

Board of Directors
American Psychological Association
750 First Avenue
Washington, D.C.

December 7, 2011

Dear Members of the Board,

As members and leaders within the Society for the Study of Peace, Conflict, and Violence, we request that the Board of the American Psychological Association consider the following proposal.

Proposal: The Board of Directors establish a Task Force or Advisory Group to create a policy document integrating the various APA Reports and Resolutions concerning Ethics and Interrogations for use by psychologists working in national security settings. This document should address the relationship of the APA ethics and interrogation policy to the Ethical Principles of Psychologists and Code of Conduct, as appropriate.

We commend the American Psychological Association for its leadership over the past several years in addressing the issue of ethics and interrogations. However, as this work is spread over several years involving multiple documents, resolutions, a Member Petition, as well as a change in the Ethics Code, there remains confusion over APA policy in the ethics and interrogation arena.

Rationale:

1. No integrative policy statement is available concerning the issue of ethics and interrogation. All of the APA policy documents, statements, and Task Force/Advisory Group reports concerning ethics and interrogation are available on the APA website. Unfortunately, due to the progressive nature of current APA policy, there is currently no integrative document outlining all of APA policy and most importantly, tying such policy to the Ethics Code, as appropriate.

Two sites exist highlighting the work of the APA in this arena:

- The Ethics Office Reports and Resolutions Adopted by APA webpage with links to:
 - Correspondence
 - Legislative Activity
 - Outreach to Federal Officials
 - Reports and Resolutions Adopted by APA
- The Timeline of APA Policies & Actions Related to Detainee Welfare and Professional Ethics in the Context of Interrogation and National Security webpage

Unfortunately, such disparate documents, reports, correspondence, etc. may engender more confusion than clarity concerning APA policy in relation to ethics and interrogations.

2. APA policy remains confusing due to failure to integrate new policies into older documents. In 2005, APA adopted the Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security (the PENS Report). Since that time, the APA has adopted several new policies as well as amended the Ethics Code. The progressive nature of APA policy has led to contradictions and confusion concerning policy. For example, the PENS Report contradicts the current Ethics Code in relation to psychologists' ethical responsibilities conflict with law, regulations, other governing legal authority, or organizational demands. The PENS Report states, "The Task Force notes that psychologists sometimes encounter conflicts between ethics and law. When such conflicts arise, psychologists make known their commitment to the APA Ethics Code and attempt to resolve the conflict in a responsible manner. If the conflict cannot be resolved in this manner, psychologists may adhere to the requirements of the law." Currently, the Ethics Code states, "If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights." Moreover, the

2006 Council Resolution states, “[T]here are no exceptional circumstances whatsoever, whether induced by a state of war or a threat of war, internal political instability or any other public emergency, that may be invoked as a justification of torture.” Such contradictions need to be rectified.

3. The PENS Report is still being identified as the primary APA policy concerning ethics and interrogation. Controversy continues to swirl around the PENS Report both in terms of process and content. Yet, the PENS Report is still often cited as the sole or primary policy in relation to psychologist involvement in national security settings (see for example, Kennedy, C. H., & Williams, T. J. (Eds.). (2010). *Ethical practice in operational psychology: Military and national intelligence applications*. Washington, DC: American Psychological Association). Without an integrative document inclusive of all of APA’s actions concerning ethics and interrogation, confusion exists concerning which document represents primary APA policy on this issue.

4. Need for an integrative document clearly applying APA ethics and interrogation policy to the Ethics Code, as appropriate. The PENS Report identified policies as enforceable within the context of the APA Ethics Code. Although not all policy is currently enforceable within that context (e.g., Member Petition Resolution, adopted by Council February 2009), most of the APA policy concerning ethics and interrogation can be tied directly to elements within the Ethics Code. Although the PENS Report began an integration but is inaccurate in part due to Ethics Code amendments and the Member Referendum, this work needs to be continued with a policy more inclusive of all of the current APA resolutions, referendums, and policies in relation to ethics and interrogations.

5. Need to provide references to appropriate human rights resources and organizations for use in understanding APA policy. The Member Petition Resolution and the Ethics Code both reference human rights. Yet most psychologists are not trained in the fundamentals of human rights documents, law, or international policy. As such, any integrative document needs to provide information about relevant human rights documents (e.g., United Nations Conventions) and international human rights organizations (e.g., United Nations Human Rights Council, the International Red Cross) into the context of APA policy with resources.

Summary:

As outlined above, there is a need for an integrative document outlining APA policy in relation to ethics and interrogations. A Task Force or Advisory Group would be invaluable in the creation of a policy document integrating the various APA Reports and Resolutions concerning Ethics and Interrogations for use by psychologists working in national security settings. This document would tie the various policies to the Ethical Principles of Psychologists and Code of Conduct, as appropriate.

Ideally, the Task Force or Advisory Group should be comprised of APA members from a range of constituencies (e.g., forensic, military, and peace psychology as well as members involved in drafting the Member Petition Resolution). Inclusion of a range of stakeholders may increase the likelihood of successful integration and acceptance of policy. Of course, any document should be submitted through the normal governance procedures of the APA (i.e., submission through the normal Board, Committee, and CoR review process).

Our thanks to you for your careful consideration of this proposal. We have provided an attachment with an example of how APA policy might be integrated into a single document. We look forward to hearing from you about this proposal that we think will only strengthen APA’s position on ethics and interrogation as well as world-wide reputation as an organization that firmly stands against torture and other cruel, inhuman or degrading treatment or punishment.

Sincerely,

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Sample Integration

Commentary and expanded references should be included to augment the sample principles outlined below

Principle 1: Psychologists do not engage in, tolerate, direct, support, advise, facilitate, design, or offer training in torture or other cruel, inhuman, or degrading treatment under any and all conditions. [Integration of 2006/2007 Resolutions wording]

The American Psychological Association unequivocally condemns torture and cruel, inhuman, or degrading treatment or punishment, under any and all conditions, including detention and interrogations of both lawful and unlawful enemy combatants as defined by the US Military Commissions Act of 2006. [2006/2007 Resolutions].

Further, the American Psychological Association re-affirms the 2006 Resolution Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment; the 2007 Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as "Enemy Combatants"; and the 2008 Amendment to the Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as "Enemy Combatants"

The American Psychological Association defines torture in accordance with Article 1 of the United Nations Declaration and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment [2006/2007 Resolutions],

The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted upon a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official [e.g., governmental, religious, political, organizational] capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions [in accordance with both domestic and international law].

The American Psychological Association defines the term "cruel, inhuman, or degrading treatment or punishment" to mean treatment or punishment by a psychologist that, in accordance with the McCain Amendment, is of a kind that would be "prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984." Specifically, United States Reservation I.1 of the Reservations, Declarations and Understandings to the United Nations Convention Against Torture stating, "the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States." [2006/2007 Resolutions]

The unequivocal condemnation of torture or cruel, inhuman, degrading treatment or punishment includes all techniques considered torture or cruel, inhuman or degrading treatment or punishment under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Geneva Conventions; the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Basic Principles for the Treatment of Prisoners; or the World Medical Association Declaration of Tokyo. An absolute prohibition against the following techniques therefore arises from, is understood in the context of, and is interpreted according to these texts: mock executions; water-boarding or any other form of simulated drowning or suffocation; sexual humiliation; rape; cultural or religious humiliation; exploitation of fears, phobias or psychopathology; induced hypothermia; the use of psychotropic drugs or mind-altering substances; hooding; forced nakedness; stress positions; the use of dogs to threaten or intimidate; physical assault including slapping or shaking; exposure to extreme heat or cold; threats of harm or death; isolation; sensory deprivation and over-stimulation; sleep deprivation; or the threatened use of any of the above techniques to an individual or to members of an individual's family. Psychologists are absolutely prohibited from knowingly planning, designing, participating in or assisting in the use of all condemned techniques at any time and may not enlist others to employ these techniques in order to circumvent this resolution's prohibition. [2008 Resolution Amendment].

Psychologists shall not knowingly participate in any procedure in which torture or other forms of cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment is used or threatened. [2006 Resolution]

Psychologists shall not provide knowingly any research, instruments, or knowledge that facilitates the practice of torture or other forms of cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment [2006 Resolution]

This principle conforms to the Ethical Principles of Psychologists and Code of Conduct: Principle A, Beneficence and Nonmaleficence, and Ethical Standard 3.04, Avoiding Harm.

Principle 2: The American Psychological Association affirms there are no exceptional circumstances whatsoever, which justify psychologist involvement in torture or cruel, inhuman, or degrading treatment or punishment. [Elements of 2006/2007 Resolutions]

Psychologists sometimes encounter conflicts between ethics and law. When such conflicts arise, psychologists make known their commitment to the APA Ethics Code and attempt to resolve the conflict in a responsible manner. An ethical reason for psychologists to not follow the law is to act “in keeping with basic principles of human rights.” The Ethics Code states, “If this Ethics Code establishes a higher standard of conduct than is required by law, psychologists must meet the higher ethical standard. If psychologists’ ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner in keeping with basic principles of human rights. (APA Ethics Code, Introduction and Applicability).

APA reaffirms its support for the United Nations Declaration and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and its adoption of Article 2.2. As such, the American Psychological Association affirms that there are no exceptional circumstances whatsoever, whether induced by a state of war or threat of war, internal political instability or any other public emergency, that may be invoked as a justification for torture or cruel, inhuman, or degrading treatment or punishment, including the invocation of laws, regulations, or orders. [2006/2007 Resolutions].

Psychologists working in this area are obligated to review essential human rights documents, such as Common Article 3 of the Geneva Conventions; the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Geneva Conventions; the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Basic Principles for the Treatment of Prisoners; the United Nations Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment; and the World Medical Association Declaration of Tokyo. [2006/2007 Resolutions]

Based upon the APA’s long-standing commitment to basic human rights including its position against torture, psychologists shall work in accordance with international human rights instruments relevant to their roles. [2006 Resolution]

This principle conforms to the Ethical Principles of Psychologists and Code of Conduct: introduction and Applicability and Ethical Standard 1.02 and 1.03.

Principle 3: Psychologists are alert to acts of torture and other cruel, inhuman, or degrading treatment and have an ethical responsibility to report these acts to the appropriate authorities. [2006/2007 Resolutions]

Psychologists shall be alert to acts of torture and other cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment and have an ethical responsibility to report these acts to the appropriate authorities. Should torture or other cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment evolve during a procedure where a psychologist is present, the psychologist shall attempt to intervene to stop such behavior, and failing that exit the procedure. [2006 Resolution]

The American Psychological Association asserts that all psychologists with information relevant to the use of any method of interrogation constituting torture or cruel, inhuman, or degrading treatment or punishment have an ethical responsibility

to inform their superiors of such knowledge, to inform the relevant office of inspector generals when appropriate, and to cooperate fully with all oversight activities, including hearings by the United States Congress and all branches of the United States government, to examine the perpetration of torture and cruel, inhuman, or degrading treatment or punishment against individuals in United States custody, for the purpose of ensuring that no individual in the custody of the United States is subjected to torture or cruel, inhuman, or degrading treatment or punishment. [2007 Resolution]

The American Psychological Association asserts that any APA member with knowledge that a psychologist, whether an APA member or non-member, has engaged in torture or cruel, inhuman, or degrading treatment or punishment, including the specific behaviors listed above, has an ethical responsibility to abide by Ethical Standard 1.05, Reporting Ethical Violations, in the Ethical Principles of Psychologists and Code of Conduct (2002) and directs the Ethics Committee to take appropriate action based upon such information, and encourages psychologists who are not APA members also to adhere to Ethical Standard 1.05. [2007 Resolution]

The American Psychological Association commends those psychologists who have taken clear and unequivocal stands against torture and cruel, inhuman or degrading treatment or punishment, especially in the line of duty, and including stands against the specific behaviors (outlined Principle 1) or conditions listed above; and that the American Psychological Association affirms the prerogative of psychologists under the Ethical Principles of Psychologists and Code of Conduct (2002) to disobey law, regulations or orders when they conflict with ethics and human rights [2007 Resolution and 2010 Ethics Code Amendment]

The ethical responsibility to report is rooted in the Ethical Principles of Psychologists and Code of Conduct: Preamble, "Psychologists respect and protect civil and human rights...the development of a dynamic set of ethical standards for psychologists' work-related conduct requires a personal commitment and lifelong effort to act ethically [and] to encourage ethical behavior by...colleagues," and Principle B, Fidelity and Responsibility, which states that psychologists "are concerned about the ethical compliance of their colleagues' scientific and professional conduct." (Ethical Standard 1.05, Reporting Ethical Violations)