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Confidentiality with respect to third parties: A psychoanalytic view

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It is assumed that confidentiality is not one singular ethical entity but a conglomerate of quite different issues depending upon clinical context and the sector of information sharing at stake. The focus here is on how to think psychoanalytically about requests for information from third parties (payers, courts, public security). Defining confidentiality as a promise to 'never tell anything' outside of the relationship omits evaluation of the impact of the third's listening on the combined freedom of thought and freedom of speech in analyst and analysand. Circulation of information outside the dyad need not be toxic, need not disrupt the analytic couple's openness to new meaning. Key to contamination and inhibition of analytic work is whether or not disclosure serves an analytic end. Current defense of confidentiality relies heavily on the models of protection of privacy and professional secrecy, which, though useful and relevant, fail to encompass the transitional, intersubjective space engendered by the analytic process. Suggestions are made for alternate sources of paradigms better suited to represent the latter. Offered for discussion is a draft of a confidentiality policy with respect to third parties that is informed by psychoanalytic theory and clinical practice rather than by local legal jurisdiction or original disciplines' ethics codes.

Confidentiality: One size does not fit all

This article will limit its purview to thinking psychoanalytically about third-party requests for information, those from external payers, from the courts and those destined to fulfill obligations regarding the protection of others. It is not possible at the present time to offer a comprehensive ethic of confidentiality for psychoanalytic practice. Confidentiality in application to specific clinical contexts, as opposed to as an abstract principle, cannot be considered a unitary entity. The potential and controversial sectors of 'contact and information sharing' are multiple and include matters other than those I will cover here: the analyst's presentation or publication of clinical material inside and outside of an interanalytic space, professional regulatory bodies or ethics committees, research and confidentiality within psychoanalytic institutes. While it makes sense to reason from basic premises related to the specialized needs of psychoanalysis, each sector of contact with the outside world—in so far as a distinct constellation of forces is brought to bear on the therapeutic work—may

require a further differentiation of ethical and clinical principles. Confidentiality thus comes in a number of different sizes and shapes, each one an adaptation to a particular therapeutic context and aim (see, for example, the Canadian Psychiatric Association's position paper 'Shared mental health care in Canada' by Kates et al. **[internet]**, where a model of shared confidentiality including several treating professionals is proposed for patients with multiple deficits) or to a particular impact, inhibiting or facilitating, on the free circulation of thoughts within the analytic dyad. This does not mean that confidentiality need be a concept impossible to define or ethically contradictory. It is not necessary to feel embarrassment about these complexities, which force rethinking of the ethics of confidentiality in each context and each sector. Physicists have known for many years that light behaves like a wave in some circumstances, like a particle in others. Perhaps we should not be amazed by this observation since, after all, it is characteristic of all material objects to vary, sometimes radically, under different conditions. The three steady states of matter—solid, liquid and gas—attest to the dramatic effect on molecular behavior of changes in temperature. Yet we can define an essential 'sameness' to the elements of the periodic table by reference to their atomic weight and structure despite significant variations in appearance and behavior under different conditions.

Third parties and the protective fiction of extraterritoriality

Many years ago, Piera Aulagnier **(1969)** used the term 'extraterritoriality' to refer to the analyst's need, in the psychoanalytic session, to put external reality in parentheses. However, as soon as this outside reality no longer returns the favor of putting psychoanalytic discourse itself in parenthesis, the analyst, Aulagnier pointed out, must address the repercussions on the dyad's capacity for reflection within the consulting room. The whole of Aulagnier's work is marked by a constant preoccupation: What are the conditions for the creation of a space for thinking? What familial, social and institutional 'realities' undermine, forbid or foreclose the I's ability to theorize itself? Whereas she was very conscious of these intrusions and of the necessity of accounting for their impact on psychic space, over time the idea of extraterritoriality has come to be asserted in some psychoanalytic quarters as a rationale for holding aloof from the outside world.

Yet the extraterritorial status of the psychoanalytic situation obviously does not depend exclusively on the special parameters of the framework. It also depends intimately on a series of increasingly wider containing social circles **(Levin, 2001)**. Significant distortions appear in the framework when there is a lack of development or a breakdown in the major social institutions upon which western democracy rests. Now this relationship between the consulting room and the surrounding culture is not a simple linear one. For example, the conditions of professional practice behind the Iron Curtain virtually prevented the development of psychoanalysis there, and in Argentina the military junta of 1976-85 was deeply inimical to psychoanalysts. On the other hand, curiously, in other parts of South America, psychoanalytic bodies did not rebel against military dictatorships, nor were they persecuted by them. Since the nuances and complexities of this relationship are well beyond my expertise

and present scope, the point I want to retain is simply that the 'extraterritoriality' of psychoanalysis is an illusion tolerated by the environment. It exists outside conventional social reality only to the extent it is allowed to exist there. We must be careful not to use the notion of 'extraterritoriality' as a way of denying our debt to the larger society for granting psychoanalysis the transitional space we need to work effectively. And this debt must be recognized, cherished and repaid by individual members and by psychoanalytic associations in order for peaceful coexistence to continue. In North America, the strong leadership the American Psychoanalytic Association (APsaA) (Pyles, **2000**, **2003**; **Mosher, 2003**) has shown in educating both the public and state and private policy-makers about the special significance of confidentiality in psychoanalytic treatment testifies to recognition by this psychoanalytic institution of the importance of the containing social environment.

A psychoanalytic conception of confidentiality

Jean Laplanche **(1999)** has criticized what he calls the 'metaphysical temptation' present in some contemporary psychoanalytic thought, whereby notions that began as adjectives or verbs mutate into nouns, substances. Confidentiality is an example of this temptation in so far as it has tended to become conceived of as a thing in itself instead of a qualification of the analytic relationship. This state of affairs is known among philosophers as 'reification' and 'hypostatization'. If we go back to fundamentals, we would be hard pressed to see anything inherently sacred about confidentiality aside from the purpose it serves. It is a technical means, not a moral goal.

The primary rationale for confidentiality in psychoanalytic treatment as protection of the information circulated in the consulting room is to promote the free association process in the patient and analyst. By reminding ourselves of the function of confidentiality as an essential characteristic and containing property of the framework, we are brought back to its purpose in permitting safe and uncontaminated movement from inchoate experience to thought experiment and eventual symbolization by the patient-psychoanalyst dyad.

