

Developments that Threaten Forensic Psychology

Forensic psychology is the application of the science and profession of psychology to issues relating to the law. In this brief essay, I describe, in context, recent developments that threaten the existence of forensic psychology as it is practiced today – namely, the assertions by a small but vocal group that psychologists may not harm others or act without the consent of those who are affected by their actions. Next, I briefly comment on some ways these current trends threaten the practice of psychologists in other specialty areas. I conclude with a modest proposal for protecting our profession, clients, and society.

Brief History

About 10 years ago, several psychologists working in settings involved in special operations and national security met with representatives from the American Psychological Association (APA). They sought to obtain guidance on how they might apply the APA *Ethical Principles of Psychologists and Code of Conduct* to new and challenging situations. They created a Task Force to address many issues, including the proper roles of psychologists in interrogations. From their collaboration sprung 12 statements intended to facilitate the application of ethical principles to complex psychological issues pertaining to national security. The statements were unequivocal. Among them:

Psychologists do not engage in, direct, support, facilitate, or offer training in torture or other cruel, inhuman, or degrading treatment.... Psychologists who serve in the role of supporting an interrogation do not use health care related information from an individual's medical record to the detriment of the individual's safety and well-being.... Psychologists do not engage in behaviors that violate the laws of the United States, although psychologists may refuse for ethical reasons to follow laws or orders that are unjust or that violate basic principles of human rights.

Political activists, including some psychologists, spoke out against the statements shortly after their release. Following nearly a decade of steady and outspoken opposition, they influenced the APA to commission an independent review of its relationships with the Department of Defense (DoD) and Central Intelligence Agency (CIA). An attorney specialized in investigating corruption cases was appointed to conduct the independent review.

APA directed the attorney to address three questions: (1) Did the APA support the development of enhanced interrogation techniques? (2) Were changes to the Ethics Code or the formation of the Task Force the product of collusion to support torture or intended to support torture? (3) Was any APA action related to torture improperly influenced by government-related financial considerations? After the attorney and his team reviewed more than 50,000 documents and interviewed nearly 150 people, not one of these three questions was answered affirmatively. Rather, the team of attorneys explicitly stated they could not conclude that the APA had worked with the DoD or CIA with the "actual intent 'to support torture.'"

Going beyond the three initial areas of inquiry, however, the team of attorneys suggested that the relationship between the APA and DoD had grown too close. They stated that the APA had

“colluded” with the DoD to draft “loose” ethical guidelines in an effort to “curry favor” with the DoD. They offered this claim without providing substantive evidence that the APA had actually benefitted from the purportedly improper relationship.

Response to the Review

The attorneys’ conclusions were leaked to *The New York Times* by early July 2015. The APA responded swiftly. Rather than clarify false claims in and about the report’s findings, the APA responded by taking action against senior staffers who had been accused of wrongdoing. Those accused of wrongdoing were offered no opportunity to respond to the attorneys’ allegations.

In response to the attorneys’ report, a group of psychologists stepped forward to push the APA to arrange for a vote of the Council of Representatives at the APA convention in early August. Apparently equating all interrogation with torture, they proposed a resolution prohibiting psychologists from consulting to all interrogations conducted in the service of national security; they offered this proposal despite no findings that psychologists had engaged in improper conduct after the drafting of the purportedly loose ethical guidelines. It is noteworthy that, initially, the psychologists pushing for the resolution stated they had no intention of advocating for an end to interrogation consultation in domestic settings.

At the annual convention, proponents of the resolution next persuaded APA leadership to cast votes by individual voice rather than secret ballot; reportedly this was done out of fear that the government might influence the outcome by manipulating the electronic voting system. Based on an initial voice vote of 156-1, APA representatives adopted a policy prohibiting APA members from consulting to interrogations in the service of national security. Consistent with the proponents’ initial statements, consultation to domestic law enforcement interrogations was explicitly exempted from the new resolution.

In the wake of the vote, one of the resolution’s proponents was proclaimed by some as a national hero, and was recognized for her efforts to promote human rights. Another one of the proponents indicated the strides that had been made were a mere starting block; he conveyed his sights were set next on stopping psychologists from “abetting cruelty” in criminal justice settings. His statement is consistent with recently proposed legislation in some states, calling for psychologists to stop consulting to interrogations in domestic law enforcement settings.

