

SEMINAR: PART A

Terrorism, interrogation and torture: International, legal and policy implications

18 August 2009



**The NSW Leagues Club
165 Phillips St, Sydney**

See doorman for direction to ANZAPPL Seminar function room
(Registration: 5:45pm) Seminar: 6-8pm

Non-members: \$10 Members: \$5 Students: \$2

Places are limited. Contact Astrid Birgden (astrid99@hotmail.com) by 10/8/09 to register (if you haven't already). Light refreshments will be available

The Importance of the Definition of Torture.

Mr Nick O'Brien, Associate Professor, Australian Graduate School of Policing (AGPS), Charles Sturt University.

What is torture? The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as, 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.' This presentation will examine different definitions of torture and discuss recent examples of torture illustrating how nation states have attempted to manipulate definitions to suit their purposes.

Nick has previously represented the UK Association of Chief Police Officers at the British High Commission in Canberra and was in charge of International Terrorism Operations in Special Branch at New Scotland Yard.

The progeny of Eris - Legal, practical and ethical impediments to the collection of evidence and criminal intelligence by the Commonwealth in overseas jurisdictions.

Mr Mark Briskey, Head of School, Australian Graduate School of Policing (AGPS), Charles Sturt University.

This presentation will touch upon some apparent dilemmas in the collection of evidence and criminal intelligence from overseas jurisdictions by the Commonwealth as well as the often confusing and contentious nature of how this is done and who it is done with. Where possible, the presentation will be derived from both personal experience and open sourced information concerning current instruments of Commonwealth law as well as those treaties and other agreements that Australia is party to and which govern how these issues are meant to be pursued. In particular, the perspective of counter-terrorism, drug, paedophile and people smuggling investigations, the methods of how this is done and the gaps, inconsistencies and ethical contentiousness with countries such as Pakistan, Iran, Bangladesh, Sri Lanka, Myanmar, Indonesia will be considered.

Mark has interviewed Australian detainees and conducted interviews regarding alleged terrorism offences involving Australian citizens in Sri Lanka and worked in various roles in a number of countries. He will discuss working with foreign jurisdictions and some legal impediments this may pose in interviews.

Counter-terrorism, Interviewing, and Investigative Relationships: The ul-Haque Case Study.

Dr Mark Nolan, Senior Lecturer, ANU College of Law, Australian National University, Canberra

In *R v ul-Haque* [2007] NSWSC 1251, Justice Adams excluded Izhar ul-Haque's admissions of training with a terrorist organisation made to Australian Federal Police (AFP) officers during interviews on 7 and 12 November 2003 and 9 January 2004. Those interviews followed earlier questioning of ul-Haque by the Australian Security and Intelligence Organisation (ASIO) officers on 6 and 7 November 2003. As a result of the inadmissibility finding, charges were dropped against ul-Haque. The prior ASIO questioning was held to be both unlawful and improper via ss 84, 85 and 138 of the Evidence Act 1995 (NSW) which led to the inadmissibility of ul-Haque's admissions obtained at the subsequent AFP interviews. This case illustrates the possible tensions between intelligence-gathering by ASIO officers and prosecution-focused, evidence-gathering by the AFP in an investigation of the same alleged terrorist activity. Justice Adams' criticisms are analysed in terms of recommendations from The Street Review, The Carnell Report, ASIO's detention and questioning powers, and empirical psychological research on questioning practice.

Since 2002 Mark has taught and researched criminal law, legal psychology, and military discipline law and he was a member of a recently-completed, ARC Discovery Project investigating international law and criminal law implications of Australia's legal response to 9/11 and subsequent events.

The Role of the Helping Professions: Lessons Learned from the US.

Dr Astrid Birgden, Fellow, Psychology Department, Deakin University.

Earlier this year I was genuinely shocked to discover that the American Psychological Association (APA) had supported the role of psychologists in consulting in the interrogation and torture of military detainees. This stance was in stark contrast to the American Psychiatric Association and the American Medical Association who had banned participation and consultation in interrogation. This policy position appears to be the failure of the profession to adequately weight: (1) the role of psychologist as treatment provider (for detainee protection) versus organisational consultant (for community protection) and (2) US domestic law versus international human rights law. The debate within the APA was fierce and it took yearly conferences from 2005 to 2008 to finally ban "engagement in any techniques considered torture or cruel, inhuman or degrading treatment or punishment as defined in international law". The presentation will detail the policy shift by the APA after playing a 10 min documentary that summarises the key issues. Of note, it was psychodynamically-orientated psychologists, not cognitive-behaviourists, who continually raised the profound ethical problems that were posed.

Astrid is a forensic psychologist experienced in establishing services for serious offenders, lecturing to criminology and psychology students, and publishing in offender rehabilitation and therapeutic jurisprudence. Her current interest is human rights and offender rehabilitation.

Note- Seminar Part B on 20/10/09 will address: *The psychological impact of torture and interrogation on detainees.*