

Putting ice on a black eye

Internal report shows where psychologists crossed the line

Every lawyer who represents patients harmed by medical negligence has encountered “defensive literature,” that is, articles published in medical journals that focus on defending lawsuits instead of good science.

The American Congress of Obstetricians and Gynecologists, for example, has been accused of publishing scientifically invalid and arbitrarily restrictive criteria for determining when a newborn baby’s brain damage is related to lack of oxygen during labor and delivery, all in an effort to provide retrospective cover for obstetricians accused of failing to promptly deliver those babies.

According to a new report, the American Psychological Association (APA) took this concept to new heights (or depths) in its efforts to provide cover for psychologists working with the CIA and the Defense Department during the Bush administration’s “War on Terror.”

The report is the result of a seven-month investigation by a team of Sidley Austin lawyers from Chicago. The *New York Times* recently obtained a copy and reported on its troubling findings.

According to the *Times*, the report details the involvement of American psychologists and the APA in the Bush administration’s post-Sept. 11 interrogation program. The report concludes that some of the APA’s top officials, including its ethics director, acted to change the association’s ethics policies to make them consistent with the Defense Department’s interrogation policies and ongoing practices.

At the same time, prominent outside psychologists took actions to provide cover for the CIA’s interrogation program and to push back against dissent from within the agency.

The report reads like a cross between a Robert Ludlum novel and a Coen brothers film. According to the *Times*, one of the main characters in the controversy was James Mitchell, a psychologist and instructor at the Air Force’s SERE program. SERE stands for survival, evasion, resistance and escape. It is a course designed to expose military personnel to simulated torture to prepare them for capture.

After Sept. 11, Mitchell’s SERE credentials helped him gain entry to the CIA’s counterterrorism community. After Mitchell acted as a consultant to a CIA advisory committee, he was introduced to the chief of special missions in the agency’s counterterrorism center who later hired Mitchell and Bruce Jessen, another SERE instructor, as contractors to help create the CIA’s interrogation program using SERE techniques.

In unrelated work, the CIA asked Joseph Matarazzo, a former president of the APA and a member of the same advisory committee, to provide an opinion on whether sleep deprivation constituted torture.



Med-Mal Matters

Thomas A. Demetrio is a founding partner of Corboy & Demetrio, representing victims of medical malpractice and personal injury.

Kenneth T. Lumb is a medical-malpractice attorney and partner at Corboy & Demetrio.

The report reads like a cross between a Robert Ludlum novel and a Coen brothers film.

He opined that it did not. Later, Matarazzo became a part-owner of a unit of Mitchell Jessen and Associates, a company created by Mitchell and Jessen to carry out their CIA contracting work.

To the CIA’s credit, internal dissent to the agency’s enhanced interrogation techniques began building almost from the start of the program, the *Times* reported. The news-

paper account said in late 2002 Terrence DeMay, the head of the agency’s Office of Medical Services, began to complain about Mitchell’s involvement.

Though some of this dissent seems to be aimed at the mere fact that outsiders were involved, DeMay specifically objected to the involvement of psychologists “... as professionals adept at human behavior and manipulation.”

These complaints, according to the *Times*, led to a significant debate within the agency, which debate eventually came to the attention of the APA. In 2004, a number of behavioral scientists who worked for national security agencies traveled to the APA’s headquarters for a confidential meet-

ing, followed by the creation of an APA task force to study the ethics of psychologists’ involvement in interrogations.

The task force, however, was packed with national security insiders, and, according to the *Times* article, it concluded in 2005 that nothing about a psychologist’s ethical obligations prevented him or her from participating in what many now consider torture, echoing the conclusion of an earlier opinion by a CIA insider. That earlier report opined that, because a psychologist has an ethical obligation to a “group of individuals, such as the nation” the APA’s ethical code “must be flexible [sic] applied to the circumstances at hand.”

According to the *Times*, the Sidley Austin report reaches “unsparing” conclusions about the APA’s involvement in both the CIA’s and the Defense Department’s interrogation programs.

The report states that APA officials “colluded” with Pentagon officials to adopt and maintain APA ethics policies “... that were not more restrictive than the guidelines that key [Defense Department] officials wanted.” The report concludes that the APA chose its ethics policy to make it consistent with questionable activities in order to help the Defense Department, manage public relations and maximize “the growth of the profession.” After the report became public, the APA issued an apology for its behavior and began a consideration of a prohibition on participating in interrogations. Hopefully, the organization has learned that providing retrospective cover for wrongdoing dishonors its members and the public it purports to serve. ■

TAD@corboylemetrio.com • KTL@corboylemetrio.com