

## 11. Mind, the Gap

After September 11, 2001, and the subsequent invasion of Afghanistan and Iraq, the Bush administration initiated an aggressive program of interrogating detainees. Some “enhanced” interrogation techniques struck critics as inhuman treatment or torture. Methods included forced standing, sleep deprivation, exposure to cold, waterboarding, and threat of harm from dogs. In conducting such interrogations, interrogators sought the services of psychologists, psychiatrists, and medical doctors.

The Code of Medical Ethics, promulgated by the American Medical Association and accepted by the American Psychiatric Association, strictly forbids doctors to participate in any way with torture, since that practice runs counter to the primary stricture to “do no harm.” In 1999, the Council on Ethical and Judicial Affairs had issued Opinion E-2.067 (which still applied), which says, in part, “[p]hysicians must oppose and must not participate in torture for any reason. Participation in torture includes, but is not limited to, providing or withholding any services, substances, or knowledge to facilitate the practice of torture. Physicians must not be present when torture is used or threatened.” Furthermore, “[p]hysicians may treat prisoners or detainees if doing so is in [the prisoners’] best interest, but physicians should not treat individuals to verify their health so that torture can begin or continue.”

The Code of Ethics for the American Psychological Association (APA) advises its members to seek to “safeguard the welfare and rights of those with whom they interact professionally and other affected persons.” Clearly, the values expressed in the code conflicted with the requirements placed on psychologists by interrogators. To remedy this conflict, in 2002, the APA amended section 1.02 of the Principles of Psychologists and Code of Conduct, entitled “Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority” to read, “[i]f psychologists’ ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict. If the conflict is irresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority.” Thus, the code permits psychologists to set aside ethical considerations when these put them at odds with government or military interrogators.

Critics of the new wording say that the APA has abandoned the lessons learned during the Nuremberg Trials, particularly Principle IV, the which states, “The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.”

Defenders of the new wording insist that if psychologists do not attend interrogations they cannot influence or deter interrogators from going too far. They point to the need for an independent party to oversee the situation and perhaps act as an advocate for interest of the detainee.

In October, 2015, the ACLU filed suit on behalf of two surviving detainees and the estate of a deceased third against two psychologists, James Elmer Mitchell and John “Bruce” Jessen, who were allegedly “contracted by the CIA to design, implement, and oversee the agency’s post-9/11 torture program.” According to the ACLU, the plaintiffs are suing Mitchell and Jessen under the

Alien Tort Statute for their commission of torture; cruel, inhuman, and degrading treatment; non- consensual human experimentation; and war crimes.

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