

## RESPONSE TO STEPHEN SOLDZ'S AUGUST 1 POST

We welcome the opportunity to respond Dr. Soldz's August 1 post. As has been the case throughout this debate, documents from Dr. Soldz and his collaborators rely heavily on factual misstatements and mischaracterizations, within a rhetorical wrapper of self-righteous certitude. Putting the best light on the errors in the most recent response, they reflect that Dr. Soldz and his colleagues have simply not done all their homework about the complex history of interrogation policies and that, having committed themselves to a position, they have become so firmly wedded to it that they are unable to take facts contrary to their narrative into account.

Our attorney has reviewed many of the relevant documents and facts with Sidley Austin LLP and with APA officials and the APA's counsel, WilmerHale, in an effort to bring all parties to a resolution of these matters. We will be glad to provide the same review for the APA Board and the Council (and to include Drs. Soldz and Reisner in those presentations).

We respond below to Dr. Soldz's specific assertions. (The timing of Dr. Soldz's post in the week of the Council meeting has forced us to respond quickly, and we apologize for any resulting lack of polish to our response.) But some context first.

There is no debate among us about the terrible history of abusive interrogations that violated the international conventions against torture. Nor is there any debate among us that psychologists should do everything in their power to prevent abusive interrogations. Our goal is not to argue those issues about which we all agree. Instead, we have two goals: to remedy the severe and lasting damage done to many APA members and to our profession by the false accusations of the Hoffman report, and to ensure that we work together to prevent future abuses.

Our disagreement with Dr. Soldz and his collaborators centers on two issues:

1. The accuracy of the Hoffman report's conclusions, especially the claim that APA and DoD officials colluded to ensure the PENS Guidelines would not constrain abusive interrogations. We have repeatedly demonstrated that the claim rests on (a) ignoring the interlocking interrogation policies actually in place at the time of PENS, (b) ignoring the work of military psychologists, including those named in the report, to create restrictive interrogation guidelines, (c) ignoring key language in Statement Four of the PENS Guidelines, and (d) characterizing the normal organizational process of creating policy as "collusion." For anyone who undertakes the tedious task of reading all the relevant e-mails in the report's thousands of pages of supporting documents and the archive of the PENS listserv, the claim of collusion quickly falls apart. And [Mr. Hoffman himself has acknowledged to Council that the e-mail exchanges would have been more accurately characterized as "collaboration," "coordination," or "behind the scenes communication" than as "collusion," a term that connotes nefarious if not illegal intent.](#)

Aside from terminology, Mr. Hoffman's conclusion rests on a fundamentally incorrect foundation: he assumes that the psychologists involved in PENS wanted to avoid putting restraints on abusive interrogations. As soon as the foundation of Hoffman's argument is removed, the logic of his argument collapses. And we have shown that many of the military authors of PENS were doing their best to craft military polices that were restrictive, and that all of us wanted ethical guidance that would support those restrictions. As has become clear, and

as we discuss in section 4 below, our view of how best to provide that support simply differed from our critics' view.

2. The role played by psychologists in interrogations and the role they should play going forward. First, we disagree fundamentally with the policy position taken by Mr. Hoffman and by Dr. Soldz and his collaborators that psychologists should have no role in interrogations. We believe they can be a strong bulwark against abuses. Mr. Hoffman cites no evidence to support his position; he simply asserts its correctness as self-evident. It is worth noting that two non-psychologist interrogators interviewed for the Hoffman report ***who have actual experience conducting interrogations*** have spoken out publicly against the report's assertion that psychologists cannot simultaneously guard against abuses and enhance the effectiveness of interrogations.

Second, as we have previously demonstrated, DoD psychologists became a primary force for trying to end abusive interrogations. It is clear that some CIA psychologists took a different view, but it is also clear that no PENS policy would have prevented their approach to interrogations. Mr. Hoffman himself quotes James Mitchell as saying, "DoD was genuinely interested in adhering to the Ethics Code and was seeking clarity about its guidelines, whereas the CIA would not have changed its operational decisions based on the ethical statements of a professional association." (Hoffman report, page 144, pdf page 162) Mr. Hoffman notes that Mitchell, a CIA-contracted psychologist accused of abusive interrogations, resigned from the APA following the PENS report, yet fails to draw the obvious conclusion: Mitchell left the Association because PENS was inconsistent with his approach to interrogations.

