

June 12, 2015

David,

I would like to follow-up on several things we discussed on Monday. Thank you for reviewing these materials. For ease of reading, I have listed my points.

1. You stated that when a moratorium resolution arose, APA found a “middle way” so as to avoid a moratorium on psychologists’ involvement in interrogations. You identified the petition that was circulating in 2006 and Neil Altman’s moratorium resolution as two examples. These middle ways fashioned by APA are positions now widely considered essential aspects of APA’s position on interrogations.
2. Regarding the event at the Wright Institute in Berkeley, CA, and its role leading up to the 2007 resolution prohibiting specific interrogation techniques, there is a tab in the notebook that gives a detailed history of this event in a correspondence between Neil Altman and me. (attachment 1) Gilbert Newman is the person who organized the event.

I note in this correspondence to Neil Altman and Brad Olson that Brad, a vocal critic of APA, has conveyed to me in conversation that he is “very ambivalent” about a list approach.

3. You identified correspondence with Morgan Banks as indicating my interest in knowing whether Banks saw problematic issues in APA texts. You indicated that, at the time, Banks was not an APA member. I also had extensive interactions with individuals from Physicians for Human Rights, and in preparation for the 2007 resolution prohibiting specific techniques of interrogation, took language directly from PHR correspondence. (attachment 2) In addition, APA supported PHR’s position on a number of initiatives. (attachment 3, in which APA President Gerry Koocher signs onto a 2006 call with PHR for a prohibition against specific abusive CIA tactics.) My email messages show me interacting with a wide range of individuals from various perspectives on this issue. In my correspondence, I continually emphasize that, despite differences among APA members on the issue of interrogations, our areas of agreement are greater than our areas of disagreement. (Attachments 2 and 4) Correspondence with Linda Woolf, Laurie Wagner, Corann Okorodudu, Judy Van Hoorn, and others consists of extensive discussions regarding specific language for resolutions (attachment 5), and I work with Laurie Wagner to draft a joint correspondence regarding the 2007 resolution (attachments 6 and 7) which gets shared with the media. (attachment 8) Correspondence with Morgan Banks must be placed in the context of my correspondence with many individuals, in particular during the resolution drafting processes.

4. Regarding my relationship with Banks, the Senate Armed Services Committee adopts language from Banks' email correspondence nearly verbatim in its conclusions. (attachment 9) Banks' position is consistent throughout the entire time I interact with him: Using reverse-SERE tactics in interrogations is ineffective, not safe, unethical, and likely illegal. The policy governing the role of behavioral science consultants that Banks drafts clearly precludes the use of reverse-SERE tactics in interrogations.
5. In our discussion on Monday, you mentioned the footnote in the memo written by the behavioral science consultants. The Senate Armed Services Committee explicitly identifies this footnote to refute the JAG's (Diane Beaver) analysis. The JAG's analysis was consistent with the Bybee memos. The BSC memo directly contradicted the Bybee analysis. The Senate Armed Services Committee stated:

The October 2, 2002 BSCT memo, however, had specifically cautioned that the techniques 'could affect the short term and/or long term physical and/or mental health of the detainee...[and that] physical and/or emotional harm from the...techniques may emerge months or even years after their use.' (Attachment 10)

The fact that the footnote was removed from the memo is an indication that those who supported abusive interrogations did not want the footnote in the memo.

6. Regarding use of the word "coercion," please see three attachments (attachments 11, 12 and 13) in which Len Rubenstein and Linda Woolf communicate to me their view that using "coercion" is problematic. Len Rubenstein writes in March of 2006 "our own thinking has evolved and I agree that coercion doesn't work as a standard." He writes in April of 2006, "the use of the term "coercion" has evolved: it is both undefined legally and vague behaviorally." Linda Woolf writes in July of 2006, "The Convention includes coercion which is a whole new can of worms" and suggests putting off a discussion of coercion, since that discussion "could potentially halt any progress on a resolution concerning torture and other cruel, inhuman, or degrading treatment or punishment."

Critics of APA were not entirely uniform in their positions on whether to use "coercion" and on whether to specify prohibited techniques.

Behnke, Stephen

From: Leonard Rubenstein <LRubenstein@phrusa.org>
Sent: Friday, March 10, 2006 5:54 PM
To: Behnke, Stephen
Subject: RE: PHR comments

✓ Steve,

Happy to talk some more -- just quickly to let you know that our own thinking has evolved and I agree that coercion doesn't work as a standard. In comments we recently submitted to AMA, we agreed with you that coercion was not a proper standard, since all interrogations are designed to cause some physical or mental harm to people -- anxiety, fear, depression -- and given the strong ethical tradition, in medicine anyway, of doing no harm, there should be no role whatsoever for physicians in interrogation. In reviewing the dual loyalty analysis, moreover, we found that socially permissible breaches of loyalty to patients never involved direct infliction of physical or mental harm on them to serve a social purpose. Prohibition on participation in executions is a good example -- after all, it's both legal and considered moral by the society -- but doctors still can't participate.

