* v. *Knybel*, 281 Conn. 707, 713, 916 A.2d 816 (2007). Accordingly, clients of social workers are presumed to know that, under § 52-136q (c) (2), a social worker is authorized to disclose certain threats against third parties and, therefore, that those threats are not made in confidence. Indeed, the defendant does not claim otherwise.

The defendant nevertheless maintains that “[a] client is . . . not on notice that threats—which come in varying kinds and degrees—will necessarily be disclosed.” I agree that the application of § 52-146q (c) (2) to a particular communication requires the exercise of judgment, and, in determining whether a social worker’s in-court testimony should be admitted, the trial court may be required to make a threshold determination as to whether the client’s statements were disclosable to the target of the threat in the first instance. The question in this case, however, is not whether the statute applied to the defendant’s statements to Burke but whether statements to which § 52-146q (c) (2) undisputedly applies are subject to an evidentiary privilege. Because clients are on notice that, if they communicate to a social worker threats that fall within the scope of § 52-146q (c) (2), those threats potentially may be disclosed and therefore are not confidential.

[11] See A. Goldstein & J. Katz, “Psychiatrist-Patient Privilege: The GAP Proposal and the Connecticut Statute,” 36 Conn. B.J. 175, 183 & n.17 (1962).

[12] Public Act No. 529 was codified at General Statutes (Cum. Sup. 1961) § 52-146a and is now codified as amended at General Statutes §§ 52-146e and 52-146f.

[13] The “privilege” language was deleted from § 52-146a and replaced with the reference to confidentiality when the legislature amended the statute in 1969. See P.A. 819. The legislative history of P.A. 819 indicates that the purpose of the amendment was to broaden the scope of the limitations on the disclosure of communications and records arising from the psychiatrist-patient relationship that were then in place. See 13 S. Proc., Pt. 7, 1969 Sess., pp. 3144–45, remarks of Senator John F. Pickett; 13 H.R. Proc., Pt. 9, 1969 Sess., p. 4191, remarks of Representative Robert G. Oliver. Nothing in the legislative history suggests, however, that the legislature intended to narrow the exceptions to the statute to prohibit disclosure of the communications and records in judicial proceedings.

[14] I emphasize that I do not conclude that *no* communication or record that comes within any of the exceptions set forth in § 52-146q (c) is privileged. Under § 52-146q (c) (1), for example, it is undoubtedly the case that the persons to whom the social worker discloses the records and communications are themselves subject to confidentiality requirements, and, therefore, the disclosure of the records and communications to them by the social worker would not destroy their confidentiality. I conclude only that, to the extent that any of the exceptions allow disclosures that would destroy the

confidentiality of communications and records, those communications and records would not be privileged.

[15] The majority contends that these cases are inapposite because they involve common-law exceptions to the psychotherapist-patient evidentiary privilege. As I have indicated, however, it is perfectly appropriate to interpret § 52-146q (c) (2) in light of relevant public policy and "common law principles governing the same general subject matter . . . ." (Internal quotation marks omitted.) *State* v. *Jenkins*, supra, 288 Conn. 620.

[16] The California Evidence Code, § 1024, provides: "There is no privilege under this article if the psychotherapist has reasonable cause to believe that the patient is in such mental or emotional condition as to be dangerous to himself or to the person or property of another and that disclosure of the communication is necessary to prevent the threatened danger." Cal. Evid. Code § 1024 (Deering 2004). The court in *San Diego Trolley, Inc.*, explained that "[t]he exception is an expression of the [l]egislature's determination that the value of safeguarding confidential psychotherapeutic communications, as great as it is, is outweighed by the public interest in protecting foreseeable victims from physical harm." *San Diego Trolley, Inc.* v. *Superior Court*, supra, 87 Cal. App. 4th 1091. Although, unlike the California rule, § 52-146q (c) (2) does not expressly state that communications that fall within its scope are not privileged, it must be construed in light of this public interest.

[17] In support of its conclusion, the Oregon Supreme Court relied in large part on the reasoning of the Connecticut Bar Journal article discussing the enactment of Public Acts 1961, No. 529, and indicating that the drafting committee deliberately had chosen not to include a dangerous patient exception in the proposed legislation. See *State* v. *Miller*, supra, 300 Or. 216 n.9, quoting A. Goldstein & J. Katz, supra, 36 Conn. B.J. 188. As I have indicated, however, subsequent amendments to the statute demonstrate that our legislature ultimately changed its position.

[18] As I have indicated, this is also the traditional rule under the common law. See footnote 9 of this opinion.

