

Commentaries

“No Cause for Action”: Revisiting the Ethics Case of Dr. John Leso

Roy J. Eidelson*^a

[a] Independent psychology practice, Bala Cynwyd, PA, USA.

Abstract

Recent revelations – from government documents and investigative reports – have brought renewed attention to the disturbing involvement of U.S. psychologists in the abuse and torture of “war on terror” detainees. In light of these revelations, this commentary examines the American Psychological Association's inexplicable decision to close – without any sanction – an ethics complaint filed against psychologist John Leso for his role in the abusive treatment of prisoners at the Guantanamo Bay detention facility. The essay reviews key components of the case: the relevant background and context, Dr. Leso's documented actions at Guantanamo, the APA's ethical standards, the ethics complaint rules and procedures, the justifications invoked by the APA leadership to defend the no-sanction decision, and recommendations for what should be done now.

Keywords: psychological ethics, American Psychological Association, Guantanamo, torture, interrogation

Journal of Social and Political Psychology, 2015, Vol. 3(1), 198–212, doi:10.5964/jspp.v3i1.479

Received: 2015-02-02. Accepted: 2015-06-21. Published (VoR): 2015-07-10.

Handling Editor: Shahnaaz Suffla, Medical Research Council, Tygerberg, South Africa; University of South Africa, Pretoria, South Africa

*Corresponding author at: 413 Pembroke Road, Bala Cynwyd, PA 19004, USA. E-mail: reidelson@eidelsonconsulting.com



This is an open access article distributed under the terms of the Creative Commons Attribution License (<http://creativecommons.org/licenses/by/3.0>), which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

On the ethics front, the past several months have been very difficult for the American Psychological Association (APA) and U.S psychology.

Last October, Pulitzer prize-winning reporter James Risen (2014) published *Pay Any Price: Greed, Power, and Endless War*. The book, which includes previously undisclosed emails from APA officials, sheds troubling light on evidence of collusion between the APA and the White House, the Central Intelligence Agency (CIA), and the Department of Defense. According to Risen, the APA's ethics policies for psychologists were crafted to provide support and cover for the Bush Administration's abusive treatment of detainees.

Then in December, the executive summary of the U.S. Senate Intelligence Committee's classified report on the CIA's brutal detention and interrogation program was released (United States Senate Select Committee on Intelligence [SSCI], 2014). The summary provides gruesome details of black site torture and documents the extent to which James Mitchell, Bruce Jessen, and other psychologists were central to these operations.

These revelations have also brought renewed attention to another disturbing fact. To date, no U.S. psychologist has been sanctioned for violating the profession's fundamental do-no-harm principles in the country's post-9/11

“war on terror.” One case in particular – that of APA member John Leso – illuminates both this unsettling reality and the possible role of powerful and unwarranted influences.

According to reports from the U.S government ([United States Senate Committee on Armed Services \[SASC\], 2008](#)) and a distinguished independent non-partisan task force ([The Constitution Project, 2013](#)), Dr. Leso recommended specific abusive techniques and was involved in torturous interrogations while stationed at Guantanamo Bay. So when psychologist Trudy Bond filed a formal ethics complaint against Dr. Leso in 2007, she never imagined that the APA’s Ethics Office might hold the file for almost seven years and then assert that there was no cause for action and close the complaint.

Yet that is exactly what happened.

To understand how and why requires a careful examination of context, evidence, ethics standards, the complaint management process, and APA justifications for its do-nothing decision. Although the Leso case has faded into the shadows, this is an opportune time to bring it back to center stage. It is very much an unfinished story, with many questions unanswered and perhaps a final chapter still to be written.

Background Context of the Leso Case

Putting the Leso case in proper context requires a brief review of some relevant APA history. Fortunately, much of that history can be told through the actions and statements of Ethics Office Director Stephen Behnke, the individual who subsequently received the ethics complaint filed against Dr. Leso.

Of particular note, in the years prior to the complaint Dr. Behnke was an active participant in leadership efforts to position the APA and its members as valued players in the U.S. national security apparatus. Those efforts involved a multi-front campaign: allegedly aligning the APA’s ethics policies with the interests of the CIA and the Department of Defense (e.g., [Miles, 2009](#); [Risen, 2014](#)); claiming a valuable role for psychologists in keeping national security interrogations “safe, legal, ethical, and effective” (e.g., [Behnke, 2006a](#), p. 154); disputing allegations of psychologist involvement in the torture and abuse of detainees (e.g., [Koocher, 2006](#)); and offering firm assurances that the APA would respond seriously to any documented cases of misconduct (e.g., [Behnke & Koocher, 2007](#)). Several examples reveal Dr. Behnke’s contributions to the pursuit of this broad agenda.

Private Meetings With Senior Intelligence and Military Officials

In July 2004, Dr. Behnke and the Ethics Office hosted a private meeting for a small group of senior CIA and Department of Defense officials ([American Psychological Association \[APA\], 2005b](#); [Risen, 2014](#)). Dr. Behnke assured the invitees that their names and the substance of their discussions would remain secret and that the group would “neither assess nor investigate the behavior of any specific individual or group” ([Risen, 2014](#), p. 198). He also explained that the APA wanted to “convey a sensitivity to and appreciation of the important work mental health professionals are doing in the national security arena” ([Risen, 2014](#), p. 198). One participant was Kirk Hubbard, a senior CIA behavioral scientist and APA member. It was Dr. Hubbard who first introduced James Mitchell and Bruce Jessen to the CIA in late 2001 ([Bloche, 2011](#)). When Dr. Hubbard left the CIA in 2005, he joined Mitchell Jessen & Associates ([Risen, 2014](#)); that company received \$81 million from the CIA to manage its brutal black site interrogations ([SSCI, 2014](#)).

