

Dr. James H. Bray
President
American Psychological Association
750 First Street, NE
Washington, DC 20002-4242

October 26, 2009

Dear Dr. Bray:

We, the undersigned members of the American Psychological Association (APA), hereby submit a Formal Complaint and request that you appoint a three-member ad hoc Committee on Constitutional Issues (CCI) to adjudicate our complaint according to Association Rule 90-1. Under the Bill of Rights for Members, III.3, "Any individual Member or group of individual Members who believe their rights as Members of the Association, as specified in this Article, or any other rights, have been abridged by actions taken by an element of the Association's governance structure or any employee or employees of the Association may seek such remedies as may be provided under procedures established by the Council of Representatives."

The Bylaws (I.1) state that one of the objects of the APA is "the establishment and maintenance of the highest standards of professional ethics and conduct of the members of the Association." We submit that the APA Task Force on Psychological Ethics and National Security (PENS) recommended a controversial new policy based in part on highly questionable interpretations of the APA Ethics Code.¹ By endorsing this policy, the 2005 Board of Directors made the APA the sole health care professional organization supporting member involvement in the interrogation of detainees held under conditions that violate international law.² According to the UN Commission on Human Rights, many detainees have experienced severe suffering amounting to torture.³ In assuming the role of Behavioral Science Consultant (BSC) to interrogators, psychologists provided professional legitimacy and expertise to programs that have come under intense government investigation and worldwide condemnation. The PENS policy has damaged the reputation of the profession and the APA and undermined the obligation of the APA "to advance psychology as a science and profession and as a means of promoting health, education and human welfare..." (By-laws Article 1), thereby adversely affecting every member.

Article XI. 7, 10 and 12 of the By-laws and Association Rule 30-8 outline the extensive reviews and checks and balances that any major change in policy must undergo before adoption. The backgrounds of a Task Force proposing a far-reaching new policy or guideline should be fully identified and its recommendations reviewed by several APA committees and Boards that address the range of relevant issues. APA staff and those

¹ Olson, Soldz & Davis, 2008.

² Marks & Bloche, 2008.

³ UN Commission on Human Rights, 2006

who would directly benefit from the policy should neither determine the policy nor dominate the process by which it is established.

Specifically, our complaint involves three interrelated issues:

A. Violation of rules for establishing a new policy

- 1) The secrecy of the PENS deliberations greatly limited information on the reasoning of the Task Force and the basis of its decisions.
- 2) Six members holding a majority vote were on the active payroll of the US military and/or intelligence agencies, creating clear bias and multiple conflicts of interest.⁴
- 3) After the Ethics Committee approved the Task Force recommendations (within days), the Board of Directors invoked its emergency powers and endorsed the PENS Report, preempting a review and vote by the Council of Representatives, which is the governing body of the APA. There was no valid reason for the extraordinary haste or for using Board emergency powers. Council was to meet within weeks of the Task Force deliberation, and could have reviewed the Task Force findings at that time, either endorsing or altering the action taken by the Board of Directors.⁵
- 4) Approval was not obtained from the Boards required to review major proposed changes in APA policy, such as the Policy and Planning Board, the Board of Professional Affairs, and the Board for Advancement of Psychology in the Public Interest (see Article XI, 7, 10 and 11).
- 5) There was little or no consultation with psychologists from a range of specialties who would be affected by and concerned about the policy, and no period for member feedback before the policy was set (see Association Rules 30-8).
- 6) APA efforts to inform members about the policy through its website and publications, and to foster discussion through venues such as the 2007 San Francisco mini-convention on Ethics and Interrogation, were totally inadequate substitutes for the vetting procedures required *before* a new policy is established.

B. Bias of APA Officials, Ethics Office/Committee, and Board of Directors

- 1) The presence and active participation of several staff and non-Task Force members, some of who had undisclosed conflicts of interest, added to the bias created by the military/intelligence skew of the voting members.⁶
- 2) A confidentiality agreement bound Task Force participants not to discuss the process or the Report. The Task Force Chair designated the Directors of the Ethics Office and Office of Public Affairs as the sole spokespersons.

⁴ Olson & Miles, 2009.

