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# Appendix B: The Hoffman Report

## Resetting APA's Moral Compass

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In November 2014, the American Psychological Association Board of Directors hired an independent reviewer, former Inspector General and former federal prosecutor David H. Hoffman, JD, of the Chicago-based Sidley Austin Law firm, to conduct a thorough and independent review to investigate the relationship between various activities of the APA and Bush Administration policies on interrogation techniques used on foreign detainees. On July 10, 2015, the report (“Hoffman Report”; see <http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>) was released to the public. It described previously unknown and very troubling facts that led Mr. Hoffman to conclude that collusion among some APA staff and members with the Department of Defense (DOD) led to a weakening of the expressed ethical values and principles of the association, and may have enabled the government’s use of abusive interrogation techniques of foreign detainees.

Mr. Hoffman and his staff investigated the process of development of a specific policy paper, the 2005 Psychological Ethics and National Security (PENS) report, a document developed with the intention to provide guidance to military psychologists who asked for support in providing ethical processes in their involvement in interrogations. That report became a very controversial one over an 8-year period among members in the association, and was ultimately rescinded in 2013, after a series of resolutions and policy statements that more accurately reflected the values of the association and its members.

The Hoffman Report found that during the production of the 2005 PENS report, the usual internal checks and balances in regard to the production of policy failed to detect the collusion and significant conflicts of interest in the

development of the PENS report resulting in what he determined was a lack of meaningful field guidance for military psychologists.

One of the key points of debate and controversy has involved whether psychologists should participate in the interrogation of persons held in custody by military and intelligence authorities. One side suggested that psychologists should never be present for those, and even not present at all at such sites as Guantanamo and Abu Ghraib, especially given that abuses were endorsed as “legal” by the Bush Administration. Others believed that our behavioral science informed us that the most ethical and effective methods of interrogation included effectively building rapport, and that the presence of psychologists with that expertise and knowledge to facilitate this goal would help to protect detainees from abusive interrogations. Other diverse views addressed what types of involvement in what locations under what rules and oversight and for what purposes. Although the controversy continues, at the point of this writing, before the August 2015 APA convention in Toronto, where the Council of Representatives meets, the Board of Directors has recommended to the Council of Representatives that they adopt a variety of policies in response to the Hoffman Report (see <http://www.apa.org/independent-review/index.aspx>)

The report *did not* conclude that APA supports torture; however, the report *did* conclude that there was collusion between APA and the DOD to allow psychologists to be present at interrogations where torture may have existed. The report did not take a position on whether psychologists should be present in interrogations but noted that there was an inherent tension when psychologists are present even when designed as safety monitors.

The findings of the Hoffman Report are deeply disturbing; its impact has been a bombshell of seismic proportions for the APA and for psychology. The Director of the APA Ethics Office has been apparently fired from his job, the Chief Executive Officer (CEO) and the Deputy CEO have announced early retirements, the APA Executive Director for public and member communications has resigned, and certain members have been asked to step down from their governance activities. In addition, several APA members are reporting experiencing repercussions either in their work places, in the APA, or both.

The Hoffman Report is a wake-up call for the APA. It highlights areas of needed reform, action, and self-reflection. However, I agree with a variety of views that sees that the Report is not without its problems (e.g., numerous statements of assumption; failure to interview key participants in APA’s anti-torture efforts; omissions of testimony; the selectivity of information requested, etc.). I recommend that everyone with interest in the issue read the entire Report carefully, as there is much to learn from it. Where does it identify facts that are of concern? Where does it provide interpretations that lack evidence?

Regardless of its imperfections, the Hoffman Report underlines the loss of an ethical focus on supporting fundamental human rights. Zimbardo (2007) made the point that the PENS report made several important contributions to the complex ethical issue of psychologists serving in working arrangements within the national security framework. Many of us were concerned about appropriate treatment of detainees who were not White (thus, vulnerable to racism), who were not Christian (and vulnerable to further bias), who were designated as “foreign combatants” (e.g., did not have rights to due process under the law as U.S. citizens), and who were feared for having potential information about future terrorism. This alerted us to be extra vigilant for this vulnerable population. The majority of those of us in governance believed that supporting the PENS report (not being aware of the behind-the-scenes collaboration with the Department of Defense personnel on wording in this report), including allowing for trained military psychologists to be present at interrogations, would have protected detainees from torture and abusive interrogations. Many others believed that we needed to go further, and over the 8 years following the release of the PENS guidelines, a number of individuals worked tirelessly to strengthen APA’s position against torture both inside and outside of national security settings. Progress was made over time (see the Conclusion for a summary).

It will take a long time to sort out the problems identified in the Hoffman Report, and many groups, including the APA Council of Representatives, APA’s policy-making body, will examine what happened, why it happened, what went wrong, and what is best for the organization in the future. In the meantime, there are many lessons to be learned that reflect the ethical principles we have tried to impart in this book. I use the structure described in Chapter 26, “Steps to Strengthen Ethics in Organization,” to describe lessons to be learned.

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## **Lessons Learned**

### **Keep Codes in Context**

We described in Chapter 26 the risk that ethics codes can fall short of fostering an ethically strong organization. What dynamics in organizations contribute to violating a culture of ethical concern, ethical leadership, and ethical enforcement?

### **The Dangers of Dichotomous Us/Them Thinking**

One of the problems has been the tendency to engage in our propensity to categorize, and join with one group or another. Opatow (1990) described how we

form groups in a we/they dichotomy. This leads to a subconscious and automatic categorization of people into our “in-groups,” those with whom we identify, and our “out-groups,” those whom we see as being outside our realm of identification. People in our in-groups are more highly valued, are more trusted, and engender greater cooperation as opposed to competition. We have more compassion and empathy for those in our in-group than for those in our out-group and are more likely to endorse and support those in this category.

On the other hand, people in our out-groups are implicitly conceptualized as “they,” or the “other,” and these categorizations affect behavior. We tend to treat out-group members as objects, in insensitive ways. At minimum, people in our out-groups are ignored or neglected; we tend to stop listening.

In the days following the release of the Hoffman Report, I became alarmed that this unfortunate process was activated in the wake of the crisis. I agree with Woolf’s (July 21, 2015, with permission) email message to colleagues where she pointed out her concern about this tendency characterizing some of the current conversation post Hoffman Report. She urges us to consider that there are many complex issues being discussed and, without clear knowledge of all, it becomes easy to view problems in dichotomous frames of good versus evil. Frank Worrell (personal communication, July 15, 2015, with permission) indicated that although he was dismayed and saddened by the Hoffman Report, he was equally dismayed by many of the disrespectful and inflammatory comments on the APA listservs following its release. He called upon all of us to be leaders in restoring trust in the Association, and to put governance processes in place to try to ensure that breeches do not re-occur. Indeed, the commitment to engage in mutual respect and to listen carefully and openly to the “other” voice are important strategies that counteract the we/they dichotomies. We must not betray our ethics in our rush to punish the “others” (see Chapter 26).

## **Other Problematic Dynamics That Undermine Ethical Organizations**

Maureen O’Hara (personal communication, July 15, 2015) described more about how dynamics in organizations can undermine ethical commitments:

In our research on how organizations that aspire to be virtuous end up doing evil . . . , my colleague Aftab Omer and I found what we termed “the myth of innocence” as a key factor that makes it more likely that good people end up doing evil deeds. We found that when accusations of behavior surface that call into question their identity as good guys they will protect their sense of collective innocence by a whole range of defensive strategies. These processes operate below the level of perception so are not recognized as defenses in the service of (false) innocence. Group think, denial, cover ups, silencing victims and whistle blowers, gag

orders, executive sessions, confidentiality policies, strategic communications techniques, blaming the victim, scapegoating, revisionism, smoke screens, discrediting evidence by discrediting the credentials of those who bring them figure prominently [in] cases of collective evil doing. There are healthy practices that make such conduct less likely and can help organizations recover from scandalous conduct but at times of crisis, when they are needed more, people often default to blaming rather than understanding, to sacrificing a few scapegoats, and to “moving on” before lessons are really learned.

O’Hara goes on to describe the elements that will allow for a more ethical, conscious association.

What happens from here, in my view, will depend on whether there is a collective will to engage in some compassionate, serious, and redemptive self-reflection and take the necessary steps (not just in the case of the Hoffman Report but in APA governance in general) to learn how to rebuild a more conscious organization.

## **Encourage Speaking Up, Listening Carefully, and Acting With Fairness**

### **The Influence of Context**

We must remember to be hypervigilant especially when the context is one of crisis. Our chapter on ethics in organizations reminds us that unethical acts may go unnoticed or unreported, and we may be particularly vulnerable to this at times of crisis. In this context, the emotional and political atmosphere following the 9/11 terrorist acts resulted in fear, grief, and anger that eventually led the country to war and to the government’s “legalized” use of torture and abusive interrogations at Guantanamo and Abu Ghraib. That context perhaps led many of us in the APA to fail to listen, engage in open communication, critically and thoughtfully analyze situations, to pause and reflect, and to fail to treat each other with respect.

### **Take Care to Not Move Too Swiftly in Those Crises**

The governance processes and procedures typically serve as a way to ensure that policies and reports are vetted, and that all voices are heard, as much as possible. Guidelines, resolutions, and reports are typically reviewed by APA Boards and Committees, key experts, divisions and state and provincial psychological associations, the Council of Representatives, and other interested parties for one or more rounds of comments. The process is long and tedious, but it works to allow concerns to be addressed, compromises to be made, and

corrections to be incorporated. This process makes room for as many voices to be heard, respected, and included so that usually a collective wisdom can be reached. Because information and knowledge evolves over time, some documents such as guidelines are required to be reviewed and updated every 10 years.

The system also allows for a bypassing of the process in cases of emergency, such as when funds and other supports are offered after natural disasters, such as the 2004 Indian Ocean earthquake and tsunami, and the 2005 Hurricane Katrina in New Orleans.

Because of the perceived urgency of the need for guidance for military psychologists, in 2005, the movers of the PENS report bypassed the usual process and it was treated as an emergency event. The lesson learned here is that when the nature of the product contains many controversial and complex issues, we should not bypass the longer vetting process. Presumptive actions can lead to a derailing of the processes and procedures to ensure diversity of voice through Machiavellian maneuverings. A reactionary zeitgeist can derail important reviews, procedures, due processes and other judicious policies.

## **Communicate to Increase Understanding**

The nature of organizations is political. Competing interests within them have to be balanced through communication, debate, negotiation, and compromise. Sometimes debates take the form of win/lose, and in that context, debates can take a negative, destructive tone. Attempts are made to silence people by treating them with disrespect; at times, it seems that there is competition for individuals on all sides to be the meanest person in the debate. We must never lose sight that the primary goal of communication is to increase understanding. In any situation with competing interests, it is optimal if consensus is reached; if not, it comes to a democratic vote. However, destructive communications are never acceptable or appropriate. All voices should be heard; participants should listen carefully; and the process should promote respect and fairness.

## **APA as an Association for All Psychologists**

One of the wonderful things about the APA is that it is a broad tent that tries to provide a home for all psychologists. It is also a challenge in that many subspecialties and disciplines in psychology are varied and at times at odds. Did we try to bend over too far to consider the guidance needed by military psychologists? I tend to think not. What is more possible is that the perceived urgency leading to a suspension of usual processes allowed for secretive behind-the-scenes communications to have undue power. This does not mean that we should stop listening to the needs of the wide variety of psychologists; it means we

must continue to consider how to work through the conflicts to produce good work, even when this takes time.

## **Respect the True Costs of Betraying Ethics**

How do we prevent masking, reinterpreting, or justifying risky acts that may be unethical, or that represent flawed judgments, logical fallacies, and cognitive strategies of justification?

## **Engage in Self-Examination**

Many of us as individuals, and the APA as an organization, are in the process of engaging in self-examination. I am looking at my own actions while serving on the Council of Representatives (2004–2006), Board of Directors (2007–2009), and as president-elect, president, and past president (2010–2012). I have talked to several colleagues and friends who were also in leadership during this period, and we are examining what we did, what we didn't do, what we wished we had done, and to reconsider all of it in light of what has been described in the Hoffman Report. How can we train ourselves to do so on a regular, ongoing basis in regard to any controversial issues that we address?

## **Seriously and Carefully Attend to Conflicts of Interest**

Because of the importance of trust, standards that apply to public governmental officials should also apply to APA members and staff. They should be stringent, and require not only avoidance of conflict of interest, but also the appearance of conflict of interest.

## **Make Amends and Apologize**

An important part of finding our moral compass to “right the ship” is to acknowledge our errors, neglect, missteps, and harm done. We have to stop and truly understand who and how we harmed others and offer specific apologies because that is the beginning of the healing process. Many of us, me included, experience regret, sadness, shame, and heartbreak. APA provided an apology in the first public announcement, “APA Apologizes for ‘Deeply Disturbing’ Findings and Organizational Failures; Announces Initial Policy and Procedural Actions to Correct Shortcomings” (July 10, 2015; see <http://www.apa.org/news/press/releases/2015/07/independent-review-release.aspx>)

In an early release of his September, 2015 *Monitor on Psychology* column, CEO Norman Anderson also apologized: “As your CEO, I want to express my deepest regrets for the events described in the report, which hurt all of us tremendously.” (Anderson, September, 2015, p. 11).

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## Conclusion

On many listservs, I have seen messages that convey beliefs to which I resonate. The American Psychological Association has extraordinary power to do good, and has a solid history of having done so. We are truly committed to meaningful change. The fact that APA leadership commissioned the Hoffman Report and publicly disclosed it in its entirety was an act of transparency and courage. In addition, Linda Woolf reminded us of the strides that were taken in the 8 years post PENS report (that were not addressed in the Hoffman Report). She states (personal communication, July 15, 2015, with permission):

One of my primary concerns with recent dialogue as well as the Hoffman Report is that it fails to take into account the changes post-PENS to bring about stronger anti-torture policy. There were individuals working within APA and many Divisions (e.g., the Divisions for Social Justice) who worked tirelessly to strengthen APA’s position against torture both inside and outside of national security settings. Some of these efforts were successful, some were largely successful, and some failed. However, regular progress was made over time. It is an error to paint APA as a whole with a broad brush as being supportive of torture, “enhanced interrogations,” or abusive conditions of confinement. Some efforts post-PENS include:

**2006 Resolution Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment -**

<http://www.apa.org/about/policy/torture-2006.aspx>. This policy is a broad-based policy condemning

torture in all contexts and against all persons. There was only one concern about the policy presented after its passage. The definition of “cruel, inhuman, and degrading” if taken from a highly legalistic perspective (certainly, not the intent of the authors and most likely not the intent of those who voted to accept the definition) could be perceived as a possible loophole. The definition was added at the CoR meeting as a friendly amendment due to concerns expressed by clinicians about the threat of spurious lawsuits, if no definition was added. The definition was taken from U.S. policy related to the UN Convention Against Torture. There is a NBI that should be coming before Council at this Convention to fix this wording issue.



**2007 APA Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as “Enemy Combatants.”** Had some wording issues, which were corrected in 2008.

**2007 Moratorium on Psychologist Involvement in Interrogations in National Security Settings.** Failed at Council. It is my hope that a prohibition against psychologist involvement in national security settings will be revisited at this Council meeting.

**2008 APA Amendment to the Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as “Enemy Combatants.”** Rectified the problematic wording from 2007.

**2008 APA Petition Resolution Ballot –**

(<http://www.apa.org/news/press/statements/work-settings.aspx>). The membership voted to approve this policy. It still needs to be further developed for implementation. The 2008 Report of the APA Presidential Advisory Group on the Implementation of the Petition Resolution with recommendations for implementation can be found at <https://www.apa.org/ethics/advisory-group-final.pdf>. More work needs to be done in relation to full implementation.

**2010 Ethics Code Change**, which speaks to the inviolate nature of human rights.

<http://www.apa.org/news/press/releases/2010/02/ethics-code.aspx>. This change is foundational.

**2013 Policy Related to Psychologists’ Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

(<http://www.apa.org/about/policy/national-security.aspx> and Related Report – <http://www.apa.org/about/policy/psychologists-national-security.pdf>). This policy represents the strongest, most comprehensive anti-torture policy and is directly related to psychologists’ work in national security settings. The Hoffman Report has nothing negative to say about this policy that was voted on and approved by Council in 2013.

**2013 PENS Rescinded** - Council voted to rescind the PENS Report at the 2013 Council meeting at Convention.

Is there more work to do? Absolutely. However, it is false to say that APA as a whole or even majority was solely supportive of psychologists' involvement in destructive interrogation or confinement conditions or that no change has occurred since 2005.

In addition, it is helpful to note that the Hoffman Report concluded that some longstanding criticisms aimed at the APA regarding these matters were inaccurate. Most notably, Mr. Hoffman concluded that counter to critics' claims of APA collusion with the CIA there was "no evidence of significant CIA interactions regarding PENS."

Mr. Hoffman also said his inquiry "did not find evidence" that supporting the Justice Department's legal rationale for approving abusive interrogation techniques was "part of the thinking or motive of APA officials."

Additionally, the report confirmed that the organization's 2002 change in its Code of Ethics was not the product of collusion. Mr. Hoffman "did not see evidence" that the revisions "were a response to, motivated by, or in any way linked to the attacks of September 11th or the subsequent war on terror. Nor did we see evidence that they were the product of collusion with the government to support torture." As the organization has repeatedly stated, the ethics code was revised to provide a support for psychologists when their ethical obligations on client confidentiality conflicted with court-ordered directive ordering disclosure of confidential patient information. When it was perceived that the change could inadvertently provide a "Nuremberg defense," the code was revised in 2010 (see Woolf citation above).

APA and its members have made tremendous strides in developing ways to treat human suffering. APA Executive Director of the Public Interest Directorate, Gwen Keita, stated:

For all of the missteps APA took with regard to coercive interrogations and despite a pattern of cover-up over the years, in the end the organization took a positive and courageous step in hiring an independent investigator and made a prior commitment that his findings would be made public no matter what they showed. As courageous as that step was, it is clearly only the first step. Hoffman provided the data, now APA leadership must do something transformative as a result. (personal communication, July 25, 2015).

Many colleagues have expressed optimism that in this crisis, there exists an opportunity for APA to grow and to learn as an ethical organization. Sandy Shullman (personal communications, July 24, 2015) eloquently stated:

... there are some great lessons here and also some great opportunities for many dedicated and talented people to break mindset about how you show up as a member of an organization and do your level and ethical best, which could ultimately lead our field to a much better place. I am not . . . minimizing the hurt and damage, but I know many great discoveries and moments of true progress followed on the heels of colossal mistakes. What we do with our recent knowledge and learning will ultimately determine the real impact of our current flaws and also the continued growth of our profession and discipline.

Ethical behavior is indeed both evolutionary and revolutionary.

There is strong commitment to learn from terrible mistakes and to do everything to strengthen our organization to demonstrate commitment to ethics and human rights. Working together, the Council of Representatives, Board of Directors, other members, and the APA staff will continue to benefit society and improve people's lives. APA will find the moral compass to right its ship.

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