Analysts have resisted being required to report on their work to third parties, not only to safeguard patient privacy, but also because of the insidious effects of outside pressure on the freedom of patients' associations, and on the benevolent neutrality of the analyst's listening. It is in permitting the suspension of reality claims that confidentiality takes on unique importance to the psychoanalytic relationship and not as a transcendent moral claim. If confidentiality is asserted as an 'absolute' value to be obeyed without reference to context and function as part of ongoing real psychoanalytic relationships, then it risks becoming a 'thing-presentation' rather than a 'word-presentation' **(Laplanche and Pontalis, 1973)**. It will be recalled that, for Freud **(1915)**, the unconscious is synonymous with isolation from the network of verbal associations. Goldberg has also observed that, if we see frame-related issues (he calls them 'boundaries') as 'self-contained moral injunctions', we effectively abandon a psychoanalytic stance; these areas become cordoned off as 'ethical' issues that cease to elicit analytic curiosity. He goes on, '[T]he attention one must pay to boundaries is better seen as an ethical consideration (i.e. what is the best way

to accomplish what this patient needs?) rather than a moral one (i.e. what have I done wrong?)' (**1999**, p. 100). While the spirit of Goldberg's proposal is similar to my own, to phrase the ethical consideration in terms of 'what the patient needs' is not ideal since it is rather imprecise and could be interpreted from the patient's ego-bounded assessment of his best social interest. I would rather we frame our ethical goal as attention to 'what preserves the integrity of the treatment, or what contributes to a continuation of the analytic process'. This is a more precise definition of our 'duty to care'. Thus, I prefer the formulation Goldberg offered a few pages earlier: 'A reconsideration of boundaries as the precondition of effective therapeutic action moves them from the area of morality to that of pursuing an optimal treatment process: an ethical aim' (p. 89).

When analysts speak to each other and the public about confidentiality, contradiction and confusion abound. Part of the problem stems from the fact that we have been using terms borrowed from other disciplines, such as law and medicine, which are foreign to our technique and to our theory, and which if applied to our domain actually misrepresent and do violence to our work. If we are to make any sense of confidentiality in the analytic setting, distinctions need to be drawn with respect to related concepts, such as secrecy, anonymity, privacy, and the privilege of nondisclosure before the courts. None of these related terms, nor even much of our own public discourse on confidentiality, has derived from psychoanalytic thought. Moreover, the exact contours of confidentiality are more meaningfully understood as clinical context sensitive rather than absolute.

Charles Levin has noted that

> It is as if we have been working with two versions of confidentiality. The first, which might be called 'civic confidentiality', is adopted for various kinds of public consumption. The second, 'psychoanalytic confidentiality', is privately acknowledged in a wise kind of way but never really developed intellectually in our own literature (**2003**, pp. 63-4).

The only way to work through our present-day conundrums is, I believe, by situating our use of the term 'confidentiality' with respect to the specifics of psychoanalytic work: the unconscious, transference and countertransference, and interpretation. What we mean by 'confidentiality' should derive from these specifics. In fact, up to now it is not our definition of confidentiality that has set us apart from the practice of other professionals but only our pretense to a more stringent observance. Is what we espouse simply a super version of the confidentiality offered by other health-care professionals, or does it take on a specialized meaning in the context of psychoanalytic treatment? It can be argued that much of our current public discourse does not give full voice to the unspoken or even 'unthought known' **(Bollas, 1987)** of the implicit conceptualization of confidentiality attendant upon analytic work.

Let us examine a typical definition of confidentiality by which analysts try (impossibly) to measure themselves. An exemplary definition appeared in a recent issue of *The Canadian Psychiatric Journal*:

> Confidentiality can be defined as the ethical, professional, and legal obligation of a physician not to disclose what is communicated to him or her within the physician-patient relationship (Chaimowitz et al., **2000**, p. 900).

A similar definition can be found in the Health Information Privacy Code of the Canadian Medical Association, which states,

> [The] 'duty of confidentiality' means the duty of physicians and other health professionals in a fiduciary relationship with patients to ensure that health information is kept secret and not disclosed or made accessible to others unless authorized by patient consent (**1998**, p. 998).

One has only to scratch the surface of these definitions to realize that they cannot guide psychoanalytic work. Literally promising secrecy, these definitions of confidentiality as a point of honor regardless of context could apply more or less identically to any number of health-and non-health professional relationships. Nor can confidentiality, as practiced by psychoanalysts, be viewed as primarily a protection of patient privacy, however crucial privacy is in its own right to individual psychological autonomy and integrity.

Paradoxical when viewed from the lens of the rights of patient privacy or of patient consent, but not when viewed from the viewpoint of professional autonomy and integrity, is the notion of a necessary triangulation of confidentiality among psychoanalysts. For a number of reasons inherent in the psychoanalytic relationship, psychoanalysts must share information about their patients and themselves with other analysts or foreclose entire sectors of their clinical comprehension and interpretive reach. They must share for the sake of the integrity of the treatment in its aim of unraveling unconscious derivatives. In contrast to treatment-oriented sharing, other commanded disclosures based on patient consent and/or non-analytic aims can undermine the process.

We have all too often reified confidentiality in one corner of our mind as an ethical ideal that has been pulled free from its therapeutic function and enshrined it as a moral precept owed in an absolute fashion to the patient. It is quite possible for an analyst to assert confidentiality against the patient's protests, against even what he believes to be his best interests. (We will have the opportunity later in this paper to see how APsaA has been careful to address this potential conflict in its ethics code.) This is odd behavior if we subscribe to the idea that patients can waive their claim to confidentiality. This apparent contradiction dissipates if confidentiality is understood as a factor contributing to the integrity of the psychoanalytic relationship, safeguarding the analyst's, as well as the patient's, mental freedom and honesty. It makes analytic sense to regard confidentiality as a 'skin' rather than as a 'lock'. It must breathe, be flexible to context and, if need be, stretch to contain therapeutic work in extreme situations. Both skins and locks act as containers, but whereas the former is a porous, dynamic membrane enveloping the entire therapeutic unit, the latter is a mechanical device, impervious to ambiance or relationship, designed exclusively for the protection of the patient in whose hand the 'key' allegedly lies. Overemphasizing the concrete content (such as a particular family fact, clinical anecdote or description of transference) of what is divulged outside the therapeutic relationship seems wrong headed if the psychoanalytic purpose of the communication is not taken into account **(Furlong, 2000)**.