⁵ Altman, 2008

⁶ Olson & Miles, 2009

- 3) Information that officials provided to Council and the membership stressed potential positives of the policy and minimized or ignored obvious drawbacks.⁷
- 4) The APA Ethics Office Director wrote the Task Force Report, became spokesperson for the PENS policy, and for four years traveled extensively to defend it.
- 5) The PENS decision treats assisting national security interrogations as a benefit to society so great BSC psychologists may violate several important Ethics Standards, such as 3:10 Informed Consent and 3:05 Multiple Relationships.⁸
- 6) The PENS decision was also built on a broad and controversial application of Ethics Code Standard 1.02, essentially applying the clause added in 2002 to a wide range of national security activity by psychologists, and earning the publicly shameful criticism that the APA had a Nuremberg may-follow-orders defense in the enforceable part of its Ethics Code.
- 7) For at least a year before the Task Force met, APA officials were conferring with intelligence and military officers about what the APA policy should be toward psychologist involvement in detainee interrogations. Before the meeting, a high-ranking army psychologist appointed to the Task Force although not an APA member, submitted a draft guide to the Task Force on the Behavioral Science Consultant (BSC) role, parts of which were incorporated into the PENS Report almost verbatim, and then the PENS Report was included in the 2006 Army Surgeon General's BSC Standard Operating Procedures along with the Task Force's selective interpretation of the APA Ethics Code that had the approval of the Ethics Committee. Officials of the Department of Defense received the Report before Council representatives had time to read it. With such a collusive and circular process, it is difficult to determine who designed the policy, officials of the Department of Defense or the APA.⁹
- 8) Despite copious evidence from government investigations and complaints filed years ago that identified APA members involved in detainee abuse, the Ethics Committee has yet to find any of these psychologists in violation of professional ethics and has failed to subject these matters to the serious ethical inquiries that the Ethics Committee has conducted concerning other APA members for matters that are far less significant in terms of professional ethics and implications for the field of psychology.¹⁰

C. Obstruction of attempts to reverse the policy

- 1) In 2007, after a long period of conferencing, revisions and debate, Council was to vote on a Moratorium resolution that put a hold on the PENS policy until the issues could be adequately vetted. In a highly irregular action, the Moratorium vote was replaced with a vote on a last-minute revision of the APA Resolution Against Torture. This Resolution, which passed, did not materially affect the PENS policy. Sponsors

⁷ Altman, 2008.

⁸ Olson, Soldz & Davis, 2008.

⁹ Arrigo, 2007; Olson & Miles, 2009; Army BSC SOP, 2006.

¹⁰ Ochroch, 2008, Bond, 2008.

of the Moratorium quickly added an amendment to the Resolution that called for a Moratorium. The Council was given little time to discuss this amendment and hear corrections to erroneous statements made about it, and it failed to pass.¹¹

- 2) In official statements, reports of abuse by CIA and BSC psychologists, including APA members, have been ignored or minimized by APA officials for years. At the same time, these officials have insisted that psychologists keep detainees safe and interrogations effective, despite clear evidence that psychologists assisted in the routine use of unethical, ineffective and harmful methods for years.¹²
- 3) The APA has yet to provide for a way by which military psychologists working in classified operations can receive counsel and oversight from civilian ethics experts even though it has been four years since the PENS Task Force recommended that the APA somehow arrange a means for such consultations.¹³
- 4) The PENS Task Force made it clear that its work was preliminary and there was a strong need for the Ethics Committee to develop a Casebook. Four years later there is still no Casebook.
- 5) In mid-2008 APA members voted in an unprecedented Referendum to ban psychologists from settings that violated international law unless they were working solely for detainee welfare and were independent of the military command, effectively removing psychologists from detainee interrogation work. Council made the Referendum official policy as of February 2009, but full implementation has been stalled by referral to unprepared committees.
- 6) The military programs built on this now-repudiated policy remain undisturbed¹⁴ and, to our knowledge, the Army Surgeon General Behavioral Science Consultant Standard Operating Procedure (BSC SOP) still contains a copy of the PENS Task Force Report and controversial interpretations of the APA Ethics Code.

The APA has long been regarded as the primary representative of American psychologists, and as such has the duty to its members and to society to vigorously protect the fundamental values of our profession. Increasingly, APA members refuse to pay dues to an organization that supports a policy that diminishes the cardinal principal of our Ethics Code to “Do no harm.” The pride and value of belonging to an organization that upholds the highest professional ethics is giving way to the shame of being associated with abettors of torture. We believe that the Charter, Bylaws and Association Rules of APA have been grievously violated by the PENS policy and process; by the way that Standard 1.02 and other parts of the Ethics Code were applied to make psychologists’ involvement in interrogations appear ethical; and by the failure of the APA’s leadership to fully implement the Referendum and, thereby, honor a legal directive of the membership. To help rectify the damage done by these violations and to restore the reputation of our profession, we petition for the following:

¹¹ Altman, 2008.

¹² CIA IG Report, 2004; UN Commission on Human Rights, 2006.

¹³ PENS Task Force Report, 2005

¹⁴ Rubenstein & Bloche, 2009.

I. Rescinding of the 2005 Board of Directors' endorsement of the PENS Task Force Report, and a clear public statement that the APA policy that asserts psychologist involvement in national security interrogations is ethical is null and void.

