

## Comments on the Hoffman Report

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[Former APA Presidents 2006 and 2005, respectively]

The Hoffman Report has assembled in one document a considerable amount of information regarding the APA's actions (or inactions) in relation to the role of psychologists in national security, interrogation, and torture of detainees by military and national intelligence organizations. Although we both served on the APA Board of Directors (BoD) at the beginning of the events chronicled in the report<sup>1</sup> we were stunned and surprised at some of the things we learned for the first time by reading the report. In addition, the report pulls together and seeks to integrate a substantial body of data ranging from formal documents to interviews and e-mail messages. Some of the e-mail quotes are inserted in the report without full contextual background. With this response we hope to provide a context that will take readers back to 2005 – 2006 and enable a fuller understanding of those events.

We want to state clearly and unambiguously: we do not now and never have supported the use of cruel, degrading or inhumane treatment of prisoners or detainees. We absolutely reject the notion that any ethical justification for torture exists, and confirm that any such behaviors never have been ethically acceptable. Although we speak only for ourselves, we know that those who served with us on the APA BoD in 2005-2006 held the same values. We never colluded with government agencies or the military to craft APA policies in order to justify their goals or the illegal “enhanced interrogation” practices promoted by the administration of President George W. Bush. We reject any interpretations of events that suggest our personal efforts ever waived from enhancing the ethical practice of psychology and ethical conduct of psychological research.

Many of the discussions held by the APA BoD about these issues were held in “executive session,” meaning that we owed APA a continuing duty of confidentiality. APA specifically waived that duty with respect to the Hoffman investigation, asking us to cooperate and disclose fully, which we did. In order to explain much of what happened, we must address some matters that occurred in executive session in the narrative that follows. On July 9<sup>th</sup> of this year APA's legal counsel was informed that the obligation of continued confidentiality is now void, because of the published Hoffman report. In an email to Gerry Koocher the same day, APA attorney Jesse Raben replied, “In terms of your potentially disseminating confidential Information about the APA that you learned while a member of the APA board or otherwise, my hope is you would reconsider given your standing in governance and your upcoming role in Council of Representatives in 2016.” That response felt particularly troubling in view of APA's newly found assertions of forward-looking transparency. We have decided to ignore this attempt by APA to silence us, and we will not limit the scope of our response.

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<sup>1</sup> Ronald F. Levant [RFL] served as President of APA in 2005 and Gerald P. Koocher [GPK] served as President-elect in 2005 and President in 2006.

### **Context for the Presidential Task Force on Psychological Ethics and National Security (PENS)**

In late 2004 and early 2005 the United States was at war in Iraq and Afghanistan. Following reports of abuse perpetrated by army reservist military police at Abu Ghraib, concern about treatment of detainees held at Guantanamo, and rumors of involvement by psychologists and medical personnel torture began to circulate. Those of us serving on the BoD were concerned and began to ask the APA Ethics Office about any such complaints.<sup>2</sup> The BoD was advised by senior staff at APA that they had been contacted by military and security services and by members of the association serving on active duty in the military seeking clarification regarding how the APA's *Ethical Principles of Psychologists and Code of Conduct* (ethics code) applied in military and national security contexts. To the best of our knowledge the formal governmental contacts involved APA staff, and no members of the BoD participated.

Many of us on the BoD did hear from concerned colleagues serving in the military, who wanted to understand their ethical obligations as psychologists in the military command structure. When asked by these members serving in the military about what our ethics code instructed about such contexts, the simple answer was, "very little." The APA ethics code clearly indicates that psychologists fall under the penumbra of the ethics code regardless of their work setting. Authors of the code never expected that our colleagues would participate in activities that violate the fundamentals of upholding the dignity, respect, and welfare of others. True, psychologists have long histories of assisting in criminal investigations, working in prisons, and even conducting competency for execution assessments as part of state and Federal death penalty assessments. Yes, considerable research exists to guide interrogators on forging relationships and eliciting truthful answers from those who might wish to conceal. But nothing in our professional code permits abuse of other human beings. Torture, degrading, and abusive treatment are never permissible.

