

Ethics and the Invisible Psychologist

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Psychologists have historically conducted research, taught, and provided human services directly with and for people who could readily identify the providers as psychologists. Increasingly, psychologists find themselves engaged in supplying consulting services that affect the lives of many people but take place without public scrutiny or identification. In these situations, the client may be a nonprofit agency, corporation, or government entity, but the effects of the psychologist's work may have rippling consequences that affect many individuals' lives profoundly. The ethical responsibility of such invisible psychologists may extend to members of the public not typically considered clients of the psychologist and raise particular concerns when the net result has adverse consequences for individuals or society.

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The American Psychological Association's (APA's) Ethical Principles of Psychologists and Code of Conduct (APA, 2002) stress our commitment to increasing scientific and professional knowledge of behavior, people's understanding of themselves and others, and the application of such knowledge to improve the condition of individuals, organizations, and society. They also express a commitment to respect and protect civil and human rights, support freedom of inquiry and expression, and strive to help the public develop informed judgments and choices concerning human behavior (APA, 2002, Preamble). Consider how those fundamental principles apply in these situations.

- From behind a one-way window, a consultant watches a group of young women, who lack a high school education and hold blue-collar jobs, talk about their music and recreation preferences. Later, she will use that information to frame an advertising campaign aimed at attracting such women to become smokers of a new brand of cigarette aimed at their particular demographic profile.

- An expert on body language and people's public interactions teaches transportation secu-

rity officials to recognize signs of anxiety, guardedness, and unusual patterns of behavior as a strategy for selecting some air travelers for special scrutiny before aircraft boarding. The expert's approach has a high false-positive rate, meaning that many people selected for special screening will prove completely innocuous.

- A psychologist with expertise in population demographics and group behavior helps a criminal defense attorney select jurors most likely to acquit the defendant. The consultant also advises the defendant how to dress and behave in the courtroom so as to appear most likable and credible to the jury.

- An agitated, heavily armed mental patient has taken a classroom full of elementary schoolchildren hostage and shot their teacher to death in front of them. As the hostage taker issues bizarre demands to police, a police officer trained as a psychologist coaches the officer negotiating with the offender on strategies to lure him close to a window so that a SWAT team sharpshooter can get a clear head shot.

- Under orders from the Pentagon, a mental health professional serving as a military officer develops a set of instructions and training modules to teach interrogators how to effectively elicit valuable intelligence information from captured enemy personnel.

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The Concept of Invisibility

Each of the preceding vignettes illustrates the work of an invisible psychologist. The

psychologist who runs the marketing focus group, trains security screeners, consults to attorneys and defendants, coaches hostage negotiators, or advises on interrogator training for the military or police forces remains invisible to many members of the public whose lives will ultimately be influenced by his or her work. Some of the work done by these invisible psychologists may surprise you, make you feel safer, or make you feel angry. Some women may become smokers. Some innocent people or would-be-terrorists may find themselves subjected to intense scrutiny and delays at airports. A guilty defendant with the resources to hire sophisticated experts may go free. A SWAT team sniper may kill a deranged hostage taker. People in jails or other detention facilities may find themselves talked into revealing more about themselves than they wish. In each of these situations, a psychologist may legally provide the services described, yet not all psychologists would willingly take on these roles. Some colleagues might assert that helping people obtain a particular advantage or suffer harm as a result of psychologists' work behind the scenes seems somehow unfair.

Psychologists have long worked behind the scenes or out of view of those affected by their work, but often their work did not directly lead to foreseeable adverse consequences for particular individuals or groups (Lefkowitz, 2003; Lowman, 2006), and generally speaking, their employers did not seek to conceal their identities or the fact that psychologists played a role in the project at hand. Increasingly, evidence has been found of deliberate concealment of both the identities of such consultants and even the use of psychological research to gain hidden advantage. Secrecy in such circumstances aligns with the principle of confidentiality as applied to the relationship between individuals and their psychotherapist, with one key difference. The invisible psychologist's work may have direct dire consequences for third parties who have no role in the confidential contract. In addition, the invisibility tends to shield such psychologists from clear lines of accountability for their own ethical behavior because any evidence of their role may remain undetectable.

