The Psychiatrist’s Goldwater Rule in the Trump Era

ALAN STONE


As she watched Donald Trump campaigning like a bull in the china shop of political correctness, Bandy Lee, a Yale psychiatrist with a degree from Yale’s divinity school, began to worry that there was something mentally wrong with the man and that she had a moral responsibility to do something about it.

Standing in her way, however, was the American Psychiatric Association’s Code of Ethics, Section 7.3—the so-called “Goldwater rule.” It says: “[I]t is unethical for a psychiatrist to offer a professional opinion [on a public figure] unless he or she has conducted an examination and has been granted proper authorization.” Lee, like me, had objections to the rule, though for quite different reasons. I was a member of the APA board of trustees that adopted the Goldwater rule and the only voting member who opposed it at the time. I did so on the grounds that the APA had no right to deprive its members of their freedom of speech. However, despite numerous requests from journalists since then, I have never broken the rule—because in my experience it is impossible to accurately evaluate people one has not personally examined.

The “Goldwater scandal,” as some have described it, was engineered by Ralph Ginzburg, editor of Fact magazine. After the Republicans nominated Goldwater for president in 1964, Ginzburg sent a questionnaire to the 12,356 psychiatrists of America asking, “Do you believe Barry Goldwater is psychologically fit to serve as President?” It is important to note that the American Medical Association, the conservative voice of the nation’s doctors—and for decades one of the most powerful lobbies in Washington—had long supported Republicans and endorsed Goldwater in the election. The psychiatrists of America were far more liberal, by contrast, and the wily Ginzburg went directly to them. His questionnaire included some information about Goldwater’s personal history which included a statement about “nervous breakdowns”—an ambiguous term then in common usage.
Primed with this prejudicial information, 2,417 psychiatrists responded. Among them, 511 said, “We don’t know enough” (I was among that group); 657 said they thought Goldwater fit; and 1,189 opined that he was not fit. Among the last group were many distinguished psychiatrists, including academics and many leading figures in the profession. Not surprisingly Goldwater was furious. He successfully sued Ginzburg and his magazine. The jury awarded him $1 in compensation, $25,000 in punitive damages against Ginzburg, and $50,000 in punitive damages against Fact magazine; it was upheld on appeal to the Second Circuit.

The AMA was equally furious; the defeat of Goldwater undermined their lobbying clout in Washington, and psychiatrists had rubbed salt in their wounds. They pressured the American Psychiatric Association to discipline their members. The result was the Goldwater rule. It must be said that in the years that followed, it became clear to everyone who knew him that Goldwater was neither mentally ill nor suffering from major psychoses, as America’s leading psychiatrists had diagnosed him. The circumstances around adoption of the rule suggested to me that the rule was best understood as serving the profession’s public image and relationship to the medical community rather than reflecting a professional responsibility to our patients.

By contrast, Dr. Lee, author and editor of “The Dangerous Case of Donald Trump: 27 Psychiatrists and Mental Health Experts Assess a President,” embraces the ethical and clinical importance of the Goldwater rule. But she believes that Trump’s mental disabilities were (and presumably are) so severe and the risks accompanying the powers of the presidency so great that she had an overriding “duty to warn.”

But there is no such explicit obligation in the medical or psychiatric canons of ethics. It was Justice Matthew Tobriner of the California Supreme Court, in the now-famous Tarasoff cases, who created a therapist-specific version of the legal “duty to warn” of tort law, overriding the therapist’s ethical duty of confidentiality. Writing for the majority in his 1976 opinion, he declared that in “this risk-infested society we can hardly tolerate the further exposure to danger that would result from a concealed knowledge of the therapist that his patient was lethal.” Tobriner predicated the legal duty on the “special relationship” between therapist and patient.

Nothing in Tarasoff actually solves Dr. Lee’s problem, however. She did not have a “special relationship” of therapist-patient with Trump. And there was no “concealed knowledge” of the kind Tobriner pointed to—some hidden knowledge of a patient’s dangerous, perhaps even lethally dangerous, condition concealed from potential victims because of the confidentiality of the therapist-patient relationship. After all, even leaving aside the lack of a physician-patient relationship and whether it is possible to diagnose a patient on the basis of media reports, much of the press (the same press, to be sure, that Trump had dubbed “fake news”) was warning the American public loudly and frequently that Trump was “nuts” and, as president, would endanger the planet.

