

**Report of the
APA Member-Initiated Task Force
to Reconcile Policies Related to
Psychologists' Involvement in National Security Settings***

Morgan Banks 8/27/12 8:41 AM

Comment: The term National Security Settings is not defined within the document. A common sense interpretation would indicate that it refers to those psychologists who work within a National Security Setting. This would certainly include all DoD and VA psychologists, regardless of role, and include those who work only in a medical facility.

Members:

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The Task Force is comprised of members of the American Psychological Association (APA) but is not an APA sponsored task force and is not under the purview of any APA board, committee, task force, or directorate.

Executive Summary

In spring of 2012, the APA Member-Initiated Task Force began work to consolidate APA policies concerning psychologist consultations in national security settings. A unified policy is urgently needed as some of the existing APA policies are outdated, redundant, and/or confusing, and do not provide a clear or accurate view of APA policy as related to the work of psychologists in national security settings. The proposed unified policy provides policy statements premised upon the following three fundamental principles:

Principle 1: Psychologists may not work in settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human rights [1].

Principle 2: Regardless of setting, psychologists acting in a professional capacity or who serve in any position by virtue of their training, experience, and expertise as psychologists are always bound by the APA *Ethical Principles of Psychologists and Code of Conduct*, as amended in 2010, including statements upholding the inviolate nature of human rights.

Principle 3: Psychologists do not engage in, assist, tolerate, direct, support, advise, facilitate, plan, design, or offer training in torture or other cruel, inhuman, or degrading treatment or punishment under any and all conditions.

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Comment: How this is interpreted will be the crux of the issue for federal employees, in particular for all uniformed psychologists. Uniformed psychologists and federal civilian psychologists have sworn an oath to the US Constitution (which will include all international instruments to which the US is a signatory). Following international law to which the US is not a signatory will likely violate their oath of office.

[1] It is clarified by a footnote in the Member Petition Resolution that military clinical psychologists could still provide treatment for military personnel.

Proposed APA Consolidated Policy Concerning Psychologists' Consultations in National Security Settings

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Comment: PENS Report, pages 4 through 9 must be included in this document as policy. For it not to be included is a violation of the stated intent not to change APA policy.

Policy Statement 1: Psychologists may not work in settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human rights [1].

Policy Statement 2: If the APA *Ethics Code*, as amended in 2010, 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 or organizational demands, 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.

Standard 1.02, Ethical Principles of Psychologists and Code of Conduct, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

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.

Standard 1.03, Ethical Principles of Psychologists and Code of Conduct, Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, 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.

Policy Statement 3: Psychologists do not knowingly engage in, assist, tolerate, direct, support, advise, facilitate, plan, design, or offer training in torture or other cruel, inhuman, or degrading treatment or punishment under any and all conditions.

APA defines torture in accordance with Article I of the United Nations *Declaration and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*:

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 APA defines the term "cruel, inhuman, or degrading treatment or punishment" to mean treatment or punishment by a psychologist in accordance with the United States Reservation I.1 of the Reservations, Declarations and Understandings to the United Nations Convention Against Torture, which defines this term as "the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States." Application of this definition is not dependent on U.S. citizenship.

APA further unequivocally condemns 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.

This prohibition does not apply to voluntary training settings, the purpose of which is to inoculate individuals to harsh treatment by captors.

Policy Statement 4: APA 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.

Policy Statement 5: Psychologists are alert to acts of torture and other cruel, inhuman, or degrading treatment or punishment and 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. If failing that, the psychologist has an ethical responsibility to exit the procedure.

Policy Statement 6: Psychologists are alert to acts of torture and other cruel, inhuman, or degrading treatment or punishment and have an ethical responsibility to report these acts to the appropriate authorities.

Policy Statement 7: 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, such as the:

- *United Nations Declaration and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*
- *Geneva Conventions*
- *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*
- *United Nations Basic Principles for the Treatment of Prisoners*
- *United Nations Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*
- *The World Medical Association Declaration of Tokyo. Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment*

Policy Statement 8: Psychologists who serve in any position by virtue of their training, experience, and expertise as psychologists, including psychologists working in national security settings, are bound by the APA *Ethical Principles of Psychologists and Code of Conduct*, in its entirety.

Based on the Principles and Standards of the APA *Ethics Code*, psychologists working in national security settings shall:

- Abide by the Ethics Code in any professional psychologist role, including roles outside traditional health-care provider relationships.
- Seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons.
- Seek to understand individuals' culture and ethnicity to avoid misunderstandings and potential harm.
- **Be aware of the potential risks involved in multiple relationships, and follow the guidance contained in Standard 3.05 to minimize those risks.**

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Comment: Psychologists working in National Security currently use some of these techniques as part of the training of servicemembers to survive in captivity. This appears to prohibit our oversight and support of that training.

Morgan Banks 8/27/12 8:41 AM

Comment: What if the professional role is not based on "their training, experience, and expertise as psychologists?"

Morgan Banks 8/27/12 8:41 AM

Comment: This statement appears to say that a psychologist may not consult to any national security organization on any topic and also be a health care provider. This is obviously unacceptable. This would prevent a psychologist from providing leadership consultation to hospital leadership while functioning as a clinician. This statement must be rewritten to be consistent with the Code of Ethics.

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Deleted: Refrain from engaging in multiple relationships such as being both a health care provider and a national security setting consultant

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Deleted: .

