

From: Linda M. Woolf, Ph.D. <woolfm@webster.edu>
Sent: Tuesday, December 19, 2006 11:04 AM EST
To: Nina Thomas <DoctorNina@aol.com>
CC: Behnke, Stephen <sbehnke@apa.org>
Subject: [Fwd: Re: APA resolution on torture]

Dear Nina,

Thanks for forwarding the note from Dr. Soldz. Just a couple of quick points as I do not want to spend too much time responding to Dr. Soldz - I have responded to him or in response to him to reporters quite a bit.

A few quick thoughts which you can cut and paste as you see appropriate:

1. I appreciate Dr. Soldz's concerns and I am sure they are shared by all who want to make sure that psychologists are not involved in torture and other cruel, inhuman, or degrading treatment or punishment (CIDTP) but also those working to see that the practices are ended globally. I, and other human rights scholars/activists, around the globe wish that definitions were in place on an international level relating to CID but also that a better definitions of torture, genocide, crimes against humanity, etc. existed. Unfortunately, the area and certainly practice of international law are relatively new and thus, we do not have perfect definitions that can be used in the pursuit of legal matters on an international level.

As noted previously, the UNCAT and the Geneva Conventions do NOT provide a definition of CID. This lack of definition is exactly what has enabled various governments around the globe to interpret CID differently and opened the door to an array of human rights abuses, particularly against women and children. Therefore, the problems associated with definition go well beyond the APA. Indeed, as noted previously, we selected the definition for CID from the only international/domestic law that was available. Again, the definition was selected to strengthen the Resolution (which it does). Omitting a definition with only reference to the UNCAT or Geneva Conventions would have weakened the Resolution as they include no definition of CID creating a level of ambiguity that has been already abused worldwide. In other words, if we had used these documents with no specific definition, we would still be having these same arguments! Personally, I'm not sure that we can hold the APA responsible for areas of weakness in international law. Additionally, we would have opened up clinicians and all who work in practice setting to frivolous lawsuits based on claims of a psychologist treating a client/patient in a "cruel" or "degrading" manner. Further discussion of "Definitions" is located on the [peacepsych.org](http://www.peacepsych.org) website in several places including responses to questions about coercive interrogations and in the Resolution's Justification Statement.

It should be noted that APA resolutions are not legal documents but rather it is the intent of the document that is important. I believe the intent of the document is quite clear if one reads the Resolution. The intent is even further clarified by an examination of the justification statement. The intent as stated previously and as adopted by Council:

The 2006 Resolution affirms APA's commitment to human rights protections; affirms the centrality of UN and other human rights documents in APA policy; reflects APA's status as a UN NGO; unambiguously condemns the use of torture and other cruel, inhuman, or degrading treatment or punishment (CIDTP); unambiguously prohibits psychologist involvement, either directly or indirectly (this includes advising, research, teaching, etc.), in torture and other CIDTP; and, highlights that these general principles apply to all psychologists, in all roles, and in all places, now and in the future, with absolutely no exceptions. Moreover, it makes clear that psychologists can not be passive bystanders but must actively work to stop/prevent torture and other CIDTP as well as report such abuses.

2. Psychological forms of torture are indeed highly destructive and unfortunately, our discipline shares some responsibility in the development of psychological torture techniques. These are directly addressed in BOTH the Resolution and the Justification Statement. Indeed, the Justification Statement has a special section devoted to this topic. As such, **both psychological and physical forms of torture and other CIDTP are prohibited under the Resolution.** I urge individuals to read not only the Resolution but the Justification Statement where the issues of psychological forms of torture and other CIDTP are addressed. Just go to <http://www.peacepsych.org> and scroll down to the right side of the page to Convention Updates. You will also find a FAQ page associated with the Resolution as well.

3. I'm sure that Dr. Soldz has simply forgotten our response to his query as I am sure he has received and responded to hundreds of emails on this issue. However, Drs. Judy Van Hoorn, Corann Okorodudu, and I have responded to his queries previously. I have pasted a response we made to him in August on this issue. To the best of my recollection and my files, he did not send any further queries upon receiving our email. We are, of course, happy to answer any questions he may have about the Resolution (drafting, moving, etc.).

