



# Physicians for Human Rights

## Preliminary Statement on the Hoffman Report

### August 2015

## I. Introduction

In the wake of the 9/11 terror attacks, a new discourse emerged in the United States about a trade-off between rights and security, with some arguing that the exigencies of the new global “war on terror” justified human rights abuses in order to keep the nation safe. Numerous professions were called on to lend their skills and expertise to what would later be understood as a program of detainee torture and ill-treatment, including lawyers, physicians, and psychologists.<sup>1</sup> Some upheld their ethics and integrity and refused to be complicit while others did not. One of the most significant examples was the role that the American Psychological Association (APA), key APA officials, and prominent psychologists played in enabling, justifying, and defending the use of torture on national security detainees.

For more than a decade, the APA has categorically denied colluding with military and intelligence officials tied to the U.S. torture program. This denial persisted even as critics highlighted the APA’s 2005 issuance of ethical guidelines stating that psychologists could ethically participate in interrogations – a startling position in the wake of the Abu Ghraib scandal and growing recognition of the role of health professionals in detainee abuses.<sup>2</sup> Indeed, APA was alone among health professional associations in adopting this stance. In November 2014, as more information became available, the APA finally authorized an independent investigation into the allegations of collusion. In July 2015, former federal prosecutor David Hoffman issued a [542-page report](#) based on his seven-month investigation, which included more than 200 interviews and the review of over 50,000 documents, including internal APA emails.<sup>3</sup>

The Hoffman report confirms what critics have long charged: the APA colluded with the Department of Defense (DoD), and to a lesser extent the CIA, in connection with the post-9/11 torture program. The APA aligned its ethics policies with DoD guidelines in order to protect the involvement of psychologists in abusive interrogations. APA officials also advised the CIA on certain torture practices and helped shield the torture program from ethical challenges. The Hoffman report details the failure of a health professional association to uphold its values. Instead of serving as a safeguard against human rights violations, the APA colluded with the government to create ethics policies designed to permit detainee torture and other violations.

Hoffman’s investigation was designed to focus on the APA, and he had no power to investigate the extent of the unlawful behavior of the DoD, the CIA, or any other government agencies. The full story of this collusion can only be understood following an independent investigation by the U.S. government, with the goal of holding those who violated U.S. and international law accountable. While the report looks at just one party, this is a scandal of historic proportion that has severely damaged the APA and tainted an entire profession.

## II. Select Findings

The Hoffman report highlights several types of improper conduct, including but not limited to:

1. The APA agreed on a strategy of deferring to DoD's preferences;
2. The APA wrote DoD military guidelines directly into APA ethics policy;
3. The APA approved psychologists' role in monitoring the "safety" and "effectiveness" of interrogations;
4. The APA rejected the inclusion of human rights standards in its ethics code under pressure from DoD psychologists;
5. The APA disregarded evidence of detainee abuse and avoided conducting meaningful ethical review and offering ethics guidance;
6. The APA engaged in a deceptive public relations campaign to portray its efforts as consistent with human rights protections;
7. The APA obstructed efforts to adopt stronger ethical standards by resorting to deceptive wording pre-approved by DoD officials;
8. The APA mishandled ethics complaints in order to protect psychologists implicated in detainee abuses; and
9. APA officials engaged in additional unethical behavior that supported CIA torture.

### **1. The APA agreed on a strategy of deferring to DoD's preferences.**

The Hoffman report found that the APA issued ethics policies that permitted psychologists to take part in the intentional infliction of pain on detainees, in collusion with the DoD, in order to curry favor with the military and to reap the financial and professional benefits of such collusion. (9, 72) This strategy was spearheaded by Stephen Behnke, APA ethics director, and Col. Morgan Banks, chief of psychological operations for the U.S. Army Special Operations Command, and reinforced by APA leadership. (293, 12–13) Hoffman found that APA officials worked in "close, confidential coordination" with military and intelligence officials to ensure that the APA gave its "'good housekeeping' seal of approval for the involvement of psychologists in interrogations, and to otherwise keep the status quo and avoid limits or constraints beyond the ones the Army or DoD had in place (or would decide to put in place in the future)." (21)

