Confidentiality: An Empirical Test of the Utilitarian Perspective

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The extent to which the confidentiality of psychiatric patients should be respected has been the subject of a curious dialectic in legal thought. In the abstract, the law generally has been willing to grant the desirability of protecting patients' confidences. Such measures as patients' bills of rights, statutes creating testimonial privilege, and tort law remedies for breaches of confidentiality have supported this position.[1] When confronted, however, with the costs of guarding confidentiality, for example, the loss of data to legal fact finders[2] or the possibility that patients' violent acts will not be deterred,[3] the legal system has been noticeably more reticent about protecting the privacy of patients' communications.[1]

This reluctance of the law to endorse an absolute right of confidentiality in the psychotherapeutic setting reflects its need to balance the interest in confidentiality against competing societal demands, including interests in justice and protection from harm. Although there is evidence to suggest that psychotherapists recognized this necessity for compromise even before the major legal initiatives in this area,[4] there can be no doubt that recent legal cases (foremost among them *Tarasoff*[3]) have highlighted the issue. Almost everyone writing in this area agrees that an expectation of absolute confidentiality in psychotherapy is unrealistic (see Dubey[5] for dissenting view), but the circumstances in which and degree to which confidentiality must be sacrificed remain controversial.

Two sets of arguments commonly are offered in support of extending confidentiality, even in the face of competing demands. The first group of reasons can be called "deontologic," that is, these arguments center on the moral good reflected in protecting private utterances, including respect of patients' autonomy and dignity. This position, in essence, is that confidentiality is a "good" in itself. Interestingly, however, these are not the arguments ordinarily made in the psychiatric literature. Rather, the argument for guarding patients' privacy is usually offered on utilitarian grounds, that is, not that confidentiality is good in itself, but that it promotes other desirable goals, such as encouraging potential patients to seek psychiatric care and allowing patients to unburden themselves fully to their therapists. Absence of guarantees of confidentiality, according to this position, would seriously damage the practice of psychotherapy and thereby injure the welfare of the public. (It should be noted that while this argument is often made

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for psychiatric and psychological practice as a whole, it is most relevant in situations in which an uncovering form of psychotherapy is employed.[6])

The utilitarian argument for confidentiality rests on a number of assumptions (including the belief that psychotherapy is in fact beneficial), but this article focuses on one crucial element in the utilitarian position: the claim that the absence of confidentiality will discourage patients from seeking and fully taking part in psychiatric treatment. Although this position frequently is avowed, the empirical data relevant to the proposition are quite limited. This article first reviews previous research on the subject and then presents data concerning patients' views of confidentiality from a study of psychiatric outpatients.

A Review of Prior Studies

Studies of Non-Patients A number of investigators have explored the opinions of groups of nonpatients about the importance of confidentiality on the assumption that one might thereby gauge the views of a representative group of "potential patients." The earliest study of this sort was performed in 1962 by a law student, who assessed the views of 108 idiosyncratically selected subjects.[7] When asked whether they would engage in free and complete disclosure to a psychiatrist if the psychiatrist might be compelled to reveal the information in court, 42 percent of the sample reported they would be less likely to be open in therapy than if their communications would be absolutely protected.

Two unpublished studies of the responses of nonpatients revealed similar results. Rosen found that 83 percent of a sample of teachers and school administrators in advanced degree programs would not have wanted identifying information revealed to state authorities if they had been treated at a community mental health center.[8] Stevens and Shearer are reported to have found college students supportive of *absolute* confidentiality in psychotherapeutic settings.[9]

More recently, Shuman and Weiner polled the opinions of 121 adult education students.[10] Their data showed that these individuals, in deciding what they might disclose in therapy, would not consider the issue of confidentiality unless specifically warned that it might be absent; under the latter circumstances, the degree of disclosure about sensitive subjects would drop markedly. In a final study, Lindenthal and Thomas asked 76 nonpatients, demographically representative but gathered by unspecified procedures, whether the possibility that a psychiatrist might divulge confidential information would deter them from seeking therapy.[11] Thirty-three percent of the sample said it would, at least to some extent, and 48 percent said they were at least somewhat concerned about the possibility.

Studies of nonpatients thus generally show support for confidentiality, but the degree to which the absence of confidentiality would determine behavior is unclear, in part because this question was not always asked directly. Many of these studies used captive audiences (that is, students in a classroom) whose similarity to the population as a whole is questionable. In addition, the validity of generalizing from hypothetical to actual situations is in doubt. Thus, as a group these studies shed limited light on the underpinnings of the utilitarian model.

