

APA and the Participation of Psychologists in Situations in Which Human Rights Are Violated: Comment on “Psychologists and the Use of Torture in Interrogations”

Bernice Lott*

University of Rhode Island

Costanzo, Gerrity, and Lykes (2006) have done us all a great service in their review of the issues surrounding the discussion of psychologists and our role in the interrogation of prisoners, specifically those currently detained in foreign camps by the United States as “enemy combatants.” They present a comprehensive and compelling analysis of the literature on relevant professional codes of conduct, on the international and national laws prohibiting torture, on the effectiveness of using torture in interrogations, and on the consequences for perpetrators, survivors, and society. Their article is clear and their arguments are powerful. My comments, therefore, have two main purposes: (1) to outline some of the significant actions and positions taken by the Board and Council of the American Psychological Association (APA) with respect to the issues under discussion; and (2) to offer a more far-reaching proposal for APA than the ones presented by the authors.

The PENS Report, and Actions of APA’s Board and Council

APA’s policy regarding the ethics of psychologists working as behavioral science consultants to the military as it interrogates detainees in foreign prisons, presented in the report of the Presidential Task Force on Psychological Ethics and National Security (Report, 2005), was never adopted or approved by the Council

*Correspondence regarding this paper should be sent to Bernice Lott, Department of Psychology, Chafee Center, University of Rhode Island Kingston, RI 02881 [e-mail: blott@uri.edu].

of Representatives. Nor was the Council ever asked to do so. Public statements that have implied or said otherwise have been inaccurate, and some have been publicly corrected.

The Board of Directors established the Task Force in February 2005. Of the ten members appointed to it by former APA President Ron Levant, six had current or past associations of one kind or another with the Department of Defense, and two of these were named in a lengthy report in the *New Yorker* by Jane Mayer (2006) as allegedly being actively involved in Behavioral Science Consultation Teams (BSCTs) working with detainees. From their personal statements, we know that two had assisted in SERE training programs (on how to resist torture), three had worked on secret service or counterintelligence projects, and one had worked in both Guantanamo and Abu Ghraib. Two official Board liaisons were also appointed (Barry Anton and Gerry Koocher), and some other high-level APA staffers also attended the Task Force meeting. It is unclear whether the impetus for the Task Force was a request for guidance by military psychologists or the need to respond to press allegations that some psychologists were consulting on the use of interrogation techniques that were demeaning, inhumane, and involved mental abuse. Probably both. At its June 2005 meeting, in a rarely used emergency action, the Board adopted the Task Force report as APA policy and authorized its public distribution.

On page 6 of the report, we learn that debate among members was vigorous and that consensus was NOT reached on two significant issues: (1) "The role of human rights standards in an ethics code," and (2) "The degree to which psychologists may ethically disguise the nature and purpose of their work." For the full impact of these statements to be appreciated, they need to be put together with what appears on page 1 of the report, namely that "it is consistent with the APA Ethics Code for psychologists to serve in consultative roles to interrogation and information-gathering processes for national-security-related purposes."

In August 2005, when the Council met, it was NOT asked to approve the Task Force report, despite its having been adopted by the Board and despite critical discussions that had been taking place among Council members, particularly those from the Divisions for Social Justice (DSJ). What did come to the Council were seven motions from the report. Of these, six were procedural, relating to gathering more information and working on a casebook, while one reaffirmed the 1986 APA Council Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment. A group of representatives to the Council from the DSJ divisions, speaking together in a dramatic presentation, introduced four additional motions: (1) that the Ethics Committee review relevant discrepancies in language in our Code of Ethics; (2) that there are *no exceptional circumstances whatsoever including the invocation of laws, regulations or orders* that can be invoked as a justification for torture; (3) that APA publicize its earlier 1986 resolution; and (4) that allegations against APA members named as having been involved in inhumane treatment of detainees be referred to the Ethics Office. All of these were approved.