- Be aware of and clarify their role in situations where the nature of their professional identity and professional function may be ambiguous.
- Clarify for themselves the identity of their client.
- Retain ethical obligations to individuals who are not their clients.
- Make clear the limits of confidentiality.
- Be mindful that individuals held in national security settings may not have engaged in untoward behavior and may not have information of national security interest.
- Be aware that certain settings may instill in individuals a profound sense of powerlessness and may place individuals in considerable positions of disadvantage in terms of asserting their interests and rights.
- Consult with others when they are facing difficult ethical dilemmas.
- Be willing to take ethical responsibility for their behavior.

Directives for Association Actions:

APA shall continue to call on the United States government—including Congress, the Department of Defense, and the Central Intelligence Agency—to prohibit the use of torture or cruel, inhuman, or degrading treatment or punishment in any interrogation and the APA shall continue to inform relevant parties with the United States government that psychologists are prohibited from participating in such methods.

In order to protect against torture and cruel, inhuman, or degrading treatment or punishment, and in order to mitigate against the likelihood that unreliable and/or inaccurate information is entered into legal proceedings, APA shall continue to call upon United States legal systems to reject testimony that results from such methods.

The APA Ethics Committee shall proceed forthwith in writing and distributing a casebook and commentary that shall set forth aspirational guidelines for psychologists that are consistent with international human rights instruments, as well as guidelines developed for health professionals, including but not limited to: Common Article 3 of the Geneva Conventions; The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; The United Nations 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; and The World Medical Association Declaration of Tokyo: Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment.

Morgan Banks 9/2/12 11:19 AM

Comment: On the face of this, it will not be possible for federally employed (uniformed and civilian) psychologists to follow international human rights instruments to which the US is not a signatory. It is likely that this would violate their oath of office, which is to the US Constitution. This section must be removed or rewritten to be in compliance with US law. Much may depend on whether or not the APA guidance is aspirational in nature or is directive in nature. Aspirational guidance may be within the law for federal employees to follow.

[1] It is clarified by a footnote in the Member Petition Resolution that military clinical psychologists could still be provide treatment for military personnel.

III. Twelve Statements Concerning Psychologists' Ethical Obligations in National Security-Related Work and Commentary on the Statements

1. Psychologists do not engage in, direct, support, facilitate, or offer training in torture or other cruel, inhuman, or degrading treatment. The Task Force endorses the 1986 Resolution Against Torture of the American Psychological Association Council of Representatives,³ and the 1985 Joint Resolution Against Torture of the American Psychological Association and the American Psychiatric Association.⁴ (Principle A, Beneficence and Nonmaleficence, and Ethical Standard 3.04, Avoiding Harm) The Task Force emphasizes that the Board of Directors' charge did not include an investigative or adjudicatory role and so the Task Force does not render any judgment concerning events that may or may not have occurred in national security-related settings. The Task Force nonetheless feels that an absolute statement against torture and other cruel, inhuman, or degrading treatment is appropriate.

2. 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. This ethical responsibility is rooted in the 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) The Task Force notes that when fulfilling the obligation to respond to unethical behavior by reporting the behavior to appropriate authorities as a prelude to an adjudicatory process, psychologists guard against the names of individual psychologists being disseminated to the public. Inappropriate or premature public dissemination can expose psychologists to a risk of harm outside of established and appropriate legal and adjudicatory processes. (Ethical Standard 3.04, Avoiding Harm)

3. Psychologists who serve in the role of supporting an interrogation do not use health care related information from an individual's medical record to the detriment of the individual's safety and well-being. While information from a medical record may be helpful or necessary to ensure that an interrogation process remains safe, psychologists do not use such information to the detriment of an individual's safety and well-being. (Ethical Standards 3.04, Avoiding Harm and 3.08, Exploitative Relationships)

Morgan Banks 9/2/12 11:19 AM

Comment: The charter, as I understand it, of this task force is not to change APA policy. Obviously, if you drop the PENS report you are changing APA policy. This is disingenuous and I cannot support dropping the only detailed ethical guidance that currently exists for our psychologists working in this area.

Morgan Banks 8/27/12 8:41 AM

Comment: These can be reformatted to be consistent with the earlier statements (numbering, etc.) and it may certainly be possible to integrate some of these statements with the earlier statements, reducing the overall total. However, the detailed guidance that is given in this report must not be lost. It is the only specific ethical guidance that APA has produced for working in these settings, and it would be a tremendous step backwards to reduce the ethical guidance given to our psychologists.

³ American Psychological Association Council of Representatives. (1986). American Psychological Association resolution against torture. Retrieved from <http://www.apa.org/about/division/cpminternatl.html#3>

⁴ American Psychiatric Association & American Psychological Association. (1985). Against torture: Joint resolution of the American Psychiatric Association and the American Psychological Association. Retrieved from http://www.psych.org/edu/other_res/lib_archives/archives/198506.pdf

4. Psychologists do not engage in behaviors that violate the laws of the United States, although psychologists may refuse for ethical reasons to follow laws or orders that are unjust or that violate basic principles of human rights. Psychologists involved in national security-related activities follow all applicable rules and regulations that govern their roles. Over the course of the recent United States military presence in locations such as Afghanistan, Iraq, and Cuba, such rules and regulations have been significantly developed and refined. Psychologists have an ethical responsibility to be informed of, familiar with, and follow the most recent applicable regulations and rules. The Task Force notes that certain rules and regulations incorporate texts that are fundamental to the treatment of individuals whose liberty has been curtailed, such as the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Geneva Convention Relative to the Treatment of Prisoners of War.⁵

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. An ethical reason for psychologists to not follow the law is to act “in keeping with basic principles of human rights.” (APA Ethics Code, Introduction and Applicability) The Task Force encourages psychologists working in this area to review essential human rights documents, such as the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Geneva Convention Relative to the Treatment of Prisoners of War.⁶