The specific function of confidentiality in the analytic process

Freud pointed out that the patient's attempt to shield secrets under any guise— altruistic, patriotic or otherwise—quickly creates a logjam in the free flow of ideas. Defining confidentiality as a promise to 'never tell anything' outside of the relationship could risk the same effect since it omits evaluation of the impact of the outsider's listening on the combined freedom of thought in the analyst and freedom of speech in the analysand. In other words, it does not take into account the purpose of the outsider's listening. When we swear our allegiance to 'absolute' confidentiality, it makes far more analytic sense to interpret this as faithfulness to an ideal of analytic listening, rather than as a concrete question of information passing outside of the dyad. The confidentiality of the process is there to unfetter the patient's discourse and the analyst's reverie. *The circulation of information outside the dyad need not be toxic, need not disrupt the analytic couple's openness to new meaning. Key to contamination and inhibition of analytic work is whether or not disclosure continues to serve an analytic end.* Confidentiality is not so much an ethical matter as a clinical one, the final arbiter of ethical decisions being faithfulness to clinical considerations in the context of our best theoretical understanding. Regarding the narrower issue of patient consent for presentation or publication, Robert Michels has arrived at a similar conclusion: 'The question of autonomy makes clear that consent is as much a clinical as an ethical issue' (**2000**, p. **369**).

Confidentiality in the analytic setting is an inherent part of an offer of a containing space. An interesting formulation has been developed by Brunet **(1999)** in which a psychoanalytic ethic of 'construction of meaning' is seen to depend upon the containment of the frame made possible by confidentiality. This containing function should not be mistaken as hermetic. It is not only in so far as it 'creates an atmosphere of trust' that confidentiality is to be appreciated. In fact, Forrester warns against psychoanalysts 'sell[ing] themselves as the guardians and indeed devotees of such trusting relationships' (**2003**, p. 24). Derived from the willingness to treat all confidences with the same benevolent neutrality, a specifically psychoanalytic technical aim, confidentiality allows new signification to be generated out of the patient's communications to his analyst. By shielding the relationship from outside pressures, confidentiality adds to the 'as if' atmosphere of the session. Encouraged to say anything coming to mind—his trust, yes, but also possibly his hate and his lack of confidence toward us—confidentiality ensures that none of the patient's material will have repercussions on either the relationship with us or on his life outside our office. New suppleness arises in dealing with awkward ethical decisions when we discard the notion of confidentiality as an oath of non-disclosure and recast it as a protective shield for an analytic mode of listening.

Rather than akin to secrecy, is not our promise of confidentiality more properly constituted as a promise to contain, associate to and cathect the ongoing generation of meaning within sessions? It is as a filter against third-party requests to examine clinical material for non-analytic ends, not as a moral code of secrecy, that confidentiality supports the breaking down of old links and the

evolution of new ones. The word ‘secret’ comes from *secernere*, which means ‘to set apart’, suggesting hidden, separate and split off; whereas ‘confidentiality’ derives from *com* (‘together’, ‘with’) and *fidere*, meaning to ‘have confidence in’ **(Webster and McKechne, 1979)**. Here is a historical reminder that the natural movement of confidentiality is relational sharing, quite the contrary of the blocked communication supposed by secrecy. When the representational work of the analytic couple is threatened, either on the patient's side by a transferential impasse or pressure to act out, or on the analyst's side by a disruption in his capacity to metabolize transferential and countertransferential affects, the analyst may need the opportunity of relying on other analytic ears for guidance in reinstating the containing and symbolizing function of his ‘analyzing capacity’. Rather than be understood as an inert ‘setting apart’, the notion of confidentiality in our field should allow for an elasticity—at the analyst's discretion—in broadening the containing function beyond the dyad to include analytic listening ‘with’ someone else. As an integral element in the ‘containing-situation’, a term employed to distinguish it from the framework understood as the technical parameters of the dyadic relationship, the boundary of confidentiality can be expected to fall most of the time at the limit of the therapeutic couple, though this boundary can, and should be, flexible, enlarging when needed to permit triangulation of the analytic listening instrument. Viewed in this way, the ethical criterion for disclosure becomes: Will it further the analytic listening and thus the treatment, or is it for unrelated purposes that may disrupt this listening?

It is not an original thought to draw attention to a latent and necessary triadic structure within which both analyst and patient can best function, since a number of other writers have done this (see, for example, **Aron, 2000**; **Gerson, 2000**). What may be new is making a particular link between the specifically analytic function of confidentiality and triangulation. Confidentiality for the analyst is more usefully understood as including, rather than as being in opposition to, the self-initiated, as needed, expansion of information sharing into the safety of an interanalytic space henceforth imagined as a flexible skin instead of a mechanical lock.

Confidentiality as psychoanalytic integrity, rather than patient right

Most professional ethical codes construct articles relating to confidentiality on the basis of the patient's twin rights to privacy and to a confidential professional relationship. APsaA has gone further in asserting confidentiality as an integral part of treatment efficacy. It states in its Guiding General Principles that ‘Confidentiality of the patient's communications is a basic patient's right and an essential condition for effective psychoanalytic treatment and research. A psychoanalyst must take all measures necessary to not reveal present or former patient confidences without permission’.

Moreover, APsaA has addressed the possibility that certain breaches of confidentiality acceptable to the patient may be objected to by the analyst for ethical or clinical reasons. A supplementary clause under article 1 of its section on confidentiality reads as follows:

> The psychoanalyst should resist disclosing confidential information to the full extent permitted by law. Furthermore, it is ethical, though not required, for a psychoanalyst to refuse legal, civil or administrative demands for such confidential information even in the face of the patient's informed consent and accept instead the legal consequences of such a refusal.

Despite these clauses, which I think are important ones, ethical guidelines such as these cannot replace the need (and, of course, APsaA is well aware of this) to educate the public and third parties of various kinds about the specific value of confidentiality in analysis. Most non-analysts only appreciate the privacy barrier and not the role of confidentiality in the relational fabric of treatment; they view confidentiality as having to do with the information in the dossier, not with the protection of a new way of 'knowing'. Confidentiality as a 'property' and 'right' of the individual tends to be overvalued at the expense of understanding its role in creating access to a specific psychological dimension. The familiar point of view relies heavily upon a medical model of understanding the dossier. Both the experimental thinking of free association and the necessarily intersubjective nature of the analytic relationship where the countertransferential offer precedes and guides the interpretation of transference mean that the psychoanalytic 'dossier' is not the inert, factual document used in medicine. Whether it exists in written form or only in the analyst's head, in psychoanalysis the dossier is inseparable from the relationship: any exportation of all or part of it outside of the relationship for third-party interests will inevitably entail the risk of significant distortion in how the process will appear to outsiders, as well as causing disruption in the delicate working alliance of the analytic dyad. Thus, it has been argued that a quasi-absolute privilege for psychoanalytic treatment with respect to the courts (or any other third-party interest, for that matter), consistently shielding the integrity of clinical work, is far more likely to promote than to detract from the truth-seeking judicial process **(Furlong, 2003a)**.

