



**UNDERSTANDING CHRISTIANITY**

A monthly forum on the third *Saturday* of each month from 6:30 to 7:30 P.M. following Evening Prayer at 6  
 Forums with Dr. Richard T. Nolan  
*Retired Honorary Canon of Christ Church Cathedral, Hartford, and Retired Philosophy & Religion Professor*  
*Editor of [www.philosophy-religion.org](http://www.philosophy-religion.org)*  
 Saturday, August 20, 2005

**Tonight's Topic:**  
***"ETHICAL DIMENSIONS OF CONFIDENTIALITY AND PRIVACY"***

*A Prayer To Be Said In Unison*

Almighty God, our heavenly Father, who has committed to your holy Church the care and nurture of all the faithful; Enlighten with your wisdom those who teach and those who learn, that, rejoicing in the knowledge of your truth, they may worship and serve you from generation to generation; through Jesus Christ our Lord. *Amen.*

**TOPICS**

**Privacy** (definitions)  
**Privacy** (introductory commentary)  
 The Need for Privacy  
 The Need for Disclosure  
**Privacy, Right Of**

**Confidential** (definitions)  
**Confidentiality** (commentary)  
 Two-fold aim  
 Confidentiality in Codes of Medical Ethics: A Sampling  
 Gossip  
 Howard Brody's summary  
 Generally Accepted Exceptions to Confidentiality: Two Models from Medical Ethics  
 Clergy in the Episcopal Diocese of Connecticut  
 Matthew 16:13-20

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**PRIVACY** (definitions)

1. a. The quality or condition of being secluded from the presence or view of others.
- b. The state of being free from unsanctioned intrusion: a person's right to privacy.

## 2. The state of being concealed; secrecy.

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**Privacy, the right to be left alone. Privacy includes both freedom from government interference in private or family matters and confidentiality of such things as personal correspondence, telephone calls, e-mail, financial information, and medical histories. Courts in recent years have recognized a right to privacy implicit in the United States Constitution and Bill of Rights, but there are concerns that privacy may be eroded by the widespread use of advanced information technologies.**

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**PRIVACY** (introductory commentary)

**Some form of privacy for the individual, the family unit, and the community is needed by all people living together. However, the need is not absolute. It must be balanced with the individual's need to disclose information and with society's need to conduct surveillance. The concept of privacy defined by United States law plays a central role in maintaining the balance of those needs.**

### The Need for Privacy

**Privacy is the claim made by individuals, groups, or institutions that they be allowed to determine for themselves when, how, and to what extent information about them is communicated to others. There are four states of privacy that allow an individual to withdraw temporarily from society. The most basic of these is *solitude*. He can separate himself from the company of others. The second is *small-group intimacy*. He can choose to communicate in confidence to a small group of persons whom he trusts. The third state of privacy is *reserve*. He can withhold information about himself, even from intimates. The fourth is *anonymity*. He can flee the restrictive influence of known persons and seek to escape in a crowd or strange surrounding.**

**Privacy is neither a self-sufficient state nor an end in itself. It is an instrument for achieving individual and group goals and self-realization. As such, it is only part of the individual's complex and shifting system of social needs.**

### The Need for Disclosure

**The individual's desire for privacy is balanced by an equally powerful desire to participate in society. Thus each individual needs to communicate with others, to disclose information about himself, and to find companionship. Each person makes a constant adjustment of these two desires with respect to his culture, status, and personal situation. As a rule, he attempts to establish a balance that serves his general social aims as well as his individual social needs. Either too much privacy or too little can create imbalances that seriously jeopardize individual well-being.**

An excerpt from the writings of Alan F. Westin *Columbia University*  
*Author of "Privacy and Freedom"*