5. Psychologists are aware of and clarify their role in situations where the nature of their professional identity and professional function may be ambiguous. Psychologists have a special responsibility to clarify their role in situations where individuals may have an incorrect impression that psychologists are serving in a health care provider role. (Ethical Standards 3.07, Third-Party Requests for Services, and 3.11, Psychological Services Delivered to or Through Organizations)

The Task Force noted that psychologists acting in the role of consultant to national security issues most often work closely with other professionals from various disciplines. As a consequence, psychologists rarely act alone or independently, but rather as part of a group of professionals who bring together a variety of skills and experiences in order to provide an ethically appropriate service. (Ethical Standard 3.09, Cooperating with Other Professionals)

Regardless of their role, psychologists who are aware of an individual in need of health or mental health treatment may seek consultation regarding how to ensure that the individual receives needed care. (Principle A, Beneficence and Nonmaleficence)

⁵ United Nations. (1987, June 26). *Convention against torture and other cruel, inhuman or degrading treatment or punishment*. Retrieved from http://www.unhchr.ch/html/menu3/b/h_cat39.htm
United Nations. (1950, October 21). *Geneva convention relative to the treatment of prisoners of war*. Retrieved from <http://www.unhchr.ch/html/menu3/b/91.htm>

⁶ Ibid.

6. Psychologists are sensitive to the problems inherent in mixing potentially inconsistent roles, such as health care provider and consultant to an interrogation, and refrain from engaging in such multiple relationships. (Ethical Standard 3.05, Multiple Relationships, “A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist’s objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.”)

7. Psychologists may serve in various national security-related roles, such as a consultant to an interrogation, in a manner that is consistent with the Ethics Code, and when doing so psychologists are mindful of factors unique to these roles and contexts that require special ethical consideration. The Task Force noted that psychologists have served in consultant roles to law enforcement on the state and federal levels for a considerable period of time. Psychologists have proven highly effective in lending assistance to law enforcement in the vital area of information gathering and have done so in an ethical manner. The Task Force noted special ethical considerations for psychologists serving as consultants to interrogation processes in national security-related settings, especially when individuals from countries other than the United States have been detained by United States authorities. Such ethical considerations include:

- How certain settings may instill in individuals a profound sense of powerlessness and may place individuals in considerable positions of disadvantage in terms of asserting their interests and rights. (Ethical Standards 1.01, Misuse of Psychologists’ Work, and 3.08, Exploitative Relationships)
- How failures to understand aspects of individuals’ culture and ethnicity may generate misunderstandings, compromise the efficacy and hence the safety of investigatory processes, and result in significant mental and physical harm. (Principle E, “Psychologists are aware of and respect cultural, individual, and role differences, including those based on...race, ethnicity, culture, national origin... and consider these factors when working with members of such groups”; Ethical Standard 2.01(b), Boundaries of Competence, “Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with...race, ethnicity, culture, national origin...is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals...”; and Ethical Standard 3.01, Unfair Discrimination, “In their work-related activities, psychologists do not engage in unfair discrimination based on...race, ethnicity, culture, national origin...”)
- How the combination of a setting’s ambiguity with high stress may facilitate engaging in behaviors that cross the boundaries of competence and ethical propriety. As behavioral scientists, psychologists are trained to observe, respond to, and ideally correct such processes as they occur. (Principle A, Beneficence and Nonmaleficence, and Ethical Standard 3.04, Avoiding Harm)

8. Psychologists who consult on interrogation techniques are mindful that the individual being interrogated may not have engaged in untoward behavior and may not have

information of interest to the interrogator. This ethical obligation is not diminished by the nature of an individual's acts prior to detainment or the likelihood of the individual having relevant information. At all times psychologists remain mindful of and abide by the prohibitions against engaging in or facilitating torture and other cruel, inhuman, or degrading treatment. Psychologists inform themselves about research regarding the most effective and humane methods of obtaining information and become familiar with how culture may interact with the techniques consulted upon. (Principle E, Respect for Peoples' Rights and Dignity; Ethical Standards 2.01, Boundaries of Competence; 2.03, Maintaining Competence; and 3.01, Unfair Discrimination)

9. Psychologists make clear the limits of confidentiality. (Ethical Standard 4.02, Discussing the Limits of Confidentiality). Psychologists who have access to, utilize, or share health or mental health related information do so with an awareness of the sensitivity of such information, keeping in mind that "Psychologists have a primary obligation and take reasonable precautions to protect confidential information..." (Ethical Standard 4.01, Maintaining Confidentiality) When disclosing sensitive information, psychologists share the minimum amount of information necessary, and only with individuals who have a clear professional purpose for obtaining the information. (Ethical Standard 4.04, Minimizing Intrusions on Privacy) Psychologists take care not to leave a misimpression that information is confidential when in fact it is not. (Ethical Standards 3.10, Informed Consent, and 4.02, Discussing the Limits of Confidentiality)

10. Psychologists are aware of and do not act beyond their competencies, except in unusual circumstances, such as set forth in the Ethics Code. (Ethical Standard 2.02, Providing Services in Emergencies) Psychologists strive to ensure that they rely on methods that are effective, in addition to being safe, legal, and ethical. (Ethical Standards 2.01, Boundaries of Competence; 2.04, Bases for Scientific and Professional Judgments; 9.01, Bases for Assessments)