Studies of Patients Questions about confidentiality were first asked of 70 psychiatric outpatients in a 1963 study of patients' expectations regarding psychotherapy.[12] Surprisingly, this group reported itself largely unconcerned about the prospect of friends, relatives, and even employers discovering that they were receiving treatment. A similarly bland response was found by Simmons in a study of 46 clients in a university counseling service.[13] Two-thirds of the respondents were willing to have information released without their consent, although there were significant (unspecified) differences in their willingness according to who would receive the information and precisely what would be revealed.

The first study to suggest that confidentiality had some importance to patients examined the effect of pressures to relinquish privacy rights.[14] All patients in a sample of 1,620 at a community mental health center who were simply asked to release information to state agencies agreed to do so, but 65 percent of 363 patients given the explicit option of refusing disclosure declined to waive their rights. More than 25 percent of the patients spontaneously expressed concerns about the use of the information released. Yet, if anything, this study demonstrated that patients would not be deterred from seeking care by a threat (admittedly mild) to confidentiality.

Lindenthal and Thomas, whose work was cited earlier, also surveyed 76 psychiatric patients who had been in psychotherapy for at least three months.[11] The group was matched to the distribution of age, sex, and race of the population of New Jersey, but the method of recruitment was otherwise unspecified. Their results generally were supportive of the utilitarian hypothesis. Twenty-two percent of the sample reported they had held back from seeking psychotherapy because of a fear of disclosure, and 45 percent were concerned about the possibility. Only 9.2 percent reported any knowledge of actual disclosures by psychiatrists. A large percentage of patients had revealed confidential information of the sort they might divulge in therapy to family (34 percent) and friends (49 percent). Finally, compared to a sample of psychiatrists, patients significantly overestimated the likelihood that psychiatrists would break confidentiality in particular situations.

Shuman and Weiner elicited the opinions of 79 psychiatric patients recruited by private psychiatrists.[10] Fifty-four percent reported that confidentiality was a concern when they began therapy, but only 28 percent had asked their psychiatrists about it. Ninety-six percent said they relied on psychiatric ethics to guarantee the privacy of their communications. Finally, only 8 percent said knowledge of a law prohibiting disclosure would have impelled them to seek treatment earlier. Although this study also supports the importance of confidentiality to patients, it fails to address the utilitarian position directly.

Perhaps the strongest support to date for the utilitarian argument comes from our previous study of 30 psychiatric inpatients.[15] Among the findings: 80 percent of the patients said an assurance of confidentiality improved their relationship with the staff; 67 percent said they would be upset or angry if verbal information were released without permission, and 17 percent said they would leave treatment in that event; and 95 percent were upset at the thought of their charts being

released nonconsensually. The current study was designed to build on these findings and to extend them to an outpatient setting. Our hypothesis was that outpatients would be even more concerned than inpatients about the possibility of disclosure of confidential information because their higher level of functioning and relationships in the community meant they had more to lose as a result of breaches of confidentiality.

Methods

This study was conducted in the outpatient clinics of the Western Psychiatric Institute and Clinic, a university operated teaching hospital with catchment area responsibilities. Therapists in two of the specialty clinics (treating schizophrenic and depressed patients) were contacted on a rotating basis and asked for permission to approach the patients they would be seeing that day. The therapists were free to exclude any patients for whom they thought participation in the study might be detrimental; an additional small number of patients declined to participate for personal reasons, usually involving scheduling. Residents similarly were asked for permission to approach their individual psychotherapy patients. Data collection continued over a five-week period.

As in our previous study,[15] patients were interviewed employing a semistructured format (somewhat modified for the outpatient setting), which was pretested for ease of administration. Twenty-five open-ended questions probed the value patients placed on confidentiality and their feelings about disclosure in a variety of circumstances. Demographic and clinical data also were gathered. Patients were encouraged to elaborate their responses as much as they desired. Interviews were tape recorded and later transcribed verbatim. A scoring key was developed and pretested on a sample of interviews, and responses were then independently scored by two of the authors (G.K. and B.W.). Discrepancies in their scores were resolved by the first author.

Fifty-eight patients were included in this study; since not every patient answered all questions, the totals reported may vary. The sample was evenly divided between men and women. Mean age was 40.3 years (range 20 to 67 years). Patients were overwhelmingly white (91 percent), not currently married (85 percent), and predominantly Catholic (52 percent). A majority had been hospitalized previously at WPIC (58 percent), and a total of 79 percent had been hospitalized in some facility. Distribution of primary diagnoses was schizophrenia 39 percent, affective disorder 39 percent, and other 22 percent. The primary therapists for most patients were nurses or social workers (73 percent). Eighty percent of patients were seen between one and four times per month, most commonly for one-half to one hour per session (48 percent). Only 20 percent characterized their sessions as primarily revolving around adjustment of their medications, whereas 54 percent said they and their therapists "talked," and 18 percent reported specifically that they discussed problems. Thus, the vast majority of patients could legitimately be considered to be involved in some form of psychotherapy.