4. The Council Meeting: Don't you just love the process of rumor! The "well, that is not what I heard" response is always difficult to counter. All that I can say is that Judy Van Hoorn and I, representing the Society for the Study of Peace, Conflict, and Violence: Peace Psychology Division 48, were at the center of all of these conversations and as movers of the Resolution could not be excluded. The process occurred as outlined previously and the changes were projected onto two giant video screens for the Council to review prior to voting. Therefore, the changes were made during the break but Council did have the opportunity to review, discuss, debate, challenge, etc. all of the changes prior to voting. This was all done before lunch and after lunch we had the presentation by the military representative and the excellent presentation by Dr. Steven Reiser.

Let me add that this was my first council meeting. I had envisioned a dark room with folks figuratively smoking cigars making decisions were made couched in groupthink, conformity, etc. It is actually very different than I expected and very open to debate. In fact, debate and extensive review/discussion were key components to all items presented before Council. It is also very organized as individuals get in line behind microphones for their chance to speak. Everyone is recognized in order so that no individuals can be denied an opportunity to present their concerns. Nothing gets voted on until all have had their chance or chances to express their ideas and concerns. Note that Council is very large with, I would estimate, well over two hundred representatives (it pays to return ones apportionment ballot which determines each division's number of representatives). And visitors are welcome from other organizations as well as the general membership. While these visitors may not be recognized to take part in the debate, the meetings are open essentially to the general public.

It is my hope that this clarifies many of the issues involved concerning the Resolution.

On a personal note, I very much appreciate everyone's concern and passion concerning this issue. I believe in the importance of social action including actions involving protest against human rights violations such as those related to torture and other CIDTP, whenever and wherever they occur. As psychologists, it is important that we highlight the dangers associated with torture and other CIDTP to victims, perpetrators, and bystanders. We can help bring to the forefront research that demonstrates the ineffectiveness of torture and other CIDTP as a means to gather information. We can also work to provide information concerning effective but most importantly humane forms of interrogation/questioning as well as work to protect the well-being of detainees being interrogated/questioned.

Further, I would add that this passion extends in many directions whether it is concern/outrage about the ongoing genocide in Darfur, the horrors of the death penalty as practices in the U.S. and abroad, child soldiers, sex trafficking of women and children, or spousal abuse. When social justice and human rights are routinely denied for the seemingly invisible among us, peace remains a dream.

To Peace,

Linda

----- Original Message -----

Subject:Re: APA resolution on torture

Date:Mon, 28 Aug 2006 22:17:52 -0500

From:Linda Woolf, Ph.D. <woolfm@webster.edu>

To:ssoldz@bgsp.edu

CC:Judith Van Hoorn <vanhoorn@mills.edu>, okorodudu@rowan.edu, koocher@simmons.edu, "Behnke, Stephen" <sbehnke@apa.org>

References:<008001c6c93e\$fab04850\$0401a8c0@Dad> <1156711477.44f20435de2bc@webmail.mills.edu>

Dear Dr. Soldz,

Thank you so much for writing and we would be happy to provide clarification.

First, there seems to be a lot of confusion about the intent of the resolution and a focus on interrogations. APA had a long standing policy (the 1986 Human Rights resolution) against torture and other cruel, inhuman, or degrading treatment or punishment (CIDTP). The 2006 Resolution is an update, and significant expansion of that resolution. Most notably, the 1986 Resolution needed updating to reflect recent advancements in human rights law and also to reflect APA's status as a United Nations (UN) non-governmental organization (NGO). While current events stimulated work on this resolution, it does not focus exclusively on these events.

Torture and other CIDTP are unfortunately concerns that impact so many individuals around the globe. As noted in our justification statement (attached) for the 2006 Resolution:

In terms of scope, between 1997 and 2000, Amnesty International recorded complaints of torture and other cruel, inhuman, or degrading treatment or punishment by agents of the state from over 140 countries (Amnesty International, 2000). More conservative estimates implicated over 100 countries in the systematic practice of torture and other forms of gross maltreatment (Genefke, 2004). Human Rights Watch (2006) further reported an increase in the use of torture within many countries such as China, Myanmar, Morocco, Nepal, Uganda, and Uzbekistan.

The Center for Victims of Torture (2001) estimated that, at minimum, a half million survivors of torture are living in the United States with between 5% and 35% of refugees being either primary or secondary survivors of torture. A survey of centers meeting the needs of the refugees and torture survivors suggested that the numbers

of refugee torture survivors may indeed be even higher. Chester (1990) found that approximately 35% to 50% of all refugees were survivors of torture. Moreover, Shelton (1998) estimated that there are at least 400,000 survivors of torture living in the United States today. Thus, the problem of torture is not just a concern internationally but a domestic concern for American psychologists and other professionals.

As such, the 2006 Resolution Against Torture and Other CIDTP is designed to address the issue of torture and other CIDTP in all settings and at all times.

In detention centers for foreign detainees, in U.S. prisons, in adolescent group homes, in facilities for the aged, in hospitals treating the chronically ill, in any situation where individuals are in a position of relative helplessness, the danger of torture and other CIDTP exists. While the treatment of foreign detainees is an incredibly important issue, we would fail as psychologists concerned about fundamental human rights if we ignored all those for whom the world is largely silent. Therefore, the 2006 Resolution was written to affirm APA's commitment to human rights protections; to affirm the centrality of UN and other human rights documents in APA policy; to reflect APA's status as a UN NGO; to unambiguously condemn the use of torture and other CIDTP; to unambiguously prohibit psychologists involvement, either directly or indirectly, in torture and other CIDTP; and, to highlight that these general principles apply to all psychologists, in all roles, and in all places, now and in the future, with absolutely no exceptions.

One of the problems associated with the 1986 Human Rights Resolution was that no definitions were provided and it did not tie any of the issues to international law. This, of course, created immense loopholes and left the 1986 Resolution open to the floating definition problem. Therefore, we felt it was important to tie the document to current international law AND (not or) domestic law.

The definition of "torture" is specific in the resolution. It uses the definition of torture as defined by the U.N. in the Convention Against Torture. There is no qualification for this item; no reference to U.S. reservations. It stands in the resolution as written under international law without alterations. Additionally, it is not just referenced in the Resolution but quoted, thus codifying that definition within the Resolution. The definition accepted by APA as policy is as follows:

[T]he term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted upon a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official [e.g., governmental, religious, political, organizational] capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions [in accordance with both domestic and international law]

The definition of "cruel, inhuman, or degrading" is taken from the McCain Amendment. This definition was included in the Justification Statement, which accompanied the Draft Resolution provided to all Council members prior to the Convention. Concerns about a lack of definition in the actual Resolution were rightly raised at Council and so we added it directly from the Justification Statement to the Resolution; indeed, strengthening the Resolution, which was passed unanimously by Council including previous Council Representatives who were co-sponsors of the resolution.

The McCain Amendment does indeed reference U.S. Reservations. Declarations and Reservations are statements that accompany almost all (if not all) UN Conventions, Declarations, etc. The Convention Against Torture (CAT) Declarations and Reservations page can be found at <http://www.unhcr.ch/html/menu2/6/cat/treaties/convention-reserv.htm>. These are normal for UN international documents and as you can see many countries add such declarations and reservations, in some cases strengthening omissions in the documents.

Unfortunately, the CAT does not provide a definition of "cruel, inhuman, or degrading." The definition contained in the U.S. statements in the Declarations and Reservations to the CAT is the only reference to any definition of "cruel, inhuman, or degrading" in any international document. We chose this definition as it is codified in international law and also is now codified in domestic law via the McCain Amendment. McCain selected that definition precisely because it is codified in international law and would thus, be very difficult to change.

By providing a definition in the Resolution, specifically one grounded in the Declarations and Reservations statements, we actually provide a standard that is higher than the CAT without the Declarations and Reservations. As the CAT itself provides no definition, it is highly subject to the floating definition problem. There are many areas around the globe where prisoners, women, children, elderly, etc. are being abused and it is simply not defined by the particular country as "cruel, inhuman, or degrading." Rather what we would most likely define as abuses, atrocities, and horrors are defined as normative within that country or culture. Without a legal definition and without the declarations and reservations, the CAT alone provides little guidance in the area of "cruel, inhuman, or degrading."

As with the definition of torture, we did not simply reference the McCain Amendment definition but quoted it and codified the

definition within the resolution. Specifically, this definition, citing both the McCain Amendment and the CAT, ties as APA policy the definition of "cruel, inhuman, or degrading" to the the 5th, 8th, and 14th Amendments of the U.S. Constitution. As such, this definition is now part of APA policy as it is written into the Resolution and not subject to change. Indeed, to lower the standards as they are explicated in the Resolution, one would need to rewrite three Amendments to the U.S. Constitution as well as recraft the CAT.

We would note also that we elected to make the torture and CIDTP definitions separate "Be It Resolved" statements to avoid any potential confusions or misapplications of the U.S. reservations in relation to the definition of torture. Thus, to reiterate, the definitions as clearly provided in the Resolution are not subject change due to their codification as written in APA policy. To change the definitions or to make them more fluid would require a new resolution. While there may be some who may not like the fact that the definitions of both "torture" and "cruel, inhuman, or degrading" are tied to BOTH international AND (Not OR) domestic law, such links strengthen the Resolution and prevent problems associated with unique policy changes in definitions and weakening of human rights standards.

As psychologists, we know that human rights are inalienable and every individual possesses inherent worth and dignity. As psychologists, we know that human rights violations cause significant and lasting harm to individuals and their families. As psychologists, we know that when human rights abuses are institutionalized, our social fabric is torn causing harm to all—victims, perpetrators, bystanders, and communities. Finally, as psychologists, we also know that psychological knowledge can be, but NEVER SHOULD BE, misused for the purposes of torture and other cruel, inhuman, or degrading treatment or punishment. With that knowledge, the Society for the Study of Peace, Conflict, and Violence worked diligently and in collaboration with many others including human rights scholars to draft and then pass the 2006 APA 2006 Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

Please feel free to contact us if you have any additional questions.

Best wishes,

Judy Van Hoorn
Corann Okorodudu
Linda M. Woolf

Drs. van Hoorn and Okordudu,

Dr. Koocher and Behnke have both referred me to you as the appropriate one to pose some questions. I have read with great interest the recent APA resolution against torture and other cruel, inhuman, or degrading treatment. I have a couple of questions about this resolution I would like clarified.

"BE IT RESOLVED, that the term "cruel, inhuman, or degrading treatment or punishment" means treatment or punishment by any psychologist that is of a kind that, in accordance with the McCain Amendment, would be prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984. (see, Footnote 3 below)"

My understanding is that this paragraph was not present in the "Final Draft" circulated among co-sponsors a few days before the Council meeting and that it was changed at the last minute. Do you know how this paragraph got into the resolution? Who proposed it? Was it agreed to be all sponsors and co-sponsors? If not, why not? It seems way beyond a matter of clarification of wording in its profound influence on the meaning and impact of the resolution.

2. This paragraph in the Resolution refers to "United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment." Why was this included?

a. Which reservations are included? I see two that could apply. One is

"That the United States considers itself bound by the obligation under article 16 to prevent 'cruel, inhuman or degrading treatment or punishment', only insofar as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States."

The other potentially relevant Reservation is:

"(a) That with reference to article 1, the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality."

I would like to clearly understand whether one or both of these Reservations applies to the APA resolution and the definitions in it. as I read them these reservations significantly reduce the meaning of this resolution. The first clause explicitly negates all international laws, treaties, and understandings regarding the meaning of 'cruel, inhuman or degrading treatment or punishment' in restricting it solely to what is recognized under US domestic law. As we are all perfectly aware, the United States under this administration has systematically moved to restrict the definitions of torture and of 'cruel, inhuman or degrading treatment or punishment' to the most extreme behaviors imaginable and has argued repeatedly that the actions taken in Guantanamo, Baghram, Abu Ghraib, etc., were perfectly legal. It would appear that the APA has now said that the definition of proscribed behaviors for psychologists depends upon the results of this debate and not upon international law and understandings. Why?

If the second clause from the U.S. Reservations applies, it explicitly excludes from the definition of torture most of the three "psychological torture" techniques that are precisely in question. If so, why was this done? If this clause was not intended to apply, shouldn't we have an explicit statement so that no one accused of ethics violations could claim otherwise.

Thanks so much for any clarification you can provide.

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"Outside of a dog, a book is a man's (and woman's) best friend. . . .
Inside a dog, it's too dark to read."
- Groucho Marx