

Chapter 3. PSYCHOANALYST SUBPŒNAED

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WHEN I was subpœnaed to give evidence in the High Court about someone who was alleged to be a former patient of mine, I was placed between two conflicting moral obligations. I had to decide whether to obey the Law or to abide by the rules of professional conduct.

I complied with the subpœna by attending Court, but I decided I could not answer any questions about the "patient", and I made all arrangements, including having a barrister to plead in mitigation of sentence, for the possibility that I should be sent to prison for contempt of court. In the event, although my silence probably did constitute a contempt, the judge declared he would not sentence me, saying it was obviously a matter of conscience. In this he was acting within the discretion the Law allows him. Though I had no legal privilege, I was in effect given the same freedom to remain silent usually allowed to priests for the secrets of the confessional. It is possible that the judge was partly moved by the idea that any evidence I could give might only be of marginal relevance to the case.

The grounds for my decision were individual, but though some other psychoanalysts might not refuse to divulge whether they had treated a person, I think it likely that in all other respects they would feel as I did. These grounds were partly explained in the statement I made when called to the witness box. I said that it was essential to my work as a psychoanalyst and psychotherapist that people should feel free to discuss with me everything that concerns them, including matters of great intimacy which they would not be able to reveal if there were any doubt about my trustworthiness. Indeed, one of these secrets could be the very fact that they had come to me for help. For me the need to retain secrecy was not just a moral imperative such as might exist, for example, for a general practitioner who was treating a patient for pneumonia. If such a doctor were to talk indiscreetly about his patient, he might not be behaving ethically, but he might still have treated the pneumonia adequately. But if I were to speak indiscreetly about a patient, I should not only be behaving unethically, but I should also be destroying the very fabric of my therapy. For people to be able to speak freely, and only then could I help them, I must supply a setting within which this could happen, and this setting was an essential part of the treatment. I had a quiet comfortable consulting-room; and when people kept their appointments I must not fail to be there; I must start and finish at the times agreed on. While they were with me there must be no interruption of the treatment; I did not talk on the phone, nor did anything besides the therapeutic task I had undertaken. I had to be completely reliable in all my dealings with my patients, and this included keeping their secrets under all circumstances. Failure to maintain any part of this essential setting would be malpractice of the same order as if the general practitioner had advised his pneumonia patient to get out of bed with a temperature of 105° and come to the surgery for treatment. My professional code applies whenever I receive anyone as a patient, whether it was someone who had attended regularly for years, or someone who had come only once, perhaps just to see what a psychoanalyst looks like.

To the judge's query whether I would still object if "the patient" gave permission, I answered with an example: suppose a patient had been in treatment for some time and was going through a temporary phase of admiring and depending on me; he might therefore feel it necessary to sacrifice himself and give permission, but it might not be proper for me to act on this.

This example involves a vital principle. Some of the United States have a law prohibiting psychiatrists from giving evidence about a patient without the patient's written permission, but this honourable attempt to protect the patient misses the essential point that he may not be aware of unconscious motives impelling him to give permission. It may take months or years to understand things said or done

during analysis, and until this is achieved it would belie all our knowledge of the workings of the unconscious mind if we treated any attitude arising in the analytic situation as if it were part of ordinary social interchange. If we allow and help people to say things with the ultimate aim of helping them to understand the real meanings underlying what may well be a temporary attitude engendered by the transference, it would be the crassest dishonour and dishonesty to permit unwarranted advantage to be taken of their willingness to avail themselves of the therapeutic situation. It would be as if a physician invited a patient to undress to be examined, and then allowed the Law to see him naked and to arrest him for exhibiting himself. Where no permission has been given, the rule to maintain discretion is, of course, similarly inviolable. Patients attend us on the implicit understanding that anything they reveal is subject to a special protection. Unless we explicitly state that this is not so, we are parties to a tacit agreement, and any betrayal of it only dishonours us. That the agreement may not be explicit is no excuse. Part of our work is to put into words things that are not being said. We are the responsible parties in the relationship, so surely it is we who should pay, if there is any price to be paid, because something has not been said clearly.

But should there be any price to pay? Was I arrogating to myself an unwarrantable freedom from the ordinary responsibilities of a citizen by refusing to give evidence? Was it not rather that the attitude of responsibility towards patients was also one of responsibility towards the Law? The fact that in theory people having analysis "tell everything" should not give rise to the misleading idea that we analysts are necessarily the repositories of secrets that could help the Courts if only we would divulge them. The concern of psychoanalysis is with the ever-developing unravelling of the unconscious conflicts of our patients. We know that these can affect the patient's perceptions and judgements while they are operative, hence the advice sometimes given to avoid major decision during analysis. We are not seeking the "objective reality" the Courts want, and generally we are not in a position to give it to them. Over the years we may hear a number of different versions of the same event, each completely sincere, but varying with the changing emotional focus of the analysand, each version being a clue to another level of unconscious conflict. To report on whichever is momentarily in the ascendant could mislead a Court as, for example, a report on an applicant's blood-pressure after a night of vomiting could mislead an insurance company. I would suggest that in principle there may be less conflict between our moral obligations to the Law and to the rules of professional conduct than would appear at first sight. If a psychoanalyst or psychotherapist wished to offer a patient's description of an event as objective evidence, it would be necessary to produce every version of the event, explaining the differences by detailing all the known underlying meanings; with the misleading probable result of the Court's either accepting one version unequivocally, or discrediting therapist or patient as unreliable. Justice, as well as our ethic, is likely to be served best by silence.

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