Lies And Coercion: Why Psychiatrists Should Not Participate in Police and Intelligence Interrogations

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Police interrogators routinely use deceptive techniques to obtain confessions from criminal suspects. The United States Executive Branch has attempted to justify coercive interrogation techniques in which physical or mental pain and suffering may be used during intelligence interrogations of persons labeled unlawful combatants. It may be appropriate for law enforcement, military, or intelligence personnel who are not physicians to use such techniques. However, forensic psychiatry ethical practice requires honesty, striving for objectivity, and respect for persons. Deceptive and coercive interrogation techniques violate these moral values. When a psychiatrist directly uses, works with others who use, or trains others to use deceptive or coercive techniques to obtain information in police, military, or intelligence interrogations, the psychiatrist breaches basic principles of ethics.

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Direct or indirect participation of a psychiatrist with police, military, or intelligence personnel when interrogators use deception or psychological or physical coercion violates basic principles of ethical forensic psychiatric practice. Such involvement leads our profession down the slippery slope of designing, endorsing, and participating in deceptive techniques and psychologically and physically damaging acts.

Police Interrogations

In 1936 in *Brown v. Mississippi*, a confession was found admissible in state court, even after presentation of undisputed evidence that the defendants were "made to strip," and "were laid over chairs and had their backs cut to pieces with leather strap and buckles. . . ." They were told by deputies that the whippings would be continued unless and until they confessed. The United States Supreme Court voided the convictions under the due process clause of the Fourteenth Amendment and explicitly outlawed confessions extracted when the police use "violence and brutality."[1]

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Since then, however, appellate court decisions have repeatedly found that it is acceptable for police to use artifice, deception, trickery, or fraud during the course of an interrogation.[2] These are all, of course, euphemisms for lying. The *Miranda* decision limits police deception when police explain *Miranda* rights to subjects and attempt to obtain a waiver.[3] However, once the police obtain a valid waiver, and absent any expressed invocation of the right to silence or to counsel, the requirements of *Miranda* do not prevent the police from using almost any deceptive tactic.

Gaining psychological control over a suspect is the critical element used by police in obtaining a confession. The "interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner."[3] Multiple texts describe how police exercise such control.[4–10] Perhaps the best known method is the so-called Reid technique, first described in the 1940s by John E. Reid. Current proponents of the Reid technique admit many of the techniques involve "duplicity and pretense," which they argue are "indispensable to the criminal justice process." Such techniques include exaggerating the strength of evidence; playing good cop, bad cop; telling the suspect an eye witness to the crime exists when none does; falsely telling a suspect that accomplices still at large have given statements against

them; using minimization techniques where the investigator lulls a suspect into a false sense of security by offering sympathy tolerance and moral justification; using scare tactics and intimidation by overstating the seriousness of the charges; and offering to cut a deal when police have no power to do so.[11] Proponents maintain that such techniques do not cause innocent persons to confess, but provide no scientific support for such a conclusion.[12]

Voluntariness is the key issue that courts use to analyze whether a confession is admissible as evidence against a defendant. Courts use a "totality of the circumstances" approach when analyzing the voluntariness of confessions. Appellate courts have found that lying techniques are only a small part of the process and do not affect the voluntariness of a confession and have held such confessions admissible in a variety of circumstances. These include:

1. Telling the defendant multiple lies about the state of the evidence against him including that there were multiple eye witnesses and that physical evidence had been obtained from the scene[13];
2. Producing false scientific evidence of gunshot residue on the defendant's hands and falsely telling the defendant that she has failed a polygraph test[14];
3. Producing a false crime laboratory report prepared by the police showing that the defendant's semen was found at the crime scene[15]; and
4. Falsely claiming that police reports exist of an eyewitness.[16]

Frazier v. Cupp,[17] the only United States Supreme Court case directly on point, held that although police had falsely told the defendant that his codefendant had confessed, such lying did not make the confession involuntary. The Court based its analysis on the "totality of the circumstances."

David Simon, a Baltimore newspaper reporter and writer of *Homicide: A Year on the Killing Streets*, followed Baltimore homicide detectives for a year in 1988 to collect data on police practices. Simon observed:

> It is left for the detective to fire this warning shot across a suspect's bow, granting rights to a man who will then be tricked into relinquishing them. . . . A detective does his job in the only possible way. He follows the requirements of the law to the letter—or close enough so as not to jeopardize his case. Just as carefully, he ignores that law's spirit and intent. He becomes a salesman, a huckster as thieving and silver-tongued as any man who ever moved used cars or aluminum siding—more so, in fact, when you consider that he's selling long prison terms to customers who have no genuine need for the product.
>
> The fraud that claims it is somehow in a suspect's interest to talk with police will forever be the catalyst in any criminal interrogation . . . sustained for hours on end through nothing more or less than a detective's ability to control the interrogation room [Ref. 18, pp 200–201].

