

From: Morgan Banks [mailto:DocMB@aol.com]

Sent: Monday, June 01, 2015 15:10

To: 'Hoffman, David H.'

Cc: 'Latifi, Yasir'

Subject: RE: Documents & Questions relevant to the PENS Report Investigation

David,

Thanks again for your time. I've been traveling every since we talked, but I wanted to send you some thoughts in writing. I expect most of what is below you already have, but I wanted to make sure I articulated my thoughts and experience in writing. They may be slightly random points, but I did not want to miss anything critical.

1. In my strong opinion, the Captain initially assigned to GTMO was placed in an environment and asked to assist in an area for which he had no training or experience. He had poor leadership, and they demanded that he (eventually, after much push back from him) produce a document that he did not want to produce. As you know, I tried to help him, but my help was not sufficient to overcome some bad leadership and a lack of good policy and overall guidance. Eventually, the leadership was fired, and to the best of my knowledge, his memorandum was not implemented. This is type of problem is exactly what I believed was critical to prevent in the future. His experience was foundational to establishing training and guidance to prevent not just untrained psychologists from inappropriate behavior, but to help commanders throughout DoD to understand the psychological factors that are at play in such environments.

2. Concerning the specific role of psychologists, and in order to prevent them from being pressured to act in an inappropriate way, I needed to accomplish the following:

- a. Establish clear legal and ethical guidelines for psychologists in this role.
- b. Develop a training program for psychologists and enforce those established standards.
- c. Establish the role within DoD such that they could influence the process and mission of detention and interrogation activities.

The PENS report provided the ethical guidance that we needed. It was not remotely sufficient, but having the help of APA as we were establishing training standards really was critical to helping us make sure we were establishing standards that would last, and be open to public scrutiny. We made sure that the AMEDD policy was open to the public, and we encouraged critical feedback on it. We certainly would have developed ethical guidance if APA had not stood up and helped, but I cannot fathom how

that would have been a good idea or beneficial to anyone. As we worked to develop the policy and the training program, we relied on as many subject matter experts as possible. This included (and continues to include) cultural experts, legal advisors with extensive intelligence and military experience, psychologists who had performed the mission, experts in detention and in interrogation, and experts in professional ethics. This was true at every level in which I participated. The Army Surgeons General with whom I worked were adamant that we adhere to the highest ethical standards. (That would be the first thing and the last thing out of LTG Schoomaker's mouth every time I briefed him.) As you would expect, the Surgeons General have senior medical ethics counselors, and they were always involved in helping us make sure we were on solid ground at each step. Our link with APA helped make sure that we were able to add the unique viewpoint of psychology ethics to that of medical and legal ethics.

3. I reviewed my records, and I rejoined APA in 2009. I was not a member during the PENS TF meeting, and I did not rejoin until I was satisfied that APA would act on this topic in a professional manner. As time went on, I was continuously impressed by the professionalism and the reliance on facts, not innuendo, that was exhibited by the leadership of APA. At every point, the leadership was more concerned about the facts concerning this area rather than the politically correct, but improper, actions that were being pushed by a minority of their membership. You have a copy of my email to many of the DoD psychologists with whom I worked explaining my decision to rejoin. I stand by that email, and am proud of APA's approach to such an emotionally fraught topic.

4. Concerning the discussion of US law vs. international law that seems to have taken on a life of its own. I don't think I was very articulate in my explanation of why I believed it was important to make sure we established US law as the standard for our behavior. APA can and does set a higher standard than is required by law in some areas. In this area it can quickly become problematic, however. Here is my reasoning. And for the record, I did consult with some JAGs as it developed later, well after the PENS report, but I did not ask any of them to put their thoughts in writing (other than email, to which I no longer have access).

