

CONFIDENTIAL RELATIONSHIPS

Edited by Christine M. Kogel, Allana Furlong and Charles Levin
Amsterdam-New York, Editions Rodopi B.V. 2003

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“Confidential Relationships” is an outcome of an international conference on the topic of confidentiality in psychotherapy held in Montreal in October 2000. As such it is a collection of papers written by mental health practitioners, jurists and philosophers, examining the issues involved from a variety of perspectives. In reading the introductory part of the book, I expected to find a collection of highly technical, dry papers written by experts for experts. Nothing could be further from truth. Most of the papers are readable, well reasoned and nicely written.

The second part presents the psychotherapeutic-psychoanalytic perspective on confidentiality in the psychotherapeutic setting and its relationship to society. Allana Furlong makes a very convincing case for the irrelevance of psychotherapy records for the primary purpose of the judicial process, i.e. the discovery of “truth”. She points out the special nature of the therapeutic encounter in which critical, rational observation of the “objective truth” is momentarily suspended and doubts, contradictions and fantasies take center stage. She argues also that any attempt to separate fact from fancy by the interrogative process in the courtroom is doomed to failure because what is expressed in therapy was born in the context of transference and counter-transference and can only be interpreted (*with some degree of reliability-my comment*) in the same context, taking into account the unconscious forces in operation.

R. D. Hinshelwood, a psychoanalyst, presents vivid clinical examples of how repression, transference and counter-transference distort the “objective” reality to the point of making clinical material potentially befuddling and damaging the purpose of judicial process. Hinshelwood goes on to raise the issue of unconscious motivation on the part of the clinician as well as on the part of the judge in deciding whether psychotherapeutic confidentiality should or should not be broken.

Jaques Mauger presents his thesis of the “compulsion to reveal”, which according to him is a universal trait of the human race, “philogenetically transmitted”, and constitutes an aspect of the relationship of an individual to humanity. This is an interesting point of view, though admittedly the author does not buttress it with clinical or other evidence.

In the last chapter of that part, Charles Levin and Christine Ury present a scathing critique of the cheapening of the psychotherapeutic process in the popular TV shows, where people are encouraged to reveal their guilty and shameful secrets, only to be battered or preached to by the interviewer to the cheers of the audience.

The third part of the book deals with ethics of confidentiality. Michael Yeo and Andrew Brooks, both philosophers, describe the “electronic panopticon”, the information revolution and the resulting trend to “accountability”, “quality assurance” and “cost effectiveness” in health services. All these extend the issue of confidentiality from the narrow confines of administration of justice, i.e. individual good, into the broader area of “social good”. They contrast the traditional with the emerging view on confidentiality. The traditional view, held by most health practitioners rests on two foundations: the value of liberty and dignity of the individual and the value of psychotherapy to society, the latter illustrated by the landmark *Jaffee v. Redmond* decision of the U.S. Supreme Court (1996). The court declared that “the mere possibility of future disclosure may impede the development of the confidential

relationship necessary for successful treatment” and thus deprive the patient of the right to proper therapy.

The emergent view refers not so much to values as to “interests”. It balances the interests of the patient and the therapist to keep confidentiality versus the larger interests of the society, such as protecting patients from harm resulting from improper treatment, or preventing waste of financial resources. Those advocating the *statutory* (as opposed by consensual) disclosure advance all kinds of technological devices intended to limit the dissemination of (not so) “confidential” personal data.

Lastly, the authors discuss the impact of information technology on collecting, disseminating and protecting health information, the potential benefits and dangers.

The next three chapters, by Christine Koggel, Margaret Denike and Sue Campbell respectively, discuss the issue of confidentiality from what they call a “relational” point of view. By “relational” they mean that the liberal ideal of equality before the law often ignores the fact that social standing and power makes such “equality” a fiction. They discuss the impact of social inequality and specifically the underprivileged status of women in Western societies, apparently more so in Canada than in the U.S., on judicial decisions regarding confidentiality. They point out how the stereotype of women being “emotional” and “suggestible” makes them untrustworthy in the eyes of a prejudiced society. Indeed the Canadian Supreme Court, in the *O’Connor* decision (1995), went so far to undermine any protection of confidentiality as to motivate the Canadian Parliament to legislate some, albeit relatively weak, protection.