Richard Leo, a social psychologist, pointed out that appellate court cases reporting on police interrogation techniques are not representative of police practices, and that scientific studies of interrogation techniques were extremely limited. To remedy this lack of data, Leo completed 500 hours of field work in an unnamed urban police department, where he observed 122 interrogations involving 45 detectives from 1992 to 1993.[11] He found that police interrogators and confidence men use similar structures and techniques. They both exploit trust and lie to convince their mark or suspect that they share a common interest, rather than the reality that they are in an adversarial relationship. Leo described police interrogation as a confidence game, with current police interrogation strategies based on manipulation and betrayal of trust.[19]

Intelligence Interrogations

Intelligence interrogations are used by the armed forces and intelligence services to obtain data regarding hostile acts against the United States or its allies by lawful or unlawful combatants. Unlike police interrogations, the primary goal is not to obtain a confession for use toward a criminal conviction. Traditional United States Armed Forces interrogation doctrine, as described in the *U.S. Army Field Manual*, while allowing "psychological ploys, verbal trickery, or other nonviolent and non-coercive ruses used by the interrogator in questioning hesitant or uncooperative sources," prohibits the use of "force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind." The goal of a military interrogator is to obtain "usable and reliable information, in a lawful manner and in the least amount of time, which meets intelligence requirements of any echelon of command."[20]

After the attack on the United States on September 11, 2001, the Bush administration produced a series of documents giving guidance and legal justification for psychologically and physically traumatic interrogation techniques for detainees labeled by the government as unlawful combatants. The guidance went well beyond traditional military interrogation doctrine. The documents first became public in the

summer of 2004 after investigative reporting from *The New York Times*,[21] *The Washington Post*,[22] *and The Wall Street Journal*.[23]

In an August 1, 2002, memorandum from Assistant Attorney General Jay S. Bybee to White House Counsel Alberto Gonzales, Bybee attempted to narrow the definition of torture under the Federal Criminal Statute on Torture.[24] The Statute on Torture is used for prosecuting people when torture is committed outside of the United States. According to the Statute on Torture, 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."[25] Bybee contended that torture covers only extreme acts and parsed the U.N. Convention Against Torture (CAT), noting that "the CAT makes clear that torture is at the furthest end of impermissible actions, and that it is distinct and separate from the lower level of 'cruel, inhuman, or degrading treatment or punishment.'"[24] Bybee argued that physical pain amounting to torture must be "equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death." He pointed out that, for purely mental pain or suffering to amount to torture, it "must result in significant psychological harm of significant duration, e.g. lasting for months or even years." Bybee further claimed that to constitute torture, mental pain or suffering must either be from threats of imminent death, threats of the infliction of the kind of pain that would amount to physical torture, or the use of drugs or other procedures "designed to deeply disrupt the senses, or fundamentally alter a subject's personality."[24]

Prolonged mental harm included only psychological harm that results in lasting but not temporary mental damage. Bybee cited the DSM-IV multiple times to make this point, using posttraumatic stress disorder as an example of a disorder that might meet the prolonged mental harm requirement. Brief psychotic disorder and obsessive-compulsive disorders were given as examples of disorders that would indicate severe disruptions of the senses or personality.[24]

Defense Secretary Rumsfeld originally approved interrogation approaches for all prisoners at Guantanamo including the use of "stress positions" for up to four hours, "fear of dogs," and "mild, non-injurious" physical contact.[26,27] Later, Secretary Rumsfeld ordered that such techniques could be used only with his direct approval.[28]

The General Counsel for the Department of the Air Force chaired a working group that assessed legal policy and operational issues related to interrogation of detainees.[29] The working group made legal arguments similar to the Bybee memorandum, but also listed approved coercive interrogation techniques including: hooding, mild physical contact, isolation, use of prolonged evaluations and prolonged standing, sleep deprivation, removal of clothing, and increasing anxiety by use of aversion.[30]

Miles,[31] in *The Lancet*, found that the medical system collaborated with designing and implementing psychologically and physically coercive interrogations. Army officials stated that a physician and a psychiatrist helped design, approve, and monitor interrogations at Abu Ghraib and that at Guantanamo Bay, medical records were routinely shared with interrogators.