Uncertain how to proceed as a matter of professional ethics, after the election, Dr. Lee convened a conference on the “Duty to Warn,” which took place in New Haven on April 20, 2017. She discovered that many of her more distinguished colleagues shared her concerns. Several of them compared their situation to that of German psychiatrists during the rise of Hitler who had failed to speak out. Some of her colleagues felt morally compelled not only to speak out, but also to share their professional opinions with President Obama, the leaders of the military, and top Democrats in Congress. Out of Dr. Lee’s gathering in New Haven came “The Dangerous Case of Donald Trump: 27 Psychiatrists and Mental Health Experts Assess a President.”
The publication of this book obviously defies the Goldwater rule—which, moreover, has been strengthened by the American Psychiatric Association in the Trump era. It had been widely understood in its original formulation as forbidding a diagnosis. The new formulation, however, might be read to forbid any comment framed in professional psychiatric terms and expertise in a political or electoral context in which a person identified himself or herself as a psychiatrist. As citizens, in other words, psychiatrists enjoy freedom of speech—just not in their professional capacity. This reformulation, Dr. Lee characterizes as “a gag order on all psychiatrists and by extension all mental health professionals.” It is unclear what Lee means by “extension” to “all mental health professionals,” however. The American Psychological Association, by contrast to the American Psychiatric Association, for example, has no Goldwater rule. The American Psychoanalytic Association no longer adheres to the rule. Furthermore, the American Psychiatric Association is a voluntary organization which has no authority over psychiatrists who are non-members. Indeed, one of the contributors to Lee’s volume, psychiatrist and ethicist Leon Glass, resigned from the APA in protest of the Goldwater rule.

Most of the chapters in “The Dangerous Case of Donald Trump” are only a few pages long, and several read like the op-ed columns they originally were. In large part, this is old wine in new bottles, with no academic or scholarly ambition. Twenty-seven psychiatrists and mental health professionals in total may have contributed to the effort, but most of the chapters are written by non-psychiatrists who offer no empirical evidence for their opinions. (The first chapter, by psychologists Zimbardo and Sword, it should be noted, is an exception. It based on their time-sequence theory of personality. Their grave concerns about Trump’s narcissism and impulsivity had previously been published in Psychology Today.)

Ironically, many of the book’s contributors seemingly avoid reference to the “official” diagnostic categories specified in the current “Diagnostic and Statistical Manual of Psychiatry”—while offering versions of the same derogatory labels as the psychiatrists who “diagnosed” Goldwater in 1964: narcissistic personality, paranoid personality, bipolar disorder, delusional disorder, presenile dementia, and impulsivity. As their predecessors had done with Goldwater, many contributors to the book also compare Trump to Hitler or mention them in the same paragraph. The only major difference between the labels attached to these men is that Trump is said to be sociopathic whereas Goldwater was deemed compulsively rigid.

With that exception there is little in the current book about Trump that was not said in 1964 by psychiatrists whose responses were published in Fact magazine. One must admit that there were some embarrassingly extreme condemnations of Goldwater. So extreme, in fact, that they ought to have raised questions about the professional objectivity or even mental status of some of the psychiatric experts:

I believe Goldwater is grossly psychotic. His statements reveal a serious thinking disorder ... He is grandiose, which is suggestive of delusions of grandeur. He is suspicious, suggestive of paranoia. He is impulsive, suggesting that he has poor control over his feelings and that he acts on angry impulses. This alone would make him extremely psychologically unfit to serve as President. A President must not act on impulse! But in addition he consciously wants to destroy the world with atomic bombs. He is mass-murderer at heart and a suicide. He is amoral and immoral. A dangerous lunatic!

Signed: A Board-certified psychiatrist
Stamford, CT
P.S. Any psychiatrist who does not agree with the above is himself psychologically unfit to be a psychiatrist.