Unavoidable Harms

As ethical psychologists, we strive to benefit those we work with while taking care to do no

harm. We attempt to safeguard the welfare and rights of those with whom we interact professionally and with other affected persons. When we confront conflicts among our obligations or concerns, we seek to resolve them responsibly while seeking to avoid causing harm. However, at times avoiding *all* harm becomes impossible, and we must attempt instead to minimize harm resulting from our work. These concepts date back to the Hippocratic oath, originating as a pledge by a healer in situations in which a professional undertakes to treat a patient. Interestingly, however, the Hippocratic oath has a powerful parentalistic tone, making no mention of consent by the patient.

The traditional practice of medicine has long recognized the necessity to favor the needs of one person over those of others (e.g., making a triage decision to provide immediate care to the patient who has suffered a respiratory arrest, even though another person who arrived earlier must wait in acute pain with a compound fracture) or to coercively limit the freedom of clients (e.g., quarantine of highly infectious patients or the use of restraints with a violent mentally ill patient). In the past half century, many mental health professionals have taken on the mantle of applying behavioral science for societal benefit apart from direct individual-focused contracts.

How do we begin to parse out our ethical obligations to others in such circumstances? We can see this timeless ethical paradox of deontology versus utilitarian ethics attempting to reconcile conflicting obligations played out on a universal interstellar scale in dialogue between the *Star Trek* characters Kirk and Spock. In *Star Trek: The Wrath of Khan* (Bennett & Sowards, 1982) a dying Spock addresses his friend Kirk with the Vulcan logic of his species:

Spock: "Don't grieve, Admiral. It is logical. The needs of the many outweigh . . ."

Kirk: ". . . the needs of the few."

In the subsequent *Star Trek* film, Kirk leads a very risky mission to bring his friend, Spock, back from oblivion. In *Star Trek III: The Search for Spock* (Bennett & Nemoy, 1984), we see the human's reversal of Vulcan logic:

Spock: "Why would you do this?"

Kirk: "Because the needs of the one outweigh the needs of the many."

The role of invisible psychologist forces us to face this paradox directly. How do we assess ethical duties we owe to members of society who have not sought our services as clients, but whose lives our work will clearly influence? How do we balance those obligations with the duty owed to the client who did hire us?

Identifying Our Clients and the Role of the Invisible Psychologist

When John Monahan (1980) and his colleagues (and more recently Haag, 2006) called on psychologists to consider “Who is the client?” they focused their attention on the criminal justice system. The heart of the question calls on us to consider our ethical and professional obligations to all people involved in the sphere of influence when providing services to or affecting one party at the behest of others. At times, the party requesting services may be a private entity (e.g., an attorney or corporation), but more often than not the hierarchy of authority will include a government or public entity (e.g., correctional authority, court system, police, school district, or security officials). This general pattern becomes particularly important in situations in which the party directing or controlling the psychological service delivery may remain deep within a corporate or governmental bureaucratic structure, unknown or hidden from the recipient of services or object of the psychologist’s attention.

Historically, we have conducted research, taught, consulted, or provided human services directly with and for people who could readily identify us as psychologists. Role conflicts occur commonly in our work with known clients, and we typically address them via role clarification and obtaining fully informed consent. For example, when beginning couples counseling, a therapist would typically establish common interests and ground rules related to any potential future unilateral conversations. In addition, even when both parties state as a treatment goal that they want to improve their relationship, the therapist will point out that they may ultimately discover conflicting interests. One party may have a strong interest in continuing the relationship, and the other might benefit by ending the relationship. The practitioner clearly has the responsibility to clarify the roles and duties owed to each party.