Our response to some of the specific misstatements in Dr. Soldz's post is below. We realize that, by now, most APA members have tired of this back-and-forth about details. Unfortunately, given the complexity of the history of interrogation policies and the APA's role, it is in the details that the truth lies.

1. **Claim:** The post attaches a letter from Leonard Rubenstein, former Executive Director and President of Physicians for Human Rights, that relies in part on a 2005 report by Lt. Gen. Randall Schmidt into interrogations at Guantanamo. According to Mr. Rubenstein, in 2005 General Schmidt found no directive or policy ending the use of sleep deprivation at Guantanamo.

**Facts:** At that time, permissible techniques at all locations, including Guantanamo, had been listed in the Schlesinger Report and Associate Deputy Attorney General Patrick Philbin's testimony before the House Intelligence Committee. Those permissible techniques did *not* include sleep deprivation; they permitted only "adjusting [a detainee's] sleep cycle, for example by requiring him to sleep days instead of nights, but *without depriving him of sleep...*" (Emphasis added) ([Philbin testimony, July 14, 2004, page 8](#)) These policies also did not permit several of the practices that, as General Schmidt reported, had been used in the 2002 interrogation of Mohammed al-Qahtani, the focus of General Schmidt's review.

Mr. Rubenstein appears to assume that the sole guidance for Guantanamo psychologists in 2005 was contained in the March 2005 Standard Operating Procedure (SOP) regarding their role. That is *incorrect*: the SOP was part of an interlocking package of guidelines and regulations, including, but not limited to, those described above and a separate Guantanamo interrogation SOP. Had Mr. Rubenstein brought his analysis to our attention, we could have discussed with him the state of interrogation policy and practice in June 2005, when PENS was written. He did not do

so, and his brief letter to the APA misses key aspects of DoD interrogation policy as it stood when PENS was written.

2. **Claim:** “Virtually every human rights group has condemned Appendix M [of the Army Field Manual] ....”

**Facts:** [In a June 9, 2015, release, seven human rights and civil liberties organizations, including the ACLU and Physicians for Human Rights, supported the McCain-Feinstein Amendment to the Detainee Treatment Act.](#) Their release states that the Act was a “game-changer by mandating ... that interrogations conducted by all Department of Defense personnel had to follow” the Field Manual, and that the amendment improves the Act by making the Manual the standard for all U.S. government interrogations. The release does not criticize Appendix M, which specifies the stringent restrictions placed on the use of separation (the military’s term) or isolation (the critics’ preferred term). It is worth noting that the APA likewise gave strong support to the McCain-Feinstein Amendment both before and following the release of the Hoffman report.

3. **Claim:** “One PENS member was with Dr. James Mitchell [a CIA-contracted psychologist] when he began torturing Abu Zubaydah in Thailand.”

**Facts:** Although technically correct, this statement leaves the profoundly misleading impression that the PENS member, Dr. R. Scott Shumate, agreed with the interrogation techniques. [According to a 2007 article by Katherine Eban, Dr. Shumate “opposed the extreme methods and packed his bags in disgust, leaving before the most dire tactics had commenced.”](#) Dr. Shumate left the CIA in 2003, apparently because he disagreed with its misuse of SERE tactics. (See Jane Mayer’s *The Dark Side*, page 162.)

The statement occurs in the context of Dr. Soldz’s claim that the PENS Guidelines should have done more to constrain CIA interrogations. In retrospect, did the Guidelines focus too much on DoD issues and not enough on the CIA? Perhaps, although Mr. Hoffman found no evidence of collusion with the CIA related to interrogation guidelines and acknowledged that the CIA would not have felt constrained by any association guidelines. The reality – as Dr. Jean Maria Arrigo acknowledged on the PENS listserv – is that the DoD psychologists came to work with the APA, the CIA did not, and the military psychologists were adamant that the APA Ethics Code should apply to *all* of their work, including interrogations.