The arguments advanced are powerful and cogent, but the authors seem so intent on advancing their case that they occasionally lack objectivity. Denike, for instance, quotes Karen Busby who pointed out that a disproportionate number of disclosure of clinical records occurs in sexual abuse and violence cases. That may well reflect a negative stereotype of women witnesses, as Denike claims. She ignores, however, the obvious fact that in the majority of sexual abuse cases the ultimate test is the relative reliability of testimony by the complainant versus that of the defendant. The counsel for defense most often has little choice but to undermine the complainant’s reliability, cruel as that may be, victimizing the victim. In Israel, for instance, the law substitutes the testimony of the child, in sexual or physical abuse cases, by that of the interrogating welfare officer if the latter declares that appearance in court might harm the child. This is a serious infraction of the right of the accused to adequate defense but protects the presumed victim.

Denike also points out the paradox that the principle of privacy, so easily breached in sexual abuse cases, is vigorously upheld in cases of family abuse, yet another instance of sexual discrimination. The same holds true for the most harsh abuse of women rationalized as respect for “cultural” or “religious” autonomy.

Sue Campbell questions the objectivity and validity of scientific studies of recall of sexual abuse, especially the recall of presumably repressed memories during treatment.

This is, indeed a highly controversial subject. Campbell argues that the stereotype of the “suggestible” woman affects the objectivity of those studies. She attacks Elizabeth Loftus, one of the most prominent investigators of the subject, for being a paid consultant to the False Memory Syndrome Foundation. Yet, to my knowledge Loftus tries to be objective and concludes that there is evidence that a real event traumatic event may be repressed and then recalled, but there is also evidence that a false memory can be planted by suggestion (in men as well as women). She also quotes some statements by therapists engaged in recovering childhood abuse memories, statements that describe patently irresponsible procedures.

The picture that emerges from these essays is that the Canadian justice system has a long way to go to provide justice (as opposed to formal equality) for women. It also appears that the

struggle for defense of confidentiality conducted by Canadian feminists has been far less successful than the parallel struggle conducted in the U.S. by psychoanalysts and psychiatrists. Perhaps the Courts are less cognizant of vested interests and unconscious motivation when it comes to a respected profession than an advocacy group.

The last part of the book deals with legal aspects of the confidentiality issue. Paul Mosher, a psychoanalyst who played a major role in the *Jaffee v. Redmond* decision, presents an erudite overview of the privileged communication concept and the history of the therapist-patient confidentiality in the U.S. There are two basic rationales for confidentiality (besides the argument of professional ethics which seems no longer upheld by the society): the “utilitarian” and the “humanistic” or “autonomy” principle. The “utilitarian” approach, i.e. the claim that confidentiality is indispensable for effective psychotherapy and that protecting it is in the interest of society, is the rationale for the *Redmond* decision. The “humanistic” rationale is derived from the constitutional right of the individual to privacy. Each approach has its strengths and problems in practice. Finally, Mosher presents a gloomy picture of the erosion of confidentiality in the era of managed health care.

The next paper, by Karen Busby, a jurist, is a step-by-step guidance for mental health professionals on how to minimize the danger of hurting the patient by disclosing confidential information demanded by the court. Like her predecessors, she presents examples of highly questionable decisions by Canadian courts in sexual assault cases. She illustrates the potential harm of too explicit or too narrow record keeping, and suggests a balanced, informed record keeping on all cases involving potential complaint by the client.

In the final chapter, Nathalie Des Rossiers, also a jurist, present an impassioned plea for the recognition of the confidentiality in relationships as a basic human need, all too often ignored by the law in its pursuit of “the Truth”.

The index, unfortunately, leaves much to be desired. For example, Bollas or R. Pyles are quoted in the book but I could not find them in the index.

All in all, this is a valuable book, informative and stimulating and a useful resource for the psychotherapist or lawyer.