Throughout this period many media reports surfaced regarding alleged abuses and torture of detainees and alleged roles of psychologists and physicians. Many commentaries appeared in print calling for APA and other professional organizations to act in an assortment of ways, often including demands aimed at specific individuals or calls for psychologists to refuse to participate in "all" military or intelligence roles. These demands in many ways paralleled similar arguments propounded during the Viet Nam era. Often the demands for action had no solid data or rationale apart from personal political opinion behind them.

One concern expressed throughout the process is that the APA would never be able to access "hard data" on the actual roles of military interrogators at Guantanamo because of the classified nature of such records [GPK]. At various points the Hoffman report suggested that such assertions were a way of avoiding the issue. Hoffman seems to believe APA could or should have done more to seek such classified information, but does not provide any suggestion of how that would have been possible. Hoffman appears to have accepted the political opinion that APA should have launched some kind of broad investigation into alleged abuses, even if no specific actionable data against individuals were available. Such arguments

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<sup>2</sup> The rules and procedures of the APA Ethics Committee require that all information be treated confidentially unless/until decisions about expulsion or appeals are made, in which case the BoD plays a role. Throughout our service of the BoD we were under the clear impression that the Ethics Office would vigorously investigate all such claims brought to its attention in a prompt and fair manner. Materials we saw for the first time in the Hoffman report call the actions of that office in these matters into question. We encourage readers to review the full Hoffman report and draw their own conclusions.

ignore the fact that APA (and most other scientific/professional organization) have no mechanism to do so. APA procedures and policies spell out a framework for ethics committee investigations, but those require a valid actionable complaint. The rationale for holding APA particularly liable in this context is troubling, because no such actions were initiated by the American Association for the Advancement of Science, American Medical Association, American Psychiatric Association, or other organizations of professions implicated in abuses. No other such organizations launched broad investigations, or sought classified government data. Instead, the focus has addressed only APA and alleged collusion as the rationale, rather than accepting the premise that such a broad inquest is not a reasonable expectation of general professional or scholarly societies. This may be a legitimate difference in political perspectives, but it is the stance taken by every other professional association and does not betoken collusion.

### Creation of the PENS Task Force

In this context the President [RFL] asked the BoD to approve funding for a special task force to:

[E]xamine whether our current Ethics Code adequately addresses [the ethical dimensions of psychologists' involvement in national security-related activities], whether the APA provides adequate ethical guidance to psychologists involved in these endeavors, and whether APA should develop policy to address the role of psychologists and psychology in investigations related to national security.

The BoD approved the formation of the task force and funded it with a budget allowing for one meeting in the 2005 budget year.<sup>3</sup> The President [RFL] asked the President-elect [GPK] and another BoD member, Barry Anton to serve as BoD liaisons to the task force. Koocher had served as BoD liaison to the ethics code revision task force that had completed work in 2002, and had co-authored an ethics textbook that included detailed commentary with examples of appropriate and inappropriate roles of psychologists in interrogation.<sup>4</sup> The process for appointing the members of the task force followed typical APA practices. A call for nominations was issued, a detailed briefing book with nominees was prepared, and the President [RFL] met with the BoD liaisons [GPK and Anton] and Director of the Ethics Office [Steve Behnke] to vet candidates. The Hoffman report describes the process through the accounts of those participating and reached the conclusion that we somehow made appointments based on excessive input from persons involved with the military or government. That naïve assertion ignores what routinely occurs in appointing members to all APA boards, committees or task forces. Communities of interest are surveyed, letters of interest and CV are collected, other members or staff often lobby or endorse assorted candidates.

In the case of the PENS task force the narrative in the Hoffman report illustrates the process well, including details on the factions that contributed to various selections. For example, he describes the President-elect's [GPK] objection to one military expert who was not an APA member at the time. The interviews and e-mail exchanges show that he [GPK] later changed his mind after hearing from a military psychologist colleague about the candidate's experience in training U. S. troops to resist torture. In fact, he [GPK] came to see that candidate's potential involvement as highly valuable and offered to pay the candidate's APA dues, if necessary, to have him on the task force. This is somehow regarded as insidious,

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<sup>3</sup> According to Association Rules task forces are consider ad hoc governance groups that require annual re-approval and budgeting by the BoD to continue operations beyond the fiscal year in which they are authorized.