### **2. The APA wrote DoD military guidelines directly into APA ethics policy.**

The APA adopted the DoD's "safe, legal, ethical, and effective" framework, which was designed to afford maximum discretion to psychologists supporting interrogators. The joint objective was to ensure that security detainees could be subjected to stress positions and sleep deprivation, among other techniques. (18) This was done at the behest of Col. Banks, who told members of the APA's 2005 Presidential Task Force on Psychological Ethics and National Security (PENS) that military leaders had already agreed on this framework. (21) The "safe, legal, ethical, and effective" language in turn derived from the Department of Justice's Office of Legal Counsel memoranda seeking to provide legal authorization for the use of torture techniques. (193)<sup>4</sup> Key ethical issues raised by non-DoD task force members, including "whether a psychologist could cause psychological distress or physical pain to a detainee; if so, whether it was important to differentiate between 'harm' and distress/pain; and if so, how one drew the line," were deliberately omitted from the final PENS report. (20) Hoffman notes that the APA's report was eagerly awaited by the DoD, including then secretary of defense Donald Rumsfeld, at a time when the DoD was fighting off "concerns about abuse and improper conditions at Guantánamo" and concurrently "developing its policy for the involvement of psychologists and psychiatrists in interrogations." (32)

### **3. The APA approved psychologists' role in monitoring the "safety" and "effectiveness" of interrogations.**

The APA endorsed the "safety monitor" role envisioned in the DoD's "safe, legal, ethical, and effective" framework, despite the fact that it could not be considered ethical for psychologists to observe abusive treatment nor determine at which point they crossed the threshold into illegality, as defined by the Bush administration. (295) The APA went one step further by endorsing expanding the role of psychologists into evaluating whether interrogations were "effective" – that is "making suggestions and recommendations to the interrogators about how to proceed." (66) In issuing ethics policies permissive of these roles, the APA ensured that its members would not only fail to prevent abusive tactics or descent into egregiously abusive tactics, but that they would be complicit. The Hoffman report describes the idea that psychologists could simultaneously be a green light to advise interrogators on how to continue and a red light to advise interrogators on when to stop, as "naive or intentionally disingenuous." (27)

### **4. The APA rejected the inclusion of human rights standards in its ethics code under pressure from DoD psychologists.**

Several DoD-affiliated psychologists on the PENS Task Force said that they could not agree to be bound by the Geneva Conventions and the U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and insisted instead on language "upholding the existing military regulations at the time." (274) As a result, the APA "rejected the use of or reference to international law, except to the extent it was incorporated into and consistent with U.S. law," (294) which – at the time – permitted torture. Opposition to this by non-DoD task force members was ignored, including concerns raised by APA member Michael Wessells:

What kind of damage [will be done] to APA if we say we do not support human rights as defined in the Geneva Conventions and other conventions? What about [the] damage to our national security? If we engage in human rights violations, the message that sends to other countries [is damaging to our national security]. They therefore become our enemies and attack. . . . The standards [on international human rights] are not an issue for debate at this point. . . . [The] APA Code commits us to human rights. . . . As a professional association, at a moment of national panic, [we must] take a high standard. (274)

Wessells told investigators, "once ethics becomes the handmaiden of patriotism," you were not talking about ethics anymore and, instead, were allowing ethics to be "appropriated by these other concerns." (274)

### **5. The APA disregarded evidence of detainee abuse and avoided conducting meaningful ethical review and offering ethics guidance.**

The Hoffman report found that the APA never seriously entertained questions regarding the ethics of participating in interrogations that could or were likely to inflict physical and mental suffering on detainees. (9–10) The APA deliberately avoided grappling with the real ethical issues, either superficially or substantively, which would have weighed heavily against encouraging psychologists to participate in interrogations known to be abusive, at a time when the Department of Justice had narrowed the definition of torture. (67) In doing so, the APA went out of its way to ignore even obvious ethical and legal concerns, particularly in light of revelations regarding torture and ill-treatment in Bagram, Abu Ghraib, Guantánamo, and undisclosed black sites. (67)