During the month after the APA convention, in September 2015, a small group of political activists convened for three days to discuss the general practice of psychology in national security settings. No psychologist actively practicing in national security settings was listed as having attended, or as having been invited to attend, that meeting. Nonetheless, the attendees proposed a new set of ethical principles to guide the practice of psychologists working in national security settings.

A Narrow Interpretation of Psychological Ethics

This vocal minority coalition appears to view all activities outside of the traditional clinical role as unethical, espousing a radical position that departs extremely from current ethical standards

for psychologists. Their position proposes that the “core” principles of professional psychology include obligations to obtain informed consent and to “do no harm,” concepts that apply primarily to a doctor-patient relationship. They state that ethical “tension” arises when the “targets” of psychologists’ “interventions” (hereafter, “actions”) do not understand or are unaware of the purpose of the procedure, or when psychologists know targets of their actions could be harmed. As such, they seek to restrict the practice of psychologists in potentially adversarial settings.

On the surface, their narrow interpretation of acceptable practice seems reasonable. Clearly, ethical tension arises when the above-stated conditions are met. But ethical tension is ubiquitous within the profession of psychology; it is hardly synonymous with unethical conduct. To accept the simple proposition that the situations described above are inherently unethical, psychologists also must accept the conclusion that forensic practitioners, who routinely operate in adversarial contexts, commit ethical violations in their usual course of business. That conclusion is erroneous.

Several examples may clarify this issue. Forensic psychologists regularly conduct assessments of, and provide treatment to, mentally ill offenders in response to court order. Because their activities are directed by court order, the targets of their actions lack the ability to choose to participate – a key element that, when absent, precludes informed consent. Put another way, when assessment and treatment activities lack voluntariness, targets *cannot* provide valid informed consent. Yet court-ordered assessment and treatment serve important societal functions. Among other things, they help to ensure society (a) does not unfairly try incompetent defendants, (b) treats rather than punishes the criminally insane, and (c) protects itself from people who are mentally ill and dangerous. Preventing psychologists, i.e., behavioral science experts, from contributing to such matters would be, simply put, socially irresponsible.

Forensic psychologists act without obtaining informed consent in situations beyond those ordered by the court. Many forensic psychologists, for example, work in correctional settings, where inmates sometimes barricade themselves in their cells. In scores of institutions across the country, before inmates are “extracted” from their cells, psychologists are called upon to help operational staff members gain cooperation without the use of force. As in situations described above, the use of psychologists in these negotiations primarily benefits society rather than the target of action – in this case, by maintaining safe and orderly management of correctional institutions. It has the added benefit of reducing the likelihood that an inmate could be harmed if forcibly extracted by members of a disturbance control or special operations response team.

In the situations described above, the targets of the psychologists’ actions are usually fully aware of the involvement of psychologists. But other situations arise when forensic psychologists serve societal interests without notifying the targets of their actions. For instance, forensic psychologists help organizations assess risk posed by subjects who stalk or threaten third parties. They develop “profiles” of unknown subjects to help law enforcement apprehend criminals, and they help law enforcement develop interrogation strategies to reduce the likelihood that suspects will offer false statements. They assess violence risk of hostage-takers, sometimes influencing an incident commander to employ a tactical team to eliminate threats. They help agencies build institutions in ways intended to minimize risk of violence to staff members and vulnerable

inmates. They help attorneys select and persuade juries, and cross-examine opposing experts, in an effort to obtain outcomes favorable to their side. Ordinarily these are carried out without the consent or knowledge of the targets of those actions.

In some of the situations described above, unwitting targets of forensic psychologists' actions could be harmed, even killed. As a direct or indirect result of psychologists' contributions, criminals are apprehended, eventually leading to loss of liberty or even life. Alternatively, due in part to psychologists' contributions, defendants are freed because of persuasive argumentation, effective cross-examination, or favorable jury composition.

Two themes are common to the situations described above. First, psychologists clearly identify their clients before undertaking services. In the situations described above, the third parties are the psychologists' clients; the targets of the actions are not. Second, psychologists balance their efforts to avoid harm with other weighty interests – namely, their responsibilities to society and the specific communities with whom they work, along with their commitments to justice, fairness and integrity. Failing to consider these competing values is, itself, a decision rife with moral implications. Hostage-takers kill victims. Incompetent defendants are tried. Insane defendants are punished. Violent criminals evade capture and prosecution.

Further Restrictions on Practice

If psychologists accept the narrow view that their roles are restricted to those defined by a vocal minority, then the nature of psychology – a discipline that from the outset has existed to understand, predict, and control human behavior – will be fundamentally distorted. The logic used to alter the professional obligations of psychologists could extend to specialty areas well beyond operational and forensic psychology. As examples:

- A health psychologist counsels a pregnant woman who is contemplating abortion. The consultation contributes to the woman's choice to terminate the pregnancy. The target of the action, the fetus, is unaware of the intervention. Yet the life of the fetus is terminated as a result of the counseling intervention, an act expressly prohibited by the Hippocratic Oath.
- An organizational psychologist is retained to prepare a firm for a pending negotiation with a competing firm. The psychologist generates personality profiles of the competing firm's leaders in an effort to inform negotiation strategies. The targets of the action, the competing firm's leaders, never give informed consent. As a result of the psychologist's work, the competing firm's leaders are harmed by receiving less money from the deal than they otherwise might have obtained.
- A counseling psychologist suspects the husband of her client has physically abused their daughter. The psychologist reports the abuse to law enforcement. This leads to the arrest of the man, the target of the action, who never had an opportunity to provide informed consent.

- A police and public safety psychologist uses guided imagery to help officers shoot their service weapons more accurately and precisely. This ultimately results in the loss of life of a citizen who posed a grave threat to the officer. That is, the psychologist's actions contributed to the death of a third party who never consented to the initial action.
- A national security psychologist helps counterintelligence professionals to identify personality characteristics of a potential foreign intelligence service operative, or spy. After the spy is apprehended, the psychologist consults to government officials who are interrogating him. The spy, who never gave consent, is eventually "harmed" when sentenced to a lengthy term of confinement.
- A neuropsychologist reviews a claimant's medical file at the request of a private insurance company. She does this without seeking consent of the claimant. Based on her file review, she suspects the claimant of malingering. She reports her findings to the insurer, who discontinues the claimant's benefits, harming him, after another psychologist opines he is malingering.

As these examples illustrate, psychologists do not exclusively fill healthcare roles that benefit an individual patient. Instead, psychologists routinely engage in a wide range of activities without the awareness of, and without obtaining informed consent from, the targets of their actions. A good number of psychologists' contributions certainly are aimed at helping individual patients. Other psychologists' contributions, however, necessarily harm individuals while benefitting society as a whole.

Correcting Course

The science and profession of psychology, at its core, is used to improve the human condition. This is accomplished in many and diverse ways. It occurs in psychotherapy offices, where psychologists strive to alleviate an individual's distress and enhance an individual's functioning. It occurs in other contexts as well, where psychologists contribute to a just and safe society.

Seemingly emboldened by the APA's recent decision to prohibit its members from consulting to interrogations conducted in the service of national security, proponents of the resolution now appear poised to lobby for a redefinition of the practice of psychology, whereby a single biomedical ethical principle (do no harm) and a single legal concept (informed consent) are set above other important ethical principles and legal concepts. If ignored, this push to narrow the practice of psychology will reach the point that the individual "on the couch" is the only potential client. For some, that is acceptable and welcome. For most, it is unacceptable and undesirable.

The profession as a whole seems to have grown tired of this issue. Indeed, APA leadership has, thus far, failed to meaningfully contend with evidence that contradicts the major allegations raised by the attorneys' report. Others seem content with ignoring the recent resolution's proponents, branding them and this issue as insignificant; after all, to date the resolution's proponents have targeted only a small group. But the resolutions' proponents have already sought to influence other areas. And if the leaders of specialty areas fail to recognize the

potential impact of some of these pending proposals, the profession as a whole will lose some of what it has fought so hard to win, and society will lose countless benefits that psychologists, as behavioral scientists, can offer.

In the near future, the profession of psychology will face decisions that could have long-term and wide-reaching negative consequences, revisions to the Ethics Code. Decision-makers will do well to flesh out potential consequences with the most critical stakeholders; this includes highly specialized practitioners in the settings at hand, not just psychologists who are outspoken and persistent. Ensuring that the Ethics Code does not prohibit consultation to national security interrogations or other adversarial situations will be the first step toward keeping a small but vocal group from redefining the profession of psychology as a whole.

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Citation: Neller, D. (2016). Developments that threaten forensic psychology. *The Specialist*, 36(1), 30-34.