<sup>4</sup> Koocher, G. P. & Keith-Spiegel, P. (2008). *Ethics in Psychology and the Mental Health Professions*. New York: Oxford. See especially Chapter 18, pp. 498-500.

instead of a valid effort to engage the best and most knowledgeable people. The materials reported by Hoffman demonstrate the deliberateness and thoughtfulness that went into selecting a competent and diverse committee.

A similar process was followed the following year when the President [GPK] appointed a task force to advise on ways the APA could assist the families of deployed service members. That panel also was comprised largely of military or government-connected psychologists, with selection influenced by external references.

With perfect hindsight, would APA have been wiser to include more people with no government connections on the task force? Possibly, however, that did not seem a problem at the time. The full BoD, as always in such matters, reviewed the President's [RFL] recommendations and approved the task force composition.

### **The PENS Task Force Meeting**

Those familiar with APA governance will uniformly report that the process of policy determination and the approval of guidelines and standards is ponderously slow. Development of the 2002 ethics code ran over more than seven years and the actual approval process of the penultimate version took nearly two years. The climate of constant public demands for action and the urgent requests of members in the military for ethical guidance gave the APA staff and the BoD clear direction – the usual process would not provide necessary and timely guidance. This ambience drove the need for prompt action and rapid review and promulgation of the results. In hindsight, wider circulation of the draft report, at least to the Council of Representatives would probably have been a wiser course.

During the course of the meeting one of the BoD liaisons, who attended only for half a day, [GPK] actively resisted the wishes of some participants to broaden the scope of the group's work. He reminded the group of their official charge and the fact that the group was funded for only one meeting. He stressed the importance of fulfilling the mandate in a timely manner.

Some members of the task force sought to address "international law" in the task force report. Military members of the task force objected, noting inter alia that military personnel are obligated under United States law. One of the BoD liaisons [GPK] pointed out that "international law" is an ambiguous term covering an assortment of treaties, many of which the United States has not signed onto. In addition, the focus of the task force was the enforceable APA ethics code, rather than any toothless international treaties. This assertion led Hoffman to observe that, "Koocher is very pro-American"

We are dismayed by the portrayal of Dr. Olivia Moorehead-Slaughter as some sort of pawn in her role as chair of the task force. She is a respected clinician, former licensing board member, and recognized professional leader. She certainly did not act as anyone's puppet, and the examples cited in the Hoffman report ignore the appropriate use of staff in assisting membership leaders. Throughout the months that followed all of the key APA leaders who participated in public meetings had guidance and instruction from the public affairs and legal counsel's offices at APA. This included drafting of statements and talking points, and hiring crisis communication consultants dedicated to protecting APA's image and communications. Many of us followed this guidance closely being warned by legal counsel in private that as BoD members we owed APA "a duty of care."

The Hoffman report makes a great deal over the attendance of some observers at the PENS meeting. Initially, one of the BoD liaisons [GPK] expressed an interest in welcoming any interested observers. Some of the military members expressed concern that having members of the press present would compromise their ability to speak candidly. In the end a more narrow set of visitors was present at various points during the meeting. Notably, this included Russell J. Newman, J.D., Ph.D., head of the APA Practice Directorate and spouse of Maj. (then) Debra Dunivan, a member of the Army Medical Corps who had been or was soon to be assigned to Guantanamo. Neither of us, nor the APA BoD, were ever asked about any potential conflicts of interest posed by this attendance. Given the management structure of the APA central office, we are confident that Dr. Newman would not have attended without the knowledge and approval of the APA CEO and legal counsel.

### **Post-PENS Events**

The Hoffman report makes much of the supposed efforts to control or limit changes in ethical guidance as some form of government collusion, include crafting an image of Defense Secretary Donald Rumsfeld eagerly awaiting a copy of the report at his ultra-secret fax number. The report states: "Other leading officials *intimately involved* in the coordinated effort to align APA actions with DoD preferences at the time of PENS were the APA President Ron Levant, then APA President-Elect Gerald Koocher... (p. 12)." This conclusion is misleading at best, as the phrase "intimately involved" implies knowledge of such a coordinated effort. We had no contact with or knowledge of any direct communications with government officials regarding the report. In response to members' actions policy changes followed. The process of addressing the PENS report in the Council of Representatives, changing APA policy, and the membership vote via a related By-Laws change all followed usual and time consuming APA policy pathways. Neither of us in any way obstructed such efforts or colluded with government authorities to do so.

