

REVIEW OF REPORT OF THE APA MEMBER-INITIATED TASK FORCE TO  
RECONCILE POLICIES RELATED TO PSYCHOLOGISTS' INVOLVEMENT IN  
NATIONAL SECURITY SETTINGS

George Hough

My understanding of the task of the APA Member-Initiated Task Force is to reconcile already existing policies relating to psychology's involvement in National Security environments. The goal is to develop a clear, comprehensive policy statement, by consolidating existing APA policies. New policy is not being developed. My role in this process is strictly as outside consultant to the task force process. I have reviewed the *Report of the APA Member-Initiated Task Force to Reconcile Policies Related to Psychologists' Involvement in National Security Settings* and my editing and comments are listed below.

The proposed policy provides policy statements premised upon three enumerated principles. These principles are a core element of the document. I will comment upon each.

A. Principles:

Principle 1: Psychologists may not work in settings where individuals are held in violation of either international law (e.g. UN convention Against Torture and the Geneva Conventions) or the US Constitution. This will raise a few issues. First, it does clarify the legal standards that the psychologist will guide upon. It will also be incumbent upon the psychologist to obtain legal clarification of the legal status of the site, whether it is in violation of international law or the US constitution. Obtaining a legal opinion in these matters would be challenging when deployed at an operational site.

Principle 2: That psychologists are bound by APA *Ethical Principles of Psychologists and Code of Conduct*, as amended in 2010, including statements upholding the inviolate nature of human rights. It affirms that the APA standards will be adhered to regardless of setting.

Principle 3: The word *tolerate* in this principle is vague. If one does not "tolerate" torture or these other cruel, inhuman or degrading treatments under *any* condition, then it would follow that to be physically at a site where such behaviors are occurring is not permissible. Expanding the concept would suggest that even military training sites where survival training and other forms of "Escape and Evasion "(E & E) techniques are taught would likely be prohibited. These training programs do inflict cruel, inhuman and degrading treatment on U.S. military service members as well as foreign military trainees. However, the mission and goal of these training experiences is to prepare or "inoculate" trainees against such treatment in the event they should ever be captured and subjected to these experiences during military conflict. An over-literal reading of the principle would preclude a psychologist from participating in these activities.

B. Policy Statements:

1. No Additional Comment.

2. With such conflicts the psychologist is under obligation to make known their commitment to the *Ethics Code* “and take steps to resolve the conflict in a responsible manner...human rights” It is unclear what specific steps are to be taken under these circumstances. To whom is one to make the commitment known? This issue is also referenced in Policy Statement 2 under Expanded Policy Statements & Brief Comments.

Standard 1.02 and Standard 1.03 says take “reasonable steps”. I recommend inserting this phrase into Policy Statement 2.

The problem is that in national security settings, with shifting lines of authority, compartmentalization of information, etc. it may be very difficult to discern exactly what such reasonable steps are and when such action satisfies this requirement.

3. Psychologists “do not knowingly engage...under any and all conditions.” It is unclear how far does the psychologists’ obligation to “know” extend. If one does not know of such activities, is there an affirmative obligation to seek out information that will help clarify whether such activities are, in fact, occurring at that particular site? If the psychologist has a reasonable suspicion that these behaviors are occurring, again, is a decision to remain willfully ignorant in violation of the policy?

APA defines torture in accordance with Article 1 of the UN Declaration Against Torture. This is an anchoring definition that is internationally accepted and is the standard used in international courts. This standard help will avoid ambiguity in the event that local standards/definitions emerge at a particular national security setting (in cases of “policy drift”) that depart from the UN definition, or if policy directives are handed down within a chain of command that depart from the UN definition.

The assertion that the APA defines the term “cruel, inhuman or degrading treatment or punishment” seems to be unnecessary if APA is adhering to the definition already spelled out by the UN Convention Against Torture. Why this is particularized APA definition carved out and asserted in place of the language already in place with the UN Convention Against Torture? The answer seems to be to insert a definition based upon the US Reservation I of the Reservations, Declarations and Understandings to the UN Convention against Torture which asserts definitions prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the US Constitution. This alteration requires explanation for the reader. If it is because the Amendments to the US Constitution offer a more stringent and higher ethical standard than the UN Convention then this reasoning should be clearly stated. That these protections afforded by the Constitutional Amendments are now extended to those individuals outside US citizenship would suggest that these Amendments are the higher ethical standard- but this issue needs to be clarified.

The condemnation of the enumerated *techniques* considered torture or cruel, inhuman or degrading treatment or punishments (and supported by a lengthy list of authorities sources) is a very helpful guide regarding specific techniques that are deployed .I would simply add that while this list is comprehensive it is not exhaustive. The human capacity for the invention of cruelty is seemingly limitless.