That 2004 meeting at APA headquarters was the springboard for the APA's controversial Presidential Task Force on Psychological Ethics and National Security (PENS) (APA, 2005b). This task force was comprised predominantly of psychologists from the U.S. military and intelligence community, several of whom were drawn from chains of command where detainee abuses allegedly took place (Society for the Study of Peace, Conflict, and Violence, n.d.). After gathering for a single weekend meeting in June 2005, the group declared that it was indeed ethical for psychologists to serve in various national security-related roles, including as consultants to detainee interrogations. Dr. Behnke played an influential role in organizing the PENS task force. He was also the primary author of the much criticized PENS Report (APA, 2005a), which the APA Board quickly approved in an emergency vote, bypassing the Association's governing body.

Responding to Reports of Psychologist Misconduct

Just days after the PENS meeting, the *New Yorker* published an article by Jane Mayer in which she identified James Mitchell as a contract psychologist present during the CIA's black site interrogation of an al-Qaeda suspect in 2002 (Mayer, 2005). According to Mayer, Dr. Mitchell “announced that the suspect needed to be subjected to rougher methods” and that he should be treated “like the dogs in a classic behavioral-psychology experiment” (a reference to the learned helplessness studies of former APA president Martin Seligman). The extent of Dr. Mitchell's role in the CIA's torture program was not fully recognized until two years later (Eban, 2007); his activities are described in detail in the recent Senate report (SSCI, 2014). That report led the APA to acknowledge publicly, for the first time, that Dr. Mitchell had been an APA member until he resigned in 2006 (APA, 2014d).

A month after Jane Mayer's article appeared, Dr. Behnke criticized press reports alleging abuses by psychologists, and he gave this assurance of accountability for misconduct:

If psychologists have engaged in any activity, and at this point the media reports are long on hearsay and innuendo, short on facts, the American Psychological Association wants the facts. And when we have the facts, we will act on them. And if individuals who are members of our association have acted inappropriately, the APA will address those very directly and very clearly. (Psychological warfare?, 2005)

Yet when he made this statement, in August 2005, Dr. Behnke presumably knew that Dr. Mitchell was a current member of the APA. He presumably also knew of the reported involvement of APA member John Leso in the abusive treatment of Guantanamo detainee Mohammed al-Qahtani, as documented in a leaked interrogation log published by *Time* magazine two months earlier (Bloche & Marks, 2005; Zagorin & Duffy, 2005). And as director of the Ethics Office, Dr. Behnke certainly knew that the APA's Ethics Committee has the authority to initiate *sua sponte* ethics complaints and conduct investigations on its own initiative (APA, 2007). But despite the reports of psychologist misconduct, it does not appear that he ever urged the committee to pursue this course of action.

Dr. Behnke did press forward with the APA's public relations campaign. In June 2006, shortly after the American Psychiatric Association declared that its members should no longer assist with interrogations, the Department of Defense announced that psychologists would continue in this role. According to Neil Lewis of the *New York Times*, in responding to this news Dr. Behnke “said psychologists knew not to participate in activities that harmed detainees” (Lewis, 2006). Similarly, in an email exchange the next month with journalist Mark Benjamin of *Salon*, he explained that psychologists encourage interrogators to talk to detainees rather than resort to harsher methods (Benjamin, 2006).

Then in 2007 Dr. Behnke co-authored a commentary with former APA president Gerry Koocher in which they reiterated that “any psychologist found to have any involvement in torture or cruel, inhuman, or degrading treatment or punishment will face sanction by the APA Ethics Committee” (Behnke & Koocher, 2007, p. 25). And following the release of a Department of Defense Inspector General report (United States Department of Defense, 2006), Dr. Behnke told the *Spokesman Review* (Steele & Morlin, 2007) that APA members were *not* among those who thought it was a good idea to reverse-engineer brutal “Survival, Evasion, Resistance, and Escape” (SERE) techniques for use against detainees (as Mitchell and Jessen had done). He also “emphasized repeatedly during the interview that Spokane psychologists Mitchell and Jessen are not APA members” (which was technically true since Mitchell had resigned the previous year).

This is the critical context in which Dr. Bond’s formal ethics complaint against John Leso arrived at Dr. Behnke’s desk. For the director of the Ethics Office, it posed a serious and likely unwelcome challenge to previous talking points and assurances. But Dr. Bond was merely following through on her professional responsibility to report evidence of ethical violations that had caused substantial harm (APA, 2002); and she was not alone: psychologists Alice Shaw and Frank Summers communicated similar ethical concerns to Dr. Behnke (Summers, 2007).

The Ethics Complaint: Dr. Leso’s Actions at Guantanamo

Dr. Bond’s formal complaint (Bond, 2007), along with supplementary materials she submitted in response to an Ethics Office request (Bond, 2008), provided a detailed account of Dr. Leso’s actions while he led the Behavioral Science Consultation Team (BSCT) at Guantanamo Bay from June 2002 to January 2003. Those actions are summarized here.

