
***Report of the APA Presidential Advisory Group
on the Implementation of the Petition Resolution***

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Report of the APA Presidential Advisory Group on the Implementation of the Petition Resolution

This report reflects the work of an advisory group appointed by APA President Alan Kazdin in November of 2008 to provide guidance to the APA Council of Representatives regarding the implementation of the petition resolution approved by a vote of the APA membership two months earlier. This resolution relates to the involvement of psychologists in settings where persons are being detained unlawfully based on national security reasons, such as has occurred at the U.S. Naval Base at Guantánamo Bay, Cuba, and at CIA black sites around the world. Specifically, the policy prohibits psychologists from working 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” or they are providing treatment for military personnel.

APA Council adopted resolutions against torture and cruel, inhuman, or degrading treatment and punishment in 2006 and 2007 (with an amendment in 2008). This petition resolution focuses on unlawful detention settings. The resolution emerged from concerted debate and analysis, culminating in a vote of the APA membership for only the second time in APA’s history. The resolution not only adds to APA’s longstanding policy against torture but also contributes to the legacy of APA’s strong policy in support of human rights. The full text of the resolution with the pro, con, and rebuttal statements is included in the Appendix to this report and can be found at: <http://www.apa.org/governance/resolutions/work-settings.html>.

APA President Kazdin created the *APA Presidential Advisory Group on the Implementation of the Petition Resolution* to review actions already taken related to the resolution and to address whether there are additional options that the APA Council of Representatives should consider as it determines how best to implement the petition resolution. This task was indicated, since according to the APA Bylaws, the “Council shall take such action as may be necessary to implement the result of any such vote.”

Several APA actions had already been initiated prior to the formation of the advisory group to inform key federal officials of the passage of the resolution and its ongoing implementation. Shortly after the passage of the resolution, President Kazdin sent letters on behalf of APA to President George W. Bush, Defense Secretary Robert Gates, CIA Director Michael Hayden, and Attorney General Michael Mukasey. Similar letters were sent to the chairmen and ranking members of the U.S. Senate and House of Representatives Armed Services, Intelligence, and Judiciary Committees. The letters also called upon the recipients to safeguard the welfare and human rights of individuals detained for national security reasons and to investigate their treatment to ensure that the highest ethical standards are being upheld.

The advisory group was presented with the following two-part charge:

- 1) To identify issues in need of clarification regarding the intent and scope of the resolution and to provide a brief explanatory statement for each issue. Also to list

possible actions that would serve to clarify each of these issues for Council to review and consider at its February 2009 meeting; and

- 2) To propose possible options to implement the resolution, including any new business items, for Council's review and consideration in February

As a potential aid to Council, the advisory group was asked to indicate options for which there was group consensus. However, suggestions of options for implementing the resolution that did not achieve consensus, including those that were supported by less than a majority of the advisory group, were still to be included in the set of options forwarded to Council.

The advisory group was also charged with preparing a brief report to further clarify the intent and scope of the resolution and to provide a bulleted set of implementation options for Council to consider, which could be presented with background or contextual information. The Council of Representatives, as the governing body of the Association, has the responsibility to take implementing action that it deems appropriate, including adoption of all, some, or none of the options provided by this report or new ones prompted by the work of the advisory group.

The advisory group held a 1 ½ day meeting at APA Central Office in Washington, D.C., on November 14-15, 2008. The composition of the group, as appointed by Dr. Kazdin, included two members of the Board of Directors, seven Council members representing most of the relevant divisions, and the three original petitioners. The work of the advisory group continued via email and was completed by the December 31, 2008, deadline to provide sufficient time for Council to review the advisory group's work in advance of its February 2009 meeting. The advisory group's process was collegial and consensus-driven, characterized by healthy and open debate among members with different perspectives and backgrounds. *The advisory group is pleased to report that consensus was ultimately achieved for every item included in its work products.*

To carry out its mandate, the advisory group prepared the following two brief documents for Council's consideration: 1) Clarification of Issues Regarding the Petition Resolution (in a question and answer format); and 2) Options for Council to Consider Related to the Implementation of the Petition Resolution.

With respect to the latter document, we encourage the APA Board of Directors and Council to consider all the suggested options carefully, and to act as expeditiously as possible. The proposed options vary on several dimensions. Some reiterate the importance of, or expand upon, actions already underway at APA (e.g., the Ethics Committee's work on a casebook and Standard 1.02, as well as APA's letters to federal officials), whereas others might require new action. Some options might require Council action to implement them fully, whereas others might be accomplished through APA's Central Office (e.g., offer consultation to psychologists working in settings potentially in violation of the resolution), or an existing APA committee (e.g., the Ethics Committee), with or without Council action.