Policy Statement 4. This statement includes the clause: “*including the invocation of laws, regulations, or orders.*” In practical application, this statement pits APA policy against the rule of law or even against a direct order from a military commander. For the psychologist on site, disobeying law or a direct order will likely prove, in practical terms, an unworkable dilemma. Still, it is recognized that to merely capitulate to law or orders that clearly violate human rights is not defensible either. The statement up to and including the word punishment can stand. This more limited statement is consistent with APA policy assertion that there is no national policy rationale or national circumstances that can justify these actions. At a policy level this statement is effective; at a practical level the above referenced clause (in italics) does not work.

Policy Statement 5. No added comments

Policy Statement 6. Again, the question is to whom does one make a report in these settings?

Policy statement 7. No added comments

Policy Statement 8. No added comments.

- (a) The statement regarding clarifying ones role (“Be aware of and clarify their role...may be ambiguous”) is an important one. Also important is that the sentence also notes that professional identity and professional function may be ambiguous. Role ambiguity is certainly quite likely to occur in national security settings.
- (b) Need clarification of statement: “*Make clear the limits of confidentiality.*” At this point, the concept seems vague. To whom does one assert these limits: the detainee? The site commander?

C. Directives for Association Actions: Agree with all. (Note: should these go at the end as future actions to take?)

D. Expanded Policy Statements and Brief Commentary

Policy Statement 1. The clause “*affirms the prerogative of psychologists to work in such setting*” is obviously aspirational and may be unworkable for a military psychologist operating under a command structure where disobeying a direct order is a punishable offense. At this juncture the military psychologist will likely not have this option.  
and

*“will explore ways to support psychologists who refuse to work in such settings or who refuse to obey orders that constitute torture.”* Obviously such discussions with the military will be important. However, the military command and control structure requires adherence to orders. In the case of employment with non-military organizations, such refusal may result in dismissal from employment but will likely not be illegal.

Policy Statement 3. This *“unequivocal condemnation...in order to circumvent this policy’s prohibition”* is total and absolute in its conviction and removes ambiguity from earlier statements.

Policy Statement 5. No commentary is currently attached to this Policy Statement. To be consistent with the organization of the document there should be a Commentary.

Policy Statement 6. Need clarification: Is this a recommendation to report directly to APA Ethics Committee or through State Psychological Associations first?

The next paragraph: *“The American Psychological Association commends those psychologists...to disobey law regulations or orders when they conflict with ethics.”* As I read the *Amendments to the 2002 ‘Ethical Principles of Psychologists and Code of Conduct’*, I refer specifically to 1.02 *Conflicts Between Ethics and Law, Regulations, Other Governing Legal Authority* as well as to 1.03 *Conflicts Between Ethics and Organizational Demands*. The last sentence inserted in both of these standards reads: *“Under no circumstances may this standard be used to justify or defend violating human rights”*. Neither of these standards, however, affirms the positive responsibility to “disobey law” as asserted in this paragraph. It is understood at least since the Nuremberg Trials that the premise that one was “just obeying orders” is not a viable legal defense when accused of such human rights crimes. Both standards do indicate that one is to take steps that fall short of law breaking: make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict in a reasonable manner, etc. The same dilemma will apply with following orders, which in a military context can also carry the force of law. Suggest further clarification on the issue regarding an affirmative obligation to disobey a law or order (when confronted with human rights violations) versus not using the standard in any way to justify or defend violations of human rights.

Policy Statement 7. In requiring that these documents be reviewed it would be important for them to be available in one easy to locate location, such as a handbook or through APA electronic site.

The Commentary: ‘The American Psychological Association...These Principles Include:’ This section enumerates seven principles which are provisions outlined in *The*

*World Medical Association of Tokyo, Guidelines for Physicians...Detention and Imprisonment.*” These are relevant background and helpful. They underscore psychology’s commitment to basic human rights and that we will work in accordance with relevant human rights instruments as they pertain to the specific role the psychologist is in. They also confirm our solidarity with the medical profession in upholding these principles. However, as these principles reference their application to physicians, they may not seem fully relevant to the psychologist other than in a more abstract sense. Nevertheless, recommend keeping them in.

Policy Statement 8. Important areas regarding clarification of professional roles and boundaries. The Commentary beginning with “Psychologists have a special responsibility...and (7) limits of confidentiality.”) to “do not exploit persons over whom they have supervisory. Evaluative or other authority...””) is very relevant.

Directives for Association Actions:

No additions or further recommendations.