Development of Abusive Detention and Interrogation Tactics

According to the U.S. Senate Armed Services Committee’s extensive 2008 report (SASC, 2008), Dr. Leso and fellow BSCT member psychiatrist Paul Burney co-authored an October 2002 “Counter Resistance Strategy Memorandum.” In this memo they recommended physically and psychologically harmful and abusive detention and interrogation tactics. Specifically, they proposed three categories of techniques of increasing severity in order to “develop rapport, promote cooperation, and counter resistance” (SASC, 2008, p. 51). As described in the Senate report:

- Category I techniques included “incentives and ‘mildly adverse approaches’ such as telling a detainee that he was going to be at GTMO forever unless he cooperated” (SASC, 2008, p. 51).
- Category II techniques included “stress positions; the use of isolation for up to 30 days (with the possibility of additional 30 day periods, if authorized by the Chief Interrogator); depriving a detainee of food for up to 12 hours (or as long as the interrogator goes without food during an interrogation); the use of back-to-back 20 hour interrogations once per week; removal of all comfort items including religious items; forced grooming; handcuffing a detainee; and placing a hood on a detainee during questioning or movement” (SASC, 2008, p. 51).
- Category III techniques included “the daily use of 20 hour interrogations; the use of strict isolation without the right of visitation by treating medical professionals or the International Committee of the Red Cross (ICRC); the use of food restriction for 24 hours once a week; the use of scenarios designed to convince the detainee

he might experience a painful or fatal outcome; non-injurious physical consequences; removal of clothing; and exposure to cold weather or water until such time as the detainee began to shiver” (SASC, 2008, p. 52).

In the same counter-resistance memo, Drs. Leso and Burney also offered recommendations for how detainees should be treated in their cells. They proposed that “resistant detainees might be limited to four hours of sleep a day; that they be deprived of comfort items such as sheets, blankets, mattresses, washcloths; and that interrogators control access to all detainees’ Korans” (SASC, 2008, p. 52). And they described “using fans and generators to create white noise as a form of psychological pressure” and suggested that “all aspects of the [detention] environment should enhance capture shock, dislocate expectations, foster dependence, and support exploitation to the fullest extent possible” (SASC, 2008, p. 52).

Involvement in the Torture of Mohammed al-Qahtani

In large measure, this memo formed the basis for the subsequent authorization from Secretary of Defense Donald Rumsfeld in December 2002, approving most of the techniques that Drs. Leso and Burney had proposed for use at Guantanamo (SASC, 2008). Many of the same techniques also became part of the interrogation of Mohammed al-Qahtani (SASC, 2008). Over the course of nearly two months beginning in late 2002, Mr. al-Qahtani was subjected to almost daily 20-hour interrogations; was held in isolation without contact with other detainees; was forcibly injected with excessive fluids until his limbs swelled; was frequently hooded; was repeatedly subjected to forced nudity and to religious and sexual humiliation; was stripped and forced to stand naked with female interrogators present; was forced to wear a woman’s bra and had a thong placed on his head; was terrorized by military dogs; and was led around by a leash and forced to perform dog tricks. As noted earlier, a leaked log confirmed that Dr. Leso himself was involved in at least some of these sessions (Bloche & Marks, 2005).

Furthermore, a sworn statement from an unidentified BSCT member asserted that at least one member of the BSCT team was *always* present during the interrogation of Mr. al-Qahtani (United States Department of Defense, 2005b). In that same statement, when asked whether he felt that Guantanamo detainees were abused, this BSCT member replied:

That is a hard question to answer. I do believe it is possible for some detainees to have some kind of long-term or unintended difficulties because of the interrogation practices, but I did not see detainees being subjected to pointless cruelty.

However, the U.S. Army’s 2005 Schmidt-Furlow Report determined that Mr. al-Qahtani was the victim of degrading and abusive treatment (United States Department of Defense, 2005a). And Susan Crawford, the convening authority on military commissions at Guantanamo, refused to refer Mr. al-Qahtani’s case to trial because she concluded that his interrogation met the legal definition of torture (Woodward, 2009).

In subsequently defending its “no cause for action” decision in the Leso case, the APA Ethics Office did not contest the factual basis or accuracy of the information provided above. This leads to an obvious question: Do the actions described here somehow *not* constitute professional misconduct on Dr. Leso’s part?

Did Dr. Leso Violate the APA's Ethics Code?

The answer is simple, and not at all surprising. It would appear that Dr. Leso violated several fundamental standards of psychological ethics, according to the APA's applicable ethics code and its related policies (APA, 1992).

Torture and Cruel, Inhuman, and Degrading Treatment

By any reasonable definition, the techniques Dr. Leso proposed – and those described above that were used against Mr. al-Qahtani – amounted to torture and cruel, inhuman, and degrading treatment. They involved the intentional infliction of severe psychological pain and suffering. As such, they were grave breaches of the Geneva Conventions, the United Nations Convention against Torture, and other norms of customary international law (International Committee of the Red Cross, n.d.).