Some on the TF and many of the critics of our support to national security wanted our ethical standards to require military psychologists to adhere to (not further defined) "international standards" of human rights. In my opinion then and now, this opens up federal employees of any sort to significant risks. As an example not related to detention and interrogation support, much of the world believes that enteral feeding is unethical. The World Medical Association and the ICRC consider it so. However, the standard in federal corrections facilities is that we will not allow prisoners to starve themselves to death. DoD adopted the same standard for detainees directly from the

American Corrections Association. If APA interpreted international standards to include enteral feeding prohibitions, which is certainly a reasonable interpretation, then we are stating that the ethical guidance to psychologists would require violation of US regulations, and potentially law in this matter. The only defined standards that would make sense for federal employees to adhere to are those contained in US law, including all treaties to which we are signatories. And the various GPW standards are what usually get brought up by the critics of our work, anyway. Everyone in DoD with whom I have worked at the policy level fully supported our adherence to common article three, for example. My (reasonable to me) fear was that “international standards” could be used in many ways that would require our psychologists to either violate US law or the APA ethical standards. US law is pretty clear on this, at least when it comes to the Torture Statue, and US Code. And yes, I certainly understand the legal permutations that occurred with the OLC (that arguably did not apply to DoD), but making vague and potentially unknowable ethical standards was and is not the correct answer to that problem. I understand that this is a complex issue, and that a case can be made that perhaps I am overly cautious in protecting my psychologists, but there is a vocal minority within the APA membership who give me concern. I would argue that at some point, if “international standards,” (again not further defined) were used as an ethical standard, federal employees could not be members of the APA, since they all take an oath of office to the constitution. This is not simply the same as making our standards higher than current US law. If that were what was proposed, I might support that, depending on the specifics. But a vague standard on something as imprecise as international law (customary, or something else?) does not seem to pass the common sense test. I may be wrong on my interpretation, but that is my logic, and I had at least some legal support from those JAGs with whom I consulted.

There has never been any argument from me or any of those with whom I interacted but that the US is required to treat detainees humanely, and IAW common article three. That has been beaten into every course I have taught, from the beginning until the present. Even the first psychologist at GTMO (in the Levin Report) states how this was emphasized. They simply did not have the backing of policy and regulation that we worked so hard to establish to help them win the argument.

5. Concerning emails between myself and Steve Behnke. For good or ill, I am certainly a subject matter expert on the topic of DoD psychology support to interrogations, and on psychology support to National Security in general. It would only make sense for Steve Behnke to ask me my opinion on topics as he is working with APA to address ethical issues as they arise. Otherwise, APA, without any expertise in this area would run the risk of being completely out of touch with actual practice. In a worse case, it might result in a direct conflict between our oath of office and the APA Ethical Standards. At no time were any of my comments, as someone who understands DoD and Operational

Psychology fairly well, more than my personal opinions. Dr. Behnke certainly understood that, and I expect that he reached out and used many different opinions from many different viewpoints. As an example, there are some really obtuse pieces about the structure and guidance of DoD that I understand, and I suspect I was able to help educate Steve on some of those issues. I often gave him my personal thoughts on how a statement or policy from APA might impact DoD. Most of the time, I remember completely agreeing with various statements that forcefully came out against the abuse (not just torture) of detainees.

6. I was going to try to put something down about the overall structure of DoD, and how the various chains of command work together, but it would take a book. If I can help explain any of the ins and outs of the command structures, and what they really mean, please reach out. It seems pretty simple to me, but it only took 37 years of figuring it out....

7. On a personal note, Steve Behnke is one of the most ethical, thoughtful, and fair persons that I have ever met. To think that he would somehow collude with anyone to achieve some nefarious goal is absurd to anyone who actually knows him. He has taken enormous personal hits and attacks for doing what he thinks is right. He continued to act in a way that is above objective reproach when the personal attacks on him are relentless and childlike in their approach. He has the character and commitment to doing right that I can only hope others would display. I was involved in this area from the very beginning, and have personally seen how he, and the APA leadership in general, tried to think through a complex problem while being attacked constantly by those with absolutely no knowledge of the topic, and no concern for doing the hard right, only what feels good and makes a loud PR noise. Steve is one of the finest men I know, and as you can see, to have his character besmirched is one of the few things that really gets me angry. He is the model of a good psychologist, and a hero in my mind. We should have such integrity in the rest of our profession.

Thanks again for your time, and I would apologize for the final rant, but it needs to be said. I wish you success in finding out as many of the facts and in as much detail as possible, and I am still willing to assist in any way possible on that task.

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