When the Council next met, in February 2006, the chair of the Ethics Committee (Olivia Moorehead-Slaughter) presented an interim report. During the subsequent discussion, a group of 15 to 20 Council members from DSJ divisions went together to the floor to offer ten talking points for reconsideration of provisions of the Ethics Code in light of the issues raised by psychologists consulting on detainee interrogations. These points included that the proposed casebook “identify specific psychological interrogation practices that are coercive, cruel, inhuman, or degrading,” that APA publicize relevant UN and other international documents, and that “the ethical issues raised by the PENS report and related discussions be used to inform the training and education of students.”

In response to discussions with DSJ members in the Council about moving a consideration of human rights from an *aspirational* to an *enforceable* objective within APA’s code of ethics, the former DSJ chair, Neil Altman, was asked, in a letter from Stephen Behnke (2006), director of APA’s Ethics Office, to “provide a generally agreed-upon statement about what principles of human rights are considered ‘basic,’ and/or [to] identify a generally agreed-upon set of texts that set forth the ‘basic principles of human rights’.” Altman (2006), working with a DSJ subcommittee, responded with a clear definition of human rights, taken from five articles of the 1948 Universal Declaration of Human Rights (signed by the United States). These articles specify that: no one may be subjected to torture or degrading punishment; everyone has the right to recognition as a person; no one may be subject to arbitrary arrest, detention, or exile; everyone is entitled to a fair and public hearing before an impartial tribunal; and everyone has the right to be presumed innocent until proven guilty.

On June 13, 2006, APA’s Board issued a statement on the APA Position on Interrogations (2006) that was not widely distributed but appeared to be a response to critical e-mail discussions about APA’s official position. This brief document clearly states that APA’s “ethical principles converge as psychologists are mandated to take affirmative steps to prevent harm to individuals being questioned and, at the same time, to assist in eliciting reliable information that may prevent harm to others.” This statement was not brought to the Council for discussion at its August meeting.

What did happen at the Council in August 2006 was that we heard an address by then-Army Surgeon General Kiley, who had been invited by President Koocher. General Kiley spoke to the Council dressed in his army fatigues (an interesting and dramatic symbol). We also heard from Steven Reisner, APA member, who presented an alternative position. The invitation to Dr. Reisner was issued after some APA members expressed concern that President Koocher had planned a one-sided program.

Toward the end of the meeting, the Council received a Resolution on Torture (2006), initiated by Division 48’s representatives (and co-sponsored by representatives from some other DSJ divisions). This resolution, overwhelmingly approved,

affirms APA's commitment to all international and UN standards/statements/definitions and positions on human rights. These are asserted to govern the behavior of all psychologists in all settings, situations, and roles.

Relevant World and National Events

Some events outside of APA, occurring at a fairly rapid pace, bear directly on the ethics of participation by psychologists in the interrogation of detainees, participation that President Gerry Koocher (2006a) wrote, in a June 7 letter to the editor of the *New York Times*, was justified because "as experts in human behavior, psychologists have skills that can help prevent future acts of terror."

Among the relevant outside events was a 54-page report in February 2006 by a team of human rights investigators for the UN that called on the United States to shut down the Guantanamo camp and either to try the detainees quickly or to free them. The investigators argued that "many of the interrogation and detention practices used . . . amounted to torture" (Hoge, 2006, par. 2).

On June 6, 2006, Pentagon officials said "that they would try to use only psychologists, and not psychiatrists, to help interrogators devise strategies to get information from detainees" (cf., Lewis, 2006). This policy followed an overwhelming vote by the Board and the Assembly of the American Psychiatric Association in support of the following statement: "No psychiatrist should . . . [advise] authorities on the use of specific techniques of interrogation" (Hausman, 2006). In a letter to the *British Medical Journal*, American Psychiatric Association President Steven S. Sharfstein (2006) wrote that psychiatrists "took the view that interrogations such as those taking place with the help of behavioural science consultation teams . . . are inherently coercive." They do not obtain informed consent, they involve pressure to talk, use psychological manipulation and induction of stress, and are often deceptive. The BSCTs were said to supply information on psychological vulnerabilities and on the kinds of stress that would induce cooperation (cf. Benjamin, 2006a, 2006b). At about the same time, the American Medical Association adopted a policy that specifically called for the avoidance of coercion in interrogations (AMA, 2006).