If there was a perceived shortfall in the PENS language, it was the result not of evil intentions, but of factors such as the desire to craft language that would be most useful to military psychologists in supporting their efforts to prevent abuses, and the fact that PENS was the APA’s initial effort, the first in a series of seven APA policy statements prior to the Hoffman report. Exactly as called for by the PENS report, those later APA resolutions elaborated and refined the APA’s position, often with the assistance and strong support of military psychologists.

4. **Claim:** “It was ... the responsibility of PENS to provide iron-clad ethics guidelines that would apply to psychologists working under any future President, Secretary of Defense, or general. By relying instead on US law that was knowingly being manipulated to legalize torture, PENS failed to do this.”

**Facts:** So much is wrong with this statement that it is difficult to unpack the fallacies.

First, although US law had been manipulated after 9/11, it was becoming increasingly explicit about prohibiting torture (see, in particular, the 2005 Detainee Treatment Act), and that trend has continued. Could it be reversed by a future administration? Perhaps. But PENS explicitly acknowledged that it was a first step in a continuing process and would have to be updated in light of future developments. As we stated above, no one expected the PENS Guidelines to be the final word, and it is disingenuous to make that assumption.

In fact, the APA later passed resolutions containing increasingly rigorous prohibitions. PENS was updated in 2006, 2007, 2008, 2009, 2010, and 2013 (when PENS was “rescinded” and significant portions incorporated into the consolidating policy). In 2007 and 2008, the APA adopted a resolution that prohibited specific interrogation techniques, including stress positions and sleep deprivation. That adoption ran so counter to Hoffman’s narrative that he could explain its specific prohibitions only by asserting a fact that was demonstrably false: that APA finally had “permission” to become specific because the 2006 Army Field Manual containing specific prohibitions had now been published. However, the 1992 Field Manual, the 2006 AFM’s predecessor, contained a list of specific prohibited techniques, a fact Mr. Hoffman ignores because it doesn’t support his argument.

Second, as Statement Four makes clear, the PENS Guidelines rely on the Geneva Convention and the Convention Against Torture, not only on US law.

Instead, PENS offers a framework for decision-making that invokes four questions that remain at the center of society’s current discourse about interrogation: Is the technique safe? Is the technique consistent with the law? Is the technique ethical? Is the technique effective? Virtually every debate over the appropriateness of interrogation techniques uses all, or some combination of, these categories. Sources that Mr. Hoffman cites in his own report – the Commentaries on the APA Ethics Code—focus on *decision-making*. Had Mr. Hoffman read these commentaries for the very reason he says they are worthwhile—i.e., to understand how the authors think about an ethics code—the PENS framework would have made perfect sense. He would have understood that those working on the PENS report believed *processes* for decision-making were preferable to specific rules, and he would have been saved from inferring improper intent from the absence of specificity.

More generally, Dr. Soldz, Mr. Hoffman, and other critics of PENS often seem to assume that, if any abusive interrogations were continuing after PENS, the existing interrogation policies were therefore defective. Those are separate issues. No policy – even those from an interrogator’s chain of command – will completely extinguish any behavior, any more than a prohibition against sexual involvements with patients will ever completely put an end to psychologist-patient sex.

We set out to put policies in place on the ground that were more restrictive than high-level DoD policy and to ensure PENS required military psychologists to obey those policies. In those efforts, we were largely successful. Moreover, we worked hard to prevent abuse and, when we were aware that it was occurring, to report it. In that effort too we were substantially successful, although the results were less universal than we would have wished. If Dr. Soldz and his collaborators accuse us of writing policies that were not perfect, we agree (but we add that the APA took a policy position a year before either the American Medical or the American Psychiatric Association). If they claim we were complicit in or acquiesced to abusive interrogations, or did less than our best to prevent abuse while working where we

could actually have an effect on the ground, this deeply offensive and damaging allegation is false, as the facts show. And despite his 500+ page report and many thousands of pages more of resource materials, Mr. Hoffman provides not one piece of evidence to show our motives and goals were anything other than to ensure that interrogations were conducted in a safe and ethical manner.

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