For many years, APA spokespersons have repeatedly stated that torture is *never* justified, and that APA members are prohibited from any involvement in torture. Indeed, in an effort to offer reassurance following the perplexing decision in the Leso case, Rhea Farberman, APA's executive director for Member and Public Communications, wrote:

APA's no torture policy is clear and unequivocal. There is never a justification for torture, regardless of the "larger societal good" at issue. The American Psychological Association's policies strictly prohibit any member from engaging in torture or other forms of cruel, inhuman or degrading treatment or punishment in any and all circumstances. This policy has been in place since 1986 and there is no exception to it. (APA, 2014b, p. 1)

That seems clear and hard to misinterpret. Similarly, there is little room for confusion about what it means for a psychologist to "engage" in torture. As Dr. Behnke wrote in a March 2007 email response to Dr. Bond, prior to her filing the complaint against Dr. Leso:

Any psychologist participation in a torture interrogation is absolutely prohibited. It makes no difference whether the psychologist's participation is direct or indirect, supervisory, central or peripheral: Any psychologist participation in a torture interrogation is prohibited. (T. Bond, personal communication, January 8, 2015)

Other Ethical Standards

In addition to breaching the APA's purported no-torture policy, Dr. Leso's conduct also violated *at least* four other enforceable standards that apply to psychologists' work more broadly.

The "Avoiding Harm" standard states:

Psychologists take reasonable steps to avoid harming their patients or clients, research participants, students, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable. (APA, 1992)

There would appear to be little question that the abusive detention and interrogation techniques proposed by Dr. Leso and used at Guantanamo violated this requirement to avoid harm.

The “Exploitative Relationships” standard states:

Psychologists do not exploit persons over whom they have supervisory, evaluative, or other authority such as students, supervisees, employees, research participants, and clients or patients. (APA, 1992)

It is clear that Dr. Leso used his position to recommend exploitative methods and to facilitate the exploitation of Guantanamo detainees by others.

The “Other Harassment” standard states:

Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons’ age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status. (APA, 1992)

Here too, the techniques proposed by Dr. Leso and those adopted under his guidance in Mr. al-Qahtani’s interrogation were indisputably harassing, demeaning, and humiliating in both design and effect.

And the “Boundaries of Competence” standard states:

Psychologists provide services, teach, and conduct research only within the boundaries of their competence, based on their education, training, supervised experience, or appropriate professional experience. (APA, 1992)

According to the Senate report on detainee treatment, Dr. Leso – unlike regular military interrogators – had virtually no training in detention and interrogation operations (SASC, 2008).

Given the extensive documentation of Dr. Leso’s apparent professional misconduct by APA’s own standards, it is hard not to think that something went very wrong with how the APA Ethics Office handled Dr. Bond’s complaint. Sorting that out begins with understanding what is *supposed* to happen when an ethics complaint is filed.

How the APA Ethics Process Is Supposed to Work

Ethics complaints are handled by the Ethics Office and Ethics Committee based upon a detailed set of rules and procedures (APA, 2007). As director of the Ethics Office, Dr. Behnke is assisted by a staff that includes a deputy director and investigators (APA, n.d.-a). The Ethics Committee does not include Dr. Behnke or any other APA staff members. It is comprised of nine APA members and one non-psychologist “public member.” These ten individuals serve staggered three-year terms; the chair of the committee changes on an annual basis.

The Standard Complaint Procedure

An ethics complaint alleging misconduct can be filed by anyone against any current member of the APA. In addition, the Ethics Committee has the authority to “proceed on its own initiative” in a *sua sponte* action (APA, 2007). Upon receiving a complaint, the Ethics Office – not the Ethics Committee – conducts the initial review and evaluation of the complaint. After a preliminary investigation is completed, the Ethics Office Director and the current Chair of the Ethics Committee decide whether a “preponderance of the evidence” indicates that an ethical violation occurred. If they believe such evidence exists, a formal case is opened and a case investigation is conducted. When in their judgment this investigation is complete, the case is then referred to the Ethics Committee for review and

resolution. That ten-person committee decides whether the case should be dismissed or whether some sanction – such as a reprimand, censure, or expulsion from the APA – is appropriate.

This process gives the Ethics Office Director significant oversight and decision-making power. His objectivity and freedom from conflicting priorities and pressures are therefore essential. He determines the manner in which his office handles a complaint, including the depth, duration, and scope of any preliminary investigation or open-case investigation conducted by investigators. As a senior full-time APA staff member recognized for his expertise in ethics, Dr. Behnke also travels widely to teach other psychologists about professional ethics. By comparison, the Ethics Committee Chair serves in that position for only a single year, and he or she often holds another full-time job at the same time. Although there may be instances when the Director and Chair disagree on whether or not to open a case (when this happens, the Committee's Vice-Chair can cast the deciding vote), there is little question as to where the primary authority and influence lie.

The Handling of the Leso Complaint

How, then, did this ethics complaint process unfold in the case of Dr. Leso? Almost *seven years* after the complaint had been filed, on December 31, 2013 the Ethics Office notified Dr. Bond that there was no cause for action. The letter she received stated:

On the basis of a careful and thorough review of the record...we have determined that we cannot proceed with formal charges in this matter. Consequently, the complaint against Dr. Leso has been closed. (APA, 2013, p. 1)

In other words, the Ethics Office concluded – quite remarkably – that the preponderance of the evidence did *not* support the allegation of *even a single* ethical violation by Dr. Leso. This determination means that a formal case was never opened, an open-case investigation was never conducted, and a referral to the full ten-person Ethics Committee for review and resolution was never made. The justifications offered for this decision by the Ethics Office will be examined shortly.