A common objection is that leaving the final decision regarding access to this confidential relationship to the analyst amounts to a restoration of paternalistic control, and an invalidation of the patient's capacity to judge what is 'right' for him in the situation. This argument is not credible with respect to the psychoanalytic relationship. It fails to take into account that any outside involvement of the analyst in the patient's differences with third parties (such as custody battles, disability claims, sexual-harassment suits, unfair hiring and firing biases, capacity for work evaluations—the list gets longer and longer with each passing year) flushes the analyst out of his ethical stance of benevolent neutrality. No sense can be made of our ethical commitment to confidentiality unless the distinction is clearly understood between sharing for treatment purposes and sharing for either third-party interests or for what the patient perceives as his best interest in the outside world. While an essential triangulation of confidentiality is inherent to the psychoanalytic process, the siphoning of information from the dyad for non-treatment-related personal, administrative, legal, social or political agendas breeches the integrity of the clinical situation. (For the clinical impact of threatened contamination from outside forces, see **Da Silva, 2003**;[1] **Garvey, 2003**.)

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[1] The author thanks Guy Da Silva for drawing attention to Meltzer's concepts of 'projective identification' and 'intrusive identification'. Meltzer **(Meltzer et al., 1984)** proposes reserving the term of projective identification to the more Bionian usage that describes a primitive and largely unconscious mode of communication, crucial for learning from experience, and using the term of 'intrusive identification' for the essential aim observed originally by Melanie Klein of invading another personality and another body. The useful analogy with the thinking about confidentiality expressed in this article is with the notion of two different modes of circulation of information, one permitting growth, and the other destructive.

At stake here are the twin principles of professional autonomy and avoidance of role conflicts. Legal experts, ethicists and mental-health professionals who have studied the breakdown in professional functioning under authoritarian political regimes, such as the Soviet Union, or who have encountered the difficulty of instituting autonomous professional identifications in countries that have never known democratic institutions, have come to the conclusion that professional ethical codes must maintain an optimal distance from both the courts and existing statutory laws **(Polubinskaya and Bonnie, 1996)**. That the Soviet psychiatrist's first pledge was to the Communist Party illustrates the danger of excessive allegiance to the state.

Another clarification may help to lay to rest the worry that advocating a psychoanalytic conceptualization of confidentiality will inevitably lead back to analytic paternalism. It is not that the analyst inherently knows best what is best for treatment. Far from it. But it does mean that analyst and patient need to monitor and analyze third-party requests in terms of that end, rather than abdicating analytic curiosity in favor of a given ethical principle or a particular individual or social outside interest. I agree with Goldberg **[internet]** when he argues that changes in the framework are best viewed as invitations to enquiry. Unthinking commitment to the 'rules' can express just as unanalytic an attitude as rationalized compromising of those rules. Goldberg's advice is sound: There are times when 'it may also be helpful to make a *psychoanalytic assessment* of the inclusion of the third party without any preconceived value judgements' (**2004**, p. **307**, my italics).

Forrester has circumscribed confidentiality in a way wholly compatible with the viewpoint defended in this article. In order to protect what he calls the 'shadow relationship, which is neither real or imaginary' (2000, p. 24), produced by the analytic situation, the rule of non-action requires that the speech within the consulting room never becomes act. It follows for Forrester that communicating with a third party about the patient is a violation of this rule, 'so my new formulation of the confidentiality condition of psychoanalysis makes it a consequence of a broader principle, that of the abstinence of the analyst' (p. 26).

He concludes that, even if the patient consented to information sharing, the analyst should not, for analytic reasons, be free to do so since this would amount to enacting 'the private theatrical scene the patient is enticing him into … Any action in the real as a result of, or in connection with, the analysis of a patient is a similar violation' (p. 26). It is interesting to juxtapose Forrester's idea with Goldberg's **(1999)** more tempered view that the analyst may have to act out something neurotic with certain patients (thus colluding with the private theater of their 'vertical split')

in order to be able, in a second temporality, to analyze it. Using a Kleinian model of 'the divided mind in treatment', Hinshelwood **(2003)** has made a rather similar point about some confidentiality breaches precipitated by patient actions. But Goldberg's and Hinshelwood's valuable clinical observations that the framework sometimes needs to be temporarily bent out of shape in order to represent an aspect of the patient's pathology do not undermine the pertinence of Forrester's apt linking of confidentiality and abstinence as a psychoanalytic way of thinking about the problem of dealing with third parties.

Public security

A major threat to confidentiality in recent years has been the redrawing of professional duty to encompass responsibilities to third parties **(Bollas and Sundelson, 1995)**. A detailed deconstruction of the questionable premises behind duty to protect and to warn regulations can be found in an unpublished brief prepared by an ad hoc Canadian Psychoanalytic Society committee in response to a modification of the Quebec Code of Professions allowing for optional reporting to protect third parties. The brief **(Société psychanalytique de Montreal, 2001)** concluded that

a) The aims of psychoanalytic and psychotherapeutic treatment do not conflict with society's interest in public safety, as is sometimes implied. In fact, as we have outlined above, they normally serve that interest by preempting the possible development of socially harmful behavior and/or by helping actually dangerous patients to explore, understand and control their violent fantasies.

b) The impact of disclosure on the treatment situation depends very much on the reasons for the disclosure. When professional secrecy is suspended for therapeutic reasons, such as professional consultation and advice, the disclosure will have only a beneficial effect on the therapeutic process. However, when professional secrecy is lifted in the interests of a third party, the trust and security of the therapeutic relationship are directly undermined.

c) The value of disclosure in potentially dangerous situations has been greatly exaggerated in recent years. If an individual is dangerous, he is much less dangerous in treatment than without treatment. Too much emphasis on the need for disclosure for reasons of public safety may deter dangerous members of society from seeking treatment and frighten inexperienced psychotherapists into making unnecessary disclosures that will lead to the interruption or dilution of treatment. Both of these eventualities will increase, not decrease, the potential for antisocial behaviour. Third-party warnings fail to address the emotional distress behind the apprehended violence. Clinically oriented intervention, backed by adequate resources, will, in the vast majority of cases, be far more useful.[2]

Privilege: Confidentiality before the courts

With due respect to the legal profession, a close examination of six recent Canadian court decisions on matters of privilege with respect to confidential information **(Furlong, 2003b)** shows a systematic bias. The courts and legal theorists take

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2 There is no space here for the review of the literature cited by the report's authors in arriving at these conclusions. The interested reader is referred to two respected sources for an introduction to this area: Ralph Slovenko's *Psychotherapy and confidentiality: Testimonial privileged communication, breach of confidentiality, and reporting duties* **(1998)** and Park Elliott Dietz's 'Defenses against dangerous people when arrest and commitment fail' **(1990)**.

a different judicial approach to legal records as compared to therapeutic ones. Whereas the solicitor-client relationship is accorded the quasi-absolute status of a class privilege, access to the psychotherapeutic relationship must be decided on a case-by-case basis 'balanced against other interests'. Relevance and balancing are specifically rejected in the very notion of solicitor-client privilege, such as in the following passages from *R v. McClure*, 2001:

> Such communications are excluded not because the evidence is not relevant, but rather because there are overriding policy reasons to exclude this relevant evidence [para 27].
>
> The decision to exclude evidence that would be both relevant and of substantial probative value because it is protected by the solicitor-client privilege represents a policy decision [para 34].
>
> … solicitor-client privilege must be as close to absolute as possible to ensure public confidence and retain relevance. As such, it will only yield in certain clearly defined circumstances, and does not involve a balancing of interests on a case-by-case basis [para 35].

