

*A briefer version of this response will appear in Psychiatric Times.*

I am writing to correct a number of erroneous statements in the essay, “The American Psychological Association & Detainee Interrogations: Unanswered Questions,” (*Psychiatric Times*, Vol. 25, No. 8), by Kenneth S. Pope, PhD, and Thomas G. Gutheil, MD. I have enormous respect for Dr. Pope, whose writings I have studied for my entire professional career, and for Dr. Gutheil, with whom I had the opportunity to work for several years in Harvard’s Program in Psychiatry and the Law. Their essay, however, significantly mischaracterizes the work of the American Psychological Association (APA) on an issue that APA and Drs. Pope and Gutheil all view as raising complex ethical questions.

The authors correctly state that APA and the American Psychiatric Association differ on the issue of member involvement in interrogations. According to the American Psychiatric Association position statement, psychiatrists should not be involved in interrogations even if the purpose is “identifying other persons ... who may be planning to commit acts of violence.” According to APA, it is ethical for psychologists to consult to interrogators in order to prevent acts of violence. This fundamental difference sets our two associations apart on this issue.

As the authors indicate, the American Psychiatric Association voted “to discourage its members from participating in any interrogation activities.” Also relevant, and not mentioned in the authors’ essay, is that on the day the American Psychiatric Association published its position statement, the Psychiatric Association’s then-president stated that the position is not “an ethical rule” and that military psychiatrists following orders “wouldn’t get in trouble with” the American Psychiatric Association.

In characterizing the psychologists’ position, the authors assert—incorrectly—that APA’s prohibition against torture is somehow not enforceable under APA’s Code of Conduct. APA’s Ethics Code absolutely prohibits torture and cruel, inhuman and degrading treatment and punishment, as the Ethics Committee itself asserted in 2005. It would belie common sense and any respect for humanity for a health professionals’ code of ethics not to prohibit torture. APA’s Ethics Code does.

The authors’ provocative and misleading references to the Nuremberg trials and the September 11 terrorist attacks neither deepen nor advance our discussion of the complex ethical challenges that face APA and its members. First, there is no “superior orders” defense to torture under the APA Ethics Code. APA has publicly, emphatically and repeatedly stated that following orders is never a defense to participating in torture. APA’s position is based upon Article 2 of the U.N. Convention Against Torture and states:

BE IT RESOLVED that the American Psychological Association affirms that 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

Following orders can *never* justify or excuse torture or cruel, inhuman, or degrading treatment or punishment. APA has emphasized this point repeatedly in communications to U.S. government officials and the public. APA Ethics Committee Chairs have been clear that statements adopted on this issue by APA's governing body, the Council of Representatives, are enforceable under the APA Ethics Code.

Second, the authors' implication that the drafting and adoption of ethical standard 1.02 bore any relation to the September 11 terrorist attacks is false. The relevant aspect of standard 1.02, on conflicts between ethics and law, was drafted in the fall of 2000 and circulated for comment prior to September 11. Contrary to what the authors imply, standard 1.02 has no connection whatsoever to the events of September 11, 2001. Moreover, this standard was written largely in response to conflicts regarding confidentiality, arising most often when courts issue subpoenas for psychologists' records (e.g., psychological test data), usually in custody disputes. The drafters of the Ethics Code revision did not believe psychologists in such a situation should be caught in a bind between a court and a licensing board or an ethics committee, and therefore concluded that psychologists should be able to follow a valid court order were the psychologist's attempts to resolve the ethics/law conflict unsuccessful. Confusion regarding rules that govern the release of relevant data would also be detrimental to clients' interests; uncertainty regarding a psychologist's obligations in this context would hinder expeditious resolutions of clients' legal matters. Standard 1.02 provides a defense to releasing confidential information in response to a legal mandate. The standard provides *no* defense to participating in torture.

Third, civil disobedience remains entirely consistent with ethical standard 1.02. APA's 2007 resolution—which The Washington Post deemed a “rebuke” of the Bush administration's interrogation policy—explicitly affirms the prerogative of psychologists to engage in civil disobedience under the APA Ethics Code. The resolution then goes on to endorse civil disobedience specifically in the context of military interrogations:

BE IT RESOLVED that the American Psychological Association, in recognizing that torture and other cruel, inhuman or degrading treatment and punishment can result not only from the behavior of individuals, but also from the conditions of confinement, expresses grave concern over settings in which detainees are deprived of adequate protection of their human rights, *affirms the prerogative of psychologists to refuse to work in such settings, and will explore ways to support psychologists who refuse to work in such settings or who refuse to obey orders that constitute torture* [emphasis added]

A review of the history of the APA Ethics Code reveals attempts to incorporate both adherence to the law—as former codes have required—and ample room for civil disobedience, as the current code provides. Critics may reasonably argue that the Code should have language that is clearer and more explicit in its support for civil disobedience, and the APA Ethics Office has reached out to numerous individuals and groups, including Dr. Pope, in order to ask for examples of specific revision language for standard 1.02. Claims that the current Ethics Code moves away from APA's ethical moorings, however, are simply inaccurate. Moreover, a review of other national and

international health and mental health codes of ethics indicates that many associations, like APA, have language that allows but does not require civil disobedience.

Fourth, the matter of torture aside, the reference to the Nuremberg trials is wholly inapt in reference to the APA Ethics Code. The defense of “just” following orders refers to an abdication of moral responsibility, a failure to engage in the moral struggle that arises when ethics and law conflict. Whereas the Nuremberg tribunal rejected the Nazi physicians’ attempt to avoid responsibility because of “superior orders,” the APA Ethics Code places an affirmative ethical duty on members of the American Psychological Association to make known their commitment to the Ethics Code and to attempt to resolve the conflict. For a defense under standard 1.02 to succeed, a psychologist must be able to demonstrate having taken these affirmative steps.

All the aspects of APA’s position discussed above stand in conjunction with other ethical requirements for psychologists’ involvement in interrogations, such as the duty to intervene to stop torture or abuse; the obligation to report torture or abuse; and, perhaps most important, the absolute prohibition against mixing the roles of health care provider and consultant to an interrogation. Moreover, the APA has also called on the U.S. judicial system to reject testimony derived from torture or cruel, inhuman or degrading treatment or punishment.

The authors underscore a critically important question regarding the effects of involvement or non-involvement of psychologists in interrogation processes. A profession based upon science seeks data. The current situation is characterized by a paucity of data relevant to the effects of psychologists’ involvement in interrogations, so we must make the best decisions we can, given what data we have.

The authors make reference to data indicating the involvement of psychologists in developing abusive interrogation techniques. APA has repeatedly asked for information that addresses the involvement of psychologists in torture or abuse, and carefully reviews relevant material that is introduced into the public domain, for example during congressional hearings. The names of two non APA member psychologists have been discussed on numerous occasions in the media as having been significantly involved in the development of abusive interrogation techniques. The involvement of a single psychologist in torture brings shame upon our entire profession.

In terms of developing Association policy, we must consider *all* data points. The authors, however, entirely ignore data pointing to the role of psychologists who have used their professional positions to fight abuse. One stellar example is found in “The Dark Side,” in which book author Jane Mayer reports that a psychologist and American Psychological Association member took heroic steps to fight abuse at Guantanamo. Another example of psychologists working against abuse is found in unredacted portions of a government report recently obtained by the American Civil Liberties Union, which the authors characterize as showing the involvement of psychologists in illegal interrogations. A careful read of the actual report reveals a very different story: The single psychologist whose behavior is discussed is in fact described as *intervening to stop* an abusive interrogation and calling in medical personnel to evaluate the detainee.

On a closely related matter, another American Psychological Association member is leading a project demonstrating how research does *not* support the use of abusive interrogation techniques. There is widespread agreement, including among human rights groups, that the revised U.S. Army Field Manual, published in 2006, represents a significant and positive improvement in the rules that govern Department of Defense interrogations. Among the community of individuals well-versed in interrogation techniques, such as those who have assisted APA in developing its policies, there is consensus that torture is unethical, illegal, and ineffective in eliciting accurate information. This thinking is reflected in APA's position.

APA's position on interrogations flows from an informed and thoughtful debate that has continued more than three years and has been the subject of focused attention from the Council of Representatives in its twice-yearly meetings. Our members have passionate feelings on this issue and APA has ensured that all voices and perspectives have been part of our dialogue. In the final analysis, psychologists all share the same goals: To end all forms of violence, including torture and abuse, and to safeguard the welfare and human rights of everyone with whom we work.

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