Increasingly, many psychologists find themselves engaged in supplying consulting services, well beyond the correctional system and government that affect many people but that take place away from public view, as described above. In these situations, the clients may include individuals, nonprofit agencies, large multinational corporations, and even political candidates, but the effects of the psychologist’s work may have rippling consequences that affect many individuals.

Common examples and activities alluded to earlier include consultation to attorneys in litigation (e.g., advising on jury selection, coaching defendants on courtroom behavior, and critiquing the work of opposing experts); design of consumer advertising and marketing plans; insurance claim reviews; crime profiling and threat assessment; strategic employment or management consultation; political polling; consulting to so-called reality TV or other entertainment programming; and training interviewers, investigators, or interrogators across a range of duties from industrial to government applications.

Do the ethical responsibilities of invisible psychologists working in such roles extend to members of the public other than the party who hired and paid the psychologist’s fee? Certainly, psychologists remain obligated by the general principles of beneficence, nonmaleficence, fidelity, responsibility, justice, and respect for the rights and dignity of people. But how far do these very general ethical obligations apply? For example, the APA Ethical Principles and Code of Conduct (APA, 2002) calls on psychologists to avoid or correct misuse of their work and to avoid conflicts between ethics and organizational demands.

Does using our work to influence consumer behavior to benefit a company’s bottom line and stockholders, through increased consumer purchases, constitute a “misuse”? Does the answer to the question change if the product we help to sell might not work as intended (e.g., computerized matchmaking software) or could prove harmful to a person’s health (e.g., alcohol, ineffective or unproven over-the-counter remedies, junk food, tobacco products, or unproven weight loss plans)? Do we have an obligation to weigh these issues before accepting an assignment?

Should ethical psychologists care how their survey data are used by others? Suppose we conduct polls for a political candidate, who then realigns her or his public statements to mesh more consistently with the measured preferences of likely voters. Does that constitute a misuse of our data? Does the answer change if we have reason to believe that the candidate's current promises will vanish once elected?

Suppose that on the basis of demographic and group dynamics research, a psychologist consulting to an attorney on behalf of a defendant in a criminal case has determined that certain types of individuals (e.g., identifiable by gender, race, or religion) will likely view the defendant more favorably. Can that psychologist ethically assist the attorney in identifying and excluding less favorable individuals from the potential jury? Would such assistance constitute unfair discrimination or valid legal assistance? Whose ethics should carry the day, the attorney's or the psychologist's?

Interestingly, the APA Ethics Code (APA, 2002) guides psychologists to avoid harm (Section 3.04) by focusing on clearly identified clients, stating,

Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

Similarly, the code cautions us to avoid role conflicts of interest (Section 3.06) and instructs on requests for services to third parties (Section 3.07), but in each case focuses on client status and makes an assumption that clients know and understand their status as a recipient of the psychologist's professional efforts. When we deliver services through organizations (Section 3.11), the code of conduct cautions,

(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality. As soon as feasible, they provide information about the results and conclusions of such services to appropriate persons.

(b) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

The crux of the issue in this section revolves around the terms *clients* and *when appropriate to those directly affected*. How do we assess the elements "when appropriate" and "directly affected"?

The State as Protector of the Vulnerable

The doctrine of *parens patriae* illustrates the origin of government intervention for the protection of the vulnerable. *Parens patriae*, Latin for "father of the people," refers in law to the public policy duties of the state to use its powers acting as a kind of ultimate parent for vulnerable citizens in need of protection. Under this doctrine, government may mandate some types of medical or mental health intervention or usurp the rights of natural parents or legal guardians to act as the parent of a child deemed in need of protection (e.g., a child whose parents are unable or unwilling to provide care or an incapacitated and dependent individual of any age).

Under such doctrine, legislative bodies have routinely enacted statutes mandating breaches of individual clients' confidentiality, and reporting by designated professionals to government authorities, when a vulnerable person or society becomes threatened in defined ways (Brann & Mattson, 2004; Koocher, 1995; Monahan, 1980; Sarkar, 2006). The most common examples affecting psychologists in the United States include laws that command us to report suspicions that a child or an elderly or dependent person has suffered abuse or neglect. We may also face obligations to seek the hospitalization of people dangerous to themselves or to others, including an obligation to alert police and warn potential intended victims. Similarly, physicians and nurses may face requirements to report patients suffering from gunshot wounds or certain highly infectious diseases to police or public health authorities. Obviously, some of the patients who come to us and disclose such behaviors or hazards would prefer that we keep silent and may experience reporting to and subsequent intervention by the state as nonbeneficial and maleficent.

In some situations, government has deemed the vulnerabilities of certain categories of people significant enough to warrant trumping the privacy rights of individual clients, potentially forcing such clients to face public embarrassment, fines, or incarceration, triggered by disclosures to their psychologist. Some legislators and attorneys who represent plaintiffs have proposed that psychotherapists become mandatory reporters to state agencies when clients tell them of sexual intimacies with prior therapists, even over the clients' objections. The post-Tarasoff era has also spawned a spate of so-called progeny cases and legislation related to the duty of the psychotherapist to protect third parties from harm (see, e.g., Eisner, 2006; Quattrocchi & Schopp, 2005; VandeCreek & Knapp, 2001; Yufik, 2005).

We can probably anticipate other future arguments that the *parens patriae* doctrine should apply to other types of breaches of duties to individual clients. We deal with this ethically by advising clients of confidentiality limits at the outset of a professional relationship, but the fact still remains: Some of our professional duties may force us to choose between taking actions potentially harmful to an individual client, but deemed beneficial to society as a whole. Legal authority often provides guidance, but the ultimate prediction of risk and decision about taking action rests with the professional.

The *parens patriae* doctrine also leads to the logical conclusion that the state may use its protective obligation in ways that may harm individuals in other ways. Indeed, violations of individual rights in quest of protecting the vulnerable have formed the foundation of many governmental actions taken in recent years as steps toward national security, relying on utilitarian ethics and permissible harms. Psychologists may find themselves called on to assist the state in its protective efforts in invisible ways.

Third-Party Situations

Conflicting interests can also occur frequently when the authority or request for a service originates with a third party known or unknown to the object of the psychologist's attention. In most circumstances, however, no reason exists to question the practitioner's goal of helping and not harming the client. In a

number of other situations, however, psychologists may ethically undertake intervention or evaluation at the behest of a third party knowing that the client may ultimately experience harm. Examples include child custody, competency, or criminal responsibility evaluations and independent examinations to determine disability, fitness for duty, or suitability for employment. In such contexts, a third party (e.g., the courts, an employer, an insurance company, or other authority) have requested or ordered evaluations or other services.

Both the entity requesting the service and the person undergoing evaluation hold a kind of client status in such cases. The process involves an appearance of mutual consent, but conflicting interests, and hence a degree of coercion. The individual facing evaluation may decline to participate or to share the results of such an evaluation with the requesting party. However, such refusals will have predictable adverse consequences such as loss of custody, loss of employment, or loss of disability insurance coverage. A competent, ethical psychologist with a high degree of professional integrity will, it is hoped, perform a skilled valid evaluation and provide accurate useful data that benefit both the institutional client and the individual client. Society as a whole clearly gains by having significant decisions of this sort aided by valid behavioral science data. Still, one party may experience a degree of harm or fail to benefit as a direct result of the entirely ethical work of the psychologist.

A more complex set of ethical issues arises when the authority or request for a psychologist's services originates with a concealed or invisible third party. In such situations, the consulting psychologists also typically remain invisible to the object of their professional attention. For example, attorneys with cases that involve psychological issues or testimony by psychological experts will often hire other psychologists to review and critique the work of the opposing experts, who will soon face cross-examination. Still other psychologists might help advise a lawyer on jury selection; run a jury simulation; use crime details to devise profiles of perpetrators to assist police investigators; help the Federal Bureau of Investigation (FBI), Secret Service, or other agencies assess the seriousness of threats made against federal officials; help an employer strategize about inter-

viewing applicants for a specific job; or develop a training program to assist investigators (pick the venue of your choice) in interviewing or interrogation.

In such instances, the client owed the primary ethical duty that accompanies actual client status may well not be the person on whom the psychologist focuses attention, but rather a third party seeking behavioral science advice. The person under study may never know that he or she has been studied, profiled, critiqued, or subject to behavioral analysis, as the psychologist's activities effectively take place behind the scenes. In addition, the person may experience some degree of harm as the result of the psychologist's work. Careless or incompetent forensic experts may find themselves embarrassed on the witness stand during a withering cross-examination enabled by detailed critical advice provided to the opposing attorney from other experts. Serial killers may find themselves identified and convicted on the basis of a psychologist's analysis of crime scene evidence. Candidates for executive positions may lose a job opportunity because of emotional or personality factors uncovered during a probing interview.

The psychologist does owe ethical duties of various sorts to people who have no direct client relationship in such situations. These include duties of competence, integrity, and obedience to law. For example, when advising police on interrogation of criminal suspects, one must remain aware that some police officers may focus on obtaining confessions rather than emphasizing the importance of obtaining truthful data (Hartwig, Granhag, & Vrij, 2005). Ethical psychologists should not agree to consult in cases in which they lack sufficient competence to provide valid advice and should not participate in depriving people of their rights. Ideally, an ethical psychologist should not knowingly tolerate others' use of unreliable or invalid data to the detriment of another person.

Police interrogators routinely use deceptive techniques to obtain confessions from criminal suspects (Janofsky, 2006). Asserting national security, the Bush administration attempted to justify coercive interrogation techniques in which physical or mental pain and suffering may be used during intelligence interrogations of persons labeled as unlawful combatants. However, ethical standards in the mental health professions demand integrity, scientific validity,

striving for objectivity, and respect for persons. Deceptive and coercive interrogation techniques violate these moral values (Arboleda-Florez, 2006; Behnke, 2006a, 2006b; Janofsky, 2006).

Invisible Psychologists in the Marketplace

Consumers also become frequent objects of study by anonymous psychologists in the employ of advertising agencies. One notorious example became public in the late 1980s when the R. J. Reynolds Tobacco Company planned to test market two new brands of cigarette. One called Uptown contained menthol, and its marketing focused chiefly on African American males. Marketing for the other brand, called Dakota, was aimed at young, poorly educated White females, termed *virile females* (Cotton, 1990). Initially, in 1984–1985 the APA Council of Representatives had declined to take a public stance, but after the outcry about Uptown and Dakota, the APA Council of Representatives (1992) adopted a resolution, reading in part,

The American Psychological Association urges our colleagues who are using psychological techniques to assist in the marketing of tobacco products to take cognizance of the public welfare and consider voluntarily suspending all efforts at using psychological techniques as a matter of conscience. (Adopted August 1992)

Some members had sought an outright ban on participation in such marketing, but others objected, noting that the profession should not bar colleagues from working for purveyors of legal commercial products that the public has an interest in purchasing. Still other psychologists argued that psychological ethics should preclude assisting in the marketing of alcohol and firearms as well.

The general stance evidenced in these arguments carries through for a range of professional activities that although lawful, run afoul of core moral, political, or social values held by others. Although all people obviously have the right to make such decisions for themselves, most professional associations or tax-exempt scientific organizations do not wish to take stands that could imply imposing restrictions on the rights of members to engage in free pursuit of legal practice in the profession.

Death Penalty Issues: Invisible Physicians

One particularly interesting issue on which professional groups have weighed in involves death penalty cases. People who participate as executioners typically qualify as invisible to both the public and the condemned person. The federal government and 38 states currently allow capital punishment and have a broad spectrum of statutes and regulations concerning roles for physicians in execution procedures. These laws have the goal of ensuring the constitutionality of capital punishment (i.e., avoiding cruel and unusual punishment), although current procedures for lethal injection have been called into question on the basis of allegations of pain to the condemned person and botched executions (Levy, 2005; Radelet, 2007).

Any role for physicians runs afoul of professional medical ethics, and the official medical community stands directly opposed to physician involvement. In response to a 2006 California court decision mandating physician participation, the chair of the American Medical Association's (AMA's) Council on Ethical and Judicial Affairs stated in part,

Judge Jeremy Fogel has disregarded physicians' ethical obligations when he ordered procedures for physician participation in executions of California inmates by lethal injection As the voice of American medicine, the AMA urges all physicians to remain dedicated to our ethical obligations which prohibit involvement in capital punishment. (Ray, 2006)

Note that the AMA does not assert that it will discipline any members who choose to assist in an execution. Similarly, it seems highly unlikely that any state medical licensing board would discipline a physician for assisting in a state-authorized execution within its borders. Current laws allow government broad, some would say excessive, discretion in deciding when to honor or disregard medical ethics in this respect. Some physicians have called for amending state and federal law to eliminate problems by creating uniform views of physician responsibility in law and medicine that comport with medical ethics (Levy, 2005). However, such proposals seem doomed to fail on the basis of potential contradiction and vagueness related to other sensitive social issues such as euthanasia and abortion.

Psychologists may find themselves facing roles in death penalty cases in the aftermath of

Atkins v. Virginia (2002), in which the courts have indicated that IQ scores may constitute a basis on which to conclude that a person should not face execution because of mental disability. Those conducting assessments to determine competency for execution will not likely have anonymity, as in the case of executioners. However, such roles will raise very interesting ethical issues for our colleagues who accept such roles.

Public Safety and National Security

Hostage situations afford an interesting ethical dilemma. Suppose that an angry, troubled teenager has brought a gun to school and taken a class hostage. A SWAT team arrives and prepares to storm the classroom, as snipers focus their laser sights on the armed teen. Now suppose that a psychologist working with the police interviews the parent of the hostage taker, who has arrived on the scene. On the basis of the information gleaned from the parent, the psychologist contacts the hostage taker via cell phone, attempts to establish rapport, asks questions, and engages him emotionally. Because of the intentional efforts of the psychologist, the teen ultimately becomes tearful or distracted and momentarily puts down his weapon, allowing the SWAT team the seconds needed to rush in and disarm him.

By using psychological skills and personal data in such situations, psychologists have saved lives while never incurring a therapeutic obligation or even disclosing their professional identities to the people whose behavior they attempt to influence. But what if the effort to have the weapon put down does not work? Would the psychologist have justification to shift gears and lure the hostage taker into a SWAT sniper's sights?

Yet another example involves concerns about psychologists consulting to interrogations associated with national security. Shameful behaviors by military personnel dealing with detainees at the Abu Ghraib prison in Iraq or the Guantanamo Bay detention site (e.g., intimidation with dogs, sleep deprivation, infliction of physical discomforts, forced nudity, and other types of humiliation) have rightly attracted condemnation. APA has clearly and repeatedly stated that psychologists who commit role violations (i.e., mixing health services delivery and interrogation support) or who participate in any way in

torture or inhumane or degrading practices have violated its Ethics Code (Behnke, 2006a, 2006b).

Can one ever work ethically in such a context? Consider case of the psychologist who developed relationship- and rapport-based strategies for training military interrogators to serve in Afghanistan and Iraq (Koocher & Keith Spiegel, 2008). He holds a PhD in social psychology and studies interpersonal influence, grew up in the region, and speaks fluent Arabic. His curriculum involves teaching concepts such as that people share information with others who appear empathic; Arab culture respects elders and seniority; learning the background of a person can enhance his or her cooperation; effective rapport flows from quid pro quo, commonalities, fairness, and mutual respect; listening carefully to a detainee's narrative without interruption, then going back over the material can prove effective; and understanding and acknowledging person's sense of honor is important. He also coaches his trainees to understand that the motivation and reasoning of many Arab fighters would differ significantly from those of Americans. For example, the culture of learning Sharia (Islamic law) confers status on the basis of memorization of the Koran, not by analysis of ambiguity or nuance, fostering a culture of obedience. Arab culture focuses on relationships, oriented toward a larger collective, and on impression management.