While the advisory group understands that its task ends with the submission of this report, the individual members would like to make themselves available as a resource to the association in its deliberations related to the petition resolution and its

implementation. The advisory group appreciates the opportunity to provide input to Council on the important issues concerning the implementation of the petition resolution.

Clarification of Issues Regarding the Petition Resolution

1. What is the intent of this new policy?

This policy restricts psychologists from working in settings where persons are held outside of, or in violation of, international law, the U.S. Constitution (where appropriate), or in violation of longstanding APA policy that prohibits psychologists from participating in torture and other cruel, inhuman, or degrading treatment or punishment. The roles of psychologists in these settings would now be limited to “working directly for the detainee” or “for an independent third party working to protect human rights” (see clarification #9), or to providing treatment for military personnel. The intent of the policy is to withhold the legitimizing power of our professional association from the unlawful settings and to bar any direct or indirect participation by psychologists in maintaining the abusive conditions at these sites.

2. How is torture defined?

For purposes of implementing this policy, torture and cruel, inhuman, or degrading treatment or punishment are defined in terms of internationally accepted instruments, such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Geneva Conventions, including those documents referenced in this new policy, as well as in the 2008 amendment to the 2007 APA resolution against torture. This definition is derived from a wide range of treaties and court cases; as such, the definition is likely to expand as courts consider and make decisions on new cases. In this context, international law is given precedence over domestic law.

3. 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?”

In the present political context, the policy is focused on settings, such as the U.S. Naval Base at Guantánamo Bay or the CIA “black sites,” which have operated “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.

4. To what authority can psychologists turn for guidance?

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

5. Does the policy apply to domestic settings where persons are detained?

This policy takes no position on existing domestic jails and prisons, nor does it take a position on settings that now exist within the domestic mental health system. Existing U.S. jails, prisons, and psychiatric hospitals all function within the legal system. Even if they are found to be in violation of the U.S. Constitution, the finding itself demonstrates that they function within a legal framework.

For this APA policy to apply to a domestic setting, the conditions in that setting would need to be equivalent to those mentioned in the resolution’s “whereas” statements. If, for example, the Guantánamo detention facility were closed and the persons detained there brought to a domestic prison and not afforded their full protections under international law, this policy would apply in regard to those detainees now held at that prison. It would not apply to the entire facility unless services and housing for the former Guantánamo detainees were commingled with other U.S. prisoners. For ambiguous situations, the APA Ethics Committee may be able to provide guidance on a case-by-case basis.

6. 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.

7. 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.

8. 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.

9. 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.”

10. How will this policy affect psychologists in the military and those employed by intelligence agencies?

This policy does not affect the work of psychologists in the military and intelligence agencies who work in settings that operate in conformity with international law and APA policy.

Psychologists in the military and intelligence agencies should not volunteer to be deployed, and should strive to avoid being deployed, to settings proscribed under this

policy, unless they are providing treatment to military personnel. Also, psychologists who are currently deployed to settings proscribed under this policy should seek to have their assignment curtailed unless they are providing treatment to military personnel.

11. To whom does this policy apply, and is it enforceable?

With this new policy, APA members now have the full support of their professional association behind their decisions to initially choose or request transfer to settings that comply with this policy. Although it applies only to APA members, the policy sets a standard for all professionals working in the field of psychology, whether as military or civilian clinicians or behavioral scientists, as do other APA policies. As the largest association of psychologists in the world, APA's positions on psychological matters are noted throughout the world. This policy says clearly to psychologists in the U.S. and to others beyond our borders the extent to which the APA categorically opposes the abuse of detainees delineated in the policy.

This policy is not currently enforceable. However, should these principles be included as part of the Ethical Principles and Code of Conduct, they would be enforceable by APA under a revised Ethics Code. Further, since the Ethics Code is incorporated into many state psychology licensing laws, it would have enforceability at the state regulatory level. In sum, while this policy is not yet enforceable, it has the same status as any other APA policy and should not be seen as optional.

Options for Council to Consider Related to the Implementation of the Petition Resolution

In keeping with its second charge, the advisory group identified seven sets of options for implementing the petition resolution for Council to consider, *which reflect the full consensus of its members following much discussion and thorough deliberation*. The specific options are provided below with some background and/or contextual information for further explanation.

