

## A Response to the Hoffman Report

When the American Psychological Association (APA) announced that it had engaged a law firm to conduct an independent review of the controversies surrounding psychologists' involvement in national security interrogations, we looked forward to a thorough and careful report that would lay out the facts objectively, undistorted by the strong opinions of those involved in the controversies. Even more than others, we were eager for the full truth to be uncovered, given our unstinting opposition to torture, our efforts to eliminate abusive interrogation tactics and harsh detention conditions, and our commitment over many years to uphold the highest standards of professional practice. We were therefore shocked to read a report that, far from being objective, is written as a rhetoric-laden prosecutorial brief. It repeatedly ignores or distorts key facts, draws inferences that are contradicted by the evidence or based on guesswork about motives, fails to include contrary analyses and conclusions reported by other sources, commingles several charges on the assumption that the combination will be persuasive even when the evidence supports none of them, and imposes its own views and opinions about policy issues.

The report's prosecutorial bias and grandstanding rhetoric may not be surprising given the background of its author, David Hoffman, as a prosecutor with a past interest in holding public office. However, we were surprised and deeply disappointed by the APA's rush to judgment when it received the report. The report is dated July 2, 2015. According to Drs. Stephen Soldz and Steven Reisner, two of those who have been most vocal in attacking the APA's work in supporting psychologists' appropriate practice in areas of national security, they were invited to meet with the APA Board on that day and provided recommendations for the organization on how to proceed. However, at no time did the APA Board or the Special Committee overseeing the investigation contact any of those attacked by the report for their views. Nor could the Board or the Special Committee have meaningfully taken the time to review the report's 528 pages, plus thousands of pages of attached documents, to test its conclusions. Most of us learned about the report only when, after having been leaked to the *New York Times*, it was reported in its July 10<sup>th</sup> edition.

Given the report's obvious biases, some of which are detailed below, and the APA's failure to test its conclusions carefully, we urge the APA Council at its meeting on August 5<sup>th</sup> to take an approach more in keeping with due process and the standards of our profession. We ask it to allow time for those of us who devoted many years to ensuring humane conditions of confinement and to restraining and ending the use of abusive interrogation tactics, at a time when many at high levels of government supported their use, to present our perspective and the facts that support it, and to demonstrate in detail the mistakes of fact, inferences and conclusions in Mr. Hoffman's report.

\*\*\*\*\*

The report's bias is obvious in the opening pages of the Executive Summary. In its first two pages, the summary devotes substantial space to the attacks against the APA's actions – but no space to the views of those who contributed to APA's efforts to counter abusive interrogation methods. Instead, it reports only that we tried to rebut the critics by calling them bullies and the attacks baseless. That rhetorical tactic may be acceptable in an intentionally one-sided brief; it borders on unethical in an objective report. An investigator working as an objective judge rather than a prosecutor would have given fair treatment to our view and the facts that support it.

Those of us in the Department of Defense worked diligently, energetically and effectively – at times putting our careers at risk – to prevent abusive interrogation methods and ensure humane conditions of confinement. As the April 2005 report of the Army Surgeon General concludes, there is no evidence that military psychologists participated in abusive interrogations and clear evidence that they took appropriate action when they observed abuse. (We can speak from our knowledge only about the military, not the CIA.) We also strove to have appropriate prohibitions codified, and worked with the APA so that we could point to its guidelines to support our efforts. Our goal was, in fact, the opposite of the goal that Mr. Hoffman so cavalierly infers from the facts he chooses to present. His conclusion that we were complicit in enabling abusive methods is deeply offensive and incomprehensible to anyone who lived through these events on a daily basis. Similarly, those of us in the APA worked hard to ensure that the report issued by APA’s Task Force on Psychological Ethics and National Security (the PENS report) would help military psychologists advocate for explicit military prohibitions against abusive techniques and ensure humane conditions of confinement.

These efforts succeeded: the PENS report states unequivocally that “[p]sychologists do not engage in, direct, support, facilitate, or offer training in torture or other cruel, inhuman, or degrading treatment” and that “[p]sychologists are alert to acts of torture and other cruel, inhuman, or degrading treatment and have an ethical responsibility to report these acts to the appropriate authorities.” (We note that Mr. Hoffman’s Executive Summary, instead of quoting the guidelines, simply characterizes them as “loose,” a characterization that falls apart in the face of their actual language.) To conclude that the APA staff and others “colluded” with Department of Defense psychologists to write guidelines that purposely left wiggle room for abusive interrogations is, again, incomprehensible to those who lived through these events.

We recognize that many of those involved were strongly committed to opposing views on some key policy issues, in particular whether psychologists should have withdrawn entirely from any involvement in the interrogation process and whether the guidelines should have specified acceptable and unacceptable interrogation techniques. We believed strongly then, as we do now, that the involvement of psychologists prevented the use of abusive techniques, helped ensure humane conditions of confinement in many instances, and sped up the codification of prohibitions against abusive techniques. We also believe strongly that the PENS guidelines were well-crafted: they clearly prohibit water-boarding and other forms of physical and mental abuse, without infringing on the professional judgment of individual psychologists about the appropriateness of non-abusive interrogation techniques in a specific circumstance. This approach to ethical guidelines is identical to the approach taken by other professions in their guidelines, such as the American Bar Association Model Rules of Professional Conduct.

Psychologists on both sides of these issues were equally opposed to abusive interrogations; they differed about strategies, not goals. Mr. Hoffman picks sides, and then concludes that those on the other side must have been trying to enable abuse, not stop it. As a politician, he has the right to choose sides; as an objective investigator, he does not.

Mr. Hoffman took seven months to complete his report; it will take us some months to review it. Once that review is complete, we will issue a report that we expect to show not only that Mr. Hoffman reached unsupportable conclusions, but also that he does so in ways that violated his duty to consider the evidence in an even-handed and objective manner.

Even an initial review, however, reveals a host of factual errors, unsupported inferences, and policy opinions masquerading as fact-based conclusions. These flaws are disconcerting one by one; cumulatively, they are outrageous.

To list only a few:

- The report distorts the APA's obligation to serve all of its members, including those in the military, into an effort to "curry favor" with the military. That phrase, which the report uses repeatedly, is drawn directly from the language of those attacking the APA's actions. For an independent investigator to use such loaded rhetoric is reprehensible. In fact, the APA was attempting to give military psychologists support that would actually be effective, rather than counter-productive, for their efforts to end abusive interrogations and ensure humane conditions of confinement.
- The report repeatedly draws inferences about motives that are unsupported by concrete evidence. For example, it claims that Colonel Banks asked that e-mails be kept private because we were engaged in underhanded collusion; in fact, Colonel Banks wanted to avoid the risk that others would think he was speaking for the military, which he was not authorized to do. More generally, Mr. Hoffman's claims about the APA's motives for "currying favor" with the military are entirely implausible to anyone involved in the 2005 events.
- The report states as fact judgments about the role of APA staff that fall apart if one looks at the role of staff in drafting communications, guiding discussions and making recommendations to governance groups in other situations. Little about their role in these events differed from their roles in many other policy discussions, as Mr. Hoffman could easily have discovered.
- Although the report relies heavily on those whose attacks led to the Special Committee's creation, it slights a series of reports that reach conclusions opposed to many of Mr. Hoffman's. These reports include the April 2005 report of the Army Surgeon General (the "Martinez-Lopez report"), the November 2008 report of the Senate Armed Services Committee, and the 2009 Department of Defense report ordered by President Obama (the "Walsh report").

For example, after reviewing the role of the Behavioral Science Consultation Teams (BSCTs) in the interrogation process, the Martinez-Lopez report found "no indication that BSCT personnel participated in abusive interrogation practices" and found "clear evidence that BSCT personnel took appropriate action and reported any questionable activities when observed." Following President Obama's executive order in 2009 to ensure that detainees were being held in "conformity with...Common Article 3 of the Geneva Conventions," the Walsh report demonstrates both the positive impact of the PENS Report and the effectiveness of the BSCTs. The report states that BSCTs "are charged with reporting any observed or suspected abuse during the interrogation," and the "BSCT function in this operational environment is a vital resource for commanders." It concluded by strongly recommending that the Department of Defense "sustain the B[ehavioral] S[cience] C[onsultant] resource to ensure continued mission support...." The Senate report describes the initiative of a psychologist and a psychiatrist, at a time in 2002 when harsh interrogation methods were sanctioned at high levels of government, to insert language opposing the use of those methods in a memo listing some of them. (When

Colonel Banks reviewed that memo, he responded that “[m]y strong recommendation is that you do not use physical pressures.”) Mr. Hoffman provides a host of reasons, none convincing, to discount these reports or slight their findings.

We do not assert that, at a time of great stress and much dispute over how to handle detainees, we managed our collaboration to prevent abusive interrogations as effectively and adroitly as, with the benefit of hindsight, we might have. Nor do we assert that the APA’s internal processes were ideal. But Mr. Hoffman’s attack upon our motives and goals is an egregious distortion in its conclusions and irresponsible in its methods, and his recurring theme that we tried to enable rather than halt abuse turns the truth on its head. We believe, as others have stated, that the report is a “gross mischaracterization” of the “intentions, goals and actions” of those involved. We are carefully evaluating all legal options.

L. Morgan Banks, Ph.D.

Debra Dunivin, Ph.D., ABPP

Larry C. James, Ph.D., ABPP

Russ Newman, Ph.D., JD