

A Sad Day for Psychologists, a Sadder Day for Human Rights
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At the 2007 American Psychological Association Convention, the Council of Representatives passed a resolution clarifying psychologists' responsibilities related to the issue of torture and other cruel, inhuman, or degrading treatment and the application of these responsibilities to prisoners identified as "enemy combatants." This commentary evaluates the general and specific components of the resolution in relation to international human rights and the profession of psychology. Also discussed is the vote by Council to not support an amendment limiting psychologists' roles in setting operating in violation of existing international human rights law. Finally, I provide a personal perspective on the process used to draft the resolution.

Less than two weeks ago, the American Psychological Association (APA) Council of Representatives passed the 2007 Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as "Enemy Combatants." At that same time, the Council of Representatives voted not to support a statement limiting psychologist involvement in interrogations of prisoners defined as "enemy combatants."^a

At first glance, the 2007 Resolution appears to be a strong document and repudiation of torture and other forms of cruel, inhuman, or degrading treatment of prisoners currently detained at Guantanamo Bay, the CIA interrogation sites, and other sites housing individuals detained as part of the "global war on terror." However, I believe it is a flawed document. I am also deeply disappointed by the vote of the APA Council to keep psychologists working, not for the primary welfare of prisoners but largely for the benefit of the state, in contexts defined as "cruel, inhuman, or degrading" under both the 2006 APA Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the 2007 Resolution.

I should note that I was not an uninvolved participant in these discussions. I was one of the co-drafters of the 2006 APA Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. I was also initially involved in work on modifications to the 2007 Resolution (full disclosure of my involvement is provided below). I also have deep respect and warm collegial relationships, indeed friendships, with many who worked diligently on the revisions to the Substitute Motion that became the 2007 Resolution. Therefore, it is with great reticence and personal conflict that I share my thoughts.

The 2007 Resolution - General Concerns

Col. Larry James, a psychologist at Guantanamo Bay speaking before the APA Council of Representatives, stated not once but twice, "If we remove psychologists from these

facilities, people are going to die." This statement is frightening in its implication. It essentially argues that psychologists are the primary protectors of prisoners--they stand between life and death, between these sites being defined as prison camps or even concentration camps as opposed to death camps. I find this chilling.

Rhea Farberman, APA Public Affairs, stated in *Newsweek* (<http://www.msnbc.msn.com/id/20364983/site/newsweek/page/0/>), "We want to have an influence on the issue of torture, and that's why we're staying engaged. Others have divorced themselves from the process altogether--like the American Medical Association, which has said it won't allow its members to be involved in interrogations in any way. But we think we can have more of an effect if we stay at the table" and "We feel we can play a positive role in maintaining detainee welfare." Unfortunately, history has shown, and I think physicians have learned, that professionals' continued involvement in destructive settings may simply serve as tacit approval of atrocities being committed at such settings. A profession becomes permanently stained by such involvement and, the long-term well-being of prisoners is rarely protected.

I recognize that there are individuals detained at Guantanamo Bay and other sites who may wish great harm upon the United States and elsewhere. Nonetheless, I recognize that how we treat our "enemies" says more about who we are as people and a culture than it does about them. This is particularly true when detainees are in positions of relative helplessness and are of little threat to us within the context of their current confinement. Unfortunately, evidence from Abu Ghraib, the CIA sites, and Guantanamo Bay suggests that we have moved down a path to becoming the mirror image of the enemy we so purportedly despise.

I also recognize that some of these detainees, particularly those captured in Afghanistan, most likely did nothing more than being in the wrong place at the wrong time. Yet, without access to due process as guaranteed under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the 5th, 8th, and 14th Amendments of the U.S. Constitution (cited in both the 2006 and 2007 APA Resolutions), these individuals may never leave Guantanamo Bay and similar sites. Moreover, if released, they will always carry the scars of their abusive detention and perhaps pass these scars on to their children. Unfortunately, those of us associated with the American Psychological Association, due to a policy of collaboration, will have collaborated in great harm.

I also recognize that the United States interrogation and incarceration sites maintained as part of the "global war on terror" are uniformly condemned by a range of human rights NGOs, the International Red Cross, and the United Nations Human (UN) Rights Council (2006). In 2006, the United Nations Human Rights Council called for the immediate closure of the U.S. detention facilities at Guantanamo Bay and called for an immediate cessation of "all special interrogation techniques authorized by the Department of Defense" (p. 25). Yet, despite APA's status as a UN NGO, we, as an organization, have turned our back on the fundamental principles of human rights as outlined by numerous UN declarations, conventions, and related documents.

