

**DENOUEMENT? NEW APA POLICY BANS PSYCHOLOGIST PARTICIPATION  
IN NATIONAL SECURITY INTERROGATIONS**

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On August 7, 2015, the American Psychological Association (“APA”) significantly overhauled its preexisting policies by prohibiting psychologists from participating in national security interrogations. The APA, the country’s largest professional organization of psychologists,<sup>2</sup> passed this resolution overwhelmingly.<sup>3</sup> The new policy is a culmination of advocacy efforts by medical, ethics, and legal professionals to prevent psychologists from participating in military interrogations and to demand accountability for health professionals who have designed, implemented, or participated in enhanced interrogation techniques in Guantánamo.

**THE NEW APA POLICY**

The APA resolution states that in keeping with the ethics code to “take care to do no harm,” psychologists “shall not conduct, supervise, be in the presence of, or otherwise assist any national security interrogations for any military or intelligence entities...nor advise on conditions of confinement insofar as these might facilitate such an interrogation.”<sup>4</sup> Psychologists may continue to offer consultation as long as their services are not related to specific national security

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<sup>2</sup> The APA has roughly 122,000 members. American Psychological Association, “About APA,” <http://www.apa.org/about/index.aspx>.

<sup>3</sup> Temple-Raston, “Psychology Group Votes to Ban Members from Taking Part in Interrogations,” <http://www.npr.org/sections/thetwo-way/2015/08/07/430361597/psychology-group-votes-to-ban-members-from-taking-part-in-interrogations>. The only dissenting vote came from Col. Larry James, a former Army intelligence psychologist at the Guantánamo Bay and Abu Ghraib detention centers. Ibid.

<sup>4</sup> American Psychological Association, Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, <http://www.apa.org/independent-review/psychologists-interrogation.pdf>.

interrogations or detention conditions.<sup>5</sup> For example, the new policy permits psychologists to work “directly for the persons being detained,” to be present at a detention center on behalf of an independent third party committed to protecting human rights, and to provide treatment to military personnel.<sup>6</sup>

The resolution affirms the APA’s commitment to the “highest standard of human rights.”<sup>7</sup> The APA policy thus privileges human rights and ethical principles, even where they conflict with U.S. laws or policies.<sup>8</sup> The resolution recognizes that the George W. Bush Administration provided a “legal justification” for the use of “enhanced interrogation techniques” with Guantánamo detainees.<sup>9</sup> By announcing that it is against APA policy for psychologists to participate in national security interrogations at Guantánamo, the APA aligned itself with recommendations by the UN Committee against Torture on US compliance with its obligations under the Convention against Torture treaty.<sup>10</sup>

## **THE “HOFFMAN REPORT”**

The APA resolution was drafted in response to a 542-page report (“Hoffman Report”)<sup>11</sup> commissioned by the APA’s Board of Directors. The report reviewed allegations by legal advocates and psychologists that the APA had made policy decisions between 2002 and 2005, which enabled U.S. government officials to use psychologists to participate in harsh and abusive

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<sup>5</sup> See American Psychological Association, press release, APA’s Council Bans Psychologist Participation in National Security Interrogations, <http://www.apa.org/news/press/releases/2015/08/psychologist-interrogations.aspx>; Temple-Raston, “Psychology Group Votes to Ban Members from Taking Part in Interrogations,” <http://www.npr.org/sections/thetwo-way/2015/08/07/430361597/psychology-group-votes-to-ban-members-from-taking-part-in-interrogations>.

<sup>6</sup> American Psychological Association, Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, <http://www.apa.org/independent-review/psychologists-interrogation.pdf>.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid. (denouncing dependence “on a given statute...or Presidential Executive Order” and clarifying that psychologists “may not engage directly or indirectly in any act of torture or cruel, inhuman, or degrading treatment or punishment”).