That “preponderance of the evidence” standard is a relatively low evidentiary threshold. Meeting this standard means only that it is more likely than not that at least one ethical violation has occurred. By comparison, “clear and convincing evidence” and “beyond a reasonable doubt” are substantially higher thresholds, but neither of these is the basis for determining whether an ethics complaint should be referred to the full Ethics Committee for review and resolution (including possible dismissal of all charges). To be clear, the preponderance of the evidence standard does *not* involve tallying a psychologist’s “good deeds” and “bad deeds” in order to see which of the two is greater in number.

An example from a different sphere may help to further clarify this standard and the decision process involved. If a client files a complaint with the APA Ethics Office alleging sexual misconduct by her therapist, it does not matter that the psychologist may have avoided inappropriate relations with all of his other clients. In deciding whether a formal case should be opened, the only assessment that does matter is whether it appears *more likely than not* that the psychologist engaged in sexual relations *at least once with this particular client*.

In short, the decision of the Ethics Office to close the Leso complaint – without ever opening a formal case for review by the full Ethics Committee – is mystifying and distressing. And the APA's subsequent attempts to justify this “no cause for action” determination raise further doubts and concerns.

The APA’s Defense of the “No Cause for Action” Decision

In three separate statements – the letter from the Ethics Office to Dr. Bond (APA, 2013), a follow-up statement from the APA Board of Directors (APA, 2014a), and then a press release (APA, 2014b) – the APA leadership insisted that the Ethics Office had acted appropriately. But the arguments presented appear to be a hodgepodge of illogic, misdirection, and obfuscation.

Early Career Psychologist

One argument the Ethics Office offered in Dr. Leso’s defense is that he was “an early career psychologist” (APA, 2013, p. 2). This is apparently true, but it is also irrelevant. The APA’s ethics code makes no distinction in regard to the applicability of specific standards based on how long an individual has been a psychologist. According to the code, behaviors deemed unethical for a senior psychologist are similarly impermissible for a junior member of the profession. To return to the earlier example, who would argue that sexual intimacies with a client are excusable when a psychologist is thirty-five but inexcusable at fifty? The same logic applies to detainee abuse.

Unanticipated Responsibilities

The Ethics Office presented a second exculpatory claim in three parts: Dr. Leso was “trained as a health care provider;” he “did not request to become involved with detainee interrogations;” and he was “informed that he would be in the role of behavioral science consultant...only after he arrived at Guantanamo Bay” (APA, 2013, p. 2). All of these points appear to be accurate – but they do not bear on the ethics of his actions. Nowhere does the ethics code advise that ethical breaches should be disregarded if a psychologist finds himself in a role that he neither trained for nor wanted. Dr. Leso’s surprise at his BSCT assignment is similarly immaterial. Although a psychologist may be caught off-guard by a client’s sexual interest in him, the unexpectedness of her overtures does not change the ethical standards that apply to his conduct. The same is true here.

No Standard Operating Procedure

A third explanation offered by the Ethics Office for closing the complaint is that “the military lacked a standard operating procedure” for the BSCT role when Dr. Leso arrived at Guantanamo and “APA did not issue its first policy on interrogations until three years later” (APA, 2013, p. 2). But this purported lack of clarity is illusory. The profession’s enforceable standards regarding torture, abuse, exploitation, and other forms of misconduct have long been established (APA, 2014b). The Guantanamo detention and interrogation environment did not suddenly make those standards inapplicable. Indeed, in 2005 the APA’s PENS task force asserted, “the Ethics Code is fundamentally sound in addressing the ethical dilemmas that arise in the context of national security-related work” (APA, 2005a, p. 3).

Pressure From Superiors

As a fourth justification, the Ethics Office noted that Dr. Leso faced “pressure from the highest levels of the Bush Administration which strongly supported ‘enhanced’ interrogation tactics” (APA, 2013, p. 2). This is undoubtedly true. But pressures to engage in misconduct do not free a psychologist from observing the profession’s ethical standards (even though they can make it more difficult and more costly to do so). Such potentially mitigating factors may come into play when the full Ethics Committee chooses among various sanctions (or dismissal), but they are not legitimate grounds for blocking review by the full Ethics Committee in the first place. Moreover, Dr.

Behnke has defended psychologists' participation in interrogations by arguing that they are uniquely trained to prevent "deviation from professionally and ethically acceptable behavior" – also known as "behavioral drift" – by others (Behnke, 2006b, p. 66). Yet here the APA argued that the pressure to engage in abusive interrogations was too great for Dr. Leso himself to resist.

Consultation Was Sought

A fifth defense put forward by the Ethics Office is that Dr. Leso "sought consultation" (APA, 2013, p. 2). But the enforceable standards in the APA's ethics code – and certainly prohibitions against torture and cruel, inhuman, and degrading treatment – are not discarded because some form of consultation took place first. The 2008 Senate Armed Services Committee report references only Dr. Leso's consultation with Morgan Banks, who was the Army's senior SERE psychologist. According to that report, Dr. Leso and Dr. Burney sought out Dr. Banks *not* for ethical guidance but rather to "better understand the interrogation process" and to "bring back [SERE] interrogation techniques that could be considered for use in interrogations at GTMO" (SASC, 2008, p. 40). Even if other ethics-focused consultations occurred, they did not relieve Dr. Leso from ultimate responsibility for his conduct thereafter.

