

Introduction to the Special Section on the Goldwater Rule

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The publication of this special section offers a chance to reflect on a topic of perennial interest in psychiatry: the ethics of commenting on public figures.

Since at least the election of 1964, when publisher Ralph Ginzburg became concerned about Barry Goldwater's psychological fitness, psychiatrists have debated the ethics of speaking out about the mental health of public figures. In that year Mr. Ginzburg commissioned a partisan "survey" of U.S. psychiatrists for his new magazine, *Fact*.¹ Although many psychiatrists said that Mr. Goldwater was mentally ill, some called Mr. Ginzburg's survey unethical. It was later proved that Mr. Ginzburg had shaped the results to support the conclusion he had already reached.^{2,3} The American Psychiatric Association (APA) quickly condemned the survey, but Mr. Ginzburg published it anyway. Mr. Goldwater consulted his friend William F. Buckley, who advised him that there was no point in bringing a libel suit (Ref. 4, p 390). Mr. Goldwater sued anyway, prevailing in district court and then in the Supreme Court. In 1969 he said how pleased he was that the APA had spoken out against "those members of the profession who did not act in a proper ethical way."⁵

The APA addressed the matter formally in 1973, when its Board of Trustees adopted Section 7.3 of *The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry*: the so-called Goldwater Rule⁶ (hereafter Rule). Since 1973, there have been many articles on the Rule in the *New York*

Times, *Psychology Today*, and other popular publications. Until recently, however, there have been remarkably few scholarly contributions on the ethics of the Rule.

Ethics Inquiry and Scholarship

By 2002, when Jerrold Post wrote "Ethical Considerations in the Psychiatric Profiling of Public Figures,"⁷ there had been many developments in the psychiatric community on the subject of the Rule. At least one APA trustee acknowledged having voted against the Rule, and a former APA president had considered the possibility of "rigid overscrupulosity" in interpreting the Rule (Ref. 7, pp 642, 645). But with the exception of Slovenko,⁸ who was indebted to him, Post was the first to bring extended critical analysis to the Rule in a scholarly publication.

Post's arguments addressed the challenge of reconciling the Rule with his experience in profiling for the Central Intelligence Agency and with his own need to respond to an ethics complaint after he testified before a committee in the House of Representatives.⁷ Reviewing the Rule's complex history, Post described his perplexity in trying to understand the language of Section 7.3. He read its provisions as internally contradictory, with the injunction to serve public education and consult to government (Sections 7.1 and 7.2) clashing with the Rule's ban on media comments. His arguments, which are still central to discussions of the Rule, may be summarized as follows:

Sound ethics principles sometimes conflict, and in some circumstances there should be a public-figure equivalent of the *Tarasoff* warning, whereby a psychiatrist may educate the public about a public figure's psychiatric illness if the

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communication is undertaken to prevent greater harm.

Because unprofessional diagnoses proliferate in the media and government, leaving these unchallenged could lead to the mismanagement of world crises or even death. In these circumstances, it would be unethical for a psychiatrist to withhold his assessment.

Richard Friedman, taking note of the importance of Post's work, provided a cogent summary of the topic in *JAMA* in 2008⁹ and in the *New York Times* in 2011.¹⁰ He noted that exceptions to the Rule might be defensible in some circumstances.¹⁰ In 2014 C. Ray Lake cited Friedman in his introduction to three *Psychiatric Annals* articles that inquired into the motivations behind mass killings. Lake justified "breaking the Goldwater Rule" on the grounds that because treatment of bipolar disorder differs from that of schizophrenia, diagnostic discussions "are likely to contribute to efforts at prevention".¹¹⁻¹⁴ By that point the APA's own view was changing. A 2008 APA Ethics Committee opinion declared that profiling, if conducted in a peer-reviewed scholarly context without specifying a diagnosis, is ethical.¹⁵

Recent Scholarship

By 2014 to 2016, a flowering of Goldwater Rule scholarship was under way. Emerging from a long tradition of attention to role conflict in forensic psychiatry, Cooke *et al.*¹⁶ thoughtfully characterized eight "responsible roles" that psychiatrists can adopt ethically when they interact with the media. Taking for granted the legitimacy of the Rule, they did not explore areas outside the media domain. In 2015, I briefly noted the Rule's origins, documented Post's challenge to the APA, and explored the public figure's point of view.¹⁷ Pies,¹⁸ writing in 2016, differentiated between clinical diagnosis (one that includes a personal evaluation) and other forms of comment. Pies proposed that the Rule be revised so as to ban diagnosis of living subjects if not based on a personal evaluation, but he favored allowing "historical inferences as to likely diagnoses" of deceased persons, differential diagnosis of living persons, and "nondiagnostic" professional opinions on broad patterns of behavior in living persons. Robertson *et al.*¹⁹ noted how the Rule might be translated to the psychiatric context in Australia, suggesting a series of reflective questions to help guide psychiatrists' media conduct.