11. Psychologists clarify for themselves the identity of their client and retain ethical obligations to individuals who are not their clients. (Ethical Standards 3.07, Third-Party Requests for Services, and 3.11, Psychological Services Delivered to or Through Organizations) Regardless of whether an individual is considered a client, psychologists have an ethical obligation to ensure that their activities in relation to the individual are safe, legal, ethical, and effective. (Ethical Standard 3.04, Avoiding Harm) Sensitivity to the entirety of a psychologist's ethical obligations is especially important where, because of a setting's unique characteristics, an individual may not be fully able to assert relevant rights and interests. (Principle A, Beneficence and Nonmaleficence, "In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons..."; Principle D, Justice, "Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices"; Principle E, Respect for People's Rights and Dignity, "Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making"; Ethical Standard 3.08, Exploitative Relationships)

12. Psychologists consult when they are facing difficult ethical dilemmas. The Task Force was emphatic that consultation on ethics questions and dilemmas is highly appropriate for psychologists at all levels of experience, especially in this very challenging and ethically complex area of practice. (Preamble to the Ethics Code, “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 consult with others concerning ethical problems”; and Ethical Standard 4.06, Consultations)

The Task Force drew several other conclusions:

- The development of professional skills and competencies, ethical consultation and ethical self-reflection, and a willingness to take responsibility for one’s own ethical behavior are the best ways to ensure that the national security-related activities of psychologists are safe, legal, ethical, and effective.
- It is critical to offer ethical guidance and support especially to psychologists at the beginning of their careers, who may experience pressures to engage in unethical or inappropriate behaviors that they are likely to find difficult to resist.
- APA should develop a process whereby psychologists whose work involves classified material and who need ethical guidance or consultation may consult their national organization for assistance and support.
- Psychologists should encourage and engage in further research to evaluate and enhance the efficacy and effectiveness of the application of psychological science to issues, concerns and operations relevant to national security. One focus of a broad program of research is to examine the efficacy and effectiveness of information-gathering techniques, with an emphasis on the quality of information obtained. In addition, psychologists should examine the psychological effects of conducting interrogations on the interrogators themselves to explore ways of helping to ensure that the process of gathering information is likely to remain within ethical boundaries. Also valuable will be research on cultural differences in the psychological impact of particular information-gathering methods and what constitutes cruel, inhuman, or degrading treatment.
- The Task Force noted a potential area of tension between conducting research that is classified or whose success could be compromised if the research purpose and/or methodology become known and ethical standards that require debriefing after participation in a study as a research subject. (Ethical Standards 8.07, Deception in Research, and 8.08, Debriefing) APA should identify and further examine the ethical dimensions of such tensions.
- Psychologists working in this area should inform themselves of how culture and ethnicity interact with investigative or information-gathering techniques, with special attention to how failing to attend to such factors may result in harm.

The Task Force engaged in vigorous discussion and debate and did not reach consensus on several issues:

- *The role of human rights standards in an ethics code.* While all Task Force members felt that respect for human rights is critical, some task force members

felt strongly that international standards of human rights should be built into the ethics code and others felt that the laws of the United States should be the touchstone.

- *The degree to which psychologists may ethically disguise the nature and purpose of their work.* While all members of the Task Force agreed that full disclosure of the nature and purpose of a psychologist's work is not ethically required or appropriate in every circumstance, members differed on the degree to which psychologists may ethically dissemble their activities from individuals whom they engage directly.
- *Whether the discussions of the Task Force should have been made available outside the Task Force.* Some members believed that sharing the substance of the discussions, debates, and disagreements of the Task Force would be helpful to others in fostering the development of professional ethics in other areas of national security. Others felt that not sharing information beyond this report and other public statements would facilitate richer and more productive exchanges during the Task Force meeting. The Task Force voted on this issue. By a vote of seven to one, with one abstention, the Task Force voted to limit what information is disclosed concerning its deliberations to this report and other public statements made by the Task Force as a whole.

Expanded Policy Statements and Brief Commentary

Commentary, except citations of the *Ethics Code*, is included to provide guidance for psychologists working in national security settings but does not represent APA policy.

Policy Statement 1: Psychologists may not work in settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human rights [1].

The American Psychological Association, in recognizing that torture and other cruel, inhuman or degrading treatment and punishment can result not only from the behavior of individuals, but also from the conditions of confinement, expresses grave concern over settings in which detainees are deprived of adequate protection of their human rights, affirms the prerogative of psychologists to refuse to work in such settings, and will explore ways to support psychologists who refuse to work in such settings or who refuse to obey orders that constitute torture.

Commentary from the 2008 APA Petition Resolution Ballot - Rebuttal to the Con Statement [3] concerning the application of this policy statement to domestic (U.S.) sites:

The referendum is specific, provides clear context, and sets a high bar: in settings where people are detained outside of the law – places where treaties such as the Geneva Conventions and Convention Against Torture are ignored or declared not to apply – psychologists can work only for those detained. U.S. “jails, prisons, psychiatric hospitals...” all function within the legal system. Even if they are found to be in violation of the constitution, the finding itself demonstrates that they function within a legal framework, and thus do not meet that bar. No matter how bad conditions might be at these domestic institutions, they can be challenged openly in U.S. courts, and everyone held there holds the rights of habeas corpus; thus they differ significantly from the secret, extra-legal settings that are the subject of this referendum.

Commentary from the *Report of the APA Presidential Advisory Group on the Implementation of the Petition Resolution* [2]:

Morgan Banks 9/2/12 11:22 AM

Comment: This section must be removed. The section above can be rewritten to accommodate federal employees. It does not appear possible for that to be done to this section. However, if an attempt must be made, I have included comments. To rewrite this section to be compliant with US law would be a major undertaking. I have left my initial comments in the text, but they would only be a beginning to the needed editing.