Once the premises of 'likely relevance' and 'balancing against other societal interests' are accepted, an impossibly slippery slope has been engaged that no mental-health professional can logically refute. It goes without saying that any psychotherapy worth its salt is going to cover topics 'relevant' to the important issues in a patient's life. Both the public and the legal community have generally too readily accepted the rationale of the need to balance the confidentiality of medical and therapeutic records against competing social interests. Contrary to most current legal thinking, the integrity of psychotherapeutic work will, in the long run, contribute to, rather than distract from, the correct disposition of justice. I have yet to come across a single instance of wrongful conviction of the innocent due to declined access to a confidential therapeutic file. Yet numerous examples of injustice have been documented as the result of improper access to 'evidence' derived from psychotherapy relationships (see **Ramona v. Ramona, 1994; Johnston, 1997**, for the first in a long series of legal disasters created by unsubstantiated claims of recovered memories of sexual abuse). It is safe to assume, therefore, that mental-health professionals could manage with a clear conscience the solicitor's standard for his own professional work of yielding privilege only 'in circumstances where to fail to do so will result in a wrongful conviction' (**R v. McClure, 2001**, para 40).

Defense lawyers and some judges are perfectly willing to grant the subjective and unreliable nature of communication in psychotherapy and psychoanalysis. They merely insist upon the right to use acceptable legal methods to tease out the relevant nuggets of fact suitable for the court. The tentative, experimental nature of patients' communications within the emotional lines of force of an intense rapport with a psychotherapist is simply not grasped. In the Canadian Supreme Court's Osolin decision, Judge Cory expressed it this way:

> what the complainant said to her counselor … could well reflect a victim's unfortunate and unwarranted feelings of guilt and shame for actions and events that were in no way her fault. If this is indeed the basis for her statement to the counselor, then they could not in any way lend an air of reality to the accused's proposed defense of mistaken belief in the complainant's consent. *However, in the absence of cross-examination it is impossible to know what the result might have been* (R v. Osolin, **1993**, p. 525, my italics).

Following common law method, the proper thing to do, as asserted by the Canadian Council of Criminal Defense Lawyers' (CCCDL) factum in another sexual assault case, is to 'put the statement to the witness so that its significance can be tested in a meaningful fashion' (response of the Intervener CCCDL, to the Factum of the Intervener Canadian Psychiatric Association, **R v. Mills, 1999**, point 11). The CCCDL added, 'As always, an actual, contextual examination is preferable in the search for the truth' (point 12). What these advocates for relevance have failed to realize is that a mutually suggestive interpersonal field is a technical necessity in treatment, and that it is this real 'context' which should militate for its exclusion from searches for legal truth. One can only wonder if in large part their miscomprehension stems from the failure of analysts and other mental-health professionals to undertake a sustained campaign to explain our work to other disciplines.

Contrasting metaphors come to mind which illustrate differences in understanding. The CCCDL's perspective invokes the ancient task of threshing, in which wheat is separated from chaff. The patient's doubts, fantasies and rehashing of the alleged events, as expressed in psychotherapy sessions, are tossed into the cross-examination threshing machine, in the mistaken belief that judge and jury can pick out kernels of wheat-truth without denaturing the healing relationship. A metaphor more respectful of the psychoanalytic point of view comes from a special-effects image from the film *The abyss*. On the ocean floor, a stranded group of deep-sea oceanographers experience close encounters with other-worldly beings who take shape from the water itself. At once astonishing, enchanting and eerie, humanoid faces gracefully coalesce, solidify, glide about and then dissipate in the ambient water. This film image is more faithful to the delicate intersubjective tissue of the psychotherapeutic dialogue than that of the robust thresher. The alien, other-worldly faces are inherent in the water just as the patient's words are inherent, immanent, in the 'other dimension' emotional dynamic of the treatment relationship, and cannot be teased apart in the outside world of the courtroom. Any attempt to extract factual truth for third-party needs, such as those of the court, constitutes an error of decontextualization and lack of appreciation of the nature of the therapeutic relationship from which the information has been culled.

Last, but not least, perhaps the least appreciated aspect of confidentiality in psychotherapy and psychoanalysis on the part of the general public and other disciplines, perhaps because it is an aspect that is so very specific to this field, is the extent to which it is fundamental to the therapist's ability to function properly. Outsiders do not realize that a certain 'disturbance' of the therapist's mental functioning in the course of a close encounter with the patient's subjectivity is a needed first step to both empathy and effective interpretation of the patient's difficulties. Hence, the privacy of the analyst's mental space with respect to non-analytic third parties is more crucial to his professional functioning than it is in other disciplines **(Bollas, 2000)**. Neither the ethical principles of privacy nor the patient's 'right' to confidentiality adequately encompass the transitional, intersubjective, partially co-constructed, relational arena at stake in an analytic treatment.

Alternate paradigms

In the light of contemporary understanding of the place of professional ethics codes in society, the International Psychoanalytical Association, the American Psychoanalytic Association and the Canadian Psychoanalytic Society have all taken steps to distance their codes from automatic compliance with the law. The International and the Canadian have removed the former caveats of 'except in compliance with existing laws'. In a separate section of their *Principles and standards of ethics for psychoanalysts*, APsaA has delineated an arena for optimal distance with respect to the law:

> Section IX. Social Responsibility … The Principles recognize that there are times when conscientious refusal to obey a law or policy constitutes the most ethical action. If a third party or patient or, in the case of minor patients, the parent(s) or guardian(s) demands actions contrary to ethical principles or scientific knowledge, the psychoanalyst should refuse **[internet]**.