Results

The Importance of Confidentiality As in our previous study of inpatients,

the outpatients in this study placed a high value on confidentiality in general. Sixty-two percent of respondents (34 of 55) reported they would feel negatively about their therapists disclosing information about them without their consent; a further 15 percent said their feelings would depend on the circumstances of the disclosure. Release of records evoked an even sharper response: 76 percent of patients (43 of 57) would feel negatively about someone other than the clinic staff having access to their charts. Even when the information to be disclosed was merely that the patients were being seen at the clinic, 68 percent of respondents (38 of 56) said they would not want persons they knew to receive that information. One reason for the patients' strong feelings is suggested by the finding that 39 percent of the sample (22 of 57) at some time had been embarrassed about seeing a therapist, and 81 percent (47 of 58) believed that other people considered it something about which to be ashamed.

On the other hand, given the importance of confidentiality to this sample, it is of interest that they believed their confidences to be well protected by the staff. Only 10 percent (6 of 58) ever had been concerned that their therapists might talk to other people without their permission, while only 21 percent (12 of 58) had concerns about nonconsensual access to their charts. The corresponding figures in our study of inpatients had been 13 percent and 43 percent respectively. Thus, outpatients were somewhat more trusting in this regard, although the differences reach statistical significance only for access to charts ($\chi^2 = 4.98$, $p < .05$).

When questioned about potential disclosure to specific individuals and institutions, patients demonstrated the hierarchy of concern about breaches of confidentiality demonstrated in the Table. The near absence of objection to discussion with other therapists, especially when compared to the percentage of patients who would object to disclosures to employers, suggests that patients are concerned with disclosure primarily when some harm might result. This posture was reinforced when patients were asked to name persons with whom their disclosures to therapists might appropriately be shared. Only 3 percent of patients (2 of 58) said they would not want their therapists to disclose information to anyone. Forty-five percent (27 of 58) would limit disclosure to physicians or other mental health professionals involved in their care, and an additional 21 percent (13 of 58) would allow release to any physician or mental health professional.

Patients themselves often release information to others. Sixty percent (35 of 58) recalled signing releases of information for outside agencies and individuals.

Table. Hierarchy of Concern of Negative Reactions to Unauthorized Disclosure.

Information Disclosed to	Percent Patients with Negative Reactions	
	Outpatients	Inpatients
Another therapist for consultation	5	0
Third party payers	33	21
Family members	39	40
Courts	43	33
Employers	76	83

SOURCE: Data on inpatients is from Schmid et al: Confidentiality in psychiatry: a study of the patient's view. Hosp Community Psychiatry 34:353-55, 1983

No outpatient/inpatient differences reach statistical significance (χ^2, $p > .10$).

Of those who remembered the information involved, 68 percent (17 of 25) said it was quite specific information about their care or condition. Ninety-eight percent of respondents (55 of 56) admitted that other people knew about their therapy, and in 93 percent of the cases (49 of 53) the patient had been the source of the information. Sixty-nine percent of these disclosures (37 of 54) involved only the general information that the patient was receiving psychiatric care.

Effects of Breaches of Confidentiality Demonstration of a generally high regard for confidentiality among psychiatric patients would be insufficient by itself to support the assumptions underlying the utilitarian position. Patients may value confidentiality, but still seek and participate in psychiatric treatment even in its absence. Therefore, the patients in this study were asked how they would respond to breaches in confidentiality incident to their care. (A corollary question, not pursued here, is whether the absence of a promise of confidentiality, even if only implied, would deter patients from seeking treatment initially.)

Fifty-seven percent of respondents (31 of 54) reported that their therapists' revelation of information without their permission would adversely affect the therapeutic relationship; another 15 percent (8 of 54) said it might have that effect, depending on the circumstances. Of 42 patients who said they might take some action in response to such disclosures, 33 percent said they would discuss it with their therapists, 29 percent said they would complain to higher authorities or ask for a new therapist, and 5 percent mentioned the possibility of legal action.

When the breach involved written records rather than oral communications, 40 percent of those who would take action (14 of 35) would seek legal recourse and only 9 percent (3 of 35) would discuss it with their therapists. Release of written records consistently provoked more intense responses from patients than did the prospect of oral disclosure.