Morgan Banks 9/2/12 11:21 AM

Comment: To repeatedly refer to the UN, or to international instruments (international law) to which the US is not a signatory would require federal employees to violate the law and their oath of office. If the intent is to require federal employees to leave APA, this would likely achieve that end.

Morgan Banks 7/26/12 11:08 AM

Deleted:

Morgan Banks 8/27/12 8:41 AM

Comment: Considering that the US Supreme Court has heard cases arising from detainees in US custody, and that all US Military personnel are required to behave in accordance with the Uniform Code of Military Justice, this argument makes no sense whatsoever. It is hard to believe that anyone with legal training approved it. This paragraph must be removed.

How is it to be determined whether the policy applies to a particular detention setting and what is meant by the term “outside of, or in violation of, international law?”

A determination of whether a particular detention setting is “in violation of international law” is to be derived from multiple sources. The U.N. and its committees can declare a site to be in violation of international law, as can any international body that the U.N. takes to be authoritative. A setting that has been censured due to reasons reflected by this policy by the Council of Europe, the International Committee of the Red Cross (ICRC), or other internationally accepted body as “outside of, or in violation of, international law” would also be considered a proscribed or prohibited setting. The factors taken into consideration by the U.N. and other internationally accepted bodies in making such a determination may include a lack of habeas corpus rights or other forms of judicial review for detainees, denial of access to the site and to detainees by U.N. monitors, and the use of torture or other forms of cruel, inhuman, or degrading treatment or punishment. The determination of whether a particular detention setting is operating “outside of international law” rests on whether the authority governing the site declares itself to be unbound by the relevant international or constitutional law, thereby indicating its unwillingness to abide by such laws. Relevant examples include a nation stating it will treat detainees in a manner “consistent” with the law rather than in compliance with the law; a state that accepts the law in part or with reservations; and a governing authority that avoids the use of internationally accepted categories, e.g., by naming its detainees “enemy combatants,” a term that does not exist in international law. The presence of any one of these conditions does not automatically mean that a site is unlawful in terms of this policy. But alone, or in combination, they do suggest the possibility that a setting fails to comply with the standards of this policy; their existence provides sufficient basis for concern and further inquiry.

Morgan Banks 8/27/12 8:41 AM

Comment: It would appear that this would not be consistent with being an employee of the US government. If passed, I would expect that it would require any federal employee to resign from APA. It would certainly require commissioned officers to either resign their commission or resign from APA. This commentary must be rewritten to be compliant with US law.

To what authority can psychologists turn for guidance?

Relevant information about whether a specific site operates outside of, or in violation of, international law can be accessed by contacting the APA Office of International Affairs to obtain assistance in reaching the U.N. Office of the High Commissioner for Human Rights or through that office, the Special Rapporteur Against Torture. Information can also be obtained by contacting non-governmental organizations, such as the International Committee of the Red Cross (ICRC), the American Civil Liberties Union, Amnesty International, the Center for Constitutional Rights, or Physicians for Human Rights for information.

Morgan Banks 8/27/12 8:41 AM

Comment: Military Psychologists will follow US law. This paragraph is hard to begin to take seriously. It must be rewritten to be in compliance with US law.

How is international law defined?

As a non-governmental organization accredited by the United Nations, the APA acknowledges the U.N. as an international legal entity through which member States are able to define international law as related to principles of human rights and justice. Through a process of lengthy negotiation and consensus building, the U.N. has developed international law in the form of conventions on various areas of human rights and humanitarian law to cover situations of armed conflict or war.

What is meant by the use of the term ‘where appropriate’ with respect to the U.S. Constitution?

“Where appropriate” refers to settings where the U.S. Constitution is the law of the land and settings to which the U.S. Supreme Court has decided that it applies, including the 50 states, U.S. embassies, and areas within the U.S. maritime and territorial jurisdiction. It also applies to U.S. citizens everywhere.

What does “working directly for the detainee” mean, and what is its significance?

A direct relationship is one in which the psychologist is acting independently and working at all times for the sole benefit and in the interests of the person being detained. This would include a psychologist being hired by and for detainees (e.g., by a detainee’s attorney to evaluate the mental health status of the detainee), in much the same way independent attorneys have worked to represent detainees at sites like Guantánamo. An independent psychologist is one without conflicts of interests or dual loyalties as related to this policy.

What is meant by the reference to a psychologist working for “an independent third party working to protect human rights?”

The new policy envisions two possibilities in the case of an independent internationally recognized and authorized third party: (1) that an organization such as the International Committee for the Red Cross (ICRC) might gain access to a site covered by the policy and that psychologists working within that independent organization would be allowed to evaluate the mental health of detainees; or (2) that such an independent organization would bring psychologists into such a site as human rights monitors or to provide treatment for, or engage in the assessment of, a detainee. In either case, the psychologists are not working “directly for the detainee.”

Policy Statement 2: If the *APA Ethics Code*, as amended in 2010, 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 or organizational demands, 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 [4].

Standard 1.02, Ethical Principles of Psychologists and Code of Conduct, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

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.

Standard 1.03, Ethical Principles of Psychologists and Code of Conduct, Conflicts Between Ethics and Organizational Demands

If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this *Ethics Code*, 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.

The American Psychological Association is an accredited non-governmental organization at the United Nations and so is committed to promote and protect human rights in accordance with the United Nations Charter and the *Universal Declaration of Human Rights*.

