

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

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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 A unified policy is urgently needed as some of the existing APA policies are outdated, redundant, and/or confusing, and do not provide a clear or accurate view of APA policy as related to the work of psychologists in national security settings.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.

**Comment [TJW1]:** I submit that it is a mis-characterization of extant APA policies that are being consolidated by the Task Force to suggest that they all concern "psychologist consultations in national security settings." In fact, of those policies listed by the Task Force as being consolidated, only the PENS policy is specifically focused on that process and the procedures pertaining thereto. As was done in the PENS report, this Task Force should address and affirm "that when psychologists serve in any position by virtue of their training, experience, and expertise as psychologists, the APA Ethics Code applies."

**Comment [TJW2]:** A careful reading of the PENS policy reinforces how it achieves both clarity of expression and has a clearly identified purpose. That is, it very specifically proscribes for psychologists, any actions that would involve violating any existing APA policies and/or Human Rights and delimits any extrapolation of presumed authorities related law or organizational policy (the presumed intent of this Task Force's terms of reference). The 2007 AH ...

**Comment [TJW3]:** Confusion is created by indicating the proposed policy is premised on three "principles" which are then used, almost verbatim, as "Policy Statements" #1-#3. The confusion arises since within the APA Ethics Code, "Principles" are defined as "aspirational in nature." Consequently, by offering the "principles" as "policy statements," it creates a ...

**Comment [TJW4]:** This linkage between "either" International Law "or" the US Constitution, however well intended, has potential far-reaching consequences for our military psychologists and for psychologists in general who may find themselves providing services in an international setting. A number of international organizations have adopted an activist agenda that often comes at the cost of ...

**Comment [TJW5]:** Limiting the applicability of the US Constitution to "(where appropriate)" creates (hopefully inadvertently), a supremacy of International Law over the US Constitution for those psychologist operating within a national security settings. This reveals a misunderstanding of the protections afforded one under the US Constitution vs international law. ...

**Comment [TJW6]:** Recommend you take reference to military psychologists treating military members "out of the footnotes". That merely follows an earlier convention used by the 2008 APA Petition Resolution Ballot. It deserves greater clarity and emphasis than a footnote provides.

**Comment [TJW7]:** Reference to "including statements upholding the inviolate nature of human rights" should be incorporated into the first policy statement. No reference or qualifier is provided as to what "statements" obtain from this dictate (e.g., it is intended to reflect other policies?). Recommend removing the phrase. Without it, the statement replicates an important aspect of the PENS policy. ...

**Comment [TJW8]:** Stipulating "any and all conditions" is too limiting since if strictly adhered to, it would be a violation to provide instruction even on actions that may have taken place during the Korean War when Chinese "psychologists" brainwashed captured "American Soldiers."

[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

**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 1 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*

**Comment [TJW9]:** By using the conjunction "or" instead of "and," the definition implies that "International Law" or "the US Constitution (where appropriate)" will apply. Attempting to "decouple" legal protections granted by the US Constitution by making psychologists who work in support of national security either accountable to "either" International Law "or" the US Constitution creates an unacceptable vulnerability and essentially asks those psychologists to forgo any of the protections normally afforded American citizens. Furthermore, most psychologists who work in support of national security have sworn an oath to "protect and defend" the US Constitution. There are many legal ramifications to this that are not clearly foreseen by those who have crafted this provision. The linkage between any international law and our constitutional protections is what Congress, in particular the Senate, is charged with considering. We should not attempt to usurp their authority in an effort to establish some ethical guidelines.

**Comment [TJW10]:** See note on previous page pertaining to this same issue.

**Comment [TJW11]:** It is important that we recognize two major points are made in this policy: First, ALL psychologists must hold themselves to a higher standard if the ethical standard is higher than the law. Second, if it is your understanding that your ethical standard conflicts with the law, you are advised to break the law. This creates a "legal fiction" whereby one is told in Policy #1 that you must always follow international law (and if applicable) the US Constitution but then we are quickly asked to usurp the law if the ethics code demands a higher standard.