Opposition to Coercion

The Ethics Office also offered a sixth argument in defending the "no cause for action" decision: that Dr. Leso "argued against such [coercive] approaches and in favor of rapport-building approaches" (APA, 2013, p. 2). In their counter-resistance memo, Drs. Leso and Burney did recommend *starting* with rapport-building approaches. But they also advocated moving to the far more severe Category II and Category III techniques (described earlier), depending upon various considerations. The Leso-Burney memo proposed a strategic ladder of harm and exploitation. It certainly did not reflect a rejection of coercion, abuse, and torture. Moreover, Drs. Leso and Burney apparently resolved their expressed concerns by emphasizing in their memo that individuals who used the more abusive techniques "must be thoroughly trained" and "carefully selected" (SASC, 2008, p. 52).

Evidence From Classified Documents

Finally, the statement from the APA Board included this additional assertion aimed at countering the evidence of Dr. Leso's misconduct: "multiple reviews conducted by individuals with access to classified material found no evidence of wrongdoing and affirmative evidence of safeguarding detainees" (APA, 2014a, p. 2). This is a provocative claim, in part because it suggests that the APA may have obtained non-public personal reports about Dr. Leso, *based on classified information*, from government officials. If so, it is possible that these individuals have conflicts of interest or are unqualified to offer an assessment of Dr. Leso's actions. If these sources are not psychologists with thorough knowledge of the APA's ethics code, how are they capable of evaluating professional misconduct? And if they themselves are psychologists associated with the operations at Guantanamo, how reliable are their exculpatory reports, given that they may have been involved in similar abusive detention and interrogation activities? Regardless, the reported "affirmative evidence of safeguarding detainees" is once again irrelevant here. Good deeds do not mean that ethical violations did not also occur.

What Should Be Done Now?

Even when stacked one on top of the other, the APA's arguments for its "no cause for action" decision are unconvincing. Yet they do highlight a key point: these responses were deemed the best available for defending Dr. Leso's conduct at Guantanamo. Moreover, it would appear that the APA has implicitly acknowledged both the strength of the evidence against him and the fact that the alleged actions constituted violations of the ethics code for which exculpatory justifications were necessary.

Unanswered Questions

But then why did the Ethics Office never open a case against Dr. Leso? Some of the possibilities are deeply concerning. For example, would sanctioning Dr. Leso for ethical misconduct have threatened the APA's carefully cultivated ties with the U.S. Department of Defense and the intelligence community? Would future career opportunities and research funding for psychologists have been put at risk? Would the credibility of the APA's broad narrative of psychologists as "safety officers" have been jeopardized?

Considerations like these, of course, should not have mattered in the Leso case, but it is not unreasonable to wonder whether they did. Last November the APA Board grudgingly hired attorney David Hoffman of the law firm Sidley Austin to review the allegations of APA-CIA-Department of Defense collusion that James Risen described in *Pay Any Price* (APA, 2014c). Such alleged collusion may bear on the baffling manner in which the complaint against John Leso was handled. Mr. Hoffman should therefore carefully examine the case files and related documents and correspondence as part of his investigation, as well as interviewing relevant parties.

Another investigatory path is also readily available. The APA's bylaws give the Council of Representatives – the Association's governing body – "the power to review, upon its own initiative, the actions of any board, committee, Division, or affiliated organization" (APA, n.d.-b). This means that the Council has the authority to investigate how the Ethics Office and Ethics Committee handled the Leso case. Thus far, over the past year, the Council has not acted upon this authority. But this is a prerogative that the Council should seriously consider.

Regardless of the exact mechanism, a thorough investigation is clearly warranted – and the evidence and findings should be made public. While the release of confidential materials understandably raises privacy concerns, the Ethics Committee's own rules and procedures provide guidelines for when confidentiality restrictions can be waived:

Such information may...be released when the Chair and the Director agree that release of that information is necessary to protect the interests of (a) the complainant or respondent; (b) other investigative or adjudicative bodies; (c) the Association; or (d) members of the public, and release will not unduly interfere with the Association's interest in respecting the legitimate confidentiality interests of participants in the ethics process and its interest in safeguarding the confidentiality of internal peer review deliberation. (APA, 2007)

Applying these guidelines, the disclosure of further information about the Leso case can serve to protect the interests of the public, of APA members and other psychologists, and of the Association itself. If currently confidential materials support the legitimacy of the "no cause for action" decision, then their release will contribute to repair of the APA's reputation and to restoration of the public's trust in the profession. And if those same materials instead reveal evidence of institutional negligence or corruption, then that knowledge should help to push the APA's

leadership toward the accountability and reforms necessary to re-establish the Association's integrity and credibility.