Commentary:

The American Psychological Association Human Rights Advocacy webpage provides information about human rights. The website states:

APA's vision statement includes serving as an effective champion of the application of psychology to promote human rights. In order to support that vision, APA seeks to promote attention to the critical role of human rights in the work of psychologists across the broad range of the field and identify resources for educating psychologists about human rights at all levels of professional development, with particular attention to the identification of materials appropriate for psychology graduate training programs. APA aims to ensure that the next generation of psychologists has resources that will help inform them about the role of human rights in their careers.

This site provides access to APA human rights policies as well as activities, resources, and links.
<http://www.apa.org/about/gr/issues/human-rights/index.aspx>

Additional information also can be found on the United Nations Human Rights webpage.
<http://www.un.org/en/rights/>

Policy Statement 3: Psychologists do not knowingly engage in, assist, tolerate, direct, support, advise, facilitate, plan, design, or offer training in torture or other cruel, inhuman, or degrading treatment or punishment under any and all conditions.

The American Psychological Association defines torture in accordance with Article I of the United Nations *Declaration and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*:

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] [5].

The APA defines the term "cruel, inhuman, or degrading treatment or punishment" to mean treatment or punishment by a psychologist in accordance with the United States Reservation I.1 of the Reservations, Declarations and Understandings to the United Nations Convention Against Torture, which defines this term as "the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States" [6]. Application of this definition is not dependent on U.S. citizenship.

The American Psychological Association further unequivocally condemns 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.

The American Psychological Association unequivocally condemns torture and cruel, inhuman, or degrading treatment or punishment, under any and all conditions (applicable to all individuals, in all settings and in all contexts without exception), including detention and interrogations of any individuals regardless of designation (e.g., lawful and unlawful enemy combatants as defined by the *US Military Commissions Act of 2006* [7] or privileged vs. unprivileged enemy belligerent as defined by the *US Military Commissions Act of 2009* [8]).

This unequivocal condemnation by the American Psychological Association includes an absolute prohibition against psychologists' knowingly planning, designing, participating in or assisting in the use of all condemned techniques at any time and that psychologists may not enlist others to employ these techniques in order to circumvent this policy's prohibition.

Moreover, 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.

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 threatened.

Commentary: This policy statement conforms to the *Ethical Principles of Psychologists and Code of Conduct*: Principle A, Beneficence and Nonmaleficence ("Psychologists strive to benefit those with whom they work and take care to do no harm. In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons . . ."), and Ethical Standard 3.04, Avoiding Harm ("Psychologists take reasonable steps to avoid harming . . . others with whom they work, and to minimize harm where it is foreseeable and unavoidable.").

Morgan Banks 8/27/12 8:41 AM

Comment: I will need a legal interpretation of this. I am not clear as to how this would impact the U.S.'s treatment of PWs and unlawful combatants. We need to follow the Law of War on treatment of detainees.

Morgan Banks 8/27/12 8:41 AM

Comment: This needs to be clarified. The current Army field manual allows an approach referred to as, "Fear Up," for example. The exact limits of this prohibition needs to be very clear.

Policy Statement 4: APA 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.

Commentary: This policy statement is in keeping with Article 2.2. of the *United Nations Declaration and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*.

Policy Statement 5: Psychologists are alert to acts of torture and other cruel, inhuman, or degrading treatment or punishment and should torture or other cruel, inhuman, or degrading treatment or punishment, including the invocation of laws, regulations, or orders. If failing that, the psychologist has an ethical responsibility to exit the procedure.

Policy Statement 6: 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.

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 in Policy Statement 3 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* (2010) 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.

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 (detailed in Policy Statement 3) or conditions listed above; and that the American Psychological Association affirms the responsibility of psychologists under the *Ethics Code* (2010) to disobey law, regulations or orders when they conflict with ethics.

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.

Commentary: The ethical responsibility to report is rooted in the *Ethics Code* 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 aware of their professional and scientific responsibilities to society and to the specific communities in which they work" and Ethical Standard 1.05, Reporting Ethical Violations, "If an apparent ethical violation has substantially harmed or is likely to substantially harm a person."

Policy Statement 7: 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.

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*; and the *World Medical Association Declaration of Tokyo, Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment*.

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Comment: This statement unequivocally requires psychologists to break the law. This is blatantly unacceptable to any federal employee. No commissioned officer could agree to any such policy, regardless of the intentions.

- *United Nations Declaration and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*
<http://www2.ohchr.org/english/law/cat.htm>

- *Geneva Conventions*
<http://www.icrc.org/ihl.nsf/full/305?opendocument>

Commentary: Article 3 is the most commonly cited Article in relation to treatment of prisoners. It states:

Art. 3. Prisoners of war are entitled to respect for their persons and honour. Women shall be treated with all consideration due to their sex. Prisoners retain their full civil capacity.

- *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*
<http://www2.ohchr.org/english/law/medicalethics.htm>

Commentary: The American Psychological Association policy conforms to and upholds the provisions outlined in the *United Nations Principles of Medical Ethics* for psychologists working in a health care capacity. The *Principles* include:

Principle 1: Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Principle 2: It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment. (a)

Principle 3: It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Principle 4: It is a contravention of medical ethics for health personnel, particularly physicians:

(a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments; (b)

(b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

Principle 5: It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health.

Principle 6: There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.

(a) See the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX), annex).