**Comment [TJW12]:** In my opinion, the 2010 amendment to the *Ethics Code* now creates a contradiction within the Code itself. For example, by pulling the General Principles more directly into a standards, this rendering creates a "Standard" since it now stipulates that the "Standard" must be resolved "consistent with the General Principle" in contrast to the *Ethics Code* guidance that the General Principles are "not themselves enforceable standards" but "should be considered." See also Standard 1.03.

**Comment [T13]:** Strongly recommend that APA policy remain true to the accepted US policy which is linked to the overall "Convention Against Torture". The parenthetical linkage of "[in accordance with both domestic and international law]" may seem an innocent but more pointed mandate. However much we might like to have all psychologists fall into accord with international and domestic law, we need to anticipate the full implications of such a rendering, especially in light of the fact that psychologists are licensed by states who then serve to regulate their professional ...

**Comment [T14]:** This doesn't make sense since no term is provided (although a phrase is). Is this missing a word? Regardless, if we have just defined APA's definition of torture above, this appears an awkward attempt to link APA's definition of torture to the US reservation with the definition that demonstrated how the US Constitution already prohibits torture but that the protections extend beyond citizenship. Recommend re-write of this section.

*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.

**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 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 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.
- Refrain from engaging in multiple relationships such as being both a health care provider and a national security setting consultant.
- 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.

**Comment [T15]:** These various sources offer many different perspectives and were generated and developed as policy as consensus statements from the perspectives of representative stakeholders. By linking APA policy to "all" of these, it moves these from becoming "aspirational" objectives to "ethical standards." That is not practical. The PENS report did a very nice job of identifying how the representations contained within many of these documents pertained to and were relevant for psychologists. I recommend we leverage the foundation of the PENS report to update policy and identify the specific ethical standards to which psychologists must adhere. Merely stating "we follow all those international provisions" creates an impossible to monitor and do not lend themselves to enforceable rules and standards.

**Comment [T16]:** Recommend rewording to: An absolute prohibition against the following techniques therefore arises from, is understood in the context of, and is interpreted according to the aforementioned texts whenever severe pain or suffering is "intentionally inflicted." This makes more evident culpability and intent since it more directly addresses the "torturer's state of mind." However much we might like to create a sweeping prohibition, such a desired does not obtain from reality. For example, the privations and hardships of warzones may result in some amount of severe suffering (e.g., exposure to severe heat or cold; noises in the cells that keep someone from sleeping, etc.); privations that are non-specific and potentially shared by ALL. Thus, although severe suffering may occur, there was no intent to torture. This becomes important from both a legal and ethical perspective since according to the IRC, even the setting can be judged as "tantamount to torture." Without linkage to "intent", this ethical provision could conceivably allow prisoners to file ethics complaints against psychologists working in prison settings where overcrowding, temperature control or other factors that result from poor prison conditions. Therefore, strongly recommend we qualify with a focus on the state of the mind to recognize there may exist poor conditions which were "not intended" and therefore do not constitute or rise to the level of torture.

**Comment [TJW17]:** This Policy statement overextends the reach in an effort to hold psychologists' work "in accordance" with six different international policies. The Ethics Code in general promotes human rights. It is inappropriate to now hold some psychologists who may work in support of national security, some of which may occur within the US borders, to international law. The previous policies are very clear in the prohibition against torture. This policy statement is unnecessary at best and inappropriate.

- 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.

**Comment [TJW19]:** This is the heart of what this consolidation of policies needs to achieve. The Ethics Code is foundational; these are the qualifiers that help provide additional guidance for an ethical practice of psychology in national security settings. If we really want to go much beyond this, the entire ethics code should be revised to represent "international interests" and not just hold those psychologists working in national security settings to those higher standards.