Next Steps

The Leso case also suggests that established APA procedures for handling formal ethics complaints may not always be adequate or appropriate. In particular, any complaint in which the APA itself has a potentially significant stake in the outcome – for example, a case that could bear on the Association's reputation, or its influence, or the future professional opportunities available to its members – poses unique challenges. Ensuring full independence and the absence of any conflicts of interest or loyalty may require that such complaints be investigated and adjudicated in ways that do not rely so heavily on the judgments and decisions of APA staff members, or on the APA's institution-protecting bureaucracy. At the same time, more broadly, there is an obvious and urgent need to engage all stakeholders in the open and thorough examination and articulation of appropriate ethical constraints on psychologists working in national security settings (e.g., Arrigo, Eidelson, & Bennett, 2012; Arrigo, Eidelson, & Rockwood, 2015a; Arrigo, Eidelson, & Rockwood, 2015b; Staal & Greene, 2015a; Staal & Greene, 2015b).

In responding to concerns and doubts about the Leso decision, the APA Board has emphasized that “It would be incorrect to draw any inference from the resolution of the Leso matter that APA is equivocal in condemning torture and abuse” (APA, 2014a, p. 3). Yet that is *precisely* the most reasonable inference to draw. This is especially true given the APA's history of suspect actions and sanitizing misrepresentations related to psychologists' ethically fraught involvement in national security operations. Although the APA may wish that the ethics complaint against John Leso would just be forgotten, there is really far too much at stake to let that happen.

Funding

The author has no funding to report.

Competing Interests

The author has declared that no competing interests exist.

Acknowledgments

The author is thankful for valuable comments and guidance from editor Shahnaaz Suffla, three anonymous reviewers, and colleagues Jean Maria Arrigo, Trudy Bond, Julianne McKinney, Brad Olson, Philip Pierce, and Stephen Soldz.

References

- American Psychological Association. (1992). *Ethical Principles of Psychologists and Code of Conduct*. Retrieved from <http://www.apa.org/ethics/code/code-1992.aspx>
- American Psychological Association. (2002). *Ethical Principles of Psychologists and Code of Conduct*. Retrieved from <http://www.apa.org/ethics/code>
- American Psychological Association. (2005a). *Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security*. Retrieved from <http://www.apa.org/pubs/info/reports/pens.pdf>

- American Psychological Association. (2005b, February). Task force to examine ethics and national security. *Science Policy Insider News*. Retrieved from <http://www.apa.org/about/gr/science/spin/2005/02/ethics.aspx>
- American Psychological Association. (2007). *APA Ethics Committee Rules and Procedures*. Retrieved from <http://www.apa.org/ethics/code/committee.aspx>
- American Psychological Association. (2013, December 31). *Ethics Office letter to Dr. Trudy Bond*. Retrieved from <http://www.theguardian.com/world/interactive/2014/jan/22/american-psychological-association-leso-letter>
- American Psychological Association. (2014a, February 20). *Statement by the APA Board of Directors on the “no cause for action” decision regarding the ethics complaint against Dr. John Leso* [Policy statement]. Retrieved from <http://www.apa.org/news/press/statements/leso-ethics-complaint.pdf>
- American Psychological Association. (2014b, March 15). *APA response to Forbes magazine opinion pieces by Todd Essig* [News response]. Retrieved from <http://www.apa.org/news/press/response/forbes-response.aspx>
- American Psychological Association. (2014c). *APA Board of Directors resolution regarding independent review*. Retrieved from <http://www.apa.org/about/governance/board/independent-review.aspx>
- American Psychological Association. (2014d, December 9). *APA applauds release of Senate Intelligence Committee report summary* [Press release]. Retrieved from <http://www.apa.org/news/press/releases/2014/12/senate-intelligence.aspx>
- American Psychological Association. (n.d.-a). *APA Ethics Office*. Retrieved from <http://www.apa.org/ethics/index.aspx>
- American Psychological Association. (n.d.-b). *Bylaws of the American Psychological Association - Article IV: Power and Functions of the Council of Representatives*. Retrieved from <http://www.apa.org/about/governance/bylaws/article-4.aspx>
- Arrigo, J. M., Eidelson, R. J., & Bennett, R. (2012). Psychology under fire: Adversarial operational psychology and psychological ethics. *Peace and Conflict, 18*, 384-400. doi:10.1037/a0030323
- Arrigo, J. M., Eidelson, R. J., & Rockwood, L. P. (2015a). Adversarial operational psychology is unethical psychology: A reply to Staal and Greene (2015). *Peace and Conflict, 21*, 269-278. doi:10.1037/pac0000108
- Arrigo, J. M., Eidelson, R. J., & Rockwood, L. P. (2015b). Adversarial operational psychology: Returning to the foundational issues. *Peace and Conflict, 21*, 282-284. doi:10.1037/pac0000109
- Behnke, S. H. (2006a). Psychological ethics and national security: The position of the American Psychological Association. *European Psychologist, 11*(2), 153-154. doi:10.1027/1016-9040.11.2.153
- Behnke, S. H. (2006b). Ethics and interrogations: Comparing and contrasting the American Psychological, American Medical and American Psychiatric Association positions. *Monitor on Psychology, 37*, 66. Retrieved from <http://www.apa.org/monitor/julaug06/interrogations.aspx>
- Behnke, S. H., & Koocher, G. P. (2007). Commentary on “Psychologists and the use of torture in interrogations.” *Analyses of Social Issues and Public Policy, 7*, 21-27.
- Benjamin, M. (2006, July). Psychological warfare. *Salon*. Retrieved from <http://www.salon.com/2006/07/26/interrogation>
- Bloche, M. G. (2011). *The Hippocratic myth: Why doctors are under pressure to ration care, practice politics, and compromise their promise to heal*. New York, NY: Palgrave Macmillan.
- Bloche, M. G., & Marks, J. H. (2005). Doctors and interrogators at Guantanamo Bay. *The New England Journal of Medicine, 353*, 6-8. doi:10.1056/NEJMp058145