## **6. The APA engaged in a deceptive public relations campaign to portray its efforts as consistent with human rights protections.**

The Hoffman report reveals that the APA engaged in a coordinated campaign to cover up collusion with the U.S. government regarding its ethics policies and to spin them as consistent with human rights standards:

To advance its PR strategy, APA issued numerous misleading statements that hid its true motives, in an attempt to explain and justify its ethics policy and the PENS Task Force report in positive terms. At times, APA's statements stressed a pro-human-rights message: the task force report and APA policy were issued to provide "strict ethical boundaries" that carefully protected human rights and ensured that psychologists were not involved in harsh and abusive techniques. (15)

This public relations campaign continued for years, in collusion with the DoD. (36–37)

## **7. APA obstructed efforts to adopt stronger ethical standards by resorting to deceptive wording pre-approved by DoD officials.**

The APA engaged in "a pattern of secret collaboration with DoD officials to defeat efforts by APA Council of Representatives to introduce and pass resolutions that would have definitively prohibited psychologists from participating in interrogations at Guantánamo Bay and other U.S. detention centers abroad." (9) Hoffman confirms that the DoD was manipulating the wording behind the scenes, as critics claimed. These efforts included orchestrated obstruction, with the DoD, of:

- Efforts to amend Ethics Code Standard 1.02, which said that psychologists who experienced a conflict between a law or order and APA ethics obligations could follow the law or the order "(labeled a 'Nuremberg defense' by critics)" (10, 41–42)
- Efforts to pass resolutions "in 2006 and (especially) 2007 that created additional restrictions on national security psychologists as a matter of 'APA policy'" (43)
- Efforts around a 2008 "petition resolution" to ensure "psychologists may not work in settings where persons are held . . . in violation of either International Law (e.g., the UN Convention Against Torture and the Geneva conventions) or the US Constitution" (42)

## **8. The APA mishandled ethics complaints in order to protect psychologists implicated in detainee abuses.**

The Hoffman report confirms that the APA was involved in obstructing and manipulating ethics investigations into psychologists involved in the torture program:

The end result of the limited nature of the ethics investigations and the Ethics Office's purposeful unwillingness to thoroughly investigate allegations of unethical conduct by psychologists who participated in interrogations was that the Ethics Office prioritized the protection of psychologists—even those who might have engaged in unethical behavior—above the protection of the public. (63)

## **9. APA officials engaged in additional unethical behavior that supported CIA torture.**

Hoffman found that influential APA officials had "very substantial interactions with the CIA in the 2001 to 2004 time period, including on topics relating to interrogations, and were motivated to curry favor with the CIA in a similar fashion to DoD." (10) While Hoffman did not find evidence that they

were acting in an official APA capacity, he noted certain limitations when "investigating activities involving the CIA, an agency that trains people to keep things secret for a living," and that his conclusions were only based on available evidence." (161, 46) Two examples of CIA interaction are included below:

In 2002, the head of the CIA's Office of Medical Services, psychologist Terrence DeMay, complained about the involvement of "torture architect" James Mitchell in CIA interrogations. Hoffman notes that this led to a "substantial dispute within the CIA," which Mitchell's supervisor at the CIA's Counterterrorism Center tried to resolve by seeking an opinion on the ethics of a psychologist participating in such interrogations. (50) CIA turned to Mel Gravitz, an APA governance member and longtime CIA contractor, who submitted a written opinion that the CIA's torture techniques were consistent with APA's ethics code. (159) Hoffman notes:

Our investigation uncovered that Gravitz had played an important role inside the CIA in clearing the way for CIA contract psychologist Jim Mitchell to continue participating in CIA interrogations in 2003 after some within the CIA protested that his work was unethical, and had also attempted to influence an APA 2002 disciplinary proceeding against Michael Gelles. (19) [...] We were told that as a result of Gravitz's opinion, the chief of the CIA Counterterrorism Center was satisfied that Mitchell could continue participating in and supporting interrogations... (65)

Gravitz later served on the PENS Task Force as an observer. In addition, Joseph Matarazzo, a former APA president, represented to the CIA that sleep deprivation is not psychological torture:

... Matarazzo said that [CIA's Kirk Hubbard] once asked him, apart from the Advisory Committee, whether sleep deprivation constituted torture. Matarazzo said that he consulted with other psychologists and thought about his own experience before concluding that sleep deprivation is not torture on its own. Matarazzo said that he gave his opinion to Hubbard, and that Hubbard came back to him with a questionnaire that broke down the question about sleep deprivation into several parts. (160)

### III. Key Violations

#### 1. Violation of "do no harm" and other ethical obligations

The Hoffman report sheds light on the secret and corrupt processes that enabled APA leadership to not only rewrite the association's ethics policies, but also obstruct internal efforts to oppose these actions. As former APA ethics director Kenneth Pope has noted, the APA abandoned the longstanding ethical imperative to "first, do no harm," which is intended to protect the public from the unsafe and unethical practice of psychology. Instead, the APA embraced the principle of "first, do no harm to psychologists," with the aim of protecting the profession from public accountability.<sup>5</sup> In weakening its own ethics code and refusing to sanction unethical behavior, the APA "prioritized the protection of psychologists—even those who might have engaged in unethical behavior—above the protection of the public." (63)

#### 2. Violation of laws prohibiting torture and ill-treatment

APA and individual psychologists may have violated domestic and international laws, including the prohibition against torture and ill-treatment.<sup>6</sup> The Hoffman investigation found that the APA "supported the development or implementation of enhanced interrogation techniques that constituted torture" (68) and should have known that abusive interrogations were occurring and

likely to continue in the absence of strict ethical guidelines. (12) Although the investigation was unable to find evidence to directly confirm that leadership knew of the existence of the so-called “enhanced” interrogation program or acted pursuant to that knowledge, Hoffman noted:

Thus, we conclude that in colluding with DoD officials, APA officials acted (i) to support the implementation by DoD of the interrogation techniques that DoD wanted to implement without substantial constraints from APA; and (ii) with knowledge that there likely had been abusive interrogation techniques used and that there remained a substantial risk, that without strict constraints, such abusive interrogation techniques would continue; and (iii) with substantial indifference to the actual facts regarding the potential for ongoing abusive interrogations techniques. (9)

The APA, in collusion with the U.S. government, authorized psychologists to intentionally inflict physical and mental pain on vulnerable individuals (72) and deliberately avoided setting firm limits on this conduct so as not to constrain DoD interrogation practices. (10, 70) This was done at a time when the Bush administration denied that Geneva Convention protections applied to detainees, when it had narrowed the definition of torture to authorize unlawful practices, when it relied on health professional supervision to claim that the actions they were monitoring did not amount to torture, and when there was widespread and credible evidence that detainees were being tortured and abused in Iraq, Afghanistan, Guantánamo, and elsewhere. (70)

### **3. Collusion at the highest levels of the APA and the U.S. government**

This collusion to justify and defend the participation of psychologists in torture took place at the highest levels of APA leadership. It involved a score of elected officials and staff, including the CEO, deputy CEO, five presidents, and top officers from APA’s ethics, science, governance, policy, practice, legal, and communications offices. In addition, this conspiracy included CIA and DoD operational psychologists, including some responsible for supporting interrogations at Guantánamo. The collusion was institutional and systemic in scope: the strategy of pleasing DoD was endorsed at the highest levels of the APA, including by the board and staff. While then ethics director Stephen Behnke was creative in carrying out this strategy, the evidence establishes that those at the helm understood what was happening.