Putting people in legal jeopardy is a different matter entirely.

The tradition of doing no harm may not be as strong in psychology, but the spirit of the ethical standards seems to be the same, and wrinkle about the extensive role of psychologists in evaluations for child custody etc is not germane -- and once again, there is a huge difference between pain inflicted for therapeutic purposes and for other purposes.

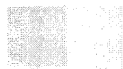
That's my view at this point -- it seems to get at the heart of the role and values of the profession.

Re getting together, next Thursday is best, though lunch probably won't work. Late pm is best -- Cosi again?

Take care.

Leonard S. Rubenstein
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PHR



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April 6, 2006

Stephen Behnke, J.D., Ph.D., Director of Ethics
American Psychological Association
750 First Street, NE
Washington, DC 20002

Dear Dr. Behnke,

Thank you for giving PHR the opportunity to respond to the questions you raise in your letter of March 29, 2006. You raise some important issues and we will try to shed some light on our thinking on these questions.

Question 1: British Psychological Definition of Torture vs. UN Convention Against Torture

Your first query concerned the reference in our commentary to the PENS report to the definition of torture in The Declaration by the British Psychological Society Concerning Torture and Other Cruel, Inhuman, or Degrading Treatment. You asked why we recommended this definition rather than the one in the UN Convention Against Torture.

I should say at the outset that we are very pleased that the committee is looking at internationally accepted definitions of torture, since, as you know, the PENS Task Force could not reach agreement that international human rights standards should govern at all. The Council addressed this concern to a degree last August when it suggested amending Ethical Standard 1.02 to include "basic principles of human rights" among the standards to be used for resolving conflicts between ethics and law. I also wish to reiterate our view, elaborated in our prior correspondence, that psychologists' ethical obligations go beyond the avoidance of torture or cruel, inhuman or degrading treatment.

Like the APA, the British Psychological Society explicitly endorses the international Convention Against Torture in its Declaration Concerning Torture and Other Cruel, Inhuman and Degrading Treatment.¹ We read the BPS Declaration's definition of torture as derived from the one provided in the Convention against Torture. The key definitional words are identical – the deliberate infliction of physical or mental suffering (the Torture Convention reads "pain and suffering" rather than "suffering," and the APA may wish to reiterate the word "pain" when referring to the Convention definition; we do not, in any event, read the omission of the word "pain" from the BPS definition to be significant). At the same time,

¹ The APA's 1986 Resolution Against Torture and Other Cruel, Inhuman or Degrading Treatment endorses the Convention.

the particular strength of the British Psychological Society definition is that, in addition to the general statement, it provides illustrative examples of the kind of practices that amount to torture: "threats, insults, sexual, religious or cultural degradation or degrading treatment of any kind."

Thus, we see no tension between the two definitions; the BPS version simply supplies illustrations that can provide useful guidance to psychologists. In this connection, the committee may also wish to refer to the definition of mental torture in U.S. law enacted to implement the provisions of the Convention relating to the criminalization of torture since that phrase that is not specifically defined in the Torture Convention. The definition of mental torture in U.S. criminal law is as follows:

As used in this chapter—

(1) "torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

(2) "severe mental pain or suffering" means the prolonged mental harm caused by or resulting from—

(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

(B) 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;

(C) the threat of imminent death; or

(D) 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.²

We think section 2(B) is especially significant in its reference to procedures calculated to disrupt profoundly the senses or the personality. The techniques listed in our commentary under Statement 1 were intended to help identify interrogation methods that meet this standard as well as the prohibition on cruel, inhuman and degrading treatment. Because the list is illustrative and not exclusive, and guidance to psychologists is so important, we sought to characterize them in operational terms, and have suggested that psychologists should not in any way assist or support the use of techniques that "1) the psychologist has reason to believe will cause prolonged negative health or mental health consequences; or 2) is intended to or does result in increased levels of distress." This provides psychologists with concrete guidance based on their knowledge rather than having to make decisions about what the law requires.

Question 2: Definitions of the Phrase, "Cruel, Inhuman and Degrading"

The meaning of "cruel, inhuman or degrading treatment or punishment" is well established. The term is used frequently in international treaties, US military guidance, and elsewhere and has been extensively interpreted in specific cases by reviewing bodies including the UN's

² 18 U.S. Code § 2340.