(b) Particularly the Universal Declaration of Human Rights (resolution 217 A (III)), the International Covenants on Human Rights (resolution 2200 A (XXI), annex), the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 3452 (XXX), annex) and the

- *United Nations Basic Principles for the Treatment of Prisoners*
<http://www2.ohchr.org/english/law/basicprinciples.htm>
- *United Nations Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*
<http://www2.ohchr.org/english/law/investigation.htm>
- *The World Medical Association Declaration of Tokyo. Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment*
<http://www.wma.net/en/30publications/10policies/c18/>

Commentary: The American Psychological Association policy conforms to and upholds the provisions outlined in *The World Medical Association Declaration of Tokyo. Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment* for psychologists working in a health care capacity. The Principles include:

1. The physician shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offense of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.

2. The physician shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.

3. When providing medical assistance to detainees or prisoners who are, or who could later be, under interrogation, physicians should be particularly careful to ensure the confidentiality of all personal medical information. A breach of the Geneva Conventions shall in any case be reported by the physician to relevant authorities. The physician shall not use nor allow to be used, as far as he or she can, medical knowledge or skills, or health information specific to individuals, to facilitate or otherwise aid any interrogation, legal or illegal, of those individuals.

4. The physician shall not be present during any procedure during which torture or any other forms of cruel, inhuman or degrading treatment is used or threatened.

5. A physician must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The physician's fundamental role is to alleviate the distress of his or her fellow human beings, and no motive, whether personal, collective or political, shall prevail against this higher purpose.

6. Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgment should be confirmed by at least one other independent physician. The consequences of the refusal of nourishment shall be explained by the physician to the prisoner.

7. The World Medical Association will support, and should encourage the international community, the National Medical Associations and fellow physicians to support, the physician and his or her family in the face of threats or reprisals resulting from a refusal to condone the use of torture or other forms of cruel, inhuman or degrading treatment.

Morgan Banks 8/27/12 8:41 AM

Comment: This is not consistent with current US law. Following this would violate the law.

Morgan Banks 8/27/12 8:41 AM

Comment: This is not only in contravention of US law, but it puts the detainee at physical risk if the knowledge of his or her medical condition requires accommodation for his or her safety. The PENS report had it right: Medical information will not be used to the detriment of a detainee.

Morgan Banks 8/27/12 8:41 AM

Comment: This is in violation of current US policy, which follows that of the US prison system.

Policy Statement 8: Psychologists who serve in any position by virtue of their training, experience, and expertise as psychologists, including psychologists working in national security settings, are bound by the APA *Ethical Principles of Psychologists and Code of Conduct*, in its entirety.

Based on the Principles and Standards of the APA *Ethical Principles of Psychologists and Code of Conduct*, psychologists working in national security settings shall:

- Abide by the *Ethics Code* in any professional role, including roles outside traditional health-care provider relationships.
- Seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons.

Commentary: This principle conforms to *Ethics Code*, Principle A: Beneficence and Nonmaleficence. “Psychologists strive to benefit those with whom they work and take care to do no harm.”

- Seek to understand individuals’ culture and ethnicity to avoid misunderstandings and potential harm.

Commentary: Failure to understand aspects of individuals’ culture and ethnicity may generate misunderstandings, compromise the efficacy of work in national security settings, and potentially result in significant mental and physical harm. (Principle E, “Psychologists are aware of and respect cultural, individual, and role differences, including those based on...race, ethnicity, culture, national origin... and consider these factors when working with members of such groups”; Ethical Standard 2.01(b), Boundaries of Competence, “Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with...race, ethnicity, culture, national origin...is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals...”; and Ethical Standard 3.01, Unfair Discrimination, “In their work-related activities, psychologists do not engage in unfair discrimination based on...race, ethnicity, culture, national origin...”)

- Refrain from engaging in multiple relationships such as being both a health care provider and a national security setting consultant. **if the multiple relationship could reasonably be expected to impair the psychologist’s objectivity, competence or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists**

Commentary: This policy statement conforms to *Ethics Code* Standard 3.05, Multiple Relationships, “A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist’s objectivity, competence or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists,” as well as 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*.

- Be aware of and clarify their role in situations where the nature of their professional identity and professional function may be ambiguous.

Commentary: Psychologists have a special responsibility to clarify their role in situations where individuals or other professionals may have an incorrect impression that psychologists are serving in a healthcare provider role. (Ethical Standards 3.07, Third-Party Requests for Services, “When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist . . . an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality”; and 3.11, Psychological Services Delivered to or Through Organizations, “(a) Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about (1) the nature and objectives of the services, (2) the intended recipients, (3) which of the individuals are clients, (4) the relationship the psychologist will have with each person and the organization, (5) the probable uses of services provided and information obtained, (6) who will have access to the information, and (7) limits of confidentiality.”)

Morgan Banks 8/27/12 8:41 AM
Comment: This would only be acceptable if the rest of the ethics code is followed, as articulated here.

Regardless of their role, psychologists who are aware of an individual in need of health or mental health treatment may seek consultation regarding how to ensure that the individual receives needed care. (Principle A, Beneficence and Nonmaleficence)

- Clarify for themselves the identity of their client.

Commentary: This policy statement conforms to *Ethics Code* Standard 3.07 Third-Party Requests for Services, “When psychologists agree to provide services to a person or entity at the request of a third party, psychologists attempt to clarify at the outset of the service the nature of the relationship with all individuals or organizations involved. This clarification includes the role of the psychologist . . . an identification of who is the client, the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality.”

- Retain ethical obligations to individuals who are not their clients.