Perhaps the most dramatic contribution to this flowering was the systematic attack by Kroll and Pouncey²⁰ on the Rule. Where Post had been quizzical and questioning, Kroll and Pouncey were bold. Covering the history of the Rule and its development in detail, they asserted that the Rule was intended to cover all areas of psychiatric practice, not just comments to the media. They provided evidence that everyday psychiatric practice and personal conscience require evaluations of just the sort prohibited by the Rule. In their view, the Rule is unable to distinguish flippant media comments from thoughtful scholarly work and itself may be unethical if it "suppresses public discussion of potentially dangerous public figures" (Ref. 20, p 232). In fact, Kroll and Pouncey argued that the Rule should be demoted from a core ethics principle to a guideline for etiquette (Ref. 20, p 234). Their contribution, while influential, brought a rapid rebuttal from Redinger *et al.*,²¹ who stood up for the value of prudence as an essential foundation of the Rule.

Harms Private and Public

The papers in this special section are intended to contribute in new ways to our understanding of the Rule and its foundation in ethics. The papers began as contributions to "Ethical Perspectives on the Psychiatric Evaluation of Public Figures," a forum presented at the 2015 APA annual meeting.²² The intent of the Forum was to bring together a wider set of viewpoints than is usually represented in psychiatric discussions of the Rule. I served as chair; panelists included the authors represented in this special section (with the exception of James Armontrout). There were videotaped contributions for the occasion from Jerrold Post, who recounted his challenge to the APA, and from 1988 presidential candidate Michael Dukakis. In excerpts from a videotaped interview conducted by Sagar Vijapura, Jonathan Carey, and me, Mr. Dukakis strongly supported the current Rule, thereby becoming the first major public figure known to have commented on Section 7.3.²³

In his contribution to this special section, Paul Appelbaum²⁴ offers a concise yet penetrating inquiry into the ethics of the Rule. Dr. Appelbaum, a former APA president, brings careful scrutiny to the arguments that have been made for and against the Rule. Conceding that a motive behind the adoption of the Rule may well have been to prevent further "public

humiliation” after the *Fact* episode, he nonetheless argues that there are substantial justifications for the Rule. He identifies the first of these as the risk of harm to the public figure, “a living human being” who may be injured by unscientific speculation. Second, he cites the adverse effect on the public of observing such episodes. When members of the public see psychiatrists drawing conclusions based on incomplete information or personal opinion, they may “write off the value of psychiatric evaluation and treatment” (Ref. 24, p 229). Thus, careless comments to the media may magnify stigma and discourage people from getting psychiatric help.

Weighing common objections to the Rule, including those of Post, Dr. Appelbaum advances thoughtful counterarguments to each. He concludes that the language of Section 7.3 could be revised to indicate more clearly that psychiatric comment is ethically acceptable in the domains of nonmedia settings, such as government agencies, and of responsible scholarship on historical figures. Dr. Appelbaum’s contribution, carefully defining ethical ground on which to defend the Rule but also noting its imperfections, is the most judicious argument yet to appear in support of the Rule, which on balance he sees as “a valuable component of the ethics of psychiatry” (Ref. 24, p 231).

Narrow Reading or Broad

The intended scope of Section 7.3 has been the subject of a surprising amount of uncertainty and controversy. Those authors who support the Rule tend to construct it narrowly, understanding it as applying only to media comments.^{16,24} Those who question the Rule tend to construct it broadly, as a ban on all comment without interview and consent.^{7,20} Meanwhile forensic psychiatrists, facing the dilemmas of making various assessments where an interview is not possible, have raised similar questions about the Rule’s scope and applicability.^{8,25} Unfortunately, forensic discussions of the Rule have often remained split off from the discussion of public figures.

In my contribution to this special section, I argue that the text of Section 7.3 is inherently ambiguous.²⁶ Psychiatrists have disagreed about how to interpret it, whereas the popular press has often summarized the Rule in an oversimplified and misleading way. Reviewing the APA’s own ethics literature, I show that the APA has consistently adopted a narrow

reading of the Rule. Following the Ethics Committee’s opinions over time, for example, makes it clear that the APA never intended the Rule to apply in traditional institutional settings such as the courts and in government agencies. In my reading, the APA ethics literature shows that the APA now views the Rule as applying only to “cavalier” comments made to the media about “unsuspecting public figures.” Recent APA literature has been confusing and even contradictory about whether a psychiatric diagnosis, if made in a scholarly rather than a media context, is ethically acceptable.^{26–28}

If Section 7.3 needs clarification, as I think it does, priorities should include the removal of any implication that a broad reading is intended and the addition of clear language about the differential ethics of comment in media versus nonmedia settings. To support such changes conceptually, I argue that the development of an integrated theory of psychiatric ethics in the absence of interview and consent is needed (for a beginning, see Ref. 8 on “psychiatric opinion without examination,” Ref 25, and Ref. 29, pp 296–8).