II. Adjudication and recommendations from the Committee on Constitutional Issues regarding evidence that since 2002 the Ethics Office has put the needs and priorities of the Department of Defense and US intelligence agencies above the responsibilities and concerns of the profession as a whole, and that the Ethics Committee has failed to give oversight to psychologists involved in national security operations at least commensurate to the oversight that is given to complaints filed against non-military members of the APA on non-torture related complaints.

III. Full implementation of the members' Referendum, including, but not limited to, published notice to the Deputy of Defense for Intelligence Oversight¹⁵ and the military and intelligence officials in charge of procedural manuals such as the Army BSC SOP and the CIA Office of Medical Services Guidelines on detainee interrogation¹⁶ that 1) the PENS Task Force decision and may-follow-orders clauses of the 2002 Ethics Code are no longer operative, and 2) that psychologists working in detention sites that violate international law, such as Guantanamo and Bagram, are now violating APA policy.

IV. CCI investigation of reports that, in its zeal to promote roles for psychologists in national security investigations, the Senior Staff of the APA, including but not limited to the APA Ethics Office, Public Affairs Office, Science Directorate, and Practice Directorate, became inappropriately involved in the PENS Task Force. Further, their work with officials at the DoD and CIA compromised APA independence as a Non-Governmental Organization (NGO) and reflected an inappropriate involvement of APA staff in efforts to influence policy within the APA contrary to historical protocols. Also, central management did not appear to monitor and manage these activities as it should.

We understand that you, as APA President, are to appoint an ad hoc Committee on Constitutional Issues to adjudicate this Formal Complaint, and that our approval of the appointments is required. Documents and sources that support the Complaint are provided in the reference section. We also understand that we may be required to provide additional documentation, and must be available for consultation through what appears to be a relatively speedy process according to Rules 90-1.

Sincerely,

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¹⁵ Deputy Secretary of Defense Memorandum, 2009.

¹⁶ CIA Office of Inspector General's Report, 2004.

Supporting References and Documents

Altman, N. (2008). Description of the Moratorium process in *Interrogation Psychologists: The Making of a Professional Crisis*, a documentary available at <http://www.DoctorsandDetainees.com>.

Arrigo, J. M. (2007). A Counterintelligence Perspective on APA PENS Task Force Process. Presented at Ethics and Interrogations mini-convention, APA Convention, San Francisco. Also, former PENS Task Force members Jean Maria Arrigo (jmarrigo@cox.net) and Mike Wessells (mwessel@rmc.edu) have informed the Complaint signers that they value the opportunity to speak with the CCI about the PENS process.

Bond, T. (2008). "And open letter to Dr. Stephen Behnke on psychologists engaged in torture: If not now, when?" <http://www.counterpunch.org/bond05192008.html>. Trudy Bond, (ar_mordilo@yahoo.com), who submitted detainee abuse complaints to the Ethics Committee on APA psychologists, has informed the Complaint signers that she values the opportunity to speak to the CCI about her experience.

CIA Office of Inspector General's May 2004 Counterterrorism Detention and Interrogation Activities Report and Supporting Documents (2002-4). <http://www.aclu.org/safefree/torture/40832res20090824.html>

Deputy Secretary of Defense Memorandum (June 2009). DoD Guidance for Reporting Questionable Intelligence Activities and Significant or Highly Sensitive Matters. <http://www.dtic.mil/whs/directives/corres/pdf/DTM-08-052.pdf>

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Olson, B. & Miles, S. H. (2009). The American Psychological Association and War on Terror Interrogations, Appendix 2 in Miles, S. H. *Oath Betrayed: America's Torture Doctors*, Berkeley: University of California Press.

Olson, B., Soldz, S. & Davis, M. (2008). The Ethics of Interrogation and the American Psychological Association: A Critique of Policy and Process. *Philosophy, Ethics, and Humanities in Medicine*, vol. 3. <http://www.peh-med.com/content/pdf/1747-5341-3-3.pdf>

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Rubenstein, L. S. & Annas, G. J. (2009). Medical Ethics at Guantanamo Bay Detention Centre and in the US Military: A Time for Reform. *The Lancet*, Vol. 374, 353-355.

United Nations Commission on Human Rights (Feb., 2006, p. 25). Situation of Detainees at Guantanamo Bay. http://www.prisoner345.net/files/UN%20Report%20on%20Guantanamo%20Bay_0.pdf

U.S. Army Surgeon General Behavioral Science Consultant Standard Operating Procedures. (2006). Army BSC SOP http://wikileaks.org/wiki/Guantanmo_Bay_use_of_psychologists_for_interrogations_2006-2008