1. ADOPT A TITLE AND ESTABLISH AN EFFECTIVE DATE FOR THE PETITION RESOLUTION WHEN RECORDING THE VOTE ON THE REFERENDUM

- **Include the petition resolution with related statements and adopt a title for the resolution when recording the membership vote in the Council minutes for the February 2009 Council meeting, as required by Association Rule 30-3.1**

In recording the membership vote, the advisory group recommends that the Council minutes include the complete text of the resolution with footnotes, and the pro, con, and rebuttal statements that accompanied the petition ballot, since they are critical to interpreting the resolution. The advisory group unanimously endorsed and recommends the following title for this new policy: *“Psychologists and Unlawful Detention Settings with a Focus on*

National Security.” This title will serve to identify the resolution (as is the case for other APA resolutions) and to help clarify its intended scope and context.

- **Vote to suspend the Association Rules to render the policy effective as of the February 2009 Council meeting**

The advisory group carefully reviewed the APA Association Rules for guidance to determine when a petition approved by a mail vote of the APA membership becomes effective. According to Association Rule 30-3.1, “Action on a petition is not complete until the next annual meeting.” The advisory group consulted with the APA General Counsel who advised that this provision should be interpreted as meaning that the effective date of the petition resolution is the 2009 APA Annual Convention. Although the advisory group recognizes the importance of delaying the effective date of some types of votes, the members could not foresee any benefit, and possibly some harm, in delaying the effective date of the petition resolution until August 2009. Indeed, the APA President has already corresponded with government leaders about APA’s new policy and its ongoing implementation.

The 2009 APA parliamentarian will be consulted as to whether Association Rule 30-3.1 is considered a point of order or a standing rule, which would require a two-thirds or majority vote of Council, respectively, to suspend the rules. Then, a motion to make the policy effective as of the February 2009 Council meeting would be offered, debated, and voted upon by Council.

2. **PROVIDE CLARIFICATION** regarding the policy for APA members and the general public

- **Adopt a clarifying statement to accompany the resolution**

The product of the advisory group’s first charge (i.e., to produce a list of issues for clarification and provide a brief explanatory statement for each) is provided for this purpose. The advisory group spent considerable time discussing the resolution and its accompanying pro, con, and rebuttal statements and reached consensus on the clarifying statement.

- **Post the clarifying statement and other additional resources on the APA Web site and provide more information about the policy in the MONITOR**

- **Seek available hour(s) for a 2009 APA Convention program on the implementation of this new policy**

3. **PROVIDE GUIDANCE TO PSYCHOLOGISTS**, including those in the military and intelligence community, regarding key issues related to the implementation of the resolution

- **Facilitate outreach through the APA Office of International Affairs and APA’s UN representatives** to the U.N. Office of the High Commissioner for

Human Rights (or through that office, the Special Rapporteur Against Torture) and to non-governmental organizations (e.g., International Committee of the Red Cross, Amnesty International, and the Center for Constitutional Rights) to help evaluate the applicability of the resolution to a given work setting

- **Offer consultation to psychologists working in settings potentially in violation of the policy** by, for example, covering related issues in the APA Ethics Casebook under development, providing continuing education programs, and establishing an ethics consultation function to help psychologists determine whether they should leave a given work setting
- **Direct APA Central Office to forward the new APA policy with clarifying information to the Association of State and Provincial Psychology Boards (ASPPB)**, so that ASPPB can provide guidance to state licensing boards regarding the policy, including its applicability to domestic work settings
- **Compile a comprehensive list of resources relevant to this policy**, including U.N. and other international documents, those related to federal agencies (e.g., the U.S. Departments of Defense and Armed Services, Veterans Health Administration), journal articles, APA policies and materials, reports of other organizations, and media accounts

4. **CONSIDER IMPLICATIONS FOR APA ETHICS CODE AND COMMITTEE**

- **Expand the scope of the Ethics Casebook** currently being developed by the Ethics Committee to include issues raised by this policy
- **Recommend that the Ethics Committee incorporate guidance reflective of this new policy related to work settings** (as explicated in the accompanying clarification document) and of the 2006 and 2007 Council resolutions with the latter's 2008 amendment related to torture and other cruel, inhuman, or degrading treatment or punishment into any revision of the Ethics Code, while ensuring that principles of human rights are explicitly addressed in the ethical standards. In so doing, the codes of ethics of professional organizations that prohibit their members from working in settings that would be in violation of this policy, such as the Australian Psychological Society and the American Anthropological Association, might be useful.
- **Recommend that any revision of the Ethics Code based on this policy include a review of ethical standard 1.02 and any other ethical standard or section** of the Ethics Code that might be construed as permitting psychologists to exempt themselves from this policy
- **Recommend that the Ethics Committee develop educational materials** on international law and ethics, specifically addressing the work of psychologists in settings addressed by this policy

