

# The Coalition

www.wacoalition.org

Advocates for Ethical Mental Health Care

Fall/Winter 2005

## Editor's Corner

Peter N. Moore, Psy.D.

This issue of the newsletter focuses on our annual meeting that was one of the most successful in years. About XXXX of our members and others from various professional groups met last November to hear our acting President, Ken King review the Coalition's work this year and our aspirations for next. You can read a summary of Ken's annual review on page 2.

Highlighting the meeting was our speaker, Dr. Steve Feldman who wears two hats: lawyer and psychologist. Psychologists in our assemblage knew that he can make the dry and dreary subject of ethics entertaining. Attendees were not disappointed. I provide a summary of Dr. Feldman's wit and wisdom beginning next door.

Many of you have received second notices to renew your membership. We hope that our invitation to continue your

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## Annual Meeting Addresses Ethical Concerns:

### Steve Feldman, JD, PHD Speaks to Ethical Issues

#### Confidentiality to the Supreme Court Covered

Peter N. Moore, Psy.D.

Psychologist Steve Feldman, also a lawyer and former law professor was the keynote speaker at the Coalition's November annual meeting. Dr. Feldman's treated attendees to his entertaining blend of wit and wisdom. His presentation covered a wide range of topics from confidentiality, consultation versus supervision, records, and even the potential portent of Supreme Court nominee Samuel Alito.

Several audience members had responded our invitation to submit questions to Dr. Feldman in advance. A number of dilemmas centered around the themes of **confidentiality and dual roles**. One person wondered if attending a client's wedding was ethical. Another noted that she had been asked to perform the ceremony! Other questioners wondered if a clinician should reveal to a client that a person with whom the client has a conflict is actually a good friend of the therapist. In another instance, a former client referred two friends to a therapist who turn out to have issues with each other.

Dr. Feldman said that ethical codes often do not provide clear guidelines in such instances.

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### Who Ya Gonna Call !?!?!?!

Coalition Helpline: 206-444-4304

Who's My Legislator: 1-800-448-4881 (State and Federal)

Legislative Hotline: 1-100-562-6000

## Coalition Annual Meeting

### Group's Accomplishments and Future Challenges Outlined

Some of the Coalition faithful and members from other mental health organizations escaped a typical cold and dreary November day to attend the group's annual meeting. Ken King, the interim chair, welcomed the throng and reviewed the year's accomplishments.

Ken reviewed the **services that the Coalition provides to its members**. He reminded the group that our organization is "not guild based" but is the only organization that represents all mental health disciplines *and* is the only one that has consumer members. The Coalition continues to work with the Insurance Commissioner, provides a lobbyist in the legislature, actively dialogues with insurance companies, offers Brown Bag lunch meetings to give members support and advice, has a Help Line for members to call about insurance and managed care questions and concerns, has recently published our first directory, continues to offer *the Coalition* to inform the membership of important events and concerns, and is developing an e-mail alert system to notify members quickly of significant issues that need timely action.

One of the most significant victories for mental health providers was achieving **mental health parity**. Ken gave tribute to lobbyist Laura Groshong who "worked long and hard with other mental health groups to pass this legislation. He said that we are "very lucky to have someone like Laura" working on our behalf in the statehouse.

Ken reminded the group that **parity** will be phased in over the next few years until 2010. Next year, the mental health community will see "relatively minimal" changes. Co-insurance and co-pays will for mental health services will become equivalent to those of medical procedures. The "biggest issue" Ken predicted will be the removal of arbitrary session limits in (20??). He predicted we will see a "big fight" with the insurance industry who will attempt to circumvent this requirement. The new parity legislation applies only to companies with 50 or more employees and does not include "ERISS" (self-insured) corporations such as Boeing and Microsoft.

The Coalition is not just sitting by waiting to see how insurance carriers will implement the mandated changes. A committee of board members Jane Palmer, Vickie East, and ??? are meeting with Regence, one of the states biggest carriers to discuss how it will carry out the new law.

**Evidence based practice (EBP)** is a new worry that cropped up this year that the Coalition has met head on. Ken informed the group that legislators were seeking to make EBP the standard of care for all state provided medical and mental health services. Ken said that EBP grew out of concerns within the medical community that physicians were not always adhering to best practices based on research of medical treatments and medications. However, mandating the use of only psychotherapy approaches validated by double blind studies was problematic. Fortunately, Laura Groshong was able to convince legislators behind the move that such a requirement would be unnecessarily draconian and counterproductive. Instead, using a "consensus" criterion that judges the validity of treatment based on "generally agreed upon" practices within the field made more sense. Further Regence had made noises about putting EBP into effect for all services. Again, the Coalition worked with the carrier to get them to back off from this proposal.

Ken thanked the membership for its continuing support and invited non-members to join our cause to help strengthen our position and clout. He also **invited members** to participate by volunteering for brief projects.

The overarching ethical principle in such cases, Dr. Feldman offered, was the ability to protect confidentiality. If the therapist can feel comfortable keeping his or her relationship with the respective parties in confidence, then therapy can be possible. He noted that the Social Workers code recognizes that "there are dilemmas" not easily resolved by guidelines. In contrast he wryly noted, psychologists instead tend to "circle the wagons but shoot in !

Dr. Feldman said that formal ethical guidelines often do not provide an answer to ethical quandaries. Rather, the solution is a matter of sound clinical judgment. He encouraged professionals not to be a "lone rangers" but actively to seek consultation. He said that malpractice is a "*failure to treat with that degree of skill, care and learning expected of a reasonable prudent practitioner of the same specialty under the same or similar circumstances*". Therefore if one regularly consults with one's peers about cases, than one is more substantially insulated against allegations of malpractice.

The discussion then traveled to the distinction between **consultation and supervision**. Dr. Feldman posed the scenario of newly minted therapist "Ima Newbie" who seeks your advice about a suicidal client. You provide your best counsel but learn later that the client takes their life. In such a case could you be sued ?

Dr. Feldman said that if a therapist is a consultant, the therapist cannot be sued successfully. He likened a consultant to being like a book that someone pulls off the shelf. The reader is under no obligation to follow the text's advice. However, a supervisor is responsible the supervisee's case. "It is your therapy" that is being carried out in a supervisory situation, he maintained. Therefore, unlike a consultant, the supervisor must, among other things, know the name and particulars of the client, and keep chart notes of the supervision. The supervisee is

obligated to follow the directives of the supervisor. He said that at least for psychologists there are specific Washington Administrative Codes that specify the nature of a supervisory relationship. A consultant however is giving an opinion about a client that is anonymous. He encouraged therapists, especially in agency settings, to clarify such relationships with colleagues and to avoid using terms such as "supervision group" when the term does not apply. He warned that liability follows the relationship, not the money.

**Record keeping** was another point of interest. Dr. Feldman wryly noted, "At one point, record keeping was for our benefit." Once a duty that served clinical purposes, it has evolved into proving medical necessity, determining professional liability ("if it wasn't written down; it didn't happen") and other administrative and legal purposes. Consequently, the content of our notes often depend upon "which master you are serving" Dr. Feldman observed.

Different disciplines have different requirements for how long a therapist needs to keep records. The HIPAA standard is six years; counselors and social workers require 5 years, psychologists require 8 years and the state requires 7 years. State law he noted will trump lesser guidelines like professional ethical codes and so most codes will specifically and expressly defer to state law when a conflict arises.

Dr. Feldman advised that we should consider who our client is before destroying therapy documentation. For example, if we work with police or firefighters, we would be well advised to keep their treatment notes for much longer than the minimum required.

Another issue that arose was the distinction of privilege versus confidentiality. Dr. Feldman said that confidentiality is an implied contract. Just as it is understood that one pays for services such as a haircut or a restaurant meal, a "reasonable expectation"

exists that what a client reports in therapy will be kept private (except for several exceptions such as imminent harm or knowledge of abuse). *Confidentiality is therefore a product of the relationship between therapist and client. It is also covered in state statutes.*

**Privilege** however “exists because the legislature says it does.” Privileged communications are legally granted to psychologists and psychiatrists by state statute but not to other mental health disciplines. The client, not the therapist, also holds privilege. Other than some exceptions, the client decides if information will be shared.

Dr. Feldman spoke to the case of **Redmond vs Jaffee**, one of his favorite topics. This legal case pitted the notes and materials of a mental health therapist against a court’s need for information to determine liability. Redmond was a police officer who shot and killed a suspect.. The officer sought treatment from a social worker for the stress resulting from the episode. The victim’s family sued the officer seeking damages. The court sought the therapist’s records to help determine culpability. The therapist refused the court’s request citing need for privacy and therefore risked a contempt of court citation. (Dr. Feldman said that if he were the therapist’s attorney he would have advised she “bring a toothbrush” to the hearing). Upon appeal, a federal court sided with the therapist arguing that because other sources of evidence existed the need for privacy outweighed the need for evidence. In this case, the need for privacy tipped the balance in favor of confidentiality against evidentiary need.

The case reached the United States Supreme Court. The court rejected the need for balance argument. The majority argued that in such a case a client cannot know in advance if what he or she professes in the sanctuary of the therapist’s office will have to be divulged because of some future need for evidence. The court maintained that a client

must know in advance that their conversations are confidential and therefore cannot be revealed later.

Justice Antoine **Scalia** dissented. In his opinion he agreed that psychotherapy was beneficial . He granted that It serves not only a given individual but also the greater good by promoting mental health. However, he argued that the court is an instrument of justice and therefore must have access to any evidence to determine truth. Consequently, the need for evidence trumps the need for therapy.

But then, Dr. Feldman offered, he went beyond the pale. Justice Scalia added that “For most of history, men and women have worked out their difficulties by talking to, inter alios, parents, best friends, siblings and bartenders -- none of whom was awarded a privilege against testifying in court. Ask the average citizen: Would your mental health be more significantly impaired by preventing you from seeing a psychotherapist, or by preventing you from getting advice from your mom? I have little doubt about what the answer would be. Yet there is no mother-child privilege.” In essence, he argued that therapy was no different than talking to one’s mother or bartender and therefore what one reveals on the couch should have no more privilege than discussions with any other trusted individual. Dr. Feldman noted that **Judge Alito**, the current Supreme Court nominee has a judicial philosophy often likened to that of Judge Scalia. It may be time to contact members of the Senate Judiciary committee to encourage them to ask Mr. Bush’s nominee about his thoughts regarding Redmond vs. Jaffee.

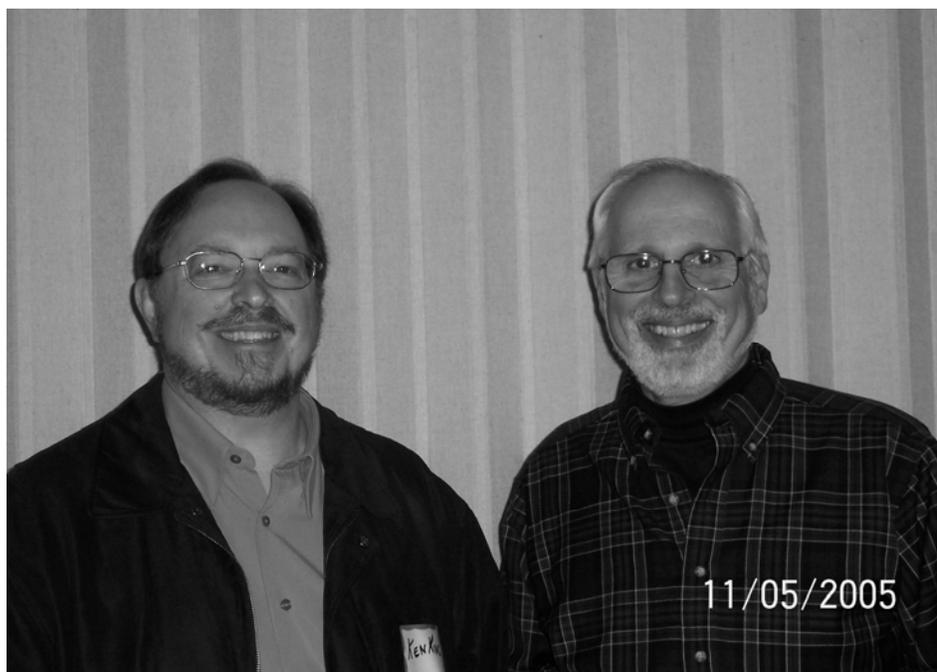


commitment to the work of the Coalition will not become misplaced amidst the deluge of bills, workshop notices, and other flotsam and jetsam that clutters our desks. I know how easily good intentions can become lost in the shuffle.

Your membership provides us with the funds to continue to inform you of events in Olympia such as movement toward evidenced based care, to support our lobbyist, Laura Groshong, who works to communicate our values and mission to legislators (who are woefully ignorant of mental health issues), and to pass legislation that furthers our calling. The enactment of Parity legislation is a prime example. So, if you are not sure if you have renewed, then call the Helpline or better yet, e-mail Susan Cohen, our membership chair (SECohen100@aol.com) to determine your status. Lost your renewal notice ? Simple: just clip the one on the back of *The Coalition* and send it in. Your dues will be credited to 2005.

As *The Coalition* editor, I also invite members to submit letters and articles relevant to our mission and to pass along information from their respective organizations that would be useful to the entire Coalition community. If you find something online, then forward it to me for consideration. I'm always looking for fresh material.

Finally, we say good-bye to long time board member **John Powers**. John and I joined the Coalition at about the same time. The date has been lost in the mists of time. He planned to serve a year or two but stayed for many more. Along with secretary Jeannete Dyal, John monitored the Helpline bringing callers' issues to the Board meetings to problem solve. He also provided valuable reflections and insights on the process of our meetings as well as helping out with Brown Bag seminars and annual meetings. He was often one of the first to arrive to help set up. Unfortunately, other concerns now demand his time. We will miss you, John.



**Ken King** (L) and **Steve Feldman** (R) at Coalition annual meeting

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**Join or Renew Your Commitment to Protect Mental Health Care**

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Member: \$65

Student: \$15

Consumer: Free

Organization: \$124

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OK to publish information in a directory ? YES \_\_\_\_\_

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