

The Ethical Use of Psychology in Criminal Investigations

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This commentary responds to an article by Leslie Danoff titled, "The Foreign Intelligence Surveillance Act: Law Enforcement's Secret Weapon," published in the *Journal of the American Academy of Psychiatry and the Law*.¹ According to Danoff, the Federal Bureau of Investigation (FBI):

...determined that it was time to launch a "sting." A select group of FBI agents, known as the Behavioral Assessment Program (BAP) team met on June 20, 1996, with a Ph.D. psychologist-consultant to discuss how best to exploit Terry's [Squillacote] severe emotional distress.

The FBI's undercover operation yielded sufficient evidence to arrest Squillacote, her husband Kurt Stand, and friend James Clark for espionage. Clark pleaded guilty and received a 12-year prison sentence. In October 1998, a Virginia jury convicted Squillacote and Stand for violation of 18 U.S.C. § 794(a) and (c), "conspiracy to transmit information relating to the national defense"; 18 U.S.C. § 794(a), "attempted transmission of national defense information"; and 18 U.S.C. § 793(b), "obtaining national defense information." Squillacote alone was also convicted under 18 U.S.C. § 1001, "making false statements." In January 1998, a federal judge sentenced Stand to 17 years, 6 months in prison and Squillacote to 21 years, 10 months.

Squillacote and Stand appealed their convictions to the Fourth Circuit Court of Appeals. They argued:

...the FBI, through its BAP report profiling Squillacote, masterfully catalogued Squillacote's every emotional and psychological vulnerability. The FBI then used this information to devise an undercover operation exploiting these weaknesses to ensure that Squillacote would fall for the undercover agent's pitch.²

Squillacote's and Stand's attorneys further argued that the undercover agent "induced Squillacote into going along with his scheme by making subtle psychological appeals to which he knew Squillacote could be uniquely vulnerable."

The appeals court upheld the convictions of Squillacote and Stand and ruled in part that:

[t]he government's evidence established that Squillacote's involvement with the HVA [East Germany's Intelligence Service] went back almost twenty years. Through her East German contacts, Squillacote learned how to determine if she was being followed and how to evade those who might be following her, how to receive and decipher sophisticated coded messages, how to use the miniature document camera, how best to remove any "classified" markings on documents. After the fall of East Germany, when Squillacote finally had a job that gave her access to sensitive information, Squillacote herself sought out opportunities to use these skills. She contacted David Truong, a convicted spy, in the hopes of establishing a new "connection," and she sent her fan letter to Kasrils, the South African official, hoping that he would "read between the lines." That Squillacote actively sought employment as a spy is powerful evidence that she was disposed to committing espionage well before the government first contacted her² (emphasis is the author's).

Squillacote and Stand appealed to the U.S. Supreme Court for relief. However, the Court declined to hear the case.

Jeffery Janofsky, a psychiatrist with The Johns Hopkins University School of Medicine, Baltimore, MD, testifying as an expert defense witness at Squillacote's and Stand's criminal trial, charged the FBI's psycholo-

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gist with violating the code of professional ethics.¹ He further accused the FBI's psychologist of intentionally devising an individualized plan to exploit Squillacote's major depression and psychiatric disorders.¹ Danoff also questioned the ethics of the FBI's psychologist who used his or her expertise to devise an undercover scheme to intentionally exploit a person's weaknesses.

Aside from Danoff's personal opinions, which consumed a large portion of the article, the only germane issue focused on the requirement for an FBI psychologist to adhere to professional codes of ethics for psychologists, such as the American Psychological Association (APA) ethics code,³ the Specialty Guidelines for Forensic Psychologists,⁴ or any other professional codes of ethics.

The linchpin to understanding the ethics issues raised by Danoff and Janofsky is that psychologists who do not belong to the APA or another professional association of psychologists are not required to adhere to the code of ethics of these respective groups. Conversely, the FBI and the BAP team are required to adhere to federal laws and the rules of evidence, which are enforceable and far more stringent than professional codes of ethics. Hence, Janofsky's assertion that the FBI's psychologist violated the code of professional ethics lacks merit.

Danoff and Janofsky might argue the point from a personal ethics perspective, which takes into account individual values, culture, religious beliefs, personal biases, and other idiosyncrasies.⁵ If the actions of a person do not violate the law or the professional ethics of the group to which the individual belongs, then the person's actions become a matter of personal choices and opinions. Thus, Janofsky's charge that the FBI's BAP psychologist violated the code of professional ethics should read: "Based on my opinion, the actions of the FBI's BAP psychologist do not comport with the personal expectations I have as to how I believe a professional psychologist should act."

Danoff cited only the facts that supported her position, instead of presenting a more evenly measured argument. In 1946, Solomon Asch studied the formation of first impressions and found that schema, a basic unit of knowledge shaped from past experiences, form a filter through which a person judges other people and events.⁶ Danoff used this technique by introducing Squillacote as an award-winning, model government worker whose mother assisted in the development of the first atomic bomb 50 years ago. The achievements of Squillacote's mother have absolutely nothing to do with Squillacote's espionage activities. Likewise, if

Squillacote were not a competent, trusted employee, she would not have been granted access to classified information.

Danoff introduced Stand as the son of a German immigrant, who resisted the Nazi party, fled to the United States, and subsequently joined the U.S. Air Force and fought the Nazis during World War II. Danoff also noted that after World War II, Mr. Stand's father was fired from a job because of his pro-Communist views. Again, no connection exists between Stand's father's personal experiences and Stand's espionage activities. As with Squillacote's introduction, Danoff contrived a more sympathetic filter through which she wanted the readers to view Squillacote and Stand.

Danoff introduced the notion of a governmental conspiracy. Conspiracy theories imbue people with the power to believe in unseen demons, which are virtually impossible to destroy.⁷ Squillacote and Stand were tried by a jury of their peers in a public courtroom. The jury's verdicts were reviewed and upheld by the appeals court. Squillacote and Stand were not victims of a governmental conspiracy. Squillacote and Stand made individual choices over a 20-year period to betray their country.

The use of psychology in national security matters, as well as in the individual clinical setting, saves lives and prevents untold human suffering. Each group of psychologists has similar goals; however, one group adheres to federal law and the rules of evidence, whereas the other group follows professional codes of ethics. Notwithstanding violations of the law, one group cannot use its code of behavior to judge the other. Squillacote, Stand, and Clark chose to betray the national security of the United States; they are criminals and traitors. The FBI's psychologist and the BAP team acted legally and ethically to ensure freedom, social order, and the rule of law.

References

1. Danoff L: The Foreign Intelligence Surveillance Act: law enforcement's secret weapon. *J Am Acad Psychiatry Law*. 28:213-24, 2000
2. *U.S. v. Squillacote* 221 F.3d 542 (4th Cir. 2000)
3. American Psychological Association: Ethical principles of psychologists and code of conduct. *Am Psychol* 47:1597-611, 1992
4. Committee on Ethical Guidelines for Forensic Psychologists: Specialty guidelines for forensic psychologists. *Law Behav* 15:655-65, 1991
5. Higgins TE: Making a good decision: value from fit. *Am Psychol* 55:1217-230, 2000
6. Asch SE: Forming impressions of personality. *J Abnorm Soc Psychol* 41:258-90, 1946, as cited in Hock RR: *Forty Studies that Changed Psychology: Explorations into the History of Psychological Research* (ed 3). Upper Saddle River, NJ: Prentice Hall, 1999, p 100
7. Dyer J: *Harvest of rage: why Oklahoma City is only the beginning*. Boulder, CO: Westview Press, 1998, p 107