Although there is much to admire in APsaA's public advocacy of confidentiality, its emphasis on the paradigms of privacy and patient rights—in line with other medico-ethical movements—has a limited reach in representing the as-if, intersubjective, clinical relationship. Our defense of confidentiality could be fruitfully supplemented with ethical models from alternate sources. In meditating upon what he has called our lack of 'synchrony' with other fields, David Tuckett, former *IJP* Editor-in-Chief, has wondered whether the intellectual isolation and marginalization of psychoanalysis may be less than it sometimes appears. We are not at all alone in some of our reservations about certain proposals for progress and in

> seeking to find an alternative way … we should keep open the possibility that we may not only protect our own discipline but perhaps also find allies in those other medical and allied disciplines where the problem is similar to the one we face (**2000**, pp. **1071-3**).

As alternative sources of paradigms that future reflection on psychoanalytic confidentiality might build upon, I propose two suggestions. One new model of conceptualizing confidentiality may be found from certain critical analyses regarding the long-term impact of the United Nations Declaration of Human Rights, which celebrated its 55th anniversary in 2003.[3] However socially progressive it has been internationally to acknowledge and promote the individual as the locus of certain inalienable legal rights, there has also been growing disenchantment among legal theorists and philosophers of ethics that exclusive emphasis on individual rights can also lend itself to social injustice. Damaging to the community fabric when legal attention narrows to the defense of the individual against the state is that not infrequently, law actually reinforces rather than palliates unjust distribution of power and social inequality. This contemporary theoretical current could offer a valuable intellectual bridge for the besieged ethics of psychoanalysis. There is, for example, the influential legal theory of Jennifer Nedelsky **(1993)**, who has critiqued liberal and individualist

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[3] See **http://www.udhr.org/index.htm** [cited 2005 Mar 16].

conceptions of rights, such as privacy and autonomy. Nedelsky convincingly demonstrates the importance of 'rethinking rights' neither as possessions nor as 'limits' or 'trumps' to state action. We need, she claims, to think of them instead as 'capacities' to form or to foster certain relationships around values such as care, respect and trust. In recent years, feminist research and study has targeted the confidentiality crisis faced by complainants of sexual assault by pointing out the damage to sexual equality of access to their personal records by the defendant **(Denike, 2003)**. It was sensitivity to the limitations of an exclusively individual right approach that led the Law Commission of Canada to set up a three-year study of legal reform (1997-2000) based on a 'human relationships' analysis. The Commission's interest in the Canadian Psychoanalytic Society's study of confidentiality as part of a professional relationship led to its financial and scholarly participation in the Confidentiality and Society Conference **(Desrosiers, 2003)**.

When a psychoanalyst attempts to grasp traditional legal approaches to confidentiality, it is easy to begin identifying with Goldilocks in her search for a meal, and a chair, and a bed that will fit the dimensions of her body. There is a certain point when one realizes that the psychoanalytic way of conceiving the treatment setting is incommensurate with the usual legal conceptualization of it, and that every attempt to adjust to their paradigms will contort the framework. Earlier versions of the IPA, CPS and APsaa's ethical codes all attempted to meet jurists on their ground and followed their suggested approaches to the problem, a strategy that has, in some instances, produced a less than ideal fit. Nevertheless, the author's personal research has turned up another legal avenue—and this is a second potential new bridge of intelligibility in explaining our position to outsiders—that appears to dovetail with our view of the consulting room as a transitional space, though to my knowledge it has never been asserted in this fashion. The reasoning behind the privilege of the deliberative process **(Morissette, 1994)** covering 'predecisional' materials might be extended to provide an entirely appropriate legal shield for the psychoanalytic relationship, though the application would not occur to most legal experts since their understanding has been mainly limited to the privacy of personal-information model. Common law demarcates specific arenas where frank discussion, experimental thinking and speculation can occur without the risk of disclosure or repetition out of context. Covered by this privilege are cabinet meetings, certain phases of labor arbitration and mediation proceedings, and judges' personal trial notes. It should be emphasized that the deliberative processes sheltered in these traditional applications all relate to governance, administration or to the legal system itself. But is there any logical, moral or philosophical impediment preventing the extension of this privilege to the self-and-other deliberative function of psychoanalysis, that is, if lawyers and judges had a clearer idea of the specific function of confidentiality in our field?[4]

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[4] Independently, Bollas **(2000)** has also pointed out the heuristic value for psychoanalytic thinking about confidentiality in the parallel with the protection of the deliberative process.

A psychoanalytic policy position on confidentiality

The notion of optimal professional autonomy allows us to disengage from the overly conciliatory attitude to the law latent in some articles of the old codes. Whereas mental-health professionals have, in general, been more likely to acquiesce that other social values need to be 'balanced' against the integrity of their work (Ontario's reporting laws on professional abuse and alcoholic intoxication while driving are two fairly recent Canadian examples), it is noteworthy that the legal profession has never felt apologetic about defending the most rigorous confidentiality for its members. A 2003 case in Canada is instructive: the Federation of Law Societies of Canada forced the Canadian government to back down when they launched a law suit to protect client/attorney privilege from proposed money-laundering disclosure laws **(Tibbetts, 2003)**. Half of Canadian lawyers surveyed said they would risk jail rather than report their client's illegal activities **(Globe and Mail, 2003)**. For every analyst who has taken a principled stand against legal intrusion (Lifschutz, cited in **Slovenko, 1998**; **Hayman, 2003**), there have been numerous others who have made peace, compromised or capitulated (Bollas, **1995**, **2000**). Those analysts practicing in countries other than the US who have resisted third-party access have, until recently, received little organizational support, so that the outsider could view them as ethical extremists or lonely voices in the wilderness, rather than reasoned institutional representatives explaining the value of the boundaries of our special workspace to the public. To be fair to psychoanalysts, it is true that we have far less clout than lawyers: in Canada, for instance, there are 80,000 lawyers and 400 members of the Canadian Psychoanalytic Society. However, I do not believe it is solely a question of numbers; it is also a question of professional ethos. For this reason, Freebury **(2003)** has used the issue of confidentiality to argue the need for a specifically psychoanalytic code of ethics.