**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.

**Comment [TJW20]:** This sounds more like a political statement than a policy statement. The policy statements make the prohibitions addressed within this paragraph clear enough. Recommend moving this to a cover letter when you send the policy forward.

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.

**Comment [TJW21]:** Is this a policy statement? This again sound more political than policy. We need to carefully consider the full ramifications since in many ways these policy statements are aimed at those within national security settings but the provisions may well land on a wide array of practitioners (e.g., police and forensic psychologists). This is especially true if increasing numbers of terrorists who pose threats to our national security are tried within the domestic legal system.

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.

**Comment [TJW22]:** Shouldn't this say "psychologists." As noted above, most psychologists working in national security settings are not providing health care. It is unclear to all we are now suggesting that ALL health professionals should have "guidelines" developed for them by the APA Ethics Committee. That is how this is worded. That seems inappropriate.

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

## 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]:

*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.

*To what authority can psychologists turn for guidance?*

**Comment [TJW23]:** To re-emphasize what I addressed earlier, this is more complicated than one might want to consider. For example, under international law, a state cannot be bound by treaties to which it has not consented. Secondly, even if we wish to somehow say that psychologists in national security settings must be held to some international standard, the International Criminal Court (ICC) has two relevant criteria for us consider: first, torture falls under the ICC’s jurisdiction as a crime against humanity if committed as a “part of a widespread and systematic attack directed against any civilian population” and to constitute a warcrime the torture must be committed against “persons or property protected under the provisions of the relevant Geneva Conventions” Rome Statute of the International Criminal Court, 37 I.L.M. 999, U.N. Doc. A/Conf. 183/9, 1998. Thus, in order for international to apply, all the nation states involved would need to signatories of the Geneva Convention and the individuals would need “protected” status by the Geneva Conventions. Again, it’s more complicated.

**Comment [TJW24]:** We need to carefully consider the full ramifications of this since the ICRC has also declared the “mere setting is tantamount to torture”. We cannot, within the policy itself, stipulate that “either, or” International Law “or” the US Constitution will apply and then turn around within the guidance and indicate, as is done in the paragraph above, that challenges cannot occur if the setting functions within the legal system.

**Comment [TJW25]:** I am hopeful that this construction is not being used to indicate that the United States, through its use of “enemy combatant” [see your endnote #7], is operating “outside of international law”. This unfortunate conclusion is easily drawn by highlighting how “naming its detainees enemy combatants” is a relevant example of a detention setting “outside of international law.” If so, it is misguided and part of the grave concern and difficulty with this approach that attempts to both sway and craft APA policy within International Law. It is important to step back and reflect on the fact that psychologists are licensed to practice by the 50 different States instead of one national sovereign. That helps to ensure, like the Framers of our Constitution intended, that the powers of our government which touch our daily lives “in the ordinary course of affairs, concerns the lives, liberties, and properties of the people” (The Federalist No. 45, at 293). Thus, the independent power of the States (and their respective licensing boards), helps to serve as a check on any one governmental entity (e.g., Federal or Int’l) from establishing complete jurisdiction over all the concerns of the professional practice of psychologists. With the offerings in this section, we seem to be striving to establish “international law” as serving to develop the “complete jurisdiction” while ignoring the risks to our liberty from allowing multiple international entities, commissions, and entities to establish some arbitrary power to make determinations of appropriate and ethical practices of psychologists supporting the national of the United States... what is wrong with this picture?



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.

*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."

**Comment [TJW26]:** See note 23 above.

**Comment [TJW27]:** It is important to highlight that Section 2340A of Title 18 U.S.C.A. already stipulates that it is a criminal offense for any person "outside the United States [to] commit or attempt to commit torture."

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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/>

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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.").

**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 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 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*.

- *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.