- **Recommend that the Ethics Committee expeditiously act upon any ethical complaints** that are filed against psychologists alleged to have participated in torture or other cruel, inhuman, or degrading treatment and report to the Board of Directors and Council if inaccessibility to classified information is an obstacle to resolving the complaints, understanding that the Committee will continue to maintain the confidentiality of its investigations and proceedings

5. COMMUNICATE WITH FEDERAL OFFICIALS

- **Follow up on APA's earlier outreach efforts to the Executive Branch and Congress** by sending letters to President-elect Obama and to new key federal officials in his administration, as well as to any new key congressional committee leaders, to inform them about the new APA policy (including the clarification document and an explanation of how the new policy relates to prior APA resolutions) and to request their support in its implementation. Also urge the appropriate officials in the U.S. government to fully endorse and implement the U.N. Convention Against Torture by removing its reservations and supporting the monitoring provision of the Convention.
- **Recommend that APA staff consult with human rights organizations (e.g., Physicians for Human Rights) and with psychologists from South Africa or any other relevant countries** who played a pivotal role in setting up national Truth and Reconciliation Commissions and then convey to relevant committees of the U.S. Congress the merits of such a commission to investigate human rights violations at the U.S. Naval Base at Guantánamo Bay, Cuba, and at CIA black sites

6. LINKAGES WITH INDEPENDENT THIRD PARTIES

- **Explore establishing potential linkages with independent third parties**, such as the International Committee of the Red Cross and the Center for Constitutional Rights, and with other stakeholders working to protect human rights, which have been able to gain access to detention sites like the U.S. Naval Base at Guantánamo Bay. These groups will be able to provide models for gaining access to such sites for the purposes of assessment and treatment of detainees that would comply with the new policy

7. STUDY THE IMPACT OF THE POLICY

- **Recommend that APA Central Office report annually to the Council and Board of Directors beginning in December of 2009** concerning steps taken to implement this policy, including the collection and analysis of data relevant to the impact of the policy, with the understanding that such reports may not be needed in the future due to changed political circumstances internationally
- **Recommend that the Ethics Committee submit an annual report beginning in December of 2009 comprised of aggregate and redacted data** on the number

of complaints alleging psychologist participation in torture, their current status or disposition, and the time to complete the investigative steps and adjudication of these complaints (while noting the instances in which denied access to classified information is responsible for the lack of adjudication). The results of the Ethics Committee investigation will be provided first to the Board of Directors and then to Council, the APA membership through the APA annual report, and to the public through the APA Web site.

Additional Options Related to the Petition Resolution Proposed for Consideration*

A number of other options were proposed in advisory group discussions that were deemed to be of significant importance related to the petition and other APA resolutions but not expressly to implementation of the petition resolution. Since they flow directly from the petition policy and related policies, the group decided to include these options in the document, but to separately categorize them, in consideration of the directive from President Kazdin to focus on his charge and not expand to other matters. *These additional options also reflect the full consensus of advisory group members.*

- **Include a focus on human rights among APA priorities**, as reflected in the upcoming strategic plan, and encourage APA's work to reflect societal leadership in the promotion of human rights through research, practice, education, science, and policy initiatives, including collaboration with other professional societies and human rights organizations
- **Recommend that the Office of International Affairs consult with APA government relations staff and APA's U.N. representatives to determine whether APA should urge key federal officials to sign and ratify the new Optional Protocol to the U.N. Convention Against Torture**, which authorizes both U.N. and national-level monitoring of a variety of foreign and domestic detention sites, including those prohibited by the new APA policy
- **Recommend that the statute of limitations be extended to twenty years in ethics cases involving torture or cruel, inhuman, or degrading treatment** in recognition that information needed to bring and resolve such charges may be classified or otherwise difficult to obtain and substantiate
- **Consider whether to change the language of the Association Rules to state that any policy enacted by referendum goes into effect upon passage by the APA membership, at the time Council records the vote, or within a time certain after passage.**

* These recommendations could be addressed either through referring to appropriate staff, committees and/or consultants, through integration with the other recommendations in this document or through initiating a separate new business item in Council.

APPENDIX

PETITION RESOLUTION

We the undersigned APA members in good standing, pursuant to article IV.5 of the APA bylaws, do hereby petition that the following motion be submitted to APA members for their approval or disapproval, by referendum, with all urgency:

Whereas torture is an abhorrent practice in every way contrary to the APA's stated mission of advancing psychology as a science, as a profession, and as a means of promoting human welfare.