By helping interrogators understand these approaches to the world that differ significantly from American cultural expectations, this psychologist hoped to help interrogators better grasp the mindset of the people they would ultimately interview. Such coaching certainly seems fully consistent with ethical practice.

Reports of involvement by psychologists and behavioral scientists in interrogation consulting roles at such facilities have led many to call on APA to demand that psychologists refuse to work in such capacities. Often such demands come from people who assume that all such personnel probably engage in torture or similar behavior. Still others recognize potential legitimate, lawful, and nonabusive roles, but argue that no participation by psychologists at such facilities is ever acceptable in any capacity. Some opposition to psychologists' participation in such activities flows from principled political objections rather than broader ethical principles.

Should we expect that military psychologists would have to disobey lawful orders or that psychologists should decline any military service? Or should we provide ethical guidance to assist our colleagues in challenging situations to actively discriminate among choices on the basis of professionally accepted standards? Given that reasonable, ethical psychologists can come to different conclusions, that latter path supportive of continuous peer interaction and consultation seems most appropriate (Gonzalez & Packer, 2004; Williamson, 2006; Wilson, 2006).

Espionage and National Security at Home

The U.S.A. PATRIOT Act

One interesting aspect of national security activities in the aftermath of the September 11, 2001, terrorist attack on the United States arises from Public Law 107-56, also known as the U.S.A. PATRIOT Act of 2001, an acronym for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001." Section 215 of that act provides for access to records and other items under the Foreign Intelligence Surveillance Act (FISA). The U.S.A. PATRIOT Act amended FISA in part by allowing the FBI to seek a secret *ex parte* order granting them access to materials (including records), while prohibiting the person forced to produce the material from telling others.

Under these provisions, a psychologist could conceivably face demands to provide confidential client files to federal authorities without ever informing the client. This statute truly creates the potential for invisible use of psychological records in situations in which the client has every normal expectation of privacy. In at least one instance that predates the U.S.A. PATRIOT Act, communications between a patient and her therapists were intercepted and used by invisible psychologists to help convict her of espionage.

Theresa Squillacote and Kurt Stand

Theresa Squillacote was born in Chicago in November 1957. She did well in school and earned a master's degree from the University of Wisconsin and a law degree from Catholic University in 1980.

Kurt Stand fled from Germany during the Nazi era but maintained contacts with friends in postwar East Germany. In the early 1970s, he became an agent for the East German intelligence agency. His assignment involved recruiting agents in the United States. In 1981, he allegedly recruited Theresa Squillacote, and they married in 1983.

Theresa served as a senior staff attorney in the office of the Deputy Undersecretary of Defense for Acquisition Reform until January 1997. Before her Pentagon assignment, she worked for the House Armed Services Committee. She used many aliases, including Tina, Mary Teresa Miller, the Swan, and Lisa Martin. She and Kurt Stand are currently serving 22 and 17 years, respectively, in federal prison for espionage (*United States of America v. Theresa Marie Squillacote*, 2000).

Authorized under a FISA warrant, the FBI maintained clandestine electronic surveillance of the couple for 550 days, including monitoring their bedroom, intercepting telephone calls with Theresa's psychotherapist (Jose Apud, MD), and executing "Operation False Flag" to lure her into damaging disclosures.

A Behavioral Analysis Program (BAP) team at the FBI prepared a report of her personality for use in the investigation based on her captured conversations with Dr. Apud. The BAP report noted that she had "a cluster of personality characteristics often loosely referred to as emotional and dramatic." The team recommended taking advantage of Squillacote's "emotional vulnerability" by describing the type of person with whom she might develop a relationship and pass on classified materials. For example, the team's report cited in court documents suggested,

She ignores and neglects her children; her clandestine activities take precedence in her life. . . . [She] is taking the antidepressants Zoloft and [sic] Diserel. She has wide mood swings. She has dependent childish relationships with men. She is totally self-centered and impulsive.