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### PRIVACY, RIGHT OF

**privacy, right of, the right to be left alone without unwarranted intrusion by government, media, or other institutions or individuals. While a consensus supporting the right to privacy has emerged (all recently confirmed Justices to the Supreme Court have affirmed their belief in the right to privacy), the extent of the right, and its basis in constitutional law, remain hotly contested. It was not until the U.S Supreme Court**

decision in *Griswold v. Connecticut* (1965), which voided a state statute preventing the use of contraceptives, that the modern doctrine of privacy emerged. In his opinion, Justice William O. Douglas argued that a protection from state intrusion into marital privacy was a constitutional right, one that was a “penumbra” [*i.e.*, an imprecise area, especially a state in which something is unclear or uncertain] emanating from the specific guarantees of the constitution. The right to sexual privacy as set forth in *Griswold* was one of the main foundations of the court’s decision in *Roe v. Wade* (1973) to overturn state abortion statutes. Later attempts to extend the right of privacy to consensual homosexual acts in *Bowers v. Hardwick* (1986) were initially rejected by the court. In 2003, however, the court reversed that decision and rejected all antisodomy laws.

The Privacy Act of 1974 provides for disclosure of, and personal access to, all federal records containing personal information, regulates their transfer to others, and allows for legal remedies in cases of their misuse under the law. The Right to Financial Privacy Act (1978) limits federal access to financial records but places few restrictions on access by states, businesses, and others. The privacy of most other information is not guaranteed. Computer and telecommunications advances have made credit, medical, and other data a readily available, highly marketable commodity, raising many concerns about individuals’ privacy.

Although the European Union in 1998 severely limited the buying and selling of personal data, these practices have been generally allowed under U.S. law. Limits exist on the federal government’s ability to intercept voice and data communications; these are established by law and related to the Constitution’s protection against unreasonable searches.

Adapted from *The Columbia Electronic Encyclopedia, 6th ed. Copyright © 2005, Columbia University Press. All rights reserved.*  
<http://www.infoplease.com/ce6/society/A0840185.html>

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**CONFIDENTIAL** adj. (definition)

1. Done or communicated in confidence; secret.
2. private and secret: carried out or revealed in the expectation that anything done or revealed will be kept private
3. dealing with private affairs: entrusted with somebody’s personal or private matters

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**CONFIDENTIALITY** (commentary)

Confidentiality begins when a child first experiences a desire to keep secrets. In doing so, a sense of “self” as separate from others is established. Also, it is the child’s desire to establish/retain intimacy. An atmosphere of trust is needed.

Two-fold aim:

1. Confidentiality seeks to facilitate communication pertaining to intimate or other sensitive matters between persons standing in special relationship to each other.
2. Confidentiality is designed to exclude unauthorized persons from access to certain information; related to one’s customary right to privacy.

Thus, confidentiality is essentially linked to control the disclosure of and access to certain information. Imagine a world without it!

## Confidentiality in Codes of Medical Ethics: A Sampling

Whatever, in connection with my professional practice, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken abroad, I will not divulge, as reckoning that all such should be kept secret. —Hippocratic Oath

A physician may not reveal the confidences entrusted to him in the course of medical attendance, or the deficiencies he may observe in the character of his patients, unless he is required to do so by law or unless it becomes necessary in order to protect the welfare of the individual or of the society.  
—AMA Principles of Medical Ethics, 1971

It is a practitioner's obligation to observe the rule of professional secrecy by refraining from disclosing voluntarily without the consent of the patient (save with statutory sanction) to any third party information which he has learnt in his professional relationship with the patient. The complications of modern life sometimes create difficulties for the doctor in the application of this principle, and on certain occasions it may be necessary to acquiesce in some modification. Always, however, the overriding consideration must be adoption of a line of conduct that will benefit the patient, or protect his interests.  
—British Medical Association, 1959

If, in the opinion of the doctor, disclosure of confidential information to a third party seems to be in the best medical interest of the patient, it is the doctor's duty to make every effort to allow the information to be given to the third party, but where the patient refuses, that refusal must be respected.  
—Addition to British Medical Association Principles, 1971

A doctor owes to his patient absolute secrecy on all which has been confided to him or which he knows because of the confidence entrusted to him.  
—International Code of Medical Ethics, World Medical Association, 1949

I will hold in confidence all that my patient confides in me.  
—Declaration of Geneva, 1948

### Gossip

1. harmless chatting about persons and events (ethical)
2. malicious chatting about persons and events (unethical)
3. unethical professional gabbing (*e.g.*, hospital cafeteria as “ethical pits”; “elevator knowledge”; indiscreet party or professional chatting, etc.)
4. the difference between “wanting to know” and the “right to know”
5. Key Question: Is this my information to give?

Howard Brody, M.D., Ph.D. – from *Ethical Decisions In Medicine* (1976 and 1981)

We can summarize our discussion of confidentiality. Confidentiality is a traditionally recognized and highly desirable right of the patient under the terms of the contractual model. However, the right is not absolute and may be overridden by clear and present danger to other persons or to the public welfare. Those who would overturn confidentiality in any particular case must bear the burden of demonstrating that some real and specific danger exists.

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## GENERALLY ACCEPTED EXCEPTIONS TO CONFIDENTIALITY: Two Models from Medical Ethics

### Model One:

- A. When the law requires it (*e.g.*, gunshot wounds, infectious diseases, suspected child abuse, dog bites)
- B. When it is in the best interest of the patient (*e.g.*, to prevent suicide)

C. When it is in the best interest of society (e.g., Typhoid Mary-type cases or the patient is planning a homicide)

Model Two:

The principle of confidentiality should not be breached unless all the following conditions are met simultaneously:

- A. Its maintenance would clearly result in damage that outweighs the damage done by the breach.
- B. There is no other way that does not involve a breach of confidentiality to avoid the damage.
- C. The breach is the least possible that will prevent the damage or is the one with the least harmful consequences to the patient.
- D. The patient is informed, preferably before the breach.

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**CLERGY IN THE EPISCOPAL DIOCESE OF CONNECTICUT ARE EXPECTED TO:**

*Maintain confidentiality* of information shared in the pastoral relationship. This means that clergy will not tell other people personal information a parishioner shares, unless that parishioner gives permission. However, the legal obligation of mandated reporting requires clergy to disclose information to the appropriate state agency in specific situations, except when the cleric learns the information within the bounds of the sacrament of confession.

*Comply with legally mandated reporting requirements* regarding the suspected abuse and/or neglect of children, the elderly and vulnerable adults. In Connecticut, clergy are mandated reporters of suspected abuse and/or neglect of children, elderly and vulnerable adults.

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See <http://psychcentral.com/best/best2.htm> for "Best Practices in eTherapy: Confidentiality and Privacy" by John M. Grohol, Psy.D.

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**Tonight's Reading in the Service of Evening Prayer: Matthew 16:13-20**

When Jesus came into the district of Caesarea Philippi, he asked his disciples, "Who do people say that the Son of Man is?" And they said, "Some say John the Baptist, but others Elijah, and still others Jeremiah or one of the prophets." He said to them, "But who do you say that I am?" Simon Peter answered, "You are the Messiah, the Son of the living God." And Jesus answered him, "Blessed are you, Simon son of Jonah! For flesh and blood has not revealed this to you, but my Father in heaven. And I tell you, you are Peter, and on this rock I will build my church, and the gates of Hades will not prevail against it. I will give you the keys of the kingdom of heaven, and whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven." **Then he sternly ordered the disciples not to tell anyone that he was the Messiah.**

*Jesus wanted the matter kept secret for reasons never explained. But this does not happen. It is not clear who failed to honor his order for confidentiality in this and some other instances. One might speculate that Jesus wanted others to come to their own conclusion that he was the Messiah, rather than being told. Or, perhaps Jesus had a strategy for his ministry that involved confidentiality about his Messiahship until, in his judgment, it was the right time and the right place for such a declaration.*