Whereas the United Nations Special Rapporteur on Mental Health and the UN Special Rapporteur on Torture have determined that treatment equivalent to torture has been taking place at the United States Naval Base at Guantánamo Bay, Cuba. [1]

Whereas this torture took place in the context of interrogations under the direction and supervision of Behavioral Science Consultation Teams (BSCTs) that included psychologists. [2, 3]

Whereas the Council of Europe has determined that persons held in CIA black sites are subject to interrogation techniques that are also equivalent to torture [4], and because psychologists helped develop abusive interrogation techniques used at these sites. [3, 5]

Whereas the International Committee of the Red Cross determined in 2003 that the conditions in the US detention facility in Guantánamo Bay are themselves tantamount to torture [6], and therefore by their presence psychologists are playing a role in maintaining these conditions.

Be it resolved that 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[7].

Footnotes

[1] *United Nations Commission on Human Rights. (2006). Situation of detainees at Guantánamo Bay. Retrieved March 4, 2008, from http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/16_02_06_un_guantanamo.pdf* The full title of the 'Special Rapporteur on Mental Health' is the 'Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health'.

[2] *Miles, S. (2007). Medical ethics and the interrogation of Guantanamo 063. The American Journal of Bioethics, 7(4), 5. Retrieved March 4, 2008, from http://ajobonline.com/journal/j_articles.php?aid=1140*

[3] *Office of the Inspector General, Department of Defense: Review of DoD-Directed Investigations of Detainee Abuse. Retrieved March 4, 2008, from <http://www.fas.org/irp/agency/dod/abuse.pdf>*

[4] *Council of Europe Committee on Legal Affairs and Human Rights (2007). Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report. Retrieved March 4, 2008, from http://assembly.coe.int/Main.asp?link=http://assembly.coe.int/Documents/WorkingDocs/Doc07/doc_11302.htm*

[5] Eban, K. (2007). *Rorschach and Awe*. *Vanity Fair*. Retrieved March 4, 2008, from <http://www.vanityfair.com/politics/features/2007/07/torture200707>

[6] Lewis, N. A. (2004, November 30). *Red Cross Finds Detainee Abuse in Guantánamo*. Retrieved March 4, 2008, from <http://www.nytimes.com/2004/11/30/politics/30gitmo.html?oref=login&adxnnl=1&oref=login&adxnnlx=1101831750->

[7] *It is understood that military clinical psychologists would still be available to provide treatment for military personnel.*

PRO STATEMENT

Brad Olson, PhD

As psychologists, our first ethical principle is to do no harm; yet substantial documentation reveals that American psychologists have systematically designed and participated in interrogations that amount to torture. In addition, they have helped to legitimize cruel and abusive treatment in Guantanamo Bay, Iraq, Afghanistan, and the CIA blacksites.

Responding to these revelations, the APA has passed several resolutions barring psychologists from participating in torture or cruel, inhuman, or degrading treatment or punishment. These resolutions, however, are insufficient as they do not address the critical role that psychologists play in perpetuating harmful interrogation strategies and in maintaining conditions that the International Committee of the Red Cross has labeled “tantamount to torture.”

These concerns, which have propelled over a thousand APA psychologists to bring this referendum to the membership, are not hypothetical. Psychologists, as “consultants”, have been active in interrogations that have brought about extreme forms of torture. In at least one of these cases, the psychologist advocated for an escalation to even more extreme 'enhanced interrogation techniques.'

Psychologists have also played a critical role in this administration's legal defense of torture. Justice Department lawyers have argued that torture can only take place if the perpetrator intends to cause 'prolonged mental harm' which, in turn, is measured by a subsequent diagnosis of posttraumatic stress disorder. Psychologists instead routinely provide diagnoses other than posttraumatic stress disorder, thus giving the illusion of safety and legal cover in otherwise objective instances of “torture”. Moreover, psychologists play a role in maintaining the conditions of detention, for instance, by removing “comfort items” such as toilet paper, toothpaste, and soap.

In settings that fail to meet basic standards of international law, it is unrealistic to rely on psychologists to challenge their superiors, report on violations, and protect abused detainees. We know, from decades of psychological research, that good people do bad things in bad situations. Psychologists are no less vulnerable to “behavioral drift” than others, particularly when subject to the chain of command in the closed environment of a geographically isolated detention center.

We do believe that psychologists working independently, and outside of the institution's chain of command, can and should be available to detainees, through NGOs such as the International Committee of the Red Cross. In abusive settings, clinicians working in the chain of command cannot know whether they are helping detainees recover only to return them to more abusive interrogations; and detainees cannot gauge whether the information being gathered by the clinician will be used against them—as has been documented on several occasions. Instead, the

proposed referendum policy places psychology and psychologists squarely on the side of the most vulnerable.

Some APA psