

COALITION FOR AN ETHICAL PSYCHOLOGY

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Background Statement on Annulment of the APA's PENS Report

Introduction

Over the decade since the horrendous attacks of 9/11, the world has been shocked by the specter of abusive interrogations and the torture of national security prisoners by agents of the United States government. While psychologists in the U.S. have made significant contributions to societal welfare on many fronts during this period, the profession tragically has also witnessed psychologists acting as planners, consultants, researchers, and overseers to these abusive interrogations at Guantánamo Bay Detention Center, Bagram Air Base, CIA "black sites," and elsewhere. Moreover, in the guise of keeping interrogations "safe, legal, ethical and effective," psychologists were used to provide legal protection for otherwise illegal treatment of prisoners.

The American Psychological Association's (APA) 2005 Report of the Presidential Task Force on Psychological Ethics and National Security (PENS Report) is the defining document endorsing psychologists' engagement in detainee interrogations.ⁱ Despite evidence that psychologists – including APA members – were involved in abusive interrogations, the PENS Task Force concluded that psychologists have a critical role to play in keeping interrogations "safe, legal, ethical and effective." With this stance the APA, the largest association of psychologists worldwide, became the sole major professional healthcare organization supporting member involvement in the interrogation of detainees held under conditions that violate international law.^{ii iii} As Behavioral Science Consultants to interrogators, psychologists provided professional legitimacy and expertise to programs that have been condemned worldwide.^{iv}

Thus the PENS Report has contributed to significant harm to vulnerable populations by supporting policies that permit abusive treatment; has badly damaged the reputation of the profession of psychology;^v has diminished the APA's commitment to advance psychology "as a means of promoting health, education and human welfare;" has compromised the integrity of the relationship between professional psychology and the security sector; and, according to some senior interrogators and intelligence professionals, has undermined national security.^{vi}

It is deeply troubling that the PENS Report continues to be an influential and authoritative guiding operational document today within psychology and the national security establishment. Of equal concern, the PENS Report resulted from institutional processes that were illegitimate in many ways. These processes – which were inconsistent with APA's own standards and were far outside the norms of transparency, independence, and deliberation for similar task forces established by professional associations^{vii} – point to the institutional impossibility and inadequacy of merely updating, or correcting deficiencies, in the Report. For all of these reasons, described in greater detail below, the correct course is for the APA to take immediate action to officially annul the PENS Report.

The PENS Report's Continuing Harmful Influence

Although the PENS Report and numerous subsequent APA documents ostensibly affirm APA's opposition to torture, the practical effect of APA policies has been uniformly to support psychologists' continued involvement in military and CIA interrogations – even when these violate

the Geneva Conventions and international law. This remains the case despite an unprecedented membership-driven Referendum in 2008. In recognition that the PENS Report legitimated ethically questionable activities and failed to give sufficient weight to international human rights law, the Referendum prohibited psychologists from settings that violate international law or the U.S. Constitution unless they are “working directly for the persons being detained or for an independent third party working to protect human rights” (or they are providing treatment for military personnel).^{viii}

The APA Council of Representatives adopted this position as official policy in February 2009. This policy should constrain the PENS Report premise that psychologists may “serve in consultative roles to interrogation and information-gathering processes for national security-related purposes.” Nevertheless, the PENS Report has routinely been cited in Behavioral Science Consultant policy memos as supporting psychologists’ involvement in the assessment and exploitation of individual detainee “vulnerabilities” for intelligence purposes,^{ix} and the DoD disseminates the PENS Report in its instructions to psychologists involved in intelligence operations without constraint of the Referendum.^x

Despite compelling evidence of its illegitimacy, the PENS Report continues to be influential in other arenas as well. For example, the Report has recently been adopted, at least informally, as the foundational ethics document for a movement promoting “operational psychology” – applications of psychology designed to aid military or intelligence operations rather than to treat suffering or prevent harm – as an officially endorsed area of specialization for psychologists.^{xi} Proponents reference psychologist involvement in detainee interrogations to support their participation in far-flung counterintelligence and counterterrorism operations. Also, the PENS Report is repeatedly cited as a resource for ethical decision-making in the APA Ethics Committee’s new National Security Commentary, a “casebook” for which the APA is currently soliciting feedback.^{xii} There may well be other significant non-public settings in which the PENS Report remains functional.

Inherent Bias in the PENS Task Force Membership

Six of the nine voting members of the PENS Task Force were on the payroll of the U.S. military and/or intelligence agencies at the time of the Task Force, and five of these six had served in chains of command that had been accused of the kinds of abuses that led to Task Force creation.^{xiii} As a result, their positions on three crucial issues were inappropriately influenced by their employment status: (1) their support for the participation of military psychologists in national security interrogations,^{xiv} (2) their accommodation of the Bush Administration’s new, permissive legal definition of torture, in contrast to the stricter definition of torture in international human rights law, and (3) their support for confidentiality of Task Force process and participation. In short, the biased composition of the PENS Task Force circumvented the group’s ostensible purpose, an independent assessment of complex ethical issues. The substitution of U.S. law on torture for international law led one civilian Task Force member to resign in protest after the Report’s release.

Significant Conflicts of Interest Associated with the PENS Process

It was later found that prior and current senior representatives from APA’s Ethics Office, Public Affairs Office, Science Directorate, and Practice Directorate had secretly participated in the weekend PENS Task Force meeting.^{xv} Their participation remains unacknowledged by APA. Several of these individuals were high-level lobbyists for the APA working on Department of Defense (DoD) and CIA funding.^{xvi} These lobbyists had direct or indirect financial entanglement with at least one Task Force member from the DoD, and they represented a substantial vested interest in producing

a PENS Report compatible with current DoD policy.^{xvii} Another undisclosed participant, a senior APA staff member who took a lead role in directing the task force meeting was married to a member of the Guantánamo Behavioral Science Consultation Team.^{xviii} The participation of these lobbyists and other undisclosed non-Task Force members in Task Force meetings was highly inappropriate and inconsistent with APA standards.

Irregularities in the PENS Report Approval Process

Official APA acceptance of the PENS Report departed from standard APA procedures in several other critical ways. The APA appointed the director of its Ethics Office as “rapporteur,” and he produced a full draft report at the close of the three-day meeting.^{xix} Within days of the meeting, APA’s Ethics Committee approved this report. The Board of Directors then invoked its emergency powers to endorse the PENS Report, preempting a standard review and vote by the Council of Representatives, the governing body of APA. The Council was scheduled to meet within a few weeks of the Task Force’s deliberations and could have reviewed the Report and voted on endorsement in a timely manner.^{xx} It is noteworthy as well that approval was not sought from the Policy and Planning Board, the Board of Professional Affairs, or the Board for Advancement of Psychology in the Public Interest. In addition, there was little or no consultation with psychologists representing a range of specialties that would clearly be affected by and concerned about the policy, and no period was provided for member feedback. These multiple irregularities reveal a disturbing pattern of disregard for established checks and balances central to good governance.

Secrecy Associated with the PENS Report

In regard to transparency, a critical foundation of institutional legitimacy, the identities of the PENS Task Force members were not included in the Report itself, were not posted on the APA’s website, and were not revealed to members of the APA or the press requesting them. They were finally published by an investigative journalist one year after completion of the PENS Report.^{xxi} Information relating to the presence of the high-level “observers” at the meeting was also withheld. The PENS Task Force Chair had designated two non-members of the Task Force, the Directors of the Ethics Office and the Office of Public Affairs, as the sole spokespersons for the Task Force. A highly unusual confidentiality agreement bound Task Force participants from discussing the process or the Report.^{xxii} These arrangements served to conceal the composition and reasoning of the Task Force and the basis for its decisions, further limiting informed review by APA members and interested others. Concerns about this secrecy and other matters led one Task Force member to resign in protest after the Report’s release. Two non-military members subsequently denounced the Report’s process and called for its annulment. At this point, all non-military Task Force members, except for the Chair, have renounced the Report’s recommendations. Concern about conflicts of interest and deception of civilian Task Force members led one to deposit in a public archive the Task Force listserv and all materials of the meeting.

Conclusion

Annulment of the PENS Report is needed not only to correct institutional processes and to set history straight, but also to help protect vulnerable populations from abuse and safeguard the future of professional psychology. The Report is a deeply flawed, misleading, and “made-to-order” document. It has caused grievous harm to the reputation of psychology in the United States as an ethical profession and has compromised the integrity of the relationship between professional psychology and the security sector. The normalization of a nation-centric psychological ethics by the world’s leading psychological association can only degrade and demoralize the profession

worldwide.^{xxiii} Ethical practice as described in the PENS Report conflicts with the international human rights standards that ought to be the benchmark against which professional codes of ethics are judged. This is especially true for organizations such as the APA, which is an accredited NGO to the United Nations. Annulment is a crucial first step toward repairing the damage the PENS Report has caused and toward holding the APA accountable - for its unethical development and promulgation during a painful and regrettable episode in the profession's history.

As health professionals, social scientists, social justice and human rights scholars and activists, and concerned military and intelligence professionals, we therefore declare that the PENS report is illegitimate. We call upon the American Psychological Association to take immediate steps to annul the Report. At the same time, in our own efforts we aim to make the illegitimacy of the PENS Report more broadly known within our communities.

September 26, 2011

Those interested in signing on to this petition calling for annulment may do so at www.ethicalpsychology.org/pens

(Names of signers are available at www.ethicalpsychology.org/pens/signers.php)

Endnotes

ⁱ A PDF version of the PENS Report is available on the APA website at <http://www.apa.org/pubs/info/reports/pens.pdf>.

ⁱⁱ Statements opposing physician involvement in interrogations were issued in 2006 by the American Psychiatric Association, the American Medical Association, and the World Medical Association.

ⁱⁱⁱ According to a 2006 report from the UN Commission on Human Rights, detention conditions and interrogation techniques approved by the DoD for use at Guantánamo Bay amount to inhumane treatment and, based on interviews, may constitute torture as well.

^{iv} In addition to human rights organizations, numerous military ethicists, military attorneys, interrogators, and other intelligence professionals have spoken out against — and even sacrificed their careers protesting — detention and interrogation practices protected by the practical effect of the PENS Report's authorization of psychologists as consultants to detention and interrogation of detainees.

^v PENS Report recommendations were built upon and promulgated Ethics Code Standard 1.02 of the 2002 APA Ethics Code, which supported the "Nuremberg Defense" for psychologists who followed orders of government authorities. See Horton, S. (2010). *The APA's Nuremberg Defense*, available at <http://www.harpers.org/archive/2009/07/hbc-90005399>. Several prominent APA members resigned or returned awards to the APA, including Mary Pipher (see *Why I've Returned My Award to the American Psychological Association – Because it Sanctions Torture*, available at http://www.opednews.com/articles/opedne_mary_pip_070824_why_i_ve_returned_my.htm), Ken Pope (see *Why I resigned from the American Psychological Association*, available at <http://kspope.com/apa/index.php>), and Beth Shinn (see *Noted psychologist Beth Shinn resigns from American Psychological Association*, available at <http://psychoanalystsopposewar.org/blog/2007/10/07/noted-psychologist-beth-shinn-resigns-from-american-psychological-association/>). A number of psychology departments protested APA policies (e.g., see Scott Jaschik's *Psychology Protest Grows*, available at <http://www.insidehighered.com/news/2007/12/06/apa>). Newspapers and op-ed columnists called for change in the APA. See, for example, the Boston Globe (2008: "Psychologists and torture," available at

http://www.boston.com/bostonglobe/editorial_opinion/editorials/articles/2008/08/30/psychologists_and_torture/), Blake Sifton (2010: *Ignored and Forgotten: Professional ethics in the War on Terror*, available at <http://www.adbusters.org/magazine/90/ethics-war-on-terror.html>), the Houston Chronicle (2007: "Human wrongs: Psychologists have no place assisting interrogations at places such as Guantanamo Bay," available at http://www.chron.com/CDA/archives/archive.mpl?id=2007_4410052), Robyn Blumer (2007: *Psychologists, torture and the rules*, available at http://www.sptimes.com/2007/10/14/Opinion/Psychologists_tortur.shtml), and Stephen Soldz (2006: *Ending the psychological mind games on detainees*, available at http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2008/08/10/ending_the_psychological_mind_games_on_detainees/).

^{vi} Arrigo, J. M., & Wagner, R. V. (Eds.). (2007). Torture is for amateurs: A meeting of psychologists and military interrogators [special issue]. *Peace and Conflict: Journal of Peace Psychology*, 13 (4).

^{vii} Please see consultations with Albro, Fleuhr, and Zonana in the *Psychology and Military Intelligence Casebook on Interrogation Ethics* at http://www.pmicasebook.com/PMI_Casebook/Consults.html.

^{viii} See <http://www.apa.org/news/press/releases/2008/09/detainee-petition.aspx>.

^{ix} For example, see page 13 of this 2008 guide for US Army Behavioral Science Consultation to "detention operations, intelligence interrogations, detainee debriefing, and tactical questioning": http://www.ethicalpsychology.org/materials/U.S_Army_Behavioral_Science_Consultation_Team_Policy_2008.pdf

^x The PENS Report continues to be included as an enclosure/appendix on the Army's Surgeon General Behavioral Science Consultant Standard Operating Procedure (SOP) for detainee interrogations (see OTSG/MEDCOM Policy Memo 09-053 from the office of the Army Surgeon General, titled "Behavioral Science Consultation Policy": https://www.gmo.amedd.army.mil/credentialing/09_053.pdf).

^{xi} The "Twelve Guiding Statements" of the PENS Report are presented as the foundational ethics document for operational psychology in the appendix of *Ethical Practice in Operational Psychology: Military and National Intelligence Applications*, edited by Carrie H. Kennedy and Thomas J. Williams (Washington, DC: American Psychological Association Press, 2011).

^{xii} This "casebook" is currently available online at <http://www.apa.org/ethics/programs/national-security-comments.pdf>.