[19] The court in *Chase* stated summarily that "a communication can be 'not confidential' under state law . . . but still 'privileged' under the Federal Rules of Evidence." *United States* v. *Chase*, supra, 340 F.3d 988. Rule 501 of the Federal Rules of Evidence provides in relevant part: "Except as otherwise required by the Constitution of the United States or provided by Act of Congress or in rules prescribed by the Supreme Court pursuant to statutory authority, the privilege of a witness, person, government, State, or political subdivision thereof shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. . . ." As I have indicated, at common law, a communication must be confidential to qualify for an evidentiary privilege. See footnote 9 of this opinion. Indeed, as the court in *Auster* recognized, the United States Supreme Court has stated that the psychotherapist-patient "privilege covers *confidential* communications made to licensed psychiatrists and psychologists [and] *confidential* communications made to licensed social workers in the course of psychotherapy"; (emphasis in original; internal quotation marks omitted) *United States* v. *Auster*, supra, 517 F.3d 315, quoting *Jaffee* v. *Redmond*, supra, 518 U.S. 15; and has stated in dictum that "there are situations in which the privilege must give way, for example, if a serious threat of harm to the patient or to others can be averted only by means of a disclosure by the therapist." (Internal quotation marks omitted.) *United States* v. *Auster*, supra, 315 n.5, quoting *Jaffee* v. *Redmond*, supra, 18 n.19. In any event, even if the federal courts have the authority to adopt an evidentiary privilege that is not dependent on the confidentiality of the covered communication, any such rule would not be binding on this state.

[20] The court in *Hayes* stated that "it cannot be the case that the scope of a federal testimonial privilege should vary depending [on] state determinations of what constitutes 'reasonable' professional conduct." *United States* v. *Hayes*, supra, 227 F.3d 584. As the court in *Auster* noted, however, the application of "[f]ederal law does not depend on state law but instead [turns] on the lack of confidentiality . . . ." *United States* v. *Auster*, supra, 517 F.3d 317. Nevertheless, the reasoning of the court in *Hayes* has no relevance to our interpretation of this state's law.

[21] As the court in *Auster* explained, "[c]onsider the marginal impact on effective therapy of allowing a statement into evidence that the patient knew would be communicated to third parties when he uttered it. In such a case, the atmosphere of confidence and trust has already been severely

undermined. Now, the patient's target and deepest enemy . . . knows the patient's secret. And for sincere threats, the target can now defend himself. If the therapist's professional duty to thwart the patient's plans has not already chilled the patient's willingness to speak candidly, it is doubtful that the possibility that the therapist might also testify in . . . court will do so." (Citation omitted; internal quotation marks omitted.) *United States* v. *Auster*, supra, 517 F.3d 318.

[22] The majority dismisses this hypothetical application of the interpretation of § 52-146q (c) (2) that it adopts on the ground that "statutory interpretation involves the determination of the meaning of the statutory language as applied *to the facts of the case* . . . ." (Emphasis in original; internal quotation marks omitted.) Footnote 22 of the majority opinion. Surely, the majority does not mean to imply that its interpretation of § 52-146q (c) (2) would not be binding in a case involving these hypothetical facts. Contrary to the majority's suggestion that this court is *prohibited* from considering the future ramifications of its interpretation of a statute, this court is *required* to consider those ramifications. Indeed, the only reason that the majority gives for declining to consider the hypothetical is that such consideration is barred by § 1-2z, a broad assertion with which I also disagree. To the extent that the majority deems the hypothetical to be irrelevant because of its conclusion that § 52-146q is plain and unambiguous as applied to the facts of this case, I previously have explained my disagreement with the majority's determination in that regard.

I also am confused by the majority's substantive response to the posited hypothetical. The majority raises the possibility that the potential harm posed by its interpretation of § 52-146q may be mitigated by testimony from the social worker (1) concerning the existence of a professional relationship with the client, and (2) that the social worker did in fact warn the third party, in accordance with the dangerous client exception, of the substantial and imminent risk of being harmed physically by the client. Footnote 22 of the majority opinion. Contrary to the majority's suggestion, it seems quite evident that such testimony would effectively constitute disclosure of information that inarguably is protected under the statute. Moreover, if, in fact, the majority is correct in suggesting that § 52-146q does not preclude testimony by a social worker that he warned a third party in accordance with the statute's dangerous client exception, I am unable to discern why the facts of the present case do not place it outside the purview of § 52-146q altogether. The trial court expressly advised Burke *not* to testify about the content of the defendant's communications to him but, instead, about his perception and reaction to those communications. Burke, therefore, did not testify about the specifics of what the defendant had told him but merely that he had met with the defendant and that he had warned Edwards of potential harm to him and his family based on the defendant's angry feelings toward Edwards. To the extent that these disclosures are not materially different from those that the majority indicates may be excluded from the scope of § 52-146q, I cannot see why, if the majority's suggested interpretation is correct, Burke's testimony would be problematic. In such circumstances, I do not understand why the majority would not first resolve this threshold issue of statutory interpretation, one way or the other, before addressing the secondary question of whether the challenged testimony properly was admitted under the dangerous client exception set forth in § 52-146q (c) (2).