My limited knowledge of contemporary ethical perspectives may make some of my affirmations clumsy in the eyes of readers more sophisticated in these matters than myself. They will point out that modern ethical thinking eschews absolutism and either/or thinking, often proposing a nuanced balancing from a hierarchy of basic principles. Unable to make the bridge myself, I welcome the feedback of those more learned in the philosophy of ethics. Nevertheless, despite its lack of expertise, my perspective does—I know from discussions with colleagues from various societies—represent the ground view for many analysts who have perhaps not properly appreciated the nuances of the ethical regulations available to them and who have allowed dubious breaches of confidentiality, thinking they had no other choice and that they had no institutional back-up for their doubts about the impact on the patient's treatment. I refer the reader to Bollas's well-known studies (**1995**, **2000**, **2003**) of the spotty record of psychoanalytic institutions in the defense of confidentiality which, though improved in some areas, still remains poorly organized in many jurisdictions. There are also two recently published clinical accounts, one from a Canadian **(Da Silva, 2003)** and one from an English analyst **(Garvey, 2003)**, which describe the anguish and isolation of the individual analyst when their local psychoanalytic institutions were caught unprepared to offer official support. From

my experience, Da Silva's and Garvey's solitude and confusion about how to protect their work are not atypical. Due to the efforts of APsaA in the last decade, American analysts are no doubt much better prepped to offer resistance when they feel third-party requests for information will damage the analysis. The same cannot be said for other international jurisdictions that are only beginning to address this issue in a collective, concerted fashion. Moreover, the problem remains that many analysts, in Canada and elsewhere, have been stumped when the patient's consent has been given. Since the specifically psychoanalytic rationale for confidentiality has not been fully articulated, these practitioners have found themselves handicapped on both sides. With respect to the patient, they have lost confidence in their capacity to maintain an analytic 'as-if-ness' regarding the request from the patient. With respect to the third party, they have lacked alternate arguments for countering the erroneous search for truth that underlies requests for analytic material.

The timing is appropriate for psychoanalytic societies to develop policy statements that explain to non-analysts the role of confidentiality in the clinical setting. A policy statement serves a different aim than confidentiality provisions in ethical codes. It serves to render the specificity of psychoanalytic practice of confidentiality intelligible and accessible to non-analysts. The existence of such documents also could provide much-needed credibility to individual members who decline third-party access to the psychoanalytic process. To stimulate discussion, I propose the following draft of a confidentiality policy informed by psychoanalytic theory and clinical practice, rather than by local legal jurisdiction or original disciplines' ethics codes. It does not pretend to address all the ways in which confidentiality can come under pressure in our work; the focus is on third-party requests for information.

Draft of a proposed policy statement on confidentiality with respect to third parties in psychoanalytic work

1) Confidentiality is integral to the quality of psychoanalytic treatment. Ensuring quality and integrity of treatment is our professional responsibility.
2) The analyst attempts as much as possible to protect his patient's treatment from contamination from third-party interests, be they economic, administrative, social or moral. Given the special relationship fostered by this setting, meanings are activated in both participants that can often only be properly understood over a period of time and that also often undergo several revisions over time. Thus, information gleaned from psychoanalytic files, or directly from the analyst, can be prejudicial or misleading when exported outside that professional relationship. Attempts to extract material for third-party needs stem from lack of appreciation of the nature of the therapeutic relationship and can alter the subjective truth emerging therein.
3) Society benefits in a number of ways (lowered medical costs, increased work productivity, lowered medication consumption, healthier interpersonal relationships, better parenting skills, less unwise recourse to the justice system etc.) from respecting the privacy of the psychoanalytic relationship.

4) It should be noted that the risk of abuse of psychoanalytic services is negligible given the already considerable mental, temporal and financial commitment involved in this kind of treatment. Consequently, only minimal administrative control (name, time and place) is necessary and justifiable. Even the disclosure of diagnosis is a significant invasion of privacy and has an impact on the patient's relationship to the analyst. Sharing a diagnosis with a third party compromises the analyst's neutral stance with respect to his patients' symptoms by forcing him to label the patient with a psychiatric identity and statistically expectable outcome. This result is counter to the psychoanalytic ethic of benevolent neutrality as the best facilitation to subjective truth.

5) Patient consent alone is not sufficient to liberate the psychoanalyst from his ethical responsibility to deliver quality care.

6) Rigorous shielding of the integrity of clinical psychoanalytical work from court-related matters is far more likely to promote than to detract from the truth-seeking judicial process.

7) In deciding what information is to be shared, or with whom it is to be shared—when safety of third parties is at risk—the analyst will remain mindful that it is in safeguarding the therapeutic interests of the patient that third-party safety is best assured.

References

Aron L (2000). Ethical considerations in the writing of psychoanalytic case histories. *Psychoanal. Dial.* 10: 231-45. [→]

Aulagnier P (1969). Sociétés de psychanalyse et psychanalyste de société [Psychoanalytic societies and society psychoanalyst]. *Topique* 1: 7-46.

Bollas C (1987). *In the shadow of the object: Psychoanalysis of the unthought known*. New York: Columbia Univ. Press.

Bollas C (2000). The disclosure industry. Opening plenary address, conference 'Confidentiality and society: Psychotherapy, ethics, and the law', 12-15 October, Montreal, Quebec, Canada.

Bollas C (2003). Confidentiality and professionalism. In: Levin C, Furlong A, O'Neil MK, editors. *Confidentiality: Ethical perspectives and clinical dilemmas*, p. 202-10. Hillsdale, NJ: Analytic Press. [→]

Bollas C, Sundelson D (1995). *The new informants: The betrayal of confidentiality in psychoanalysis and psychotherapy*. Northvale, NJ: Aronson.

Brunet L (1999). Éthiques et psychanalyse. De l'éthique du sens à celle de la fonction contenante [Ethics and psychoanalysis. From the ethics of meaning to the ethics of the containing function]. *Filigrane* 8: 61-76.