^{xiii} Brief bios of the Task Force members are available on an earlier version of the Division 48 website: <http://www.clarku.edu/peacepsychology/tfpens.html>. See also Coalition for an Ethical Psychology (2008: *Analysis of the American Psychological Association's Frequently Asked Questions Regarding APA's Policies and Positions on the Use of Torture or Cruel, Inhuman or Degrading Treatment During Interrogations by the Coalition for an Ethical Psychology*, available at http://psychoanalystsopposewar.org/blog/wp-content/uploads/2008/01/apa_faq_coalition_comments_v12c.pdf), Jeffrey Kaye (2009: *Broken Faith: How a Navy Psychologist Drove A U.S. Prisoner to Attempt Suicide*, available at <http://pubrecord.org/torture/4321/broken-faith-military-psychologist/>), and Stephen Soldz, S. (2009: *The "Ethical Interrogation": The Myth of Michael Gelles and the al-Qahtani Interrogation*, available at <http://www.truthout.org/1221091>).

^{xiv} More detailed information on the stances of the individual Task Force members can be obtained by reviewing the publicly-available compilation of emails from the Task Force listserv: http://s3.amazonaws.com/propublica/assets/docs/pens_listserv.pdf.

^{xv} See Arrigo, J. M. (2006). Unofficial Records of the APA PENS Task Force, *Intelligence Ethics Collection*, Hoover Institution Archives, Stanford University.

^{xvi} See Arrigo, J. M. (2006). Op cit.

^{xvii} See <http://www.apa.org/about/gr/science/spin/2004/10/also-issue.aspx> -- "Science Policy Staff meet with Psychologists in Counterintelligence" (Note: Geoff Mumford and Heather Kelly attended the PENS meeting, and Scott Shumate was a voting member of the PENS Task Force):

On October 19th, Science Policy staffers Geoff Mumford and Heather Kelly held an initial meeting with high-ranking psychologists within the Department of Defense (DoD) Counterintelligence Field Activity (CIFA) to discuss possible areas of collaboration. CIFA is designed to serve as a defense-wide coordinator of counterintelligence activities, resource allocation, budget planning, and policy implementation. The 2002 DoD directive establishing CIFA describes the mission more specifically as to develop and manage "programs and functions that support the protection of...DoD personnel, resources, critical information, research and development programs, technology, critical infrastructure, economic security, and U.S. interests against foreign influence and manipulation, as well as to detect and neutralize espionage against the Department."

APA members are remarkably well-positioned within CIFA to bring operational and research expertise to bear on counterintelligence activities. Scott Shumate directs the Behavioral Sciences Directorate, and within the Directorate Kirk Kennedy serves as Chief of the National Center for the Study of Counterintelligence and Operational Psychology. Both are very interested in highlighting psychology's contributions to national security challenges and will continue to talk with Science PPO about collaborative opportunities such as advisory panels, fellowships, and training programs.

^{xviii} See Arrigo, J. M. (2006). Op cit.

^{xix} See Arrigo, J. M. (2006). Op cit.

^{xx} The PENS Report was publicly released on July 5, 2005, prior to the August Council of Representatives meeting and less than one week after the Board met in emergency session (<http://www.apa.org/news/press/releases/2005/07/pens.aspx>). That Council did not vote to approve the PENS Report is explicitly confirmed by this "Correction" in the May 2006 *Monitor on Psychology* (<http://www.apa.org/monitor/may06/correction.aspx>): "It was [previously] written that the Presidential Task Force on Psychological Ethics and National Security (PENS) report "was accepted by APA's Council of Representatives." Council did not accept the report, as in early July 2005, the Board of Directors invoked emergency action on council's behalf to adopt the PENS Report as APA policy." Additional valuable perspective on process in the PENS Report context is provided in this article: Lott, B. (2007). APA and the participation of psychologists in situations in which human rights are violated: Comment on "Psychologists and the Use of Torture in Interrogation." *Analyses of Social Issues and Public Policy*, 7, 1-8.

^{xxi} See Mark Benjamin's "Psychologists Group Still Rocked by Torture Debate" (<http://www.salon.com/news/feature/2006/08/04/apa>), which includes the following: "But a link to the biographies of those task force members appeared on the APA Web site only *after* the publication of Salon's article. Farberman acknowledged that the APA did put the link to the bios of the task force members on its site after Salon published its story."

^{xxii} See Arrigo, J. M. (2006). Op cit.

^{xxiii} See, for example, Moghaddam, F. M. (2007). Interrogation policy and American psychology in global context. In J. M. Arrigo & R. W. Wagner (Eds.), *Torture is for amateurs: A meeting of psychologists and military interrogators* [special issue]. *Peace and Conflict: Journal of Peace Psychology*, 13, 437-444.