In addition, the report sheds light on the extent to which the Bush administration relied on APA policies in an attempt to legitimize the U.S. torture program, which extended to supporting the legal authorization for these practices. Hoffman notes: “we are not government investigators, and do not have the powers (such as subpoena power) or the same access to government information that such investigators typically have.” (5) Hoffman’s mandate was limited to an investigation of APA collusion and corruption, but the government was corrupt as well. This report documents an inappropriate relationship between the DoD, CIA, and APA, but there is more to be understood – precisely why a federal investigation with subpoena powers is critical.

## **IV. Recommendations**

In endorsing the use of psychology to harm individuals, the APA crossed an ethical bright line of “do no harm” and must be held accountable for this violation, any crimes committed, as well as the harm that followed. The APA has caused immeasurable harm to the detainees who were tortured, with the aid of psychologists. The APA’s actions have also diminished the profession’s autonomy and severely damaged its integrity in the eyes of the public. The United States will pay the price for decades. As

U.S. Senator Dianne Feinstein has stated, “This is a stark reminder that torture can corrode every institution it touches, including medical and psychological professions.”<sup>7</sup> The APA must restore its ethical standards and recommit to human rights protections. It must ensure accountability of those who led the APA away from its ethics and into actions that, at a minimum, undermine human rights standards and may have been unlawful. It must also commit to never again allowing its ethics and integrity to be hijacked by third party interests, including the government.

### **Accountability**

The U.S. Department of Justice must appoint a special prosecutor and conduct a full criminal investigation into the torture and ill-treatment of national security detainees and all those who authorized, designed, participated in, or otherwise enabled these violations, including health professionals.

### **Policy Reform**

The APA must reform its ethics policies and take appropriate actions to prevent psychologists from participating in or enabling detainee torture or ill-treatment, including the adoption of policies prohibiting psychologist involvement in interrogations and other activities that are inconsistent with the profession’s “do no harm” ethic.

### **Justice**

National security detainees have been denied the right to seek an effective remedy for the torture, ill-treatment, and other violations they have experienced as a consequence of the U.S. “war on terror.” This right must be restored and U.S. courts should accept jurisdiction of both civil and criminal cases to provide justice for the victims and accountability to those responsible for these violations and crimes.

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<sup>1</sup> Allen, SA et al. (2014). *Doing Harm: Health Professionals’ Central Role in the CIA Torture Program*. New York: Physicians for Human Rights.

[http://s3.amazonaws.com/PHR\\_Reports/doing-harm-health-professionals-central-role-in-the-cia-torture-program.pdf](http://s3.amazonaws.com/PHR_Reports/doing-harm-health-professionals-central-role-in-the-cia-torture-program.pdf)

<sup>2</sup> American Psychological Association (2005). *Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security*. <http://www.apa.org/pubs/info/reports/pens.pdf>

<sup>3</sup> Hoffman, DH et al. (2015). *Report to the Special Committee of the Board of Directors of the American Psychological Association: Independent Review Relating to APA Ethics Guidelines, National Security Interrogations, and Torture*. Chicago: Sidley Austin LLP. <http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>

<sup>4</sup> See Soldz, S et al. (2015). *All the President’s Psychologists: The American Psychological Association’s Secret Complicity with the White House and U.S. Intelligence Community in Support of the CIA’s “Enhanced” Interrogation Program*. <http://s3.amazonaws.com/s3.documentcloud.org/documents/2069718/report.pdf>

<sup>5</sup> Pope, KS. (2015). *The Hoffman Report And the American Psychological Association: Meeting the Challenge of Change*. <http://kspepe.com/kpepe/Hoffman.php>

<sup>6</sup> U.S. Anti-Torture Statute (18 U.S.C. §§ 2340-2340A); Federal War Crimes Act; Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution; U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; International Covenant on Civil and Political Rights; Geneva Conventions.

<sup>7</sup> Feinstein, D. (2015). *Feinstein on Alleged Link Between APA, CIA Torture Program*.

<http://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=c4164060-080f-4f04-915f-a3b4b46091b3>