**Comment [TJW28]:** It is unfortunate that we have an APA Policy document that is advocating “disobeying law”. How can we attempt to construct an elaborate international law underpinning that is linked to the US Constitution and then “affirm the responsibility of psychologists under the Ethics Code (2010) to disobey law, regulations, or orders...” Ours once was a nation where no one was above the law. What legal training is provided to psychologists to help them validly and reliably discern and decide which laws to follow and when they should disobey. As noted in several earlier notes, responding “legally” to the stipulations between “international law” and the U.S. Constitution are not as easily sorted out as one would like to have it be. For example, as noted earlier, one might find themselves staring at a conflict of international law and the U.S. Constitution. If the Senate does not “advise and consent” that would mean International Law does not apply, only the U.S. Constitution...does our psychologist then, according to the guidance provided in this policy get to decide which of the two best meets their immediate circumstance? What do we know about bias in our decision-making? Bottom Line: Most psychologists providing support in national security settings took an oath of office to protect and defend the U.S. Constitution and that is done from a well-reasoned position. For example, under our Constitution, members of Congress, as our elected representatives, have the expertise and are entrusted with the prerogative to make policy judgments. If we disagree with these judgments, and enough join in our belief, we can elect new representatives. Thus, it is our job as citizens to ensure we understand the consequences of our political choices. We can do that within our Constitution, we do not have the same standing within International Law to do so but must again, depend on our elected representatives, the Executive, to propose which international laws we “should” follow and within the Senate to “advise and consent” as to whether they agree. Thus, it is ill-advised to champion international law over our Constitution, since to do so would potentially extend an ethics policy of the APA in such a manner so as to disavow the carefully constructed separation of federal power provisions provided within our Constitution. If the law does not represent an ethical stance deemed important by the APA and its members, then, as a NGO, it should seek to convince the elected officials, who represent our citizens, of the relative merits of such a measure. That is the more “ethical” approach which also happens to be the more legal one as well.

**Comment [TJW29]:** Since ALL psychologists should reflect APA’s long-standing commitment to basic human rights, then it should hold that ALL psychologists (not just those in national security settings), should review these documents.

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 Standard Minimum Rules for the Treatment of Prisoners (First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report by the Secretariat (United Nations publication, Sales No. E.1956.IV.4, annex I.A)).

- *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.

**Comment [TJW30]:** While this section is interesting and serves as a convenient resource, there seems to be very little thought as to what this really means for this proposed policy consolidation. Since these principles are really focused on "patient-care" related activities taken by physicians, how does it apply except by "extrapolation" of what has been deemed important for physicians "must" also be important for psychologists?

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.

**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-

**Comment [TJW31]:** This is an appropriate overview and explanation for the provisions of the ethics code and how it applies to national security settings. Nonetheless, it is in essence a restatement of the existing ethics code with some elaboration and explanation such as is provided by the PENS policy.

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.

**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.”)

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](http://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

**Comment [TJW32]:** These sound like “political statements or stands and would be more appropriate either in a cover letter to share some of the motivations behind this consolidation but adds nothing to this section. Recommend deleting.

**Comment [TJW33]:** Again, a policy needs to apply to ALL psychologists, not just Military clinical psychologists. There may be occasion whereby a psychologist who is in an academic setting is “contracted” to provide support in a national security setting. This policy should apply to the special settings, not to a specific category of psychologist. Although that may have been intended all along, the specific “call out” for “military clinical psychologists” to indicate they can still provide treatment for military personnel, creates the impression that this policy document is just for military psychologists.

“(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; ‘

‘(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.

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THOSE COMMENTS WHICH ARE TRUNCATED IN EARLIER PAGES ARE PRESENTED HERE IN THEIR ENTIRETY.

COMMENT [TJW2] A careful reading of the PENS policy reinforces how it achieves both clarity of expression and has a clearly identified purpose. That is, it very specifically proscribes for psychologists, any actions that would involve violating any existing APA policies and/or Human Rights and delimits any extrapolation of presumed authorities related law or organizational policy (the presumed intent of this Task Force's terms of reference). The 2007 APA resolution and the 2010 change to the Ethics Code, clarified APA's position and holding for the supremacy of the Ethics Code over legal or organizational demands (e.g., "being ordered" could not excuse torture or cruel, inhuman, and degrading treatment).