As the APA Council of Representatives meeting in 2006 approached, several PENS related concerns seemed likely to surface for debate. The President [GPK] reached out to military psychologist colleagues in quest of a knowledgeable spokesperson, and was advised that Maj. General Kevin Kiley, an ob-gyn physician and Surgeon General of the Army would be willing to speak and answer questions from the Council. Dr. Morehead-Slaughter was invited as chair of the PENS task force. Dr. Steven Reisner, a vocal critic of APA policy in this arena also was invited to address the Council. Each was allowed 20 minutes. Gen. Kiley used about 15 minutes and answered several questions. Dr. Reisner took more than 30 minutes and was asked no questions. The President [GPK] invited Reisner to sit next to Gen. Kiley at lunch so that he might have the opportunity to ask additional questions, if he wished. The Hoffman report suggests an elaborate conspiracy to get Gen. Kiley in front of the Council and orchestrate the event. Actual responsibility for all invitations and orchestration of the event followed the President's [GPK] direction in an effort to get information in front of the APA Council.

### **Guantanamo Visits**

Both of us visited the detention facilities at Guantanamo Bay, Cuba [RFL in 2005 and GPK in 2006]. In each case we were accompanied by the leaders of other professional associations (e.g., American Psychiatric and American Nursing) as well as medical ethicists. In 2006 the invitation to make such a visit was offered by Gen. Kiley to the President [GPK] after a discussion over lunch regarding the nasogastric feeding of detainees on hunger strikes. The President [GPK] has significant familiarity with such procedures in the treatment of adolescents with anorexia nervosa. Gen. Kiley extended an invitation to

learn first-hand of how all the medical care was delivered, and to have the opportunity to talk to psychologists on site about their actual roles and practices. The President specifically requested that APA Ethics Officer Steve Behnke be included, along with leaders of other professional associations and set as a condition that this visit would not become a publicity event for the military.

The Hoffman report makes much of a belief that this was solely a publicity opportunity and that the APA participants were somehow willing dupes. He notes as purported proof that no patients were observed having nasogastric feedings as an example, and offers criticism of Dr. Behnke related to discussion of ethical questions raised when he and the President [GPK] spoke directly to psychologists on duty there. The Hoffman report ignores the fact that exhibiting prisoners in front of visitors is a violation of a Geneva convention in force at Guantanamo. The Hoffman report fails to note that the visitors viewed facilities and discussed procedures used in nasogastric feedings with medical personnel. The Dr. Behnke and the President [GPK] intentionally deferred detailed discussion of ethical case problems at that time, as we were accompanied by military minders and well aware of the problems that would pose for a candid exchange. The Hoffman report cites a PowerPoint presentation prepared by the President [GPK] using photographs provided by the military and describing in objective behavioral terms facts provided in the on-site briefing. Despite being told that the material was used for professional presentations, with full and clear narrative that the material was orchestrated and provided by the military, the Hoffman report concludes that it could be deemed “uncritical and highly positive” to the military and implies yet another level of collusion or extreme naïveté. The narrative and conclusions reached in the Hoffman report regarding these visits demonstrates, yet again, the propensity throughout the report to draw unfounded conclusions based on personal opinions. The Hoffman report does not confirm that no public statements favorable to the government resulted. One positive outcome of the visit was a joint statement against torture with Dr. Pedro Ruiz, President of the American Psychiatric Association who had been on the Guantanamo trip, and the first joint meeting in history of the BoDs of the APA and American Psychiatric Association (in 2006).

### **In Closing**

We could continue this narrative by noting many other points of confusion and unfounded conclusions in the Hoffman report, but we do not have the time, access to data, and resources needed to complete a point by point analysis. The Hoffman report does correctly conclude that the APA ethics code was not adversely influenced by government authorities. The report also demonstrates problems associated with disconnections between staff-directed and membership-directed governance, even as APA staff have increasingly consolidated their authority by pressuring the Council to delegate more authority to the BoD and staff.

Was APA’s incremental response to addressing the ethical challenges of psychologists in national security settings poorly crafted and executed? Yes. We believe that we did the best we could have done knowing what we knew and managing what we could given the data we had access to at the time in or limited roles as APA Presidents.

Is torture, abuse, demeaning treatment, or cruel behavior ever acceptable or ethically acceptable to a psychologist? Absolutely not.