

Therapist Activism and Clinical Practice in a Time of War and Repression

--By Milton Kalish, LCSW

It can't happen here, at least not in my office - or so I thought. I assumed that the sanctity of our profession remained inviolable. However, Section 215 of the USA Patriot Act provides that the Department of Justice can obtain a court order requiring the release of clinical records without showing cause; and therapists are forbidden to disclose that a client's records have been seized under penalty of law, including possible incarceration. Even though the principle of confidentiality may be at risk, to date no professional association has addressed this matter in a meaningful way. This, and social and political forces as they impact the clinical setting were discussed at a conference entitled Therapist Activism and Clinical Practice in a Time of War and Repression presented by Therapists for Peace and Justice and sponsored by the California Society for Clinical Social Work.

Therapists for Peace and Justice

Founders Rose Phelps, MFT and Roberta Stern, LCSW discussed the history of Therapists for Peace and Justice, which began with a single posting to an Internet list of San Francisco Bay Area therapists after 9/11. Feelings of fear, outrage and hopelessness led to a desire to connect with other therapists who might have similar feelings. At first, meetings focused on how therapists could contain clients' intense responses while dealing with their own, as well as issues of self-disclosure and balancing authenticity with neutrality. The original group of five grew to 15 therapists/activists who supported each other in political work and consulted on cases where the political environment influenced the therapy relationship. The group eventually decided to bring many of the issues they discussed in their monthly meetings into the professional community for consideration and deliberation, culminating in the workshop which was held on April 17th and attended by over 70 people.

Kathy Anolick, MFT and Andrea Aidells, LCSW, MFT spoke on Integrating Political Issues in the Clinical Setting. Each presented case material illustrating the complex clinical interplay of transference, countertransference, authenticity and neutrality, and the feelings of therapists and clients as they relate to these traumatic times. Guest speaker Alzak Amlani, PhD presented case material illustrating the experiences of Arab Americans and other clients of color under the impact of 9/11 and subsequent events.

The USA Patriot Act and Our Profession

The second part of the program focused on the Patriot Act and the implications of Section 215 for our profession. David Glick, MFT described how the tragic terrorism of September 11th provided an opening for the Bush administration to wage war abroad while rushing the Patriot Act through Congress at home. This, together with various executive orders, has upset the delicate balance of powers enshrined in the Constitution, increased government secrecy, gutted our Bill of Rights by

giving the government draconian powers to suppress legitimate political dissent, allowed for invasion of privacy, and overturned due process in judicial proceedings.

I addressed the implications for our profession regarding Section 215 allowing the government access to our confidential clinical records and providing no safeguards as to how the information will be used. From a practical perspective, psychotherapists are faced with difficult ethical/clinical dilemmas. One dilemma is whether we should tell our clients about this possible breach of confidentiality. Whether or not the government ever actually uses this power, simply knowing about this law could interfere with the capacity of some clients to trust the clinical relationship, especially those who do not trust the government. However, by not telling clients about this, the therapist would be proceeding with psychotherapy while experiencing uneasy feelings about providing treatment under false pretenses and failure to fulfill an ethical mandate. Even though the representatives and attorneys that I have spoken with from CSCSW, NASW, CAMFT and APA have said that therapists are not required legally to give informed consent about the Patriot Act, each professional society confirmed that informed consent is an ethical mandate, especially as it applies to the limits of confidentiality. This is critical to our professional work because only in an atmosphere of safety and privacy can clients develop the trust that is necessary for them to be emotionally vulnerable and engage in the process of healing. I assume a client would feel justifiably betrayed and outraged to find that her records were secretly released by the therapist who failed to warn her about this possibility.

Because of the prohibition on disclosing the release of clinical records, there is no way to know whether this is happening. For this reason, Section 215 can potentially engender a climate of anxiety, intimidation and secrecy within the profession, which in turn could diminish the ability of some therapists to do their work. Consider some of the possible outcomes: Would you or could you continue treatment for a client after secretly releasing her clinical records? Could you lose your license or even go to prison if the clinical records requested by the government were lost or destroyed in a fire or flood? If you would choose to risk legal penalties including incarceration in order to safeguard confidentiality, what is your ethical responsibility to the rest of your clients?

Mobilizing our profession to respond

At the end of the workshop various possible responses were discussed:

First, Board of Behavioral Science Examiners member Peter Manoleas LCSW, who attended the conference, recommended that a letter be sent to the BBS outlining the ethical conflicts and discrepancies between state law and Section 215, and requesting that the Board clarify our professional legal responsibilities and mandate that this material be included in Law and Ethics courses. That letter is in process, to be delivered prior to the upcoming May 20-21 board meeting. It is anticipated that this topic will be considered at the August board meeting

Second, over 50 therapists signed up to lobby their professional organizations, requesting that they mobilize as a united front to advocate for changing the law, clarifying our legal responsibilities, updating ethical guidelines for informed consent and clinical record keeping if this law cannot be changed quickly, and providing clinical guidelines for dealing with potential harm to clients who are

currently in treatment due to possible disruption of treatment related to being given new information concerning section 215.

Third, a lawsuit has been filed by the American Psychoanalytic Association and the National Coalition of Mental Health Professionals and Consumers vs. Tommy Thompson, Secretary, Health and Human Services. The attorneys are looking for evidence of people avoiding health care or withholding information from their medical files since April 14, 2003.

If you are interested in obtaining more information and/or becoming more involved, please contact Therapists for Peace and Justice in the San Francisco Bay Area (Kathy Anolick MFT, kanolickmft@att.net, (925) 685-2816, and Roberta Stern LCSW, (510) 649-5854) and Therapists for Social Responsibility in the Sacramento area (Shauna Smith and Ray Bacigalupi, 916 447-5706, gushauna@yahoo.com). If you live in a different location, members from both organizations would be glad to aid you in setting up your own group. Please check out their new joint website: www.therapistsforsocialresponsibility.org

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