Opportunity or Risk in Media Discussion

In her contribution to this special section, Meredith Levine, chair of the Ethics Advisory Committee of the Canadian Association of Journalists, provides the first scholarly assessment of the ethics of the Rule from the perspective of journalism.² Noting that journalism never developed an equivalent of the Goldwater Rule, she makes several arguments in support of the Rule, all novel and all involving the quality of the public discourse. First, she notes that journalism is dedicated to reporting the truth; yet the Supreme Court’s “actual malice” libel doctrine “permits overlooking this obligation when it comes to reporting on public figures, as long as it is done without malice” (Ref. 2, p 246). The actual malice doctrine, she argues, is seldom acknowledged in news practice, leaving subjects and sources “blind to, or underinformed about” risks and ethics-related challenges in reporting on public figures (Ref. 2, p 241). This is an informed-consent model of journalism.³⁰

Ms. Levine argues that when psychiatrists speak to the media for purposes of public education, they are unwittingly entering a different world where the “norms and constraints of journalistic storytelling” are likely to distort the psychiatrist’s complex message (Ref. 2, p 246). She argues that, by banning psychiatrists’ comments to the media, the Rule actu-

ally helps steer media discussion toward an evidence-based debate. She gives many examples of the risks that may emerge from the mismatch of mental health expertise with the media's need for a simple narrative. One hopes that psychiatrists will learn from her valuable observations.

The Experience of Psychiatric Residents

In their contribution to this special section, Drs. Armontrout and Vijipura³¹ contribute the first scholarly article on the Rule in relation to residency education. For them, residency is a time of professional identity formation when the development of ethical reasoning is at stake. In their view, there is no shortage of temptations for residents to comment on public figures in the age of social media. Yet discussion of the Goldwater Rule appears to occupy little or no place in general residency education in psychiatry or in the peer-reviewed literature on residency education.

After a lucid survey of this neglected ethics-based and educational terrain, the authors propose that psychiatry residency programs develop and offer a one-hour didactic discussion focused on Section 7.3: "Such a discussion ideally would cover the current form of the rule and the story behind its creation, provide guidelines for drawing the line between statements that violate the rule and those that do not, and introduce the reasons that some psychiatrists have called for the rule's repeal." (Ref. 31, p 251). Among the benefits of this new curriculum would be the chance for residents to see their attending psychiatrists modeling ethical behavior and talking through difficult ethics-related dilemmas. Drs. Armontrout and Vijapura's innovative model curriculum, deployed at a critical time in a psychiatrist's career, may "help set the stage for thoughtful affirmations or revisions" of the Rule in the generation to come (Ref. 31, p 252).

Avenues for Further Inquiry

As the debate continues, several kinds of inquiry might enrich future discussions of the Rule. Among these are building a more systematic ethical theory, educating the public about the Rule's subtleties, and engaging residents in a discussion of the Rule.

Given the centrality of harm to the public figure in arguments over the Rule, it would also be valuable to seek more depth in our understanding of the experi-

ence of public figures who have been the subject of profiling. For example, one can trace Mr. Goldwater's effort to preserve his dignity during the *Fact* libel suit. In his testimony and public statements about *Fact*, Mr. Goldwater maintained a tight focus on ethics, harm, and legal precedent.^{32,33} In private, as his letters show, he suspected that Mr. Ginzburg was motivated by Communist leanings,³⁴ claimed Mr. Ginzburg was mentally unbalanced, and later said he would not mind "if they put Ginzburg [sic] in jail and throw away the key."³⁵ He declined, however, to say so publicly.³⁵

The argument that media comments about public figures adversely affect public trust in psychiatry might also be examined more closely. Mr. Goldwater's papers contain numerous letters from supporters who expressed their sense of outrage at the *Fact* publication and what they saw as its misuse of psychiatry.³⁶ Beyond this, a well-designed empirical survey might help shed light on the effects of psychiatric profiling on the public. A simple survey could determine how psychiatrists and residents understand the scope of the Rule.

Conclusion

When I first began to learn about the Rule, the scholarly literature was so sparse that I began to wonder if there was some sort of taboo about discussing it in print. Fortunately, as scholarship on the Goldwater Rule has begun to flourish, the debate has become more wide-ranging, more complex, and more open. Ezra Griffith, the current chair of the APA Ethics Committee, has emphasized that arguments over the Rule are legitimate and that it is "important not to close debate."³⁷ As long as elections in our democracy continue, there will be no shortage of opportunities for psychiatrists to study and debate the Rule. The conceptual richness of discussions about the Rule has only begun to unfold.

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