- Bond, T. (2007, April 15). *Trudy Bond APA complaint against John Leso*. Retrieved from <http://ethicalpsychology.org/leso/Bond-Leso-APA-Complaint-4-15-07.pdf>
- Bond, T. (2008, September 22). *Trudy Bond letter to Ethics Office with additional documentation*. Retrieved from <http://ethicalpsychology.org/leso/Bond-Letter-to-Ethics-Office-with-Additional-Documentation-9-22-08.pdf>
- The Constitution Project. (2013). *The report of The Constitution Project's Task Force on Detainee Treatment*. Washington, DC: Author. Retrieved from <http://detaineeetaskforce.org/report/download/>
- Eban, K. (2007, July). Rorschach and awe. *Vanity Fair*. Retrieved from <http://www.vanityfair.com/politics/features/2007/07/torture200707>
- International Committee of the Red Cross. (n.d.). *Rule 90. Torture and cruel, inhuman or degrading treatment*. Retrieved from https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule90
- Koocher, G. P. (2006, February). Speaking against torture. *Monitor on Psychology*, 37(2), 5. Retrieved from <http://www.apa.org/monitor/feb06/pc.aspx>
- Lewis, N. A. (2006, June 7). Military alters the makeup of interrogation advisers. *The New York Times*. Retrieved from <http://www.nytimes.com/2006/06/07/washington/07detain.html>
- Mayer, J. (2005, July 11). The experiment. *The New Yorker*. Retrieved from <http://www.newyorker.com/magazine/2005/07/11/the-experiment-3>
- Miles, S. H. (2009). Psychologists and torture [Letter to the Editor]. *British Medical Journal*, 338, b1653.
- Psychological warfare? A debate on the role of mental health professionals in military interrogations at Guantanamo, Abu Ghraib and beyond. (2005, August 11). *Democracy Now!* Retrieved from http://www.democracynow.org/2005/8/11/psychological_warfare_a_debate_on_the
- Risen, J. (2014). *Pay any price: Greed, power, and endless war*. New York, NY: Houghton Mifflin Harcourt.
- Society for the Study of Peace, Conflict, and Violence. (n.d.). *American Psychological Association Presidential Task Force on Psychological Ethics and National Security*. Retrieved from <https://www.clarku.edu/peacepsychology/tfpens.html>
- Staal, M. A., & Greene, C. H., III (2015a). An examination of "adversarial" operational psychology. *Peace and Conflict*, 21, 264-268. doi:10.1037/pac0000095
- Staal, M. A., & Greene, C. H., III (2015b). Operational psychology: An ethical practice – A reply to Arrigo, Eidelson, and Rockwood. *Peace and Conflict*, 21, 279-281. doi:10.1037/pac0000097
- Steele, K. D., & Morlin, B. (2007, June). Spokane psychologists linked to CIA: Congress probes role in controversial interrogations. *The Spokesman-Review*. Retrieved from <http://www.spokesman.com/stories/2007/jun/29/spokane-psychologists-linked-to-cia-congress>
- Summers, F. (2007). Psychoanalysis, the American Psychological Association, and the involvement of psychologists at Guantanamo Bay. *Psychoanalysis, Culture & Society*, 12, 83-92. doi:10.1057/palgrave.pcs.2100114
- United States Department of Defense. (2005a). *Army Regulation 15-6: Final report: Investigation into FBI allegations of detainee abuse at Guantanamo Bay, Cuba detention facility*. Retrieved from <http://www.defense.gov/news/jul2005/d20050714report.pdf>
- United States Department of Defense. (2005b). *Exhibit 63 to Army Regulation 15-6 investigation into detainee abuse at Guantanamo Bay*. Retrieved from http://www.dod.gov/pubs/foi/Reading_Room/Detainee_Related/Exhibit_63_to_AR15_6GTMO_Investigation.pdf

- United States Department of Defense. (2006). *Review of DoD-directed investigations of detainee abuse*. Retrieved from <http://www.fas.org/irp/agency/dod/abuse.pdf>
- United States Senate Committee on Armed Services. (2008). *Inquiry into the treatment of detainees in U.S. custody*. Retrieved from http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf
- United States Senate Select Committee on Intelligence. (2014). *Committee study of the Central Intelligence Agency's detention and interrogation program*. Retrieved from <http://www.intelligence.senate.gov/publications/committee-study-central-intelligence-agencys-detention-and-interrogation-program>
- Woodward, B. (2009, January 14). Guantanamo detainee was tortured, says official overseeing military trials. *The Washington Post*. Retrieved from <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html>
- Zagorin, A., & Duffy, M. (2005, June). Inside the interrogation of detainee 063. *Time Magazine*. Retrieved from <http://content.time.com/time/magazine/article/0,9171,1071284,00.html>