Bloche and Marks, writing in *The New England Journal of Medicine*, described how in Guantanamo and Abu Ghraib, Behavioral Science Consultation Teams (BSCT, pronounced Biscuit) "advised military personnel on interrogation tactics." A psychiatrist and psychologists staffed the BSCT. "BSCT consultants prepared psychological profiles for use by interrogators; they also sat in on some interrogations, observed others from behind one-way mirrors, and offered feedback to interrogator," and may have accessed detainee's health care treatment information. Physicians had a "systematic role in developing and executing interrogation strategies," which included "dietary manipulation," "sensory deprivation," "stress positions," and the "presence of working dogs."[32]

Unlike the *U.S. Army Field Manual on Interrogation*, no current interrogation doctrine is available in the public domain for the United States Intelligence Services. However, The National Security Archives has posted copies of CIA interrogation manuals from the 1960s and 1980s obtained through Freedom of Information Act requests.[33] Used to train new interrogators, the handbooks presented information regarding coercive techniques available for use in intelligence interrogations. Coercive interrogation techniques were used to induce regression in the subject. The handbooks described the benefits and disadvantages of techniques such as forcing detainees to stand or sit in stress positions, cutting off sources of light, disrupting their sleep, and manipulating their diets. The descriptions of such coercive techniques

are very similar to the techniques described in the Bybee and Working Group memoranda, and as applied in Guantanamo and Abu Ghraib as described by Bloche and Marks.[32]

Senator John McCain and others proposed amending the 2006 Defense Appropriations Bill with language that banned "cruel, inhumane and degrading" treatment, and that would require that the *U.S. Army Field Manual* interrogation practices and standards be used for all military and intelligence evaluations. The final legislation, contained in The Detainee Treatment Act of 2005, contained those provisions. However, it also included language that allows U.S. personnel who are charged with using unlawful interrogation practices against aliens who have been determined to be terrorists to use as a defense that they did not know the practices were unlawful.[34] Furthermore, when President Bush signed the bill on December 30, 2005, he included a "signing statement" which construed the Act "relating to detainees, in a matter consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on judicial power . . . ," and also interpreted the Act to disallow enemy combatants access to Federal Courts to enforce the Act, including writs of *habeas corpus*.[35] It is therefore unclear whether United States intelligence personnel will always follow *U.S. Army Field Manual* interrogation practices, especially when unlawful combatants are interrogated.

Our Ethical Duties as Physicians

The American Medical Association (AMA),[36] American Psychiatric Association (APA),[37] and The American Academy of Psychiatry and the Law (AAPL)[38] have all taken the position that a physician may not ethically participate in torture. What are psychiatrists' ethical limitations when dealing with deception, coercion, or physical and psychologically harmful interrogation practices that do not meet criteria for torture?

Stone,[39] concerned about the ethical boundary tensions between clinical care and courtroom testimony urged that psychiatrists had no place in the courtroom, in part from the risks that forensic psychiatric evaluators might "deceiv[e] the patient" or "prostitut[e] the profession." Most forensic psychiatrists would agree that when acting in their forensic roles, they do not owe the people they evaluate the general duty of physicians to advance their evaluee's interests and not cause harm (beneficence and nonmaleficence). What are the values that society desires our profession to promote? Our work as forensic psychiatrists is primarily valued to advance the interests of justice. However, this value is not absolute. Professional ethics codes attempt to balance competing goods.

AAPL's code of ethics and psychiatrists who have written about ethics have focused on settings, such as the courtroom, where legal rules are generally clear and where subjects of forensic evaluations have access to legal counsel. Appelbaum[40] argues that when working as forensic psychiatrists we work under ethics norms built around the legitimate needs of the criminal justice system to seek and reveal the truth. However, this duty to seek the truth is not absolute. He argues that another duty, respect for persons, excludes using deception in the quest for truth. Simon and Wettstein,[41] writing on the development of guidelines for forensic psychiatric evaluations, teach that forensic evaluators should not attempt to influence the examinee, should employ no coercive techniques, and use no manipulation. Halpern *et al.*[42] argue that forensic psychiatrists and all psychiatrists must remain constantly alert to the danger of being drawn into unethical conduct in the service of an elusive and not infrequently unjust justice. Candilis[43] reminds us that social justice theory balances the good of the individual against the good of society, and that forensic ethics acknowledge the power differential between the evaluee and the state by providing formal protections for the evaluee. In cases in which the practices are secret or unclear, such as interrogations, there is a relatively higher moral burden on the state and the psychiatrist to ensure that the evaluee is protected. AAPL's ethics code highlights honesty, striving for objectivity, and respect for persons as forensic psychiatry's main ethics principles.[38]