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> The official title of the report is “Report to the Special Committee of the Board of Directors of the APA, Independent Review Relating to APA Ethics Guidelines, National Security Interrogations, and Torture.” The report is commonly referred to as the “Hoffman Report,” named after the Chicago attorney, David H. Hoffman, who was assigned to conduct the review.

interrogation techniques.<sup>12</sup> The Hoffman Report was released in July 2015, one month prior to the enactment of the APA's new rule. The report found that there was undisclosed coordination between top APA officials and the Department of Defense ("DoD") to develop an interrogation program after the September 11th attacks and to undermine efforts by the APA Council of Representatives to pass resolutions that would have prohibited psychologists from participating in national security interrogations.<sup>13</sup> According to the Hoffman Report, the then-APA's Ethics Director, Stephen Benke, and others had "colluded with important [DoD] officials to have the APA issue broad, high-level ethical guidelines that did not constrain" the Pentagon in its interrogation of terrorism suspects at Guantánamo Bay.<sup>14</sup> The APA's primary motivations in keeping its principles in line with DoD's interrogation policies were to bolster the credibility of the professional association and "curry favor" with the DoD.<sup>15</sup> The Hoffman Report ultimately led to the resignation of top APA officials, including its Chief Executive Officer, Dr. Norman Anderson, and its deputy Chief Executive Officer, Dr. Michael Honaker.<sup>16</sup>

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<sup>12</sup> Hoffman, et al., *Report to the Special Committee of the Board of Directors of the American Psychological Association, Independent Review Relating to the APA Ethics Guidelines, National Security Interrogations, and Torture*, 1, <http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>. The APA's military psychology division issued a response to the Hoffman Report. Three military psychologists and one former official, who were all named in the report, have also written a separate rebuttal. Both argue that the Department of Defense had already banned harsh interrogations by the time the Presidential Task Force on Psychological Ethics and National Security ("PENS"), commissioned by the APA in 2005 to investigate the role of psychologists in national security efforts, published its report concluding that psychologists could remain in national security interrogations. See Harvey, et al., *Response to the Hoffman Independent Review*, <http://www.hoffmanreportapa.com/resources/TF19%20Response%20to%20the%20Hoffman%20Report.pdf>; Morgan Banks, et al., *Hoffman's Key Conclusion Demonstrably False: The Omission of Key Documents and Facts Distorts the Truth*, [http://www.hoffmanreportapa.com/resources/RESPONSE\\_TOD\\_AVID\\_HOFFMAN1026.pdf](http://www.hoffmanreportapa.com/resources/RESPONSE_TOD_AVID_HOFFMAN1026.pdf). The APA released a statement requesting that by June 8, 2016, Mr. Hoffman complete a review of the policies and documents provided in his critics' reports. American Psychological Association, press release, APA Seeks Clarification of Relevance of Specific Defense Department Policies to Independent Review, <http://www.apa.org/news/press/releases/2016/04/independent-review.aspx>.

<sup>13</sup> See Hoffman, et al., *Report to the Special Committee of the Board of Directors of the American Psychological Association, Independent Review Relating to the APA Ethics Guidelines, National Security Interrogations, and Torture*, 1, <http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>. 36-43.

<sup>14</sup> *Ibid.* at 9, 12, 36-43.

<sup>15</sup> *Ibid.* at 9.

<sup>16</sup> See American Psychological Association, press release, APA Announces Retirements and Resignation of Senior Leaders, <http://www.apa.org/news/press/releases/2015/07/retirements-resignation.aspx>; Ackerman, "Three senior officials lose their jobs at APA after US torture scandal," <http://www.theguardian.com/us-news/2015/jul/14/apa-senior-officials-torture-report-cia>.

## OVER A DECADE OF ADVOCACY

The Hoffman Report and the subsequent APA resolution mark a profound sea change. Both follow more than a decade of advocacy regarding the role of psychologists in formulating and facilitating torture techniques in Guantánamo in order to create an environment designed to break down detainees. Advocates lodged complaints with state psychological boards against psychologists who organized and facilitated torture programs post-9/11, documented studies detailing the role of psychologists at the detention facility, and called for a new APA policy banning such participation and demanding accountability.

In 2004, along with news of detainee abuse in Guantánamo, reports of psychologist participation in interrogations surfaced.<sup>17</sup> Convinced that the involvement of psychologists in detainee interrogations violated fundamental ethical principles, members of the APA turned to the organization to investigate and hold accountable individuals who had participated in these activities.<sup>18</sup> However, two important developments halted their efforts. First, in 2002, APA ethics code 1.02 was revised to provide that in circumstances in which there was a conflict between professional ethics and the law, psychologists may nevertheless “adhere to the requirements of the law, regulations, or other governing legal authority.”<sup>19</sup> Second, the controversial Presidential Task

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<sup>17</sup> For example, a leaked report of the International Committee of the Red Cross revealed that Guantánamo medical personnel had been providing information on the health of the detainees to Behavioral Science Consultation Team (“BSCT”) members. ICRC, *Report on the Treatment of Fourteen ‘High Value Detainees’ in CIA Custody*, <http://www.nybooks.com/icrc-report.pdf>; see also ACLU, “Newly unredacted report confirms psychologists supported illegal interrogations in Iraq and Afghanistan,” <http://www.aclu.org/safefree/torture/35111prs20080430.html>. The BSCT, a group of mental health professionals, was originally assigned to oversee the mental health of soldiers at Guantánamo but was later enlisted to support interrogation operations. U.S. Senate Committee on Armed Services, *Inquiry into the Treatment of Detainees in U.S. Custody*, 38. BSCT psychologists crafted interrogation techniques and suggested using detainee phobias and other harsh methods to enhance detainee cooperation. *Ibid.*, 50-52.

<sup>18</sup> Boston Globe, “Psychologists and torture,” <http://tinyurl.com/5qhtf2> (“Many psychologists fault their own professional organization, the American Psychological Association, for not taking a firmer stance and for not punishing association members who in the past have helped interrogators in using techniques like sleep deprivation to raise prisoners’ stress levels or in finding their emotional weak points.”).

<sup>19</sup> American Psychological Association, *Ethical Principles of Psychologists and Code of Conduct* § 1.02, <http://www.apa.org/ethics/code/principles.pdf>. Section 1.02 has been labeled by many as the “Nuremberg Clause,” a reference to the defense of prosecuted Nazi leaders, who alleged that their actions were legal under German law of the time. See Pope and Gutheil, “Psychologists Abandon the Nuremberg Ethic: Concerns for Detainee Interrogations.” In 2010, Section 1.02 was amended to incorporate the following language: “If psychologists’ ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.” American Psychological Association, *Ethical Principles of Psychologists and Code of Conduct* § 1.02, at 15, <http://www.apa.org/ethics/code/principles.pdf>; see also American Psychological

Force on Psychological Ethics and National Security (“PENS”), commissioned by the APA in 2005 to investigate the role of psychologists in national security efforts, published a report sanctioning the direct assistance of psychologists in detainee interrogations.<sup>20</sup>

In an effort to bring accountability to psychologists who designed and facilitated detainee abuse, legal advocates lodged complaints with various state psychological boards. In July 2010, the Harvard Law School International Human Rights Clinic filed a complaint with the Ohio Psychology Board calling for an investigation into the conduct of Colonel Larry James—then licensed in Ohio—in his capacity as former chief psychologist of the intelligence command at Guantánamo. According to the complaint, for several months in 2003 and between 2007 and 2008, Dr. James was the senior psychologist of the Guantánamo Behavioral Science Consultation Team (“BSCT”), a group of mental health professionals who advised on and participated in interrogations.<sup>21</sup> The complaint alleged that during Dr. James’ tenure at Guantánamo, detainees were subjected to a series of abusive treatment,<sup>22</sup> and that Dr. James, in his position of authority, knew or should have known that such abuse was being inflicted. In July 2010, the Center for Justice and Accountability filed a complaint with the New York Office of the Professions against a New York psychologist, Dr. John Leso, for his role in designing, implementing, and participating

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Association, press release, APA Council of Representatives Directs Change in its Ethics Code to Prevent So-Called Nuremberg Defense, <http://www.apa.org/news/press/releases/2009/08/ethical-standard.aspx>.

<sup>20</sup> American Psychological Association, *Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security*, <http://www.apa.org/releases/PENSTaskForceReportFinal.pdf>. Many psychologists condemn the conclusions of the PENS report, and the APA’s actions in convening the task force and issuing the report that has created widespread and intense controversy within the APA and international psychological community. See Hoffman, et al., *Report to the Special Committee of the Board of Directors of the American Psychological Association, Independent Review Relating to the APA Ethics Guidelines, National Security Interrogations, and Torture*, 2, <http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>. Former APA president, Philip Zimbardo, noted in a letter to the task force that: “A more lenient standard puts individual psychologists engaged in capacities related to military investigations at risk for ‘doing harm’ despite not violating their association’s code of ethics.” Zimbardo, “Thoughts on Psychologists, Ethics, and the Use of Torture in Interrogations.” Others criticized the composition of the task force as reflecting military bias. Of the ten PENS members, six were high-level DoD or CIA employees or contractors. Arrigo and Long, *APA: Denunciation and Accommodation of Abusive Interrogation* 190-91. Civilian task force members felt that the presence of members and observers associated with the military influenced the direction of the PENS report. Ibid.

<sup>21</sup> Harvard Law School, “HLS International Human Rights Clinic files complaint against Guantanamo psychologist,” <http://today.law.harvard.edu/hls-international-human-rights-clinic-files-complaint-against-guantanamo-psychologist/>.

<sup>22</sup> The complaint cites the following abusive treatment: “Boys and men were threatened with rape and death for themselves and their family members; sexually, culturally, and religiously humiliated; forced naked; deprived of sleep; subjected to sensory deprivation, over-stimulation, and extreme isolation; short-shackled into stress positions for hours; and physically assaulted.” Ibid.

in a system of abusive interrogations at Guantánamo.<sup>23</sup> Additionally, in June 2010, a Texas psychologist lodged a complaint with the Texas State Board of Psychologists against Dr. James E. Mitchell, alleging that he violated the profession's rules of practice by helping the CIA develop "enhanced interrogation techniques" for use in its "black site" prisons.<sup>24</sup> The Ohio, New York, and Texas boards dismissed these complaints, and subsequent attempts to seek judicial review have been unsuccessful.<sup>25</sup>

In addition to targeting psychologists believed to be complicit in the torture and ill-treatment of detainees, the NGO Physicians for Human Rights ("PHR") also documented the U.S. government's abusive techniques in a series of reports beginning in 2005.<sup>26</sup> Together with the International Committee of the Red Cross, the U.N. Commission on Human Rights, and the Senate Armed Services Committee, PHR chronicled incidents of psychologists advising, and in some cases, directing, the interrogation of detainees that rose to the level of torture under international law.<sup>27</sup> PHR's reports called for an end to detainee abuse and a federal investigation into the role of health professionals in the U.S. torture program, demanding full criminal and professional accountability for health professionals involved.<sup>28</sup>

Legal and mental health professionals also demanded that the APA revise its own policies to denounce torture and ill-treatment of detainees and reflect a commitment to human rights. The American Civil Liberties Union sought modification of APA ethics code 1.02, which allowed

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<sup>23</sup> Complaint—John Francis Leso, NY License #013492, <http://cja.org/article.php?id=876>; see also Center for Justice and Accountability, "Reisner v. Leso," <http://cja.org/article.php?list=type&type=412>.

<sup>24</sup> Texas State Board of Examiners of Psychologists Complaint Against Dr. James Elmer Mitchell (License No. 23564), <http://hrp.law.harvard.edu/wp-content/uploads/2013/07/MIT-FINL.pdf>.

<sup>25</sup> Human Rights@Harvard Law, "Professional Misconduct Complaints," <http://hrp.law.harvard.edu/areas-of-focus/counterterrorism-human-rights/professional-misconduct-complaints/>.

<sup>26</sup> These reports are accessible on the PHR webpage. See Physicians for Human Rights, "Papers and Reports on US Torture," <http://physiciansforhumanrights.org/issues/torture/us-torture/reports-on-torture.html?referrer=http://www.commondreams.org/newswire/2015/10/30/phr-welcomes-apas-call-remove-psychologists-guantanamo-and-national-security->.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*; see also Letter from Physicians for Human Rights, to Alan Kazdan, President, American Psychological Association and Norman Anderson, CEO & Vice-President, American Psychological Association, <http://physiciansforhumanrights.org/library/letter-2008-08-14.html>. Coalition for an Ethical Psychology also called for an independent investigation of psychologists and psychological organizations involved in abuse of detainees that rose to the level of torture. See Open Letter from Coalition for an Ethical Psychology to Suzanne Bennett Johnson, American Psychological Association, [http://ethicalpsychology.org/materials/Open\\_Letter-APA\\_President-9-18-12.pdf](http://ethicalpsychology.org/materials/Open_Letter-APA_President-9-18-12.pdf).

controversial legal opinions to supersede longstanding ethical principles.<sup>29</sup> Coalition for an Ethical Psychology also harshly criticized the APA's refusal to categorically prohibit members from participating in any phase of military interrogation. In October 2012, in an open letter on their website, the group voiced its disagreement with APA leadership and called for the APA to require its members to refuse participation in military interrogations.<sup>30</sup>

The Hoffman Report and APA's recently-adopted resolution therefore give recognition to the efforts of various legal and mental health professionals spanning over a decade to halt the involvement of psychologists in detainee interrogations.

### **RESPONSE TO THE APA RESOLUTION**

As part of the APA's first major step in implementing its new policy, the organization sent official correspondence to President Barack Obama, the Pentagon, the CIA, Congress, and other federal entities apprising them of its recently adopted resolution.<sup>31</sup> In its correspondence, the APA requested that the U.S. government take a number of actions, including withdrawing psychologists from any role in national security interrogations and redeploying all psychologists currently working in detention settings, such as Guantánamo, that violate the U.S. Constitution or international law, subject to few exceptions.<sup>32</sup> Government officials have yet to issue an official response to the APA's request.

For anti-torture advisors at Physicians for Human Rights, the APA's correspondence signals the association's return to the "psychology profession's dedication to respecting dignity and

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<sup>29</sup> Boulanger, "American Psychological Association Sees No Evil," <https://www.aclu.org/blog/speakeasy/american-psychological-association-sees-no-evil?redirect=blog/national-security/american-psychological-association-sees-no-evil>.

<sup>30</sup> Letter from Coalition for an Ethical Psychology to Dr. Younggren and Members of the APA Division 42 Board, <http://ethicalpsychology.org/materials/Coalition-Response-to-Div42-Board.pdf>.

<sup>31</sup> American Psychological Association, press release, APA Alerts Federal Officials to New Policy Banning Psychologists from National Security Interrogations, <http://www.apa.org/news/press/releases/2015/10/banning-psychologists-interrogations.aspx>.

<sup>32</sup> Ibid. Psychologists may remain in detention centers if they are exclusively treating military personnel or working directly for detainees or independent third parties protecting human rights. See American Psychological Association, Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, <http://www.apa.org/independent-review/psychologists-interrogation.pdf>.

improving the welfare of people everywhere.”<sup>33</sup> For PHR, the policy sends a “clear message” to the U.S. government that the psychology profession “unequivocally rejects policies of torture and abuse.”<sup>34</sup> PHR requests that the U.S. government set “appropriate limits” on the role of psychologists in national security contexts and urges the Obama administration to comply with the new APA policy and end indefinite detention at Guantánamo.<sup>35</sup>

Despite praise for the APA’s resolution, other legal advocates demand that the APA do more. The APA still refuses to sanction those members known to have designed and participated in abusive interrogation techniques in the Guantánamo, Iraq, and Afghanistan detention centers.<sup>36</sup> While a policy shift reflects a much-needed step in the right direction, other advocates maintain that there needs to be a full and public investigation of the institutional and leadership failures that led the U.S. government to torture hundreds of detainees.<sup>37</sup> Many demand that victims and survivors of torture need official apologies and redress.<sup>38</sup>

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<sup>33</sup> Physicians for Human Rights, press release, PHR Welcomes APA’s Call to Remove Psychologists from Guantánamo and National Security Interrogations, <http://physiciansforhumanrights.org/press/press-releases/phr-welcomes-apas-call-to-remove-psychologists-from-guantanamo-and-national-security-interrogations.html>.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Open Letter from Coalition for an Ethical Psychology to Suzanne Bennett Johnson, American Psychological Association, [http://ethicalpsychology.org/materials/Open\\_Letter-APA\\_President-9-18-12.pdf](http://ethicalpsychology.org/materials/Open_Letter-APA_President-9-18-12.pdf) (highlighting the APA Ethics Office’s failure to investigate and adjudicate extensively documented allegations of torture and other forms of prisoner abuse against APA psychologists John Leso, Larry James, and Michael Gelles).

<sup>37</sup> Ladin and Watt, “The Psychologists Who Enabled Torture,” <https://www.aclu.org/blog/speak-freely/psychologists-who-enabled-torture>.

<sup>38</sup> Ibid.



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