Commentary: Regardless of whether an individual is considered a client, psychologists have an ethical obligation to “avoid harming their . . . organizational clients and others with whom they work, and to minimize harm where it is foreseeable and unavoidable” (Ethical Standard 3.04, Avoiding Harm). Psychologists’ ethical obligations are especially important where, because of a setting’s unique characteristics, an individual may not be fully able to assert relevant rights and interests. (Principle A, Beneficence and Nonmaleficence, “In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons . . .”; Principle D, Justice, “Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices”; Principle E, Respect for People’s Rights and Dignity, “Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making”; Ethical Standard 3.08, Exploitative Relationships, “Psychologists do not exploit persons over whom they have supervisory, evaluative or other authority . . .”)

- Make clear the limits of confidentiality.

Commentary: Psychologists take care not to leave a misimpression that information is confidential when in fact it is not. (Ethical Standards 3.10, Informed Consent, and 4.02, Discussing the Limits of Confidentiality, “(a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives) and organizations with whom they establish a scientific or professional relationship (1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities.”)

- Be mindful that individuals held in national security settings may not have engaged in untoward behavior and may not have information of national security interest.

Commentary: Ethical obligations are not diminished by the nature of an individual’s acts prior to detainment or the likelihood of the individual having relevant information. At all times psychologists remain mindful of and abide by the absolute prohibitions against engaging in or facilitating torture and other cruel, inhuman, or degrading treatment. (Principle E, Respect for Peoples’ Rights and Dignity, “Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making”; and 3.01, Unfair Discrimination, “In their work-related activities, psychologists do not engage in unfair discrimination based on . . . race, ethnicity, culture, national origin . . .”)

- Be aware that certain settings may instill in individuals a profound sense of powerlessness and may place individuals in considerable positions of disadvantage in terms of asserting their interests and rights.

Commentary: Psychologists are mindful that prisoners represent a vulnerable population. (Principle E: Respect for People’s Rights and Dignity, “Psychologists respect the dignity and worth of all people, and the rights of individuals to privacy, confidentiality, and self-determination. Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose

vulnerabilities impair autonomous decision making.” Also, Ethical Standards 1.01, Misuse of Psychologists’ Work, “If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation,” and 3.08, Exploitative Relationships, “Psychologists do not exploit persons over whom they have supervisory, evaluative or other authority . . .”)

- Consult with others when they are facing difficult ethical dilemmas.

Commentary: Preamble to the Ethics Code, “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 consult with others concerning ethical problems”; and Ethical Standard 4.06, Consultations.

- Be willing to take ethical responsibility for their behavior.

Directives for Association Actions:

APA shall continue to call on the United States government—including Congress, the Department of Defense, and the Central Intelligence Agency—to prohibit the use of torture or cruel, inhuman, or degrading treatment or punishment in any interrogation and the APA shall continue to inform relevant parties with the United States government that psychologists are prohibited from participating in such methods.

In order to protect against torture and cruel, inhuman, or degrading treatment or punishment, and in order to mitigate against the likelihood that unreliable and/or inaccurate information is entered into legal proceedings, APA shall continue to call upon United States legal systems to reject testimony that results from such methods.

The APA Ethics Committee shall proceed forthwith in writing and distributing a casebook and commentary that shall set forth guidelines for psychologists that are consistent with international human rights instruments, as well as guidelines developed for health professionals, including but not limited to: Common Article 3 of the Geneva Conventions; The United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; The United Nations 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; and The World Medical Association Declaration of Tokyo: Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment.

[1] It is clarified by a footnote in the Member Petition Resolution that military clinical psychologists could still be provide treatment for military personnel.

[2] *Report of the APA Presidential Advisory Group on the Implementation of the Petition Resolution*. Retrieved from www.apa.org/ethics/advisory-group-final.pdf

[3] 2008 APA Petition Resolution Ballot - Rebuttal to the Con Statement, Retrieved from <http://www.apa.org/news/press/statements/work-settings-con-rebuttal.aspx>

[4] *Ethical Principles of Psychologists and Code of Conduct*, Retrieved from <http://www.apa.org/ethics/code/index.aspx>

[5] United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* – <http://www2.ohchr.org/english/law/cat.htm>

[6] 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."

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

[7] Defined as both unlawful enemy combatants and lawful enemy combatants as set forth in the U.S. Military Commissions Act of 2006 (Chapter 47A; Subchapter I: § 948a. Definitions)

“(1) UNLAWFUL ENEMY COMBATANT.—

(A) The term ‘unlawful enemy combatant’ means—

“(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or

“(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.

“(B) CO-BELLIGERENT.—In this paragraph, the term ‘cobelligerent’, with respect to the United States, means any State or armed force joining and directly engaged with the United States in hostilities or directly supporting hostilities against a common enemy.

“(2) LAWFUL ENEMY COMBATANT.—The term ‘lawful enemy combatant’ means a person who is—

“(A) a member of the regular forces of a State party engaged in hostilities against the United States; or

“(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

“(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

[8] Defined as both privileged belligerent and unprivileged enemy belligerent as set forth in the U.S. Military Commissions Act of 2009 (Chapter 47A; Subchapter I: § 948a. Definitions)

“(6) PRIVILEGED BELLIGERENT.—The term ‘privileged belligerent’ means an individual belonging to one of the eight categories enumerated in Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War.

“(7) UNPRIVILEGED ENEMY BELLIGERENT.—The term ‘unprivileged enemy belligerent’ means an individual (other than a privileged belligerent) who—

“(A) has engaged in hostilities against the United States or its coalition partners;

“(B) has purposefully and materially supported hostilities against the United States or its coalition partners; or

“(C) was a part of al Qaeda at the time of the alleged offense under this chapter.