In 1981, the United States Court of Appeals for the District of Columbia invited the APA to submit an *amicus* brief to set forth the organization's views in a criminal case when the defense of insanity was raised. The APA took the position that not only should the evaluating psychiatrist for the court or government seek assurance that the defendant has access to counsel, but that defense counsel knows of the examination and has agreed to let the examina-

tion proceed. The APA felt that the responsibilities for giving these assurances rests with the court.[44]

The APA's ethics code has taken the position that:

> Ethical considerations in medical practice preclude the psychiatric evaluation of any person charged with criminal acts prior to access to, or availability of, legal counsel. The only exception is the rendering of care to the person for the sole purpose of medical treatment.[45]

In May 2005, AAPL clarified and broadened ethics principles for governing forensic psychiatric evaluations before an evaluee has had access to legal counsel:

> Absent a court order, psychiatrists should not perform forensic evaluations for the prosecution or the government on persons who have not consulted with legal counsel when such persons are: known to be charged with criminal acts; under investigation for criminal or quasi-criminal conduct; held in government custody or detention; or being interrogated for criminal or quasi-criminal conduct, hostile acts against a government, or immigration violations.[38]

Police and intelligence interrogators may use both lying and psychological manipulation. Intelligence interrogators may also use physical interrogation techniques that, although not currently legally defined as torture by our Executive Branch, may be judged as cruel, inhumane, or degrading. International conventions of medical ethics prohibit physician engagement, either actively or passively, in acts that constitute such cruel, inhumane, or degrading treatment.[46] Police and intelligence interrogations take place in private. "Privacy results in secrecy and this in turn results in a gap in our knowledge as to what in fact goes on in the interrogation rooms."[3] Subjects of intelligence interrogations have minimal or no right to judicial review. It may be appropriate for law enforcement, military, and intelligence personnel to use such techniques. Deceptive and coercive techniques will not always be used in any given interrogation. However, even if psychiatrists themselves are honest and noncoercive in their own dealings with interrogation subjects, they have little if any ability to change the practices of interrogators, or to control where or when deceptive or coercive practices will be used.

Forensic psychiatrists use methods initially derived from clinical practice to obtain accurate information and reach an honest opinion. Coercion (involuntary inpatient treatment and mandated outpatient commitment)[47] and deception (use of placebos[48] and paradoxical strategies[49]) may be ethically appropriate in clinical psychiatric practice when they are used paternalistically, to provide potential benefit for the patient. Such techniques are not acceptable in general forensic practice, where honesty is so strongly valued and where the forensic evaluator has the potential to cause harm. Police and intelligence interrogation techniques use lying, exploitation, and coercion to obtain information that provides no benefit to, and through admissions against interest are overtly designed to cause harm to, the interrogation subject. It is almost never in an interrogation subject's interest to speak with police before consulting with counsel to weigh the risks and benefits of providing information. When a psychiatrist directly uses, works with others who use, or trains others to use methods that are deceptive and coercive to obtain information in police and intelligence interrogations, the psychiatrist causes harm both directly to the evaluee and to the public's perception of psychiatry.

It is instructive to note how appellate courts have viewed such behavior by psychiatrists. In *Leyra v. Denno*,[50] a psychiatrist with considerable knowledge of hypnosis was presented to the defendant by interrogators as a doctor brought to treat the defendant's painful sinus condition. The psychiatrist provided no medical care, but instead, by suggestive questioning, threats, and promises, induced the defendant to confess. The District Attorney and the police secretly recorded the confession. The actions of the psychiatrist were called "despicable" by one reviewing lower court[51] and "torture of the mind" by another.[52]

The goal of professional ethics codes is to focus discourse, set standards for practice, and establish the credibility of the profession. When psychiatrists participate with interrogators or consult to interrogators about a specific case, they damage psychiatry's reputation in both clinical and forensic realms. They abandon the "moral relationship" inherent in our professional role as forensic psychiatrists,[53] a professionalism that "protect(s) not only vulnerable persons but also vulnerable social values."[54]

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