COMMENT [TJW3] Confusion is created by indicating the proposed policy is premised on three "principles" which are then used, almost verbatim, as "Policy Statements" #1-#3. The confusion arises since within the APA Ethics Code, "Principles" are defined as "aspirational in nature." Consequently, by offering the "principles" as "policy statements," it creates an impression that the policy statements are also "aspirational" in nature. One would presume that is not the intent of the policy statements.

COMMENT [TJW4] This linkage between "either" International Law "or" the US Constitution, however well intended, has potential far-reaching consequences for our military psychologists and for psychologists in general who may find themselves providing services in an international setting. A number of international organizations have adopted an activist agenda that often comes at the cost of the traditional freedoms and independence U.S. citizens have enjoyed. A careful and measured approach is advised before abdicating and/or delegating these freedoms to supranational bodies to interpret, implement, and apply their norms. In particular, our government establishes "Status of Forces" agreements with other countries where U.S. military and other citizens serving national security interests may serve. These agreements essentially serve as "treaties" and are negotiated by our executive branch (i.e., the President) and approved, via "advise and consent" by our Senate. This helps ensure that laws that bind our U.S. Citizens are decided by our constitutional officials. It also helps to establish the norms that regulate an individual's behavior outside our domestic boundaries and for the norms governing the behavior of the nation states regarding their expectations for how violations of those agreements are handled.

COMMENT [TJW5] Limiting the applicability of the US Constitution to "(where appropriate)" creates (hopefully inadvertently), a supremacy of International Law over the US Constitution for those psychologist operating within a national security settings. This reveals a misunderstanding of the protections afforded one under the US Constitution vs international law. Recommend deletion of the "where appropriate". Since Federal Courts, under The Judiciary Act, grants to the Federal judiciary the power to hear claims regarding violations of international law and given that Federal courts also have long held that Federal law includes "universally recognized human rights norms", we need to ensure we are not, via an ethics policy, creating a situation whereby our interpretation of the laws that pertain to our ethics code result from the political actions of several other nation states. That is the direction this provision seems to be starting to take us.

COMMENT [TJW7] Reference to "including statements upholding the inviolate nature of human rights" should be incorporated into the first policy statement. No reference or qualifier is provided as to what "statements" obtain from this dictate (e.g., it is intended to reflect other policies?). Recommend removing the phrase. Without it, the statement replicates an important aspect of the PENS

policy and reinforces the Ethics Code linkage to when one is acting in a professional role as a psychology.

#### COMMENT [TJW13

Strongly recommend that APA policy remain true to the accepted US policy which is linked to the overall "Convention Against Torture". The parenthetical linkage of "[in accordance with both domestic and international law]" may seem an innocent but more pointed mandate. However much we might like to have all psychologists fall into accord with international and domestic law, we need to anticipate the full implications of such a rendering, especially in light of the fact that psychologists are licensed by states who then serve to regulate their professional activities. Thus, by stipulating the linkage to "domestic law" we either now must address the 50 states and territories licensing laws (presuming we mean the U.S. by domestic) thereby, and by extension, it leads to us creating a potential lack of universality in how this provision might be applied since the "lawful sanctions provision" and linkage to domestic law now gives states flexibility to apply this exception. The recommended definition of torture should therefore remain: "For the purposes of this convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on 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 capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." Thus, while our politics and dispositions toward certain measures or actions by our government may render an action as more or less wise, "we" cannot render them as more or less constitutional (cf., Chief Justice John Marshall, A Friend of the Constitution No. V, Alexandria Gazette, July 5, 1819). By extension, we need to ensure we retain a definition of torture that U.S. Federal Courts recognize and use since that provides us a national uniformity in the application of the legal standards upon which an ethical foundation is made.