

# Attacks on Hoffman Report from Military Psychologists Obfuscate Detainee Abuse: A Rebuttal to Banks et al. and APA's Division 19 Task Force

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## Introduction

In the wake of the July 2015 [Hoffman Report](#), which found that the American Psychological Association (APA) colluded with the Department of Defense (DOD) to ensure that no APA policy would constrain psychologists' participation in DOD's "enhanced interrogation" program, the APA Council of Representatives passed an historic [ban](#) on the involvement of psychologists in national security interrogations and at detention sites that operate outside or in violation of international law, including Guantánamo Bay Detention Center.

Despite this critical move to restore the psychology profession's ethics and autonomy, there has been targeted opposition from inside and outside APA. This has come from parties with a vested interest in the continued involvement of psychologists in national security operations, and in particular, from those whose careers and spheres of influence have benefitted directly from psychologists' expanding roles in those operations.

The latest examples of this opposition are: (a) a [commentary](#) from four psychologists implicated in collusion between APA and the Department of Defense (DoD), including three directly connected with the national security interrogations in question and one of their spouses, a former APA staff member (Banks Commentary),<sup>1</sup> and (b) a [report](#) from the APA's Division 19 (Military Psychology) Task Force (TF19 Response).<sup>2</sup>

Banks et al. and TF19 avoid addressing Hoffman's actual "key conclusion": that senior APA officials and DoD personnel, including the four Banks Commentary authors, worked secretly to influence APA policy to ensure that it comported with military and government policy. Instead, the authors raise peripheral issues, which they then attempt to refute. In what follows we expose and correct critical omissions, distortions and misrepresentations in the Banks Commentary and TF19 Response:

- 1) **Authorization and Condoning of Detainee Abuses After 2004.** Banks et al. and TF19 argue that Hoffman's "key conclusion" – that the PENS Task Force Report allowed continued DoD interrogation abuses – is invalid because abuses had stopped by the time of PENS. This is a mischaracterization of Hoffman's central finding. Moreover, it is factually incorrect, as abuses were authorized and condoned after 2004. The authors' claim is contradicted by their

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<sup>1</sup> Hoffman's Key Conclusion Demonstrably False: The Omission of Key Documents and Facts Distorts the Truth (October 2015). The Banks Commentary was authored by Col. L. Morgan Banks (ret.), Col. Larry C. James (ret.), Col. Debra L. Dunivin (ret.), and Col. Dunivin's spouse, Dr. Russell Newman (Director of the APA Practice Directorate from 1993 to 2008).

<sup>2</sup> Response to the Hoffman Independent Review: The Society for Military Psychology (APA Division 19) Presidential Task Force (November 2015). The TF19 Response was authored by Drs. Sally Harvey, Jennifer Barry, Joseph Bonvie, Deb Engerran, Janice Laurence, Larry Lewis, Michael Oganovich, Thomas Williams, and Ms. Angela Legner. The TF19 Response is broader in scope than the Banks Commentary but advances similar claims.

own evidence, as well as authoritative, non-DoD entities mandated to independently determine what constitutes abuse in such circumstances.

- 2) **Continued Detainee Abuses After 2004, Regardless of Authorizations.** Banks et al. and TF19 ignore a wealth of evidence that systemic military interrogation abuses continued long after the time when the authors claimed they were banned. In both Iraq and Afghanistan, reports indicate that widespread interrogation abuses continued years after the PENS Report. The failure of the PENS Report to definitively ban psychologist participation in abusive national security interrogations allowed psychologists to be involved in the ongoing abuses.
- 3) **Acknowledgement that DoD Permitted Abuses Before December 2004.** Banks et al. and TF19 acknowledge publicly for the first time that *abuses were indeed authorized or permitted by DoD and government regulations at least until December 2004* – i.e., during the period when the three military psychologist authors of the Banks Commentary held command authority positions over Guantánamo interrogation operations. This is precisely when Guantánamo and Abu Ghraib abuses were widely documented. In working to influence the PENS Task Force responsible for determining the ethics of these interrogation practices, Banks et al. had incentive and opportunity to shape APA policies that would determine their own (or their spouse's) ethical liability for such actions.
- 4) **Undue Influence and Conflicts of Interest Relating to APA Policy and Process.** Banks et al. sidestep Hoffman's central finding that the four authors worked secretly to undermine APA's democratic process and thwart the will of the membership to a) ensure that APA policy comported with military and government policy and b) support their own (or their spouse's) careers.

A review of the documentary evidence shows that the Banks Commentary and TF19 Response present distorted, selective, and disingenuous recastings of the Hoffman Report's central findings, the history of the PENS Task Force, and the roles of the Banks Commentary coauthors in this disastrous episode. These distortions are attempted distractions from the fact that APA and DoD collusion, including by Banks et al., resulted in permissive APA ethical policies that allowed psychologist participation in ongoing detainee abuses. Such obfuscation must be regarded as an unsuccessful attempt to halt real progress in repairing the ethical foundations of psychology and promoting healing within the profession and the APA, following this decade-long ethics crisis.

## Background

### Hoffman Report and APA Response

After a seven-month independent investigation commissioned by the APA, former Chicago Inspector General and institutional corruption specialist attorney David Hoffman and his colleagues concluded that the APA and the DoD colluded to ensure that APA's ethics policy on psychologists engaged in national security interrogation operations would not contradict or depart from DoD rules and policies.

In 2005 the APA established the Psychological Ethics and National Security (PENS) Task Force in response to outcry from the public and the membership over [reports](#) of interrogation practices at

Guantánamo described as “tantamount to torture,” and which were reportedly overseen by health professionals, including psychologists. The APA charged the PENS Task Force with investigating and determining the ethical guidelines and restrictions on psychologist involvement in national security interrogations. The PENS Report concluded that participation in national security interrogations was ethical for psychologists as long as those interrogations were deemed legal by the U.S. government as opposed to international human rights covenants. According to Hoffman, the PENS Report aligned APA policy with DoD policy.

The PENS Report and other products of APA-DoD collusion guaranteed that APA ethics would place no constraints on the government’s “enhanced” interrogation program or on psychologists’ essential role in that program. As Hoffman states, “there remained a substantial risk, that without strict constraints, such abusive interrogation techniques would continue” and that those involved in the collusion exhibited “substantial indifference to the actual facts regarding the potential for ongoing abusive interrogations techniques” (Hoffman et al., p. 9).

In the wake of Hoffman’s Report, the APA Council of Representatives passed an historic ban on the involvement of psychologists in national security interrogations and at detention sites, like such as Guantánamo Bay Detention Center, that operate outside, or in violation of, international law. This ban, passed 157-1 at the APA Annual Meeting in August 2015, signaled the restoration of APA’s independence from military and intelligence agencies in setting policy and ethical standards for professional psychologists. Further, the ban aligned APA’s policy with that of other major health profession associations.

## Hoffman Report Critics

Key parties implicated in the Hoffman Report have criticized its findings, including the four authors of the Banks Commentary. These were their professional positions during the 2005 PENS Task Force meeting:

- **Col. Morgan Banks** (PENS Task Force Member): Command Psychologist and Chief of the Psychological Applications Directorate of the U.S. Army Special Operations Command, providing training and support to all Army psychologists involved in interrogations operations. He organized the first training for the Guantánamo Behavioral Science Consultation Team (BSCT) and interrogators in October 2002 and continued in this role through the period of the PENS Task Force and beyond. In this capacity, Col. Banks had a senior supervisory role over psychologists deployed to Guantánamo, Iraq, and Afghanistan.
- **Col. Larry James** (PENS Task Force Member): Chief Psychologist for the Joint Intelligence Group and head of the BSCT at Guantánamo, supervising interrogations in 2003. He became Director of the Behavioral Science Unit, Joint Interrogation and Debriefing Center at Abu Ghraib in 2004. He returned to his position at Guantánamo from 2007-2008. He was also Chair of the Department of Psychology at Walter Reed Army Medical Center from 1998-2003.
- **Col. Debra Dunivin** (unauthorized, secret PENS Task Force liaison to the DoD; lobbied APA to appoint Banks, James, and herself): Head of the BSCT at Guantánamo from fall 2004 to fall 2005, following James. She served as Deputy Department Chief and Director of Training under Col. James in the Psychology Department at Walter Reed. Throughout this period, she was the spouse of Russ Newman, Executive Director of the APA Practice Directorate.

- **Dr. Russ Newman** (secret PENS Task Force “observer”; took lead role in proceedings): Executive Director of the APA Practice Directorate and spouse of Col. Dunivin during her Guantánamo deployment, which began before the PENS Task Force was organized and continued after the PENS Report was issued.

Before we explore the evidence for their claims, it should be noted that while TF19 and the Banks Commentary focus only on DoD policy and military interrogations, the PENS Report was presented as a general policy regarding psychologists’ involvement in all national security interrogations. Thus it applied to the CIA as well the DoD. Ample [documentation](#) of CIA interrogation abuses by psychologists, which were known to military PENS members and which continued after PENS, invalidates the claim that the PENS Report did not require greater specificity to constrain abusive actions by psychologists.

## Misrepresentation of the Documented History

The Banks Commentary and TF19 Response disregard the central findings of the Hoffman Report, which are as follows:

- APA staff and governance leaders colluded with military psychologists who served in commands connected with alleged abuses of war-on-terror detainees in order to establish APA policy on psychological ethics in national security settings;
- APA-DoD collusion undermined subsequent APA policy that aimed to restore ethical standards and restrict psychologist participation in abusive national security interrogations (including the 2008 member-passed [referendum](#) prohibiting psychologists from participating in operations at detention sites violating international law); and
- APA-DoD collusion manipulated APA ethics and policy to authorize this participation and minimized credible evidence that abuses “tantamount to torture” were associated with these interrogations and related detention activities.

Instead, Banks et al. and TF19 advance the argument that no APA-DoD collusion occurred because DoD’s policies were no longer permissive of torture by the time of the PENS Task Force, and that detainee abuses were in fact no longer occurring. Specifically, they assert that (a) no abuses took place when psychologists were present, (b) the abuses were stopped by intelligence psychologists nearly two years after they first arrived in 2002, and (c) the abusive treatment was legal and therefore could not be considered abusive.<sup>3</sup>

These claims, as well as the resulting conclusion, are false and unsupported by the evidence. These authors ignore evidence that supports Hoffman’s actual findings and they edit the evidence they do present to create a misleading impression. These tactics – focusing on collateral issues, disregarding

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<sup>3</sup> The logical flaws in this argument are perhaps best understood through analogy. Consider the famous story of the man who was sued for returning a borrowed kettle in a damaged condition. The defendant asserted that (a) he never borrowed the kettle; (b) the kettle had a hole in it already when he borrowed it; and (c) he gave back the kettle undamaged.

key findings, and eliding contradictory segments of the evidence they present — obfuscate the nature and purpose of the collusion.

## **1. Authorization and Condoning of Detainee Abuses After 2004**

The Banks Commentary and TF19 Response selectively focus on whether detainee abuses were continuing at Guantánamo at the time of the 2005 PENS meeting. Banks et al. deny this, arguing that approval for abusive interrogation techniques ended with the “restrictive military policies issued in [December] 2004 and early 2005, some of which we participated in creating.” (Banks Commentary, p. 2) Yet even that narrow claim is false and based on a distorted reading of the cited documents, as well as disregard for a wealth of other publicly available evidence.

### **A. “Torture” Memos**

The Banks Commentary claims that a December 2004 memo by the Department of Justice’s (DoJ) Office of Legal Counsel (OLC), which superseded an August 2002 OLC memo, “made it clear that ‘[t]orture is abhorrent,’ that interrogators were bound by the United Nations Convention Against Torture, and that the prohibitions in CAT were reflected in U.S. criminal laws. There was no question what the law was at the time of PENS” (Banks Commentary, p. 9, citing Reference 1).

The authors further assert that “enhanced” techniques were no longer authorized, referring to a February 2005 OLC memo which stated that an earlier OLC memo was under review and should no longer be relied upon (Banks Commentary, p. 9, citing Reference 2). They also cite two pages of a 2009 [report](#) by the DoJ’s Office of Professional Responsibility (OPR) as additional evidence that the withdrawal of early OLC memos meant that approval of the abusive “enhanced” techniques themselves was withdrawn (Banks Commentary, p. 5, citing Reference 3).

However, Banks et al. omit essential facts that contradict their claims, even within the very documents they cite. For example, the February 2005 OLC memo goes on to state:

*Assistant Attorney General Goldsmith specifically advised, however, that the 24 interrogation techniques approved by the Secretary of Defense for use with al Qaeda and Taliban detainees at Guantánamo Bay Naval Base were authorized for continued use... (Banks Commentary, Reference 2)*

Among the [24 techniques](#) are such forms of abuse as “sleep adjustment,” “isolation up to 30 days,” “environmental manipulation,” and “dietary manipulation.” The [OPR Report](#) further clarifies (in a section Banks et al. fail to cite) that the OLC did not permanently outlaw these “enhanced” techniques in 2004. To the contrary, the OPR Report shows that in May 2005 — one month before PENS — OLC’s Principal Deputy Assistant Attorney General, Steven Bradbury, issued a new legal rationale for the “enhanced” techniques:

*The 2005 Bradbury Memo concluded that the use of the following EITs, as proposed by the CIA, would be lawful: (1) dietary manipulation; (2) nudity; (3) attention grasp; (4) walling; (5) facial hold; (6) facial slap or insult slap; (7) abdominal slap; (8) cramped confinement; (9) wall standing; (10) stress positions; (11) water dousing; (12) sleep deprivation (more than 48 hours);*

*and (13) the waterboard.* (OPR Report, pp. 133-134)

While the Bradbury memo applied only to the CIA, nothing prevented the renewed legal justification for the techniques from being applied equally to the DoD, as had occurred with the earlier OLC memos. Further, PENS was applicable to CIA interrogations, not solely those conducted under DoD auspices. Thus, even if one accepted the argument that PENS constrained the conduct of DoD psychologists, it failed as an ethics policy as it did not constrain CIA psychologists.

An [April 2006 OLC memo](#) further contradicts the claims that the OLC memos show that authorization for the use of abusive treatment of detainees ended in 2004. This memo states that the abusive techniques contained in Appendix M of the 2006 [Army Field Manual \(FM 2-22.3\)](#) are legal. The April 2006 memo is apparently [still in effect](#) and [potentially provides legal immunity](#) even for the abuse of U.S. citizens overseas.

### **B. Appendix M of the Army Field Manual**

Another example of misleading citation by Banks et al. is the repeated references to the 1992 [Army Field Manual \(FM 34-52\)](#). The Banks Commentary states, “In April of 2005, the New York Times reported that DoD was working on a revision to the Army Field Manual which would contain even more specifics about prohibited interrogation techniques.” (p. 9). This [revised manual](#), which Col. Banks claims to have consulted on (Banks Commentary, p. 11), was released in September 2006 and remains operative today. However, the authors fail to mention that the revised manual contains an appendix (M), which allows the continued use of various abusive techniques, including isolation, sleep deprivation and sensory deprivation.

Banks et al. further fail to mention that Col. Banks reportedly does not consider such techniques to violate the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. According to the Hoffman Report: “[A]t the time of PENS, neither Banks nor the other DoD psychologists were willing to list stress positions or sleep deprivation as techniques that automatically fell within those definitions. And Banks was unwilling to do so ten years later when we spoke with him” (p. 66). The United Nations Committee Against Torture, on the other hand, has specifically identified these techniques as violations of the prohibition against torture and ill-treatment and has requested that Appendix M be [rescinded](#) for this reason.

Various human rights organizations have condemned Appendix M, including Amnesty International, which describes it as likely “[sanctioning cruelty](#).” It has also been [denounced](#) by a number of veteran interrogators, including several now affiliated with the High-Value Detainee Interrogation Group and by numerous military and national security [interrogators](#). Retired Air Force interrogator Matthew Alexander (pseudonym), who headed the interrogation team that located Al Qaeda in Iraq’s leader in 2006, described techniques permitted under Appendix M as “[torture’s loopholes](#)” in a 2010 New York Times op-ed:

*[Appendix M] allows the military to keep a detainee in “separation” – solitary confinement – indefinitely. It requires only that a general approve any extension after 30 days. Rest assured, there will be numerous waivers to even that minuscule requirement.... The Army Field Manual also does not explicitly prohibit stress positions, putting detainees into close confinement or environmental manipulation (other than hypothermia and “heat injury”). These omissions open a window of opportunity for abuse.*

*The manual also allows limiting detainees to just four hours of sleep in 24 hours. Let's face it: extended captivity with only four hours of sleep a night (consider detainees at Guantánamo Bay who have been held for seven years) does not meet the minimum standard of humane treatment, either in terms of American law or simple human decency.*

*And if this weren't enough, some interrogators feel the manual's language gives them a loophole that allows them to give a detainee four hours of sleep and then conduct a 20-hour interrogation, after which they can "reset" the clock and begin another 20-hour interrogation followed by four hours of sleep.*

Others, including a [task force](#) of prominent medical professionals, extend criticism of the Army Field Manual beyond Appendix M to the main body, which authorizes creation of intense fear as an interrogation technique. Interrogations considered "humane" by Banks et al. and TF19 include many approaches widely considered to be "inhumane" by leading authorities in the legal, medical, and law enforcement fields. In August 2015, the APA Council of Representatives [repudiated](#) Appendix M, officially stating that in the eyes of the association, cruel, inhuman, or degrading treatment "includes interrogation techniques related to 'separation,' e.g., solitary confinement and sleep deprivation, as authorized in Appendix M of the Army Field Manual."

### **C. Guantánamo's "Frequent Flier Program"**

Both the Banks Commentary and TF19 cite U.S. government documents as stating that sleep deprivation was banned at Guantánamo from March 2004, including a 2005 [report](#) by Lt. Gen. Randall Schmidt and Brigadier General John T. Furlow. That report states, "Current JTF-GTMO Commander terminated the frequent flyer cell movement program upon his arrival in March 04" (Schmidt and Furlow, p. 11). However, [DoD records](#) presented in the 2008 military commission hearings of Mohammed Jawad – a juvenile imprisoned at Guantánamo for over six years on false charges – contradict that claim.<sup>4</sup> Jawad was subjected to sleep deprivation in May 2004, months after the technique was ostensibly banned, in the form of the prison's "frequent flyer program." He was subjected to 112 cell moves in 14 days as a way of preventing sleep and [lost](#) 10% of his body weight during those two weeks.

In 2008, the *Washington Post* [reported](#) that at least 16 other detainees were also subjected to "frequent flyer" sleep deprivation after March 2004. The total number is unknown, as is the date the "program" actually ended. In [testimony](#) prepared for Jawad's military commission hearings, Gen. Schmidt stated: "The fact that the frequent flyer program was apparently carried out after the point that we were told the practice had been discontinued is troubling." It is unlikely that Jawad's treatment escaped the notice of Banks et al. and TF19, as his case was widely reported in the press. Other reports that sleep deprivation continued after the Schmidt-Furlow investigation claimed it ended are equally available. In fact, a July 6, 2013 *Guardian* [article](#) details Shaker Aamer's account that sleep deprivation was still in use, nine years after it was "banned."

### **D. Internal Military Reports**

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<sup>4</sup> In the interests of transparency, it should be noted that one of this paper's authors (Stephen Soldz) was a consultant to (then) Maj. David Frakt in the Jawad case.

TF19 and the Banks Commentary selectively cite various internal military reports to deny that authorized interrogation abuses occurred after 2004. However, these reports are of questionable validity due to the restricted scope of the investigation and serious methodological flaws. In addition, ongoing, systemic abuses after 2004 have been documented by independent, authoritative sources, which the Banks Commentary and TF19 fail to mention. In particular, it is a significant omission to interpret military reports on detainee abuse without reference to one of the earliest, the Army's Taguba Report, and the consequences for its author, Maj. Gen. Antonio M. Taguba (ret.).

- **Taguba Report (May 2004).** When word first reached Washington of the photographs of prisoner abuse at Abu Ghraib, Gen. Taguba was assigned to investigate. He [documented](#) “systemic and illegal abuse” at the prison and found “[n]umerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted on several detainees” (p. 16). Because Army rules barred Gen. Taguba from investigating anyone of higher rank than himself, he was unable to pursue responsibility up the chain of command. However, the evidence led him to believe that top generals were implicated and that Secretary of Defense Donald Rumsfeld’s claim he had been unaware of Abu Ghraib abuses were untrue. After Gen. Taguba turned in his report, he was praised by his immediate superior. However, he faced harsh rebuke from others up the chain of command, including [derision](#) from Secretary Rumsfeld and threats of investigation from Gen. John Abizaid, then head of Central Command. Gen. Taguba described the experience to New Yorker’s Seymour Hersh: “I’d been in the Army thirty-two years by then, and it was the first time that I thought I was in the Mafia.” In January 2006, Gen. Taguba was summarily ordered to retire by the Army’s Vice-Chief of Staff.

Gen. Taguba’s mistreatment sent a clear message to those in the military who since have investigated detainee abuse that conducting a thorough investigation, especially one that found systemic abuse, would likely be a career-ender. That no internal investigation has found systemic abuse, as TF19 and the Banks Commentary inform their readers, is unsurprising, given the reception of the Taguba Report and the consequences of that report on Gen. Taguba’s career.

Furthermore, many subsequent investigations were designed and conducted in such a way as to preclude the likelihood of finding any instances of abuse, let alone a systemic pattern of abuse. The conclusions of Col. Banks and other investigators can be attributed at least in part to methodologies that were carefully selected to exclude mistreatment that was legally justified by the [Working Group Report on Detainee Interrogations](#), and authorized in Secretary of Defense Rumsfeld’s April 2003 [memo](#) on approved counter-resistance techniques.

- **Army IG Investigation (July 2004).** Col. Banks notes his personal involvement in conducting a 2004 Army Inspector General [investigation](#) of detainee abuse, which found no “systemic” abuse anywhere in Iraq or Afghanistan, including Abu Ghraib prison (Banks Commentary, p. 24). Yet this investigation was restricted in critical ways. It appears to have been limited to activities independent of the abusive techniques officially authorized for use at the time. The operational definition of “abuse” was confined to “wrongful death, assault, battery, sexual assault, sexual battery, or theft” (p. 27). As a result, the team did not consider a vast number of interrogational abuses, including sleep deprivation, exposure to extreme hot or cold temperatures, sensory isolation, being overwhelmed with loud noises and strobe lights, forced nudity and other sexual humiliation, or forced “stress positions”. Further, the investigation’s primary source of evidence drew on already identified incidents – abuses reported to the Army Criminal Investigative Division (CID), or death or specific abuses

investigated by the chain of command. Yet almost by definition, such abuses would not be ones authorized or sanctioned by higher officers or civilian officials, precluding a finding of systemic abuse.

- **Schmidt-Furlow Report (April 2005).** DoD commissioned the Schmidt-Furlow [investigation](#), mentioned above, to examine incidents of abuse at Guantánamo that were reported by FBI agents stationed there. Yet it failed to examine hundreds of such reports, including of the most serious abuses, according to a Seton Hall Law School [analysis](#) of FBI emails obtained by the ACLU. Thus, the investigators' claim that they "found no evidence of torture or inhumane treatment" at Guantánamo (p. 1) is not credible. Even more questionable is the investigators' claim that they "found only three interrogation acts in violation of interrogation techniques authorized by Army Field Manual 34-52 and DoD guidance" (p. 1) in the three years they investigated (2002-2004). Given the extent of abuses documented at Guantánamo during this period, now admitted even by TF19 and Banks et al., the Schmidt-Furlow findings indicate that such abuses were consistent with the DoD guidance.
- **Army Surgeon General Report (May 2005).** In late 2004 and early 2005, the Army Surgeon General [conducted](#) an Assessment of Detainee Medical Operations for OEF, GTMO, and OIF in which health personnel – including intelligence Behavioral Science Consultants who interacted with detainees – were interviewed. The investigation reported a very low rate of detainee abuse, with the vast majority of observed cases being reported up the chain of command. However, it is unlikely that officially authorized actions, however torturous, would be considered, let alone reported, as abuse. It is also unlikely that respondents would tell investigators of unreported abuse, since they were given disclosure forms stating that obtained information could be subject to criminal investigation. In fact, two cases were so referred: "Only 2 medical personnel failed to properly report actual or suspected detainee abuse that had not previously been conveyed to an appropriate authority. The Team referred these cases to the CID [Criminal Investigative Division]" (p. 1-6; pdf p. 12).

Bioethicist Steven Miles, who examined thousands of pages of government documents, found multiple instances of abuse that were covered up or not reported by commanders and investigative agencies, as detailed in *Oath Betrayed*, his comprehensive account of medical and psychological complicity in torture and detainee abuse. Based on his review, Miles also documents a systematic pattern of falsification of death certificates and autopsies in cases of potential homicides. Other medical experts, many affiliated with Physicians for Human Rights, have identified similar patterns of neglect of medical evidence of torture and abuse, based on review of DoD records.<sup>5</sup>

## 2. Continued Detainee Abuses After 2004, Regardless of Authorizations

While TF19 and Banks et al. focus on official authorizations and government reports, many others who observed conditions on the ground where U.S. troops were deployed reported that systemic interrogation and detention abuses in fact continued. These reports came after 2005, when the PENS Report was issued and when TF19 and the Banks Commentary assert that abuses had essentially ended.

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<sup>5</sup> See, e.g., Iacopino V, Xenakis SN (2011). Neglect of Medical Evidence of Torture in Guantánamo Bay: A Case Series. *PLoS Med* 8(4): e1001027.doi:10.1371/journal.pmed.1001027, and Allen S et al. (2006). Deaths of Detainees in the Custody of U.S. Forces in Iraq and Afghanistan From 2002 to 2005. *MedGenMed*. 2006; 8(4): ncbi.nlm.nih.gov/pmc/articles/PMC1868355.

## **A. Guantánamo**

In the post-PENS years from 2005, conditions at Guantánamo have alternated from extremely harsh and abusive to somewhat less harsh. While going over this history is beyond the scope of the present document, one example will illustrate that concerns about conditions at Guantánamo post-2005 are warranted. In 2007 Amnesty International [documented](#) that nearly 80% of Guantánamo detainees were kept in long-term isolation in cells often subjected to extreme cold through air conditioning turned on high and lights on 24 hours a day. Detainees were subject to very frequent observation, including by female soldiers while showering or using the toilet. Amnesty has termed these conditions “cruel and inhuman” and in violation of standards for prisons of the American Correctional Association and international law.<sup>6</sup>

*Amnesty International believes that the conditions described in Camps 5 and 6 and Camp Echo, particularly when applied long-term or indefinitely, constitute cruel, inhuman or degrading treatment in violation of the above standards. This conclusion is based on the isolation and prolonged cellular confinement; the conditions inside the cells including the enclosed environment and lack of any view to the outside; the lack of access to natural light and fresh air, particularly in Camp 6; the constant and allegedly intrusive observation; the paucity of possessions or equipment available to detainees; and the absence of social or external stimuli or almost any form of activity, together with minimal contact with the outside world (p. 13).*

Two years later, the Center for Constitutional Rights reported similar conditions at Guantánamo in a 2009 [report](#):

*The conditions in these camps are harshly punitive and violate international and U.S. legal standards for the humane treatment of persons deprived of their liberty. Solitary confinement, sensory deprivation, environmental manipulation, and sleep deprivation are daily realities for these men and have led to the steady deterioration of their physical and psychological health.... Contrary to statements by the military, conditions at Guantánamo have not improved for the majority of detainees and are still in violation of the law.*

It is especially difficult to accept the assertions of the authors of the Banks Commentary about the cessation of abuses, when there appears to have been a purposeful effort to avoid learning of such abuses. For example, Banks et al. co-author Col. Larry James made it clear in an [interview](#) that he did not care to know about conditions in some areas of Guantánamo. When asked about Camp 7, where high value detainees were kept in near-total isolation, he said, “I learned a long, long time ago, if I’m going to be successful in the intel community, I’m meticulously – in a very, very dedicated way – going to stay in my lane... So if I don’t have a specific need to know about something, I don’t want to know about it. I don’t ask about it.”

## **B. Iraq, 2006**

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<sup>6</sup> In an example of the distortion of language from military sources when describing conditions at Guantánamo, one of us (Stephen Soldz) had conversations in 2007 regarding isolation of detainees at Guantánamo with the Guantánamo commander and with two military psychologists who had been deployed to the prison. All three insisted that isolation was nonexistent at Guantánamo. Rather, all three said, there was simply “single occupancy cells” in which detainees were confined for 22 to 24 hours a day.

In his 2008 *Washington Post* [op-ed](#), Air Force interrogator Matthew Alexander (referenced above) described what interrogations nominally following the Army Field Manual actually looked like during his 2006 Iraq deployment:

*What I soon discovered about our methods astonished me. The Army was still conducting interrogations according to the Guantánamo Bay model: Interrogators were nominally using the methods outlined in the U.S. Army Field Manual, the interrogators' bible, but they were pushing in every way possible to bend the rules -- and often break them. I don't have to belabor the point; dozens of newspaper articles and books have been written about the misconduct that resulted. These interrogations were based on fear and control; they often resulted in torture and abuse.*

U.S. security contractors Donald Vance and Nathan Ertel described similar abuses during the same period at a U.S. run detainee facility in Iraq, when they were arrested in 2006 after reporting corruption, including illegal weapons trading abuse, to the FBI and agreeing to help the FBI investigate this corruption. As the [New York Times](#) reported in 2006:

*The fluorescent lights in his cell were never turned off, he said. At most hours, heavy metal or country music blared in the corridor. He said he was rousted at random times without explanation and made to stand in his cell. Even lying down, he said, he was kept from covering his face to block out the light, noise and cold.<sup>7</sup>*

Vance and Ertel report being interrogated by an array of officials apparently representing the FBI, CIA, Naval Criminal Investigative Service and Defense Intelligence Agency. In that no one from any of these agencies appears to have made an abuse report based on the Vance and Ertel's accounts of mistreatment, such mistreatment seems to have been neither unusual nor prohibited. Failure to follow up on accounts is consistent with pattern of not investigating abuse claims.

Upon his release Vance, a Navy veteran, attempted to [sue](#) Secretary Rumsfeld with responsibility for his abusive treatment. The courts, however, ruled that Secretary Rumsfeld and all members of the military have [immunity](#) from lawsuits for torture.

### C. Afghanistan, 2009-2010

In Afghanistan, as late as 2009-2010, media outlets including the [BBC](#), [Washington Post](#), [New York Times](#) reported abuses at a secret U.S. screening facility run by Special Operations Forces at the Bagram Air Base, referred to by released prisoners as the “Black Jail”. Recently released prisoners, interviewed separately, described abuses including sleep deprivation, forced nudity at times while being photographed and laughed at by U.S. troops, and continuous intense cold with only a thin blanket to cover themselves. Some ex-prisoners reported being beaten by guards. According to media reports these abuses continued for several years. The [BBC](#) quotes a former prisoner describing his treatment at the “Black Jail”:

*Sher Agha and others we interviewed complained their cells were very cold. “When I wanted to sleep and started shivering with cold I started reciting the holy Koran,” he said. But sleep,*

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<sup>7</sup> Reportedly, the temperature in the cells was in the 50s.

*according to the prisoners interviewed, is deliberately prevented in this detention site. “I could not sleep, nobody could sleep because there was a machine that was making noise,” said Mirwais, who said he was held in the secret jail for 24 days. “There was a small camera in my cell, and if you were sleeping they’d come in and disturb you,” he added. The prisoners, who were interviewed separately, all told very similar stories.*

Although, denied by the U.S. military, the International Committee of the Red Cross (ICRC) [confirmed](#) the existence of the “Black Jail.” Yet, none of the official reports cited by TF19 or the Banks Commentary describe the widely documented abusive conditions at Guantánamo, the systemic abuse in Iraq reported by Matthew Alexander and Donald Vance, or the “Black Jail” abuses in Afghanistan, all of which took place in the post-PENS period.

### **3. Acknowledgement that DoD Permitted Abuses Prior to December 2004**

In making the case that abusive techniques were prohibited in December 2004 and in spring 2005, the Banks Commentary publicly acknowledges, for the first time, that prior to these dates, abusive interrogation techniques indeed were authorized. Accordingly, Banks et al. replace their previous position – that there were “no incidents of abuse at Guantánamo Bay by either an interrogator or psychologist since [Col. James’] arrival in Cuba in January 2003”<sup>8</sup> – with a different, but similar claim: that the abuses were only prohibited as of December 2004 and the spring of 2005, only months prior to the convening of the PENS Task Force. As we have shown, these revised claims are also exaggerated and based on a selective and distorted reading of the history.

Further, during this same period in which detainee abuses were widely reported and documented, and in which the Banks Commentary now acknowledges the abuses were sanctioned, three of the four authors held command authority positions over BSCT involvement in interrogation processes at Guantánamo. The fact that abusive techniques were permitted under their watch makes clear the high personal and professional stakes for these psychologists in the outcome of PENS. In the face of well-documented evidence of abuses at Abu Ghraib and Guantánamo, and under extreme pressure from the public and APA membership, the association was putting together a task force to determine the ethics of these very activities – and by extension, the liability for ethics violations of BSCT psychologists.

While BSCT treatment of Guantánamo detainees is mostly classified, enough information has been made public to shed some light into routine BSCT operations and recommendations. The treatment of Mohammed Jawad (see above, p. 7), as [described](#) in trial filings, provides one such glimpse. Jawad was somewhere [between 12 and 16](#) years old when he arrived at Guantánamo in 2002. In addition to the May 2004 “frequent flyer” sleep deprivation, he was subjected to “excessive heat, constant lighting, loud noise, linguistic isolation (separating the accused from other Pashto speakers), and on at least two separate occasions, 30 days physical isolation.

On one occasion in 2003, Jawad was observed speaking to a poster on the wall of his cell and crying for his parents, according to court documents reported in the [press](#). A concerned interrogator called in the BSCT psychologist, subsequently [identified](#) as Lt. Col. Diane Zierhoffer.<sup>9</sup> Her response was to encourage the interrogators to dial up the emotional pressure on Jawad:

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<sup>8</sup> James, L (2008). *Fixing Hell: An Army Psychologist Confronts Abu Ghraib*. New York, NY: Grand Central Publishing.

<sup>9</sup> Zierhoffer was a member of the APA throughout this period. Her membership ended in 2005.

*He appears to be rather frightened, and it looks as if he could break easily if he were isolated from his support network and made to rely solely on the interrogator. Make him as uncomfortable as possible. Work him as hard as possible.*

The BSCT psychologist recommended that Jawad be placed in social isolation and that interrogators emphasize to Jawad that his family appeared to have forgotten him. Not long afterwards, Jawad attempted suicide. Attempts to obtain testimony from Lt. Col. Zierhoffer in Jawad's military commissions case were [withdrawn](#) when she told the prosecutor she would claim her Article 31 right against self-incrimination under the Uniform Code of Military Justice.<sup>10</sup>

There is no reason to believe that Jawad's treatment was exceptional, given similar accounts of "frequent flyer" and other abusive tactics from prisoners during this period. Given that abuses were permitted while BSCT psychologists were overseeing Guantánamo interrogation and detention processes, and the PENS Task Force's mandate included identifying psychologists' roles at Guantánamo and criteria for distinguishing ethical and unethical behavior, BSCT psychologists who belonged to APA (e.g., Col. James, Col. Dunivin, Lt. Col. Zierhoffer) may well have been liable to charges of ethics violations, had the Task Force fulfilled its mandate.

#### **4. Undue Influence and Conflicts of Interest Regarding APA Policy and Processes**

As noted above, the Banks Commentary and TF 19 Response ignore Hoffman's actual key conclusion, that senior APA officials and DoD personnel, including the four commentary authors, worked secretly to influence APA policy to ensure that it comported with military and government policy. As documented by Hoffman, this collusion undermined APA's democratic process and thwarted the will of the membership; it additionally supported their own (or their spouse's) careers. This constituted both *undue influence and conflict of interest*. (Hoffman, p. 12-14)

It is a *prima facie* conflict of interest for an active duty military psychologist whose career, reputation, and income derive from and depend on their role in national security interrogations and interrogation policy to serve on a task force charged with independently assessing ethics and ethical policy regarding those very interrogations. Further, it is a "classic conflict of interest," as the Hoffman Report describes (p. 13), for the spouse of such an individual to play any role in a task force charged with determining whether the activities of the military psychologist were in violation of professional ethics.

In sidestepping these issues, TF19 and Banks et al. also ignore Hoffman's extensive documentation of the authors' secret manipulations in areas of APA policy that might have directly affected their careers, reputations, and/or income. These manipulations involved the composition, process, and conclusions of the PENS Task Force and resulting report, as well as other APA policy changes that might have conflicted with DoD policy. Examples of these manipulations include:

- **Col. Dunivin** exerted strong secret influence over the PENS Task Force composition, pressuring APA officials to appoint specific psychologists also directly involved in

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<sup>10</sup> One of us (Stephen Soldz) was scheduled to testify after this BSCT regarding the ethics of her actions. It is important to note that Jawad's interrogations were not about obtaining intelligence – everyone involved acknowledged that he had none – but about obtaining a (false) confession to a "crime" that he didn't commit.

interrogation operations. She wrote in an [email](#) to APA's Ethics Director Dr. Stephen Behnke that "the composition of the task force is critical to accomplishing its mission... [therefore] the following people MUST be included": Col. Banks (her military superior); Col. James (her superior at Walter Reed); Dr. Scott Shumate (the Chief Psychologist for the DoD Agency with "oversight over all psychology support for counterintelligence activities" and former CIA psychologist present at the initial implementation of the CIA torture program); and herself (Hoffman et al., Binder 1, p. 908).

- **Dr. Newman** played a secret and guiding role in task force deliberations directly affected the career of his wife, Col. Dunivin. Banks et al. and TF19 assert that this conflict of interest was widely known among APA officials; however, the fact that others in authority were aware of the conflict of interest does not exonerate the two authors. It does, however raise questions regarding those others who had a responsibility to prevent such conflicts. Additionally, none of the non-security members of the Task Force were aware either of the relationship between Col. Dunivin and Dr. Newman, nor of Col. Dunivin's deployment to Guantánamo as a BSCT psychologist;
- **Col. Banks** worked with Dr. Behnke to incorporate language from Guantánamo interrogation policy, written by two of the authors, directly into the APA's ethics policy, as described in the PENS Report. He also vetted and secretly helped shape other APA policy statements on torture and detainee abuse so as to not constrain military and DoD affiliated psychologists involvement in interrogations.
- **Col. James** colluded with Dr. Behnke to undermine the implementation of the 2008 APA member-passed "petition resolution," which prohibits psychologists from being present at sites in violation of international human rights law. Col. James worked with Behnke, in consultation with other military personnel, to insure that the policy change would be couched in language that would undermine the intent of the membership and the council. Col. James wrote in an [email](#) to a group of military psychologists: "The real victory is that no part of the recommendations will be apart [sic] of concil's [sic] report or APA policy. It will only say that psychologists can't work in unlawfull [sic] detention facilities" (Hoffman, et al., p. 448).