Patients also were asked if they knew of any rules or laws governing release of information. (Pennsylvania has tight statutory[16] and regulatory[17] codes on this subject.) Only 28 percent of patients (16 of 57) said they knew of such rules, but 80 percent of the remainder (32 of 40) believed that some rules existed. This contrasts with 17 percent in both categories combined in our previous study of inpatients. The greater awareness of the existence of rules in this area among outpatients was highly significant ($\chi^2 = 33.1$, $p < .001$). Further, 64 percent (30 of 47) of those who knew or thought rules were in force believed they had some recourse under them in the event of nonconsensual disclosure. Sixty percent of that group (18 of 30) specifically mentioned legal action.

Anticipated responses to revelations by clinic staff to specified others varied with the degree of upset the disclosures provoked. Twenty-four percent of patients (14 of 58) maintained they would take some action in response to disclosures to family members; 14 percent of these patients would consider legal action. Twenty-nine percent of patients (17 of 58) would take actions following disclosures to third-party payers, and 64 percent (37 of 58) after disclosures to employers. Legal action was spontaneously mentioned by 30 percent (5 of 17) of those who would act in response to disclosures to insurers, and 35 percent (13 of 37) of those responding to disclosures to employers.

Discussion

The results of this study provide support for the utilitarian position on confidentiality in the therapeutic setting. In addition, the tone and content of patients' responses demonstrated that most patients shared a belief in confidentiality as a deontologic principle. Patients surveyed were not only likely to place great value on confidentiality but also would respond adversely to breaches, should they occur.

As in our previous study of inpatients, the outpatients we interviewed did not appear concerned about absolute confidentiality. They were quite receptive to their therapists disclosing information when it might aid them (for example, to a consulting therapist) or at least when it would be unlikely to cause them harm (for example, to mental health professionals not involved in their care). When breaches might lead to difficulties, however, as with family members and courts, and especially with employers, patients were much more likely to be upset by such behavior. Confidentiality was seen as a flexible tool to be used in patients' best interests. Nonetheless, patients generally preferred to have control over decisions about disclosure. It should be noted, however, that a substantial minority of respondents indicated in almost all circumstances a lack of concern with the issue of confidentiality; future studies might profitably characterize this group further.

Although this sample of outpatients appeared no more concerned about confidentiality than the group of inpatients we studied previously,[15] they were impressively more aware of their rights and of possible remedies should breaches occur. Legal recourse was mentioned spontaneously by a large segment of this population, but by relatively few inpatients. One reason for this might be the difficulty inpatients may have envisioning retaliatory action against those who are responsible for every aspect of their personal care and sustenance. The greater independence of outpatients, as well as their lower overall level of psychopathology, may make it easier for them more vigorously to assert their rights. Unfortunately, we lack data on the comparative functional levels of our inpatient and outpatient populations with which to draw more definitive conclusions. Differences between the two groups might have appeared more prominent had the outpatient group not been composed largely of patients who, at some point, had undergone previous hospitalizations.

Our findings also explain why previous studies that inquired merely about the level of patients' concern that confidentiality might be breached would provide a false picture of the importance placed on confidentiality. How ever much of our sample valued the principle and would react to unauthorized disclosures, they were overwhelmingly confident that their therapists would protect their privacy. (This confirms the assumption of some courts that patients enter psychotherapy with an implicit trust in their therapists, as fiduciaries, to maintain confidences.[18]) Thus, the demonstration that patients do not ordinarily consider the possibility of revelation before they seek therapy or decide to confide in their therapist (as in Shuman and Weiner[10]), does not imply that they would engage in therapy even if it were clear that confidentiality could not be guaranteed.

Although the usual caveats apply to generalization from a simple set of interviews in one institution, the cross-section of population served by WPIC lends credence to the results of this study. Given the institutional setting, however, and the predominance of nonphysicians as primary therapists, the applicability of these findings to the private practice of psychiatrists remains to be established. Of greater concern are the limitations inherent in a methodology that relies in part on hypothetical questions as a basis for gauging probable responses. (For example, it is probably much more common to talk about the possibility of legal action should a foreseen event ensue, than actually to seek redress in the wake of its occurrence.) This difficulty, to date, has afflicted all studies in this area. To avoid it would require either a long-term prospective study of patient reactions to breaches of confidentiality or a massive retrospective analysis. Either course would be complicated by the difficulty of studying an infrequently occurring event, as well as intrinsic methodological difficulties.

As noted previously, in a complex world few values resist some degree of compromise. When that compromise is struck for the principle of psychotherapeutic confidentiality, however, the evidence that loss of confidentiality would impair psychiatric care, as suggested by this study, should weigh heavily in consideration.

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