Committee Against Torture, the UN Special Rapporteur on Torture, the US State Department annual Country Reports, and decisions by judicial bodies such as the European Court of Human Rights. In the United States, where Congress has interpreted "cruel, inhuman and degrading treatment" to have the same meaning as "cruel and unusual punishment" under the 8th Amendment, many judicial decisions have interpreted the phrase. We review these interpretations as applied to certain practices in Chapter VI of PHR's report, *Break Them Down*, which may serve as a useful reference guide for the Committee's discussions.

Thus, this term, like psychological torture, provides solid guidance for identifying prohibited interrogation practices. Having said that, we agree, as we explain in the preceding section, that psychologists need still more exacting and operational guidance in order to protect them from violating their ethical duties – and behaviorally-based rules and examples are helpful in this regard. It is for this reason that our thinking on the use of the term "coercion" has evolved: it is both undefined legally and vague behaviorally.

In our March 15 letter, therefore, we propose a straight-forward standard derived from the fundamental ethical duty to avoid causing harm: we urge that, however torture and cruel, inhuman and degrading treatment may be defined as a matter of law, psychologists may not ethically participate in national security-related interrogations of individuals because of the inherently stress-inducing nature of the interrogation process; nor, of course, may psychologists ethically offer general advice that may be used to increase levels of distress.

Question 3: Participation of Psychologists in Training Interrogators in Building Rapport

We have emphasized our belief that ethical concerns regarding interrogation should be based fundamentally on whether a psychologist's conduct contributes to increased levels of distress or harm. Providing interrogators particularized information or advice regarding an individual detainee violates that ethical standard, we believe, because it contributes directly to – and exacerbates – an inherently stressful and harmful process. Providing general advice about ways to increase levels of distress and harm, of course, violates that standard, as well.

Providing general training and advice regarding rapport-building strategies, however, is qualitatively different. The general nature of the guidance distances and insulates it from individual interrogations, helps assure that they will be lawful, and precludes the disclosure of any particularized knowledge of a subject's psychological health or condition or individualized advice about interrogation techniques in the moment. Moreover, given its very nature, rapport-building advice, when fire-walled from individual interrogations, will not itself contribute to harm. In contrast, a psychologist's participation in an individual interrogation, even if intended to promote rapport, always raises the possibility – sometimes in ways beyond the psychologist's control – that his or her particularized knowledge and advice will be used to increase distress or harm to a subject. This concern is described in more detail in the March 15 letter, along with the related problem that a psychologist's mere presence in, or observation of, an individual interrogation can lead to the unintended sanctioning of torture or cruel, inhuman or degrading treatment, regardless of the psychologist's stated purpose for participating. For these reasons, we believe that general advice and training on rapport building should set the outer limit of the psychologist's ethical role in interrogation in the national security setting.

Stephen Behnke, J.D., Ph.D.
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Thank you once again for the opportunity to share our views with the Committee. If you or the Committee have additional questions, please do not hesitate to contact me. It would be a pleasure to continue this dialogue, either in writing or in person, as long as it is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Leon S. Rubenstein". The signature is fluid and cursive, with the first name "Leon" and last name "Rubenstein" clearly distinguishable.

Leonard S. Rubenstein

Behnke, Stephen

From: Linda Woolf, Ph.D. <woolfm@webster.edu>
Sent: Tuesday, July 11, 2006 1:42 PM
To: Behnke, Stephen
Cc: Corann Okorodudu; Judith Van Hoorn; oms@parkschool.org; G. Andrew H. Benjamin, J.D., Ph.D.; Doughaldeman@aol.com; Farberman, Rhea
Subject: Re: Revised Resolution on Torture and Other CIDT

Hi All,

Behnke, Stephen wrote:

Also, please note the WONDERFUL WASHINGTON POST HEADLINE THAT CAME OUT AT
10:21 AM:
U.S. Will Give Detainees Geneva Rights

I saw that last night. Of course, as noted in the one of the articles I read, this is not (place tongue in cheek here) a change in the President's policies in relation to Guantanamo Bay.

Linda has done a FABULOUS job of putting together all the UN/Human rights materials.

Thanks. I went ahead and added the Geneva Convention related to treatment of prisoners to the web page. We don't reference it, but if folks are interested, it is there.

The Geneva Convention is far more restrictive than anything we have written. It states:

◁No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.

✓ The Convention includes coercion which is a whole new can of worms. For example, "we will give you better food if you provide information." Is this coercion? Can any form of lying or deception be used or is this a form of coercion? One of the reasons I argued against the inclusion of the Geneva Convention in the resolution is that coercion is part of most interrogations throughout the States and quite legal. Individuals may be quite correct that psychologists should not be involved in any form of coercive interrogation. Nonetheless, I think that is a discussion for another day and could potentially halt any progress on a resolution concerning torture and other cruel, inhuman, or degrading treatment or punishment.

Best wishes,

Linda