The most concrete “danger” this writer imputed to Goldwater is a supposed willingness, indeed a conscious desire, to wage nuclear war. It highlights a feature of the “dangers” identified by these psychiatrists then and now: the powers and discretion of the president and commander in chief in matters of national security, use of force, and war, including nuclear war. The election campaign of 1964, pitting Goldwater against Lyndon Johnson (running for his first full presidential term after the Kennedy assassination), took place at the height of the Cold War amid serious public anxiety about nuclear conflict; the Cuban missile crisis had unfolded under Kennedy not long before. Many voters feared Goldwater for his hawkish views, and the Johnson campaign played on those fears in a famous—outrageous, for those at the time who believed it overstepped norms of campaign civility—television ad indelibly linking Goldwater to nuclear war, complete with mushroom cloud rising in the background. The mental health professionals writing in “The Dangerous Case of Donald Trump” today are similarly most viscerally anxious about Trump exercising presidential power to use force and launch missiles. The “dangers” they point to about Trump are largely about national security. They do not write to sound the alarm about Trump and tax reform.

There are some thoughtful and ethically nuanced contributions to “The Dangerous Case of Donald Trump.” One of the contributors to Dr. Lee’s book, for example, is a good friend of mine, the erudite James Gilligan. He is one of the very few psychiatrists who has for most of his career admirably worked in prisons and is a leading authority on violence. The title of his brief chapter is “The Issue is Dangerousness, Not Mental Illness.” Presumably he was responding to the older version of the Goldwater rule and assumed that he was constrained only from making a diagnosis. Moreover, I assume that, like those of the other contributors, his chapter was not written for an academic or professional audience.

His contribution to the book describes Tarasoff as imposing “A positive obligation to speak out publicly [my emphasis].” However, this is not the way most legal authorities would construe Tarasoff or the many other state court opinions or statutes on the issue. The legal duty to warn or to protect is not a duty to go public. Instead, a typical approach is to notify the police and contact the endangered person, usually through a registered letter. To fulfill the Tarasoff duty, one certainly does not publish a chapter in a book identifying your dangerous patient or go on television to let the public at large know. I believe Dr. Gilligan is responding to his moral and political concerns when he describes his obligation as he sees it—he’s not aiming to give an exacting reading of tort law.

But there is another reason to question the approach Dr. Gilligan takes in his chapter. For the past 20 years, it has been fashionable to consider violence as a public health problem. It is an approach that has influenced many criminal law scholars. From a public health perspective, one can identify areas where violence is endemic and articulate factors that are ignored in individual clinical assessments. But experts who combine public health approaches and profound clinical experience, like Dr. Gilligan, have still not demonstrated empirically that their methods are better able to predict a particular individual’s future dangerousness than actuarial statistical methods.

What stands out in this book is Dr. Lee’s cri de coeur: “[T]he only people not allowed to speak about an issue are those who know the most about it.” I wish I believed that psychiatrists did in fact know the most
about cases of dangerousness, but the totality of the empirical evidence available today refutes that. Lee claims in a crucial footnote that “dangerousness” is more about the situation, and not so much about the person. If that were so, on this view, there would be less need for a psychiatrist to have known or personally examined Donald Trump. But does anyone believe that psychiatrists know more about the presidency and the situation in the White House than other professionals?

The last chapter of the book carries the title, “He’s Got the World in His Hands and his Finger on the Trigger.” In it, two psychiatrists urge Congress to appoint a panel of experts to examine the president. Their proposed panel is to include three “non-partisan” neuropsychiatrists (not just plain-vanilla psychiatrists). Obviously, none of the contributors to this book could now claim to be “non-partisan.” More ironically, however, of the psychiatrists who opine about Trump as the “dangerous case,” none identify themselves as “neuropsychiatrists,” and none are recognized as such by our profession.

Still, there is an epilogue to this book written by the redoubtable Noam Chomsky. The two greatest threats to the planet, he tells us, are global warming and nuclear holocaust, and Trump is a menace on both counts. You do not have to be a psychiatrist to believe that.

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