The team went on to specify the type of undercover agent most likely to elicit secret documents from Squillacote (*United States of America v. Theresa Marie Squillacote*, 2000, Appendix A). In this case, invisible mental health experts on the FBI BAP team helped to catch spies. Squillacote and her husband maintained their inno-

cence and sought unsuccessfully to overturn their convictions as entrapment.

Recommendations for Ethical Role Management

Some colleagues occasionally argue against any concealed roles involving application of behavioral science to serve the needs of some third parties, usually by asserting a personal important moral values position. Our Ethics Code has generally not attempted to prohibit such activities, so long as the psychologists in such roles perform their duties lawfully. As psychological science advances, we must expect that private parties, governments, and corporations will continue to seek psychological consultation out of public view. The Ethics Code (APA, 2002) should compel attention to human welfare, integrity, appropriate role clarity, and obedience to law, but not become a tool for advancing political or narrow social agendas.

Protection of the public and vulnerable members of society should remain a prime directive for psychologists. In many situations, psychologists will face requests for services that involve multiple layers of clients, each with different positions in a hierarchy of control and vulnerability. We must remain mindful of these nuances and focus on retaining our professional integrity, while providing high-quality service in the context of relative strengths and weaknesses of the parties involved.

These situations will certainly remind ethicists of the divergent views of deontological and consequentialist philosophers. Deontologists such as Immanuel Kant would argue that the rightness or wrongness of an action does not depend on its consequences, but rather on the intent of the actor. In contrast, consequentialist or utilitarian ethics as expounded by John Stuart Mill or Jeremy Bentham would hold that determining the ethically correct act or system of rules depends on the degree to which it maximizes good consequences, based on some impartial determination of good and evils. Frances Kamm, a contemporary professor at Harvard's Kennedy School of Government, has highlighted the principle of permissible harm (Kamm, 2006). She might assert that one may ethically cause harm to save more, if and only if the harm is an effect or an aspect of the greater good itself.

We must begin to conceptualize our professional obligations much like the leaves of an artichoke, connected at the base by our ethical responsibilities and closely packed but still distinct and separable. As our science continues to improve and gains more public recognition for value added to decision making, we will find ourselves increasingly drawn into situations in which a multitude of social and political interests apply across hierarchies to whom we owe various degrees of professional duties. These considerations can help guide our responses in such situations whether visible to the people who become the objects of our professional attention or not.

- First, by clarifying our professional obligations to ourselves and the other parties involved at the outset of our professional relationships, we reduce the risk of subsequent confusion and misunderstanding. This requires us to consider the potential application of our work, even when the specific parties remain unspecified.

- Second, at times legal standards or emergent need may legitimately dictate the precedence of one person's priority and rights over another's in considering professional obligations. Such standards should emerge from legitimate public policy decision-making processes and not become confused by political ideologies of the right or the left. Invisibility should heighten our personal and professional senses of accountability.

- Third, by focusing on the welfare and best interests of the most vulnerable party in the chain of individuals to whom one owes a legitimate professional duty, psychologists optimize the likelihood of a beneficial outcome. We must remain particularly mindful of this obligation when those at the bottom of the chain remain unaware of our involvement.

- Fourth, at times the most vulnerable party may be the public at large. In such situations, psychologists must weigh their moral obligations against legally permissible options (e.g., I may legally help to market cigarettes, but I may choose not to do so to preserve public health). Sometimes withholding our services may yield a greater public good than providing them.

- Finally, engaging in illegal, inhumane, cruel, degrading, or other torturous practices can never pass as ethically acceptable conduct under any rationale. Doing so from a concealed role betokens cowardice and ethical misconduct.

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