Canadian Medical Association (1998). Health information privacy code. *Can Med Assoc J* 159: 97-1006.
Chaimowitz G, Glancy G, Blackburn J (2000). The duty to warn and protect—Impact on practice. *Can J Psychiat* 45: 899-904.
Da Silva G (2003). Confidentiality in psychoanalysis: A private space for creative thinking and the work of transformation. In: Levin C, Furlong A, O'Neil MK, editors. *Confidentiality: Ethical perspectives and clinical dilemmas*, p. 151-65. Hillsdale, NJ: Analytic Press.
Dietz PE (1990). Defenses against dangerous people when arrest and commitment fail. In: Simon R, editor. *Review of clinical psychiatry and the law*: Volume 1, p. 205-19. Washington, DC: American Psychiatric Press.
Denike M (2003). Sexual inequality and the crisis of confidentiality: The myth and the law on personal records. In: Koggel C, Furlong, A, Levin C, editors. *Confidential relationships*, P. 133-50. New York: Rodopi.
Desrosiers N (2003). Confidentiality, human relationships, and law reform. In: Koggel C, Furlong A, Levin C, editors.*Confidential relationships*, p. 133-50. New York: Rodopi.
Forrester J (2003). Trust, confidentiality, and the possibility of psychoanalysis. In: Levin C, Furlong A, O'Neil MK, editors. *Confidentiality: Ethical perspectives and clinical dilemmas*, p. 19-27. Hillsdale, NJ: Analytic Press. [→]
Freud S (1915). The unconscious. *SE* 14, p. 161-215.
Freebury DR (2003). Psychoanalytic ethics: Has the pendulum swung too far? In: Levin C, Furlong A, O'Neil MK, editors. *Confidentiality: Ethical perspectives and clinical dilemmas*, p. 211-27. Hillsdale, NJ: Analytic Press.
Furlong A (2000). The questionable contribution of psychotherapeutic and psychoanalytic records to the truth-seeking process. In: Koggel C, Furlong A, Levin C, editors. *Confidential relationships*, p. 13-29. Amsterdam and New York: Editions Rodopi BV.
Furlong A (2003a). The why of sharing and not the what: Confidentiality and analytic purpose. In: Levin C, Furlong A, O'Neil MK, editors. *Confidentiality: Ethical perspectives and clinical dilemmas*, p. 39-49. Hillsdale, NJ: Analytic Press.
Furlong A (2003b). The wheat and chaff of judicial approches to psychotherapeutic confidentiality. Introduction to chapter on confidentiality. In: Sklar R, editor. *Psychiatry, ethics and the law* (unpublished manuscript).
Garvey P (2003). Whose notes are they anyway? In: Levin C, Furlong A, O'Neil MK, editors. *Confidentiality: Ethical perspectives and clinical dilemmas*, p. 167-81. Hillsdale, NJ: Analytic Press.
Gerson S (2000). The therapeutic action of writing about patients: Commentary on papers by Lewis Aron and by Stuart A Pizer. *Psychoanal. Dial.* 10: 261-6. [→]
Globe and Mail (2003). Breach of confidentiality harms justice, lawyers say. 7 September, B6.
Goldberg A (1999).*Being of two minds: The vertical split in psychoanalysis and psychotherapy*. Hillsdale, NJ: Analytic Press.
Goldberg A (2004). A risk of confidentiality. *Int. J. Psycho-Anal.* 85: 301-10. [→]
Goldberg A [internet]. The mutuality of meaning. New York, NY: Institute for Psychoanalytic Self Psychology; ©2002 [cited 2005 Mar 16]. Available from: www.selfpsychologypsychoanalysis.org.
Hayman A (2003). A psychoanalyst looks at the witness stand. In: Levin C, Furlong A, O'Neil MK, editors. *Confidentiality: Ethical perspectives and clinical dilemmas*, p. 293-308 Hillsdale, NJ: Analytic Press.
Hinshelwood RD (2003). A psychoanalytic perspective on confidentiality: The divided mind in treatment. In: Koggel C, Furlong A, Levin, C, editors. *Confidential relationships*, p. 31-51. Amsterdam: Rodopi.
Johnston M (1997).*Spectral evidence: The Ramona case: Incest, memory and truth on trial in Napa Valley*. Boston: Houghton Mifflin.
Kates N, Craven M, Bishop J, Clinton T, Kraftcheck D, LeClair K, et al. [internet]. Shared mental health care in Canada. Joint position paper by the Canadian Psychiatric Association and the College of Family Physicians in Canada. Ottawa, ON: Canadian

Psychiatric Association; ©1996 [cited 2005 Mar 16]. Available from: www.cpa-apc.org/Publications/Position_Papers/Shared.asp.

Laplanche J (1999). A short treatise on the Unconscious. In: *Essays on otherness*, p. 84-116. New York: Routledge.
Laplanche J, Pontalis J-B (1973). *The language of psychoanalysis*. New York: Norton. [→]
Levin C (2003). Civic confidentiality and psychoanalytic confidentiality. In: Levin C, Furlong A, O'Neil MK, editors. *Confidentiality: Ethical perspectives and clinical dilemmas*, p. 51-75. Hillsdale, NJ: Analytic Press.
Levin C (2001). The siege of psychotherapeutic space. Psychoanalysis in the age of transparency. *Can. J. Psychoanal.* 9: 187-215. [→]
Meltzer D, Milana G, Maiello S, Petrelli D (1984). La distinction entre les concepts d'identification projective (Klein) et de 'contenant-contenu' (Bion) [The conceptual distinction between projective identification (Klein) and container-contained (Bion)]. *Rev. Franç Psychanal* 2: 551-69.
Michels R (2000). The case history. *J. Amer. Psychoanal. Assn.* 48: 355-75. [→]
Morissette Y-M (1994). Review of administrative record. Paper presented at: Centre for Trade Policy and Law Workshop, Ottawa, 22 November.
Mosher P (2003). We have met the enemy and he (is) was us. In: Levin C, Furlong A, O'Neil, MK, editors. *Confidentiality: Ethical perspectives and clinical dilemmas*, p. 230-49. Hillsdale, NJ: Analytic Press.
Nedelsky J (1993). Reconceiving rights as relationship. *Rev Constitutional Studies* 1: 1-26.
Polubinskaya S, Bonnie R (1996). New code of ethics for Russian psychiatrists. *Bull Med Ethics* 117: 13-9.
Principles and standards of ethics for psychoanalysts [internet]. New York, NY: American Psychoanalytic Association (APsaA); ©2005 [cited 2005 Mar 16]. Available from: www.apsa.org/ethics0105.pdf.
Pyles R (2000). The good fight: Psychoanalysis in the age of managed care. Luncheon address at the Confidentiality and Society Conference, 14 October 2000. [→]
Pyles R (2003). The American Psychoanalytic Association's fight for privacy. In: Levin C, Furlong A, O'Neil, MK, editors. *Confidentiality: Ethical perspectives and clinical dilemmas*, p. 252-64. Hillsdale, NJ: Analytic Press.
Ramona v. Ramona (1994). Napa Cty Super. Court File. No. 61898.
R v. McClure (2001). 1 SCR. 445.
R v. Mills (1999). Response of the Intervener The Canadian Council of Criminal Defense Lawyers (CCCDL) to the Factum of the Intervener Canadian Psychiatric Association. SCC. Court File No. 26358. [→]
R v. Osolin (1993). SCC. Court File No. 22826.
Slovenko R (1998).*Psychotherapy and confidentiality: Testimonial privileged communication, breach of confidentiality, and reporting duties*. Springfield, Illinois: Charles C Thomas. [→]
Société psychanalytique de Montréal (2001). Letter to the Minister of Justice of Quebec regarding Bill 180. Co-signed by the presidents of the Société psychanalytique de Québec, the Canadian Psychoanalytic Society (Quebec English) and the Canadian Psychoanalytic Society.
Tibbetts J (2003). Ottawa to exempt lawyers from money-laundering laws. *National Post*, 25 March; A14.
Tuckett D (2000). Reporting clinical events in the journal: Towards the construction of a special case. *Int. J. Psycho-Anal.* 81: 1071-3. [→]
Webster N, McKechne J (1979). *Webster's new universal unabridged dictionary*, 2nd ed. New York: Simon & Schuster.