When President Bush signed the bill containing the McCain amendment, which prohibits torture (an amendment publicly supported by APA), he specified that his administration would define torture in its own way, without being bound by international standards. This was followed by a Supreme Court decision, in *Hamdan v. Rumsfeld* (June 29, 2006), that "the administration had exceeded its authority by creating a system of tribunals [for detainees] without the approval of Congress . . . [and] that detainees were able to assert their rights under Article 3 [of the Geneva Convention] in federal court" (Lewis & O'Neil, 2006, par. 6). This Article "guarantees detainees a minimum level of rights expected in a civilized country" (par. 9) and "prohibits 'outrages upon personal dignity, in particular,

humiliating and degrading treatment” (Zernike, 2006a). The Court’s decision was in line with “the views of the military’s most senior uniformed lawyers” (par. 10), views that had previously been ignored.

The next step was a memo from the Pentagon on July 11 proclaiming that all detainees held in U.S. military custody were entitled to Geneva Conventions basic human and legal protections (Flaherty, 2006; Mazzetti & Zernike, 2006), thus countermanding President Bush’s order of February 7, 2002 that the Geneva Conventions did not apply to al Qaeda or Taliban detainees. (The number of detainees is about 1,000 in Guantanamo Bay, Cuba, and Bagram, Afghanistan and another two dozen perhaps in CIA custody elsewhere, with some in CIA custody now transferred to Guantanamo.)

Beyond a Focus on Psychologists’ Behavior: A Proposal for No Participation

Early on in the various discussions of the Presidential Task Force report on Psychological Ethics and National Security and its many implications, I believed, along with others, that the key issue was the alleged consultation and guidance by psychologists in the use of techniques that some were calling “torture-lite,” which were demeaning, humiliating, disorienting, and coercive. The term “coercion” had been purposely avoided in early public statements made by APA spokespersons. In a conversation among Amy Goodman, APA member Steven Reisner, President Koocher, and retired general Stephen Xenakis on a *DemocracyNow* (2006) broadcast, Koocher said that there are situations (outside of detainee prisons) in which the actions of psychologists may be interpreted as coercive. His examples included attempting to get information from individuals who do not want to answer questions as are found in employment screenings, or for disability or insurance claims.

In a subsequent column in the *Monitor*, Koocher (2006b, p. 5) defended psychologists who “participate in interrogations legally and appropriately” and compared their work in detainee camps with that of other psychologists whose work may appear to involve coercion. He specified the following: evaluations for the legal system on competence to stand trial or child custody cases; evaluations for disability insurance; employer screenings; and training of police or attorneys in effective interrogation techniques. But there are stark differences between these situations and working in detainee camps. In these domestic arenas: psychologists do not work in secrecy; have obtained informed consent; are subject to legal, professional, and community oversight; can be challenged; and the rights of all parties are protected by constitutional and other guarantees.

Because of the absence of all these in detainee prisons, I have now moved to a position that does not focus on the ethics of what individual psychologists do,

their roles or behaviors, which has been in the forefront of our discussions thus far. By centering our attention on the *behavior of individual psychologists*, we have neglected to ask the more important social psychological questions having to do with situation and context. When psychologists work in hospitals, clinics, courts, prisons, etc., in this country, there are rules and a relatively open process; there is potential oversight by lawyers, family, and community.

Can our ethics say it is okay to work in situations where this is not the case, in secrecy, in places in which violations of human rights systematically occur as a matter of institutional policy? where prisoners are detained for indefinite periods and not charged with any crimes? where they are not protected by international human rights protocols or provisions of the U.S. Constitution? Would we have condoned psychologists working (in any role) in Nazi concentration camps? Should psychologists work in any setting where processes are not subject to open review by courts, community, and oversight groups? I believe the correct and ethical response must be NO.

Postscript

In the final week of September 2006, the Bush administration, which had asked for federal legislation specifically limiting and narrowly defining detainee legal rights and giving approval to “tough” interrogation techniques, got much of what he had asked for when both houses of Congress approved the Military Commission Act. Touted as a compromise, what was agreed to, in the words of one analyst, is a highly ambiguous “series of interlocking paradoxes” (Liptak, 2006, par. 1). Congress did not redefine Common Article 3 of the Geneva Conventions, but the administration will have the right to interpret it and to have detainees subjected to abusive, stressful, and harsh interrogation methods. Detainees will NOT have the right to bring complaints about their treatment to a court, nor to challenge their indefinite detentions and request that they be charged with a crime (habeas corpus). While Common Article 3 bans humiliating and degrading treatment and “outrages upon personal dignity,” the new law does not prohibit such abusive and coercive techniques as sleep deprivation; exposure for long periods of time to extreme cold, bright lights, stressful positions, or loud noise/music; forced standing; simulated drowning; slapping; prolonged isolation, etc. Many legal experts believe that such techniques will remain available to the CIA (cf. Liptak, 2006). The new law gives the administration the authority to label anyone inside or outside of the United States an unlawful or illegal “enemy combatant.” And it calls for changes in the War Crimes Act to provide retroactive immunity for persons who have committed torture or other degrading, abusive acts (Zernike, 2006b).

In contrast, the new Army Field Manual “requires humane treatment of all terrorism suspects and . . . specifically bans forcing a detainee to be naked or perform sexual acts; using beatings. . . ; electric shocks; and placing hoods over prisoners’

heads or tape on their eyes; . . . staging mock executions; withholding food, water or medical care; . . . using dogs . . . [and] waterboarding” (Zernike & Lewis, 2006, pars. 7, 10). Thus, it is possible that we will have, as General Xenakis argued, “two conflicting standards of detainee treatment . . . a high standard for the military and a lower standard for the CIA” (cf. Press Release, 2006).

Prior to the passage of the Military Commission Act, seven leaders of the medical and psychological communities in the United States, including APA’s Gerald Koocher and Philip Zimbardo (and the President of the American Psychiatric Association), wrote to Senator McCain (Letter, 2006), urging that Congress not exempt the CIA or any other federal agency “from the absolute ban on torture and cruel, inhuman, and degrading treatment.” The letter specifies that such interrogation methods as sleep deprivation, hypothermia, shaking, and stress positions, which “can have a devastating impact on the victim’s physical and mental health” must be included in such a ban.

A new business item for APA Council introduced by Neil Altman (2007), which is currently working its way through the legislative process, calls for a moratorium on all psychologist involvement in interrogations of national security detainees in U.S. custody. I am a cosponsor of this initiative, but I believe that APA needs to go even further. In light of the provisions of the Military Commission Act, my position remains the same. Psychologists *should not participate in any role* within detainee camps as long as prisoners are not unambiguously guaranteed internationally recognized human rights, with freedom from physical and mental abuse, and with access to legal protections and open critical oversight.

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BERNICE LOTT is Professor Emerita of Psychology and Women's Studies at the University of Rhode Island and is a former Dean of its University College. She has taught at the University of Colorado and at Kentucky State College and was a visiting scholar/professor at Brown University's Center for Research and Teaching on Women, Stanford University's Institute for Research on Women and Gender, the Department of Psychology in Waikato University, New Zealand, and the University of Hawaii at Manoa. She received her university's Excellence Award for scholarly achievement, served as president of APA's Division 35 (The Psychology of Women), and has been honored for scholarly, teaching, mentoring and social policy contributions by APA's Committee on Women, Division 35, the Association for Women in Psychology, and the National Multicultural Conference and Summit. In 1999, the University of Rhode Island awarded her the honorary degree of Doctor of Humane Letters. She is the author of numerous theoretical and empirical articles, chapters and books and is a Fellow of APA and of Divisions 1, 8, 9, and

35. Her areas of interest are interpersonal discrimination; the intersections among gender, ethnicity, and social class; multicultural issues; the social psychology of poverty; and the social psychology of dissent. Currently, she represents Division 9 (SPSSI) on APA's Council of Representatives; is a member of an Interdivisional Minority Pipeline Project working on strategies to increase the recruitment and retention of graduate students of color; and has represented Divisions 9 and 35 on the coalition of Divisions for Social Justice.