Are there psychologists working hard to protect the welfare of prisoners in interrogation settings? I am sure that there are and I respect their efforts. Regardless, significant problems remain. First, situational pressures can overwhelm even the best among us. Second, psychologists are being asked to serve as protection for prisoners, a role generally assumed by legal counsel. The right to legal counsel is a fundamental component of due process and attorneys are best trained to protect our rights and interests in situations of detention. Finally, regardless of the positive motives of psychologists involved in working with the CIA or at sites such as Guantanamo Bay, they are at best treading water. They do not have the power to reform a broad, destructive context.

The 2007 Resolution - Relation to the 2006 Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The 2007 Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as "Enemy Combatants" is aptly named. It is quite simply a reaffirmation and application of the 2006 APA Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. There is very little that is new in the 2007 Resolution but it is a clear explication of the concepts as applied to interrogation settings.

The 2006 Resolution:

1. Unequivocally condemned torture and cruel, inhuman, or degrading treatment or punishment.
2. Prohibited psychologist involvement, either directly or indirectly, in behaviors that involved torture or cruel, inhuman, or degrading treatment or punishment and called upon psychologists to report violations.
3. Stated that the prohibition and condemnation applied to all persons, settings, and contexts.
4. Included the principle that settings could be defined as cruel, inhuman, or degrading.
5. Included the fundamental principle of denial of due process in as a primary characteristic in defining a setting as cruel, inhuman, or degrading.
6. Argued that there were no exceptional circumstances that justified the use of torture or cruel, inhuman, or degrading treatment or punishment, including instances of war or following orders.

There are numerous other elements (go to <http://www.peacepsych.org> for the full text of the 2006 Resolution, justification statement, and FAQ page - scroll down the right hand side of the page) but this list represents some of the major features.

The 2007 Reaffirmation Resolution simply repeats all of the above but within the context of interrogations of individuals defined as "enemy combatants" and "illegal enemy combatants" under the Military Commissions Act of 2006. There is much that is good in the 2007 Reaffirmation largely due to the efforts of those who worked tirelessly at the 11th hour in an attempt to insure that this new Resolution didn't take a step backwards in relation to human rights. I have deep respect for those who worked to hold the 2007 Resolution to the principles inherent in the 2006 Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Unfortunately, the last-minute proposal of a deeply flawed Substitute Motion and the resultant process by which that Substitute Motion was revised almost insured that ANY 2007 Resolution would be more press release than substance; it would maintain the status quo. And indeed, this was the outcome.

The 2007 Resolution - Specific Concerns

It is important to recognize that the 2007 Resolution makes some excellent points such as the statement, "BE IT RESOLVED that this unequivocal condemnation includes all techniques defined as torture or cruel, inhuman or degrading treatment under the 2006 Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the United Nations Convention Against Torture, and the Geneva Convention." Moreover, the 2007 Resolution reiterates important points from the 2006 Resolution such as, "there are no exceptional circumstances whatsoever, whether induced by a state of war or threat of war, internal political instability or any other public emergency, that may be invoked as a justification for torture or cruel, inhuman, or degrading treatment or punishment, including the invocation of laws, regulations, or orders." Additionally, the 2007 Resolution reaffirms that contexts can be defined as cruel, inhuman, and degrading and highlights the importance of international documents such as the Geneva Conventions.

Regardless, there are several serious problems with the 2007 Resolution and hence, the APA's position regarding interrogations of prisoners detained by the CIA, the U.S. Government, or the U.S. military at sites such as Guantanamo Bay and elsewhere. These problems include:

1. Prisoners may live in conditions defined as cruel, inhuman, or degrading BUT psychologists can continue to work in such settings in non-health care capacities (e.g. interrogations). The settings meet the definition of "cruel, inhuman, or degrading" under both the 2006 and 2007 Resolutions. Yet, psychologist involvement in maintaining these settings and conditions as well as working within cruel, inhuman, or degrading contexts in a non-health care related capacity is nonetheless still viewed as acceptable.

2. Prisoners can be denied due process as defined under the UN Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the 5th, 8th, and 14th Amendments of the U.S. Constitution. Yet, psychologist involvement in maintaining these settings and conditions as well as working within contexts in a non-health care related capacity is nonetheless still viewed as acceptable, despite prisoners' lack of due process as defined under both domestic and international law.

3. Prisoners can be detained indefinitely at sites of detention for "enemy combatants." According to the 2006 United Nations Human Rights Council, "uncertainty about the length of detention and prolonged solitary confinement, amount to inhuman treatment and to a violation of the right to health as well as a violation of the right of detainees under article 10, paragraph 1, of ICCPR to be treated with humanity and with respect for the inherent dignity of the human person" (p. 24). Yet, psychologist involvement in maintaining these settings and conditions as well as working within these inhumane contexts in a non-health care related capacity is nonetheless still viewed as acceptable.

4. Although the 2007 Resolution listing of prohibited abusive techniques is qualified by the statement, "includes, but is by no means limited to", any listing carries the risk of being viewed as a primary guide concerning acceptable versus prohibited behaviors. Therefore, harsh interrogation techniques not on the lengthy list may be perceived as causing insufficient harm to qualify as torture or cruel, inhuman, or degrading treatment. This opens the door to psychologist involvement in abusive interrogations via a process of ambiguity. This is further compounded when psychologists are asked to be involved in interrogation techniques legally defined as "harsh" but not "torture." The Military Commissions Act of 2006 opened the door to such a possibility through the authorization of non-specified harsh interrogation techniques.

5. Although qualifiers are not placed on most of the techniques listed in the 2007 Resolution, some techniques such as isolation, sensory deprivation and over-stimulation and/or sleep deprivation include the following qualification "used in a manner that represents significant pain or suffering or in a manner that a reasonable person would judge to cause lasting harm." At what point does harm become acceptable or unacceptable? And why are there no similar qualifiers for other techniques resulting in prohibitions such as:

- "Sexual humiliation used in a manner that represents significant pain or suffering or in a manner that a reasonable person would judge to cause lasting harm."
- "The use of dogs to threaten or intimidate used in a manner that represents significant pain or suffering or in a manner that a reasonable person would judge to cause lasting harm."
- "Physical assault including slapping or shaking used in a manner that represents significant pain or suffering or in a manner that a reasonable person would judge to cause lasting harm."

Of course, none of the above qualifications exist in the 2007 Resolution. So why does the qualification exist for techniques of isolation, sensory deprivation and over-stimulation and/or sleep deprivation--techniques that we know can be quite painful and harmful even if just in the short term? Moreover, why is psychologist involvement in any abusive harm acceptable regardless of whether it reaches the level of torture or cruel, inhuman, or degrading or not? This qualification provides an immense loophole leading to the potential abuse of these techniques as long as they do not cause undefined "significant pain or suffering" or "lasting harm."

6. Although the 2007 Resolution condemns conditions of torture or other cruel, inhuman, or degrading treatment (e.g., water boarding, prolonged exposure to heat/cold, prolonged sleep deprivations, the use of non-therapeutic drugs, forced-feedings in violation of international law, etc.), these conditions may still legally exist at detention centers for individuals identified as "enemy combatants" under the Military Commission Act of 2006. However, according to the 2007 Resolution, as long as these techniques are used outside the immediate procedural context of a psychologist's involvement, a psychologist can continue to work at such a settings in a non-health care capacity. Essentially, a person can be tortured "down the hall" in preparation for interrogations or as a condition of their confinement and, according to the 2007 Resolution, it is still acceptable for a psychologist to be involved either directly or indirectly in interrogations once the prisoner has been moved into an alternate setting. This form of compartmentalization and diffusion of responsibility has not withstood historical scrutiny in the past and I think fails in this context as well.

7. As noted above, prisoners can still be subjected to "harsh interrogation techniques" as discussed by Attorney General Alberto Gonzalez and defined as torture by the International Red Cross and the United Nations, and psychologists can still participate in the operations of these settings but not in these specific interrogations. Unfortunately, psychologists' presence at such sites provides tacit support for these "harsh" techniques, legal under the Military Commissions Act of 2006. Although reporting is mandated when psychologists witness the use of abusive techniques, this reporting to superior officers is meaningless as the techniques have been approved and are considered legal. This is particularly relevant in relation to CIA interrogations. Therefore, although the 2007 Resolution is a rebuke of commonly cited CIA techniques, the Resolution unfortunately contains an inadvertent wink and a nod for their continued use. Protest carries little effect when logical consequent actions are not recommended.

Ultimately, the 2007 Resolution maintains the status quo and prisoners will continue to experience torture and other cruel, inhuman, or degrading treatment both as a function of perpetrator behavior and as a function of context. It is indeed a sad day for psychologists, a sadder day for human rights, and a day of despair for detainees.

Much like those historically who found themselves in similar situations of human rights abuses, psychologists working at Guantanamo Bay, previously at Abu Ghraib, or other detention sites will be forever marked simply by association with these abusive contexts

regardless of their individual actions. Psychologist continued involvement in interrogations at these settings will be perceived as and, more importantly I fear, will have functioned as support for these inherently destructive environments. Certainly, the American Psychological Association and the psychology profession has become historically linked to atrocity and images of Abu Ghraib, Guantanamo Bay, and the CIA sites. Rhea Farberman argued that we have chosen to "stay at the table." However, I think our presence at that table has come with a price, a stain, and significant shame.

Personal Statement of Involvement and Concerns about the Process

In 2006, I was one of the primary drafters of the APA Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and in 2007, I was one of the early members of the group drafting amendments to the Board of Directors Substitute Motion, which resulted in the 2007 Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as "Enemy Combatants." I withdrew my participation from the working group drafting the amendments to the Substitute Motion on Thursday of the Convention due to issues of conscience.

In the weeks prior to the Convention, the Board of Director's sent to Council a Substitute Motion that represented, as written, a roll-back of some of the principles outlined in the 2006 Resolution. I do not think this was the intention of those drafting the Substitute Motion but rather the outcome of a hastily drafted document--a proposed alternate motion to a Moratorium Resolution already before Council. Many individuals responded to the Substitute Motion with statements of concern and suggestions for amendments. Moreover, individuals expressed the belief that for the Substitute Motion to genuinely be proffered as an alternative motion, these amendments needed to include a call for a limitation on psychologist involvement in interrogations^a.

Work on the amendments began online and then several constituencies came together for intensive meetings during the Convention to work further on the wording of the amendments to the Substitute Motion. Immediately, I became concerned regarding what I perceived to be a pattern of groupthink. There was intense pressure to reach agreement and come out of the meetings with a Resolution that could be taken to Council representing a unified or "collaborative" effort. I originally felt compelled to work on the amendments as I did not want to see the Association move backward and hoped for forward movement representing the principles outlined in the 2006 Resolution. However, it quickly became clear that the goal of a unified draft seemed to take precedence over other concerns and the time crunch precluded extensive, careful consideration of wording, issues of international law, and broader human rights concerns. Moreover, it was clear that any statement involving limitations to psychologist involvement^a at Guantanamo Bay and similar detention sites for "enemy combatants" was being actively discouraged and marginalized. Indeed, the way in which the potential clause concerning limitations was presented to Council encouraged its marginalization and it was

subsequently voted down after a short period of discussion. The time issues both during and prior to the Council meeting and the manner in which Substitute Motion was presented to Council facilitated maintenance of the status quo in relation to psychologist involvement in interrogations at sites such as Guantanamo Bay and the CIA sites.

I decided after my first two meetings with those working on the amendments to withdraw my participation. I began to perceive my participation as not "collaborative" in the sense of working together towards a positive goal but rather "collaboration" in the sense of unwitting assistance in destructive endeavors. Therefore, I wrote Dr. Stephen Behnke and others working on the Substitute Motion on the evening of August 16,

"I've given a great deal of thought to the issue of my involvement with the working group drafting the amendments to the Board of Directors Substitute Motion. At this point, I feel as if I can no longer continue to be involved in this process as a matter of conscience. Moreover, I do not want my further presence in these deliberations to be viewed as support for the changes being drafted as discussed at lunch. I recognize that there are many views on the issue of interrogations of individuals defined under the Military Commissions Act as "illegal enemy combatants" and "enemy combatants." I also recognize the good faith effort, sincerity, and deep commitment of all within the APA struggling with these issues. Nonetheless, I deeply value fundamental human rights both in practice and in principle. These human rights guidelines shape my professional work and thinking. As such and with these human rights principles in mind, I can no longer participate in the process of revising the amendments to the Board of Directors Substitute Motion. The revisions being recommended deeply conflict with my personal ethics and values."

References

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More Information

Psychologists concerned about the 2007 Resolution or who want to see the proposed amendment added into the Resolution during a future Council meeting should contact their APA Council Representative or members of the Board of Directors:
<http://cor.apa.org/corlist.cfm>

For information about the 2006 Resolution, go to <http://www.peacepsych.org>. Scroll down the right hand side of the page Torture and Terrorism Resources. The 2007 Resolution can be found at <http://www.apa.org/governance/resolutions/councilres0807.html> .

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^a Proposed amendment that was voted down by the Council of Representatives: "BE IT RESOLVED that the objectives of the APA shall be to advance psychology as a science and profession and as a means of promoting health, education and welfare ... " (Bylaws of the APA: Article 1) and, therefore, the roles of psychologists in settings in which detainees are deprived of adequate protection of their human rights, should be limited as health personnel to the provision of psychological treatment."