Both reports assert that the four psychologists' conflicts of interest in the PENS process is superseded by their "special expertise": "it appears both logical and prudent to select members who have specific expertise and/or an abiding interest in the focus area" (TF19, p. 32). Yet the argument for choosing the very psychologists whose activities were being evaluated, because of their "specific expertise and/or abiding interest," strains credibility. The PENS Task Force was an emergency ethics review, not a neutral policy exercise. It required disinterested *ethical expertise*, not firsthand subject matter expertise, as the authors imply. Even if "expertise" and "abiding interest" might have been helpful to the process, ethics require that people with this level of career and financial involvement disclose the full extent of the conflict and withdraw from decision-making. This did not happen in the case of PENS.<sup>11</sup>

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<sup>11</sup> Consider the following hypothetical analogy: Suppose that the Centers for Disease Control and Prevention (CDC) is investigating reports that scientists working for the tobacco industry have provided falsified scientific data attesting to the safety of tobacco. The CDC puts together a Task Force to assess (a) the medical risks of tobacco and (b) the ethics of the research. Would we consider it ethical or appropriate for an author of the suspect research to pressure the CDC to place

Had the PENS Report declared that it was unethical for psychologists to participate in interrogations at Guantánamo and elsewhere, several Task Force members – as well as Dr. Newman’s wife – might have been liable for having engaged in unethical activity. Similarly, if the APA policy resulting from the 2008 member-initiated [referendum](#) had not been undermined and psychologists were prohibited from being part of military operations that violated the United Nations Convention Against Torture, then these psychologists’ careers likely would have been directly harmed.

The implicit acknowledgment by Banks et al. that abusive interrogation tactics were authorized during the period that three of its authors served at and/or consulted to the Guantánamo prison, renders these conflicts of interest even more troubling. After all, the PENS Task Force was created precisely to interpret the applicability of the APA ethics code to those and other potential abuses occurring with psychologist participation.

## Conclusion

### Implications

Our analysis of key claims made by TF19 and the Banks Commentary exposes the manner in which the reports present distorted evidence, selectively omitting information that contradicts their claims and ignoring readily available information that supports Hoffman’s findings – including the wealth of evidence presented in the 500 page report. These factual inaccuracies and lack of scholarly rigor belie the claim of TF19 that its report, unlike the Hoffman Report, is “based upon methods of science” (p. 2, emphasis in original).

Implicit in the Banks Commentary and the TF19 Response is the authors’ position that reports by the United Nations Committee Against Torture, DoD Inspector General, Senate Armed Services Committee, International Committee of the Red Cross, Institute on Medicine as a Profession, Constitution Project, and now the Hoffman independent review – each taking months to prepare and based on review of thousands of pages of evidence – are wrong, “biased” and “political”, and that their own self-serving claims, supported only by strongly worded assertions and selectively cited documents, are correct, impartial, and unbiased.

As we have shown, when Banks et al. and TF19 assert that Hoffman’s “key conclusion” is “demonstrably false,” they are wrong on both counts. First, as noted above, Hoffman’s actual key conclusions<sup>1</sup> is that:

... [K]ey APA officials... colluded with important DoD officials to have APA issue... ethical guidelines that did not constrain DoD.... [T]hat APA’s principal motive in doing so was to align APA and curry favor with DoD.... [And] that in the three years following the adoption of the 2005 PENS Task Force report as APA policy, APA officials engaged in a pattern of secret collaboration with DoD officials to defeat efforts by the 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....

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his/her co-authors on the Task Force? Would we accept that it is appropriate for these scientists to determine the ethics of their own practice because of their “expertise” and “interest”?

*...APA's motive to curry favor with DoD was enhanced by personal relationships between APA staff and DoD personnel, an important conflict of interest that was intentionally ignored... (p. 9)*

They have not credibly refuted these core findings of Hoffman's seven-month investigation, nor have they even attempted to do so.

Second, the finding Banks et al. and TF19 do critique – “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... ” (p. 9) – is demonstrably true and supported by the evidence. In fact, even today, the Army Field Manual, which is the standard for interrogations, permits techniques that are condemned by the United Nations Committee Against Torture.

While the Hoffman Report deserves critical and objective scrutiny, like all documents, the Banks Commentary and TF19 responses serve only to obscure rather than clarify the issues. They provide no evidence to seriously challenge Hoffman's findings, central or otherwise, nor the methodology that produced these findings. Relatedly, the authors provide no reason for APA to backtrack on its post-Hoffman commitment to ending psychologist participation in detainee abuses and furthering the association's commitment to putting human rights at the center of the profession's identity.

## **Recommendations**

We recommend that APA members and the public subject the Banks Commentary and TF19 Response to the same level of scrutiny the original PENS Report deserved. Like the flawed PENS Report, both reports distort the historic data in a manner that uncritically protects DoD interrogation and detention policies that have been nearly universally condemned. And both aim to protect the reputation of psychologists who, evidence shows, were involved not only in commands when and where abuses took place, but who dedicated themselves to undermining APA's independence in assessing the ethics of those activities.

In this light, the two critiques can perhaps best be understood as efforts to halt essential reforms to psychology's ethics initiated in the response to the Hoffman Report following upon years of documented psychologist complicity in detainee abuses. Banks et al. and TF19 seek to reverse the historic action taken in August 2015 by the APA Council of Representatives in removing psychologists from national security interrogations and from sites, such as Guantánamo, operating outside of international law. Further, they seek to restore an era when the APA served more as a protector of narrow DoD and CIA interests than as an expression of the will and interests of the association's members.

For APA to transcend this scandal, it must continue the healing process that began with the APA's independent review and the policy changes passed at the August 2015 Council of Representatives meeting. APA must continue to acknowledge the errors of its past, to put in place processes of accountability for egregious violations of ethics and policy, reaffirm and solidify its commitment to “do no harm” as a foundational ethical principle for all psychologists, and to align its policy with international human rights standards as well as the highest standards of medical ethics.

## Authors

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