

Reply to Schafer: Exploitation of Criminal Suspects by Mental Health Professionals Is Unethical

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Suspected of being a spy, Theresa Squillacote was placed under intense electronic and physical surveillance by the Federal Bureau of Investigation (FBI), as authorized by the Federal Intelligence Surveillance Act (FISA).¹ The psychologist on the FBI's Behavioral Assessment Program (BAP) team used data derived from the surveillance, including phone conversations with her psychiatrist, to assess accurately Ms. Squillacote's specific psychological vulnerabilities. The BAP team then designed an individualized sting operation to take advantage of her weaknesses. In my opinion, the psychologist's behavior violated principles of professional ethics.

In October 1997, Theresa Squillacote and her husband Kurt Stand were arrested for conspiracy to commit espionage. Their arrest was the culmination of an extensive FBI investigation spanning several years. The investigation began after the fall of East Germany, when the United States made a cash payment to an undisclosed source in exchange for records that ostensibly came from the former East German intelligence service and contained the names of the defendants. The government then obtained the first of 20 separate authorizations pursuant to the FISA to conduct clandestine eavesdropping on conversations in the home and hotel rooms of Ms. Squillacote and her husband, as well as on their telephone conversations. Two separate court-approved covert physical searches of Ms. Squillacote's home were conducted as well. After more than 550 days of

around-the-clock eavesdropping and surveillance, the FBI uncovered no evidence that the defendants had ever passed classified information.

The government then referred the case to the BAP, which created a report based primarily on information collected from the FBI's surveillance operation. The BAP team consisted of FBI agents and mental health professionals. The identities and credentials of the mental health professionals were never disclosed. The BAP team report led to an undercover sting operation in which an FBI agent played the role of a spy from South Africa. Ms. Squillacote was subsequently charged with and convicted of conspiracy to commit espionage.

The defense raised the issue of entrapment, among other defenses. I testified as a defense expert. I interviewed Theresa Squillacote and Kurt Stand, reviewed Theresa Squillacote's medical and psychiatric treatment records, spoke directly with her treating psychiatrist, and listened to hours of tapes the government had obtained through wiretaps of the defendants' home and telephone calls. Some taped calls were between Squillacote and her psychiatrist, with Ms. Squillacote in an obviously distressed mental state. I also reviewed a copy of the BAP report and the Proposal for Group II UC [Undercover] Operation. The government had redacted several portions of the reports, including the identities and professional titles of the mental health professionals involved. Only at trial did the defense team learn that one of the mental health professionals was a psychologist. The psychologist did not appear at trial, despite defense requests that he or she be made available for cross-examination.

I concluded that the BAP team had accurately as-

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sessed Ms. Squillacote's psychiatric vulnerabilities from the life-story, mental disease, and personality vulnerability perspectives. The BAP team had collected extensive data regarding Ms. Squillacote's family and history from direct surveillance and interviews with outside informants, including her extensive family history of depression, her multiple birth defects severely affecting her limbs (which had caused her to be hospitalized as a child for more than a year), her difficulties with interpersonal relationships, and her current medical problems. They also discussed in detail symptoms of her depressive illness and her cluster B personality traits. The NEO Personality Inventory-Revised, Form R, which is designed to assess personality traits through third-person-observer reports, was completed by BAP team members and used in the BAP report.

Having accurately arrived at a formulation of Ms. Squillacote's problems, the BAP team then inverted traditional psychiatric and psychological clinical practice and made recommendations to "exploit her narcissistic and histrionic characteristics" by devising a "false flag" operation to "capitalize on her fantasies and intrigue" and leave her "beguiled and craving more attention." The plan was designed to make Ms. Squillacote "dependent on the UCA [undercover agent]." The profile recommended swift action "to take advantage of her [Squillacote's] emotional vulnerability" (all these quotes were taken directly from either the "BAP Team Report" or the "Proposal for Group II UC Operation," both of which were disclosed to the defense in redacted form).

I concluded that the BAP team's accurate assessment of Ms. Squillacote's constellation of psychiatric vulnerabilities had allowed the team to craft an individualized plan designed to exploit and manipulate Ms. Squillacote. It was deliberately designed to leave Ms. Squillacote craving attention and to make her so unsure of her social attachments that she would feel compelled to take impulsive risks to maintain her relationship with the undercover agent. It intentionally targeted her while she was in a depressed state and promoted her dependency on the undercover agent. I also testified that I thought that for a psychiatrist to participate in the BAP in the context of a criminal case was a gross violation of professional ethics, because the overt intent of the BAP was to deceive deliberately and exploit the defendant in ways directly related to her unique psychological vul-

nerabilities. I limited my testimony about ethics to ethics in psychiatry, as that is my area of expertise.

Special Agent (SA) John Schafer appears to argue that because the FBI and the BAP team members were required to follow federal laws and the rules of evidence, no further inquiry into their ethical behavior or actions was warranted. However, all members of society, including members of the defense team in a criminal case, must follow federal laws and the rules of evidence. Abiding by the law is necessary, but not sufficient for a mental health care professional. An action taken by a person may be perfectly legal but still unethical. For example, although it is legal for a psychologist or psychiatrist to ask a current patient out on a date, it is highly unethical to do so.

Although all members of society must follow general norms of ethics, professional organizations, such as the American Psychiatric Association and American Psychological Association (APA), have developed rules of ethics specific to members of their professions. As Appelbaum² notes, professional codes of ethics may weigh some particular moral rules more heavily than others and may transform moral ideals into moral rules that are binding on the profession. Such rules tend to hold professionals to higher standards than other members of society.

In his article, Schafer argues that the psychologist who participated in the BAP team either operated outside the client-practitioner relationship and therefore was not bound by the APA's code of ethics or was not a member of the APA and therefore was not bound to follow its code. The government psychologist's identity was never disclosed, and it is therefore impossible to know whether the psychologist is an APA member. It was also impossible for the psychologist to be cross-examined at trial regarding the nature and the ethics of participating in the formulation of the BAP report or for anyone to lodge an ethics complaint with the APA. If the psychologist is an APA member, we do not know how the APA ethics committee might approach this matter. Schafer informs us that he is a member of the FBI's current BAP team. I encourage him to ask the BAP team psychologist to make his or her name public so that an ethics complaint can be made and the matter directly investigated by the APA. I would be happy to file the complaint myself.

Finally, non-APA membership does not relieve a professional from following guidelines of ethics; it just makes enforcement of the guidelines more diffi-

cult. Some states have overcome this hurdle by having violations of their medical or psychology practice acts include violation of professional guidelines. But again, without disclosure of the identity of the BAP psychologist, it is impossible to know whether any state's practice act was violated.

The methodology used by the BAP team is not common in either clinical or forensic psychiatric practice. The BAP team used data obtained in part through wiretapping therapeutic phone conversations between Ms. Squillacote and her psychiatrist, as well as thousands of hours of conversations between Ms. Squillacote and others, recorded in her home and elsewhere. The BAP team then designed an individualized exploitation plan that was executed by an undercover agent. They used material and techniques derived from standard clinical practice, not to provide treatment, but to exploit overtly Ms. Squillacote's psychological vulnerabilities. At the same time, the BAP team indirectly interfered with Ms. Squillacote's ongoing psychiatric treatment by deliberately working against the treatment plan designed by her treating psychiatrist.

Obviously, mental health professionals on the BAP team did not have a direct physician-patient relationship with Ms. Squillacote and did not directly owe her the beneficence and nonmaleficence that are usual in ethical clinical treatment. However, Stone³ and Diamond⁴ have argued against such misuse of clinical techniques in forensic practice. In my opinion, the BAP team's use of clinical information and techniques to exploit Ms. Squillacote's psychological vulnerabilities represent such an irresponsible, unethical practice.

The BAP team did not follow forensic psychiatric principles of ethics either. Appelbaum² has written that advancing the interests of justice through truth-telling and respect for persons are the two core principles on which rest forensic psychiatry's rules of ethics. He concludes that such principles exclude the "use of deception in the quest for truth."⁵ Halpern⁶ points out that there are limits to the forensic psychiatrist's ethical duty to advance the interests of justice and warns psychiatrists to be alert to being drawn into unethical conduct "in the service of an elusive and not infrequently unjust justice." Weinstock⁷ and Diamond⁴ argue that although truth-telling and respect for persons are important principles of ethics in forensic psychiatry, they are not sufficient and must

be balanced with traditional values of medical practice. Weinstock⁷ contends that some situations require forensic psychiatrists to perform roles that are so foreign to values of traditional medical practice that the only ethical solution is for the forensic psychiatrist to turn down the case. Diamond⁴ argues that the society makes "ceaseless demands for applications of psychiatry and psychology to the law that are frequently inappropriate, impossible and highly undesirable" and that it is up to psychiatry as a profession to resist.

The BAP team's overt use of lying and deception to target a specific person who had not yet committed a crime, for the purpose of maximizing the probability that she would commit a crime, does not further the ethical goals of truth-telling and respect for persons. Such tactics were therefore ethically prohibited by Appelbaum's² model of serving the interests of justice and Halpern's,⁶ Weinstock's,⁷ and Diamond's⁴ more mixed models. Finally, by evaluating Ms. Squillacote before she was represented by legal counsel, the BAP team evaluator directly violated the American Academy of Psychiatry and the Law's Ethics Guideline III, which prohibits forensic evaluation of individuals charged with criminal acts before they are allowed access to or are apprised of availability of legal counsel.⁸

The principles of ethics behind the methodology used by BAP mental health professionals should be debated and discussed. Such a debate cannot move forward unless the U.S. Government allows psychiatrists, psychologists, and other mental health professionals who participate in the BAP to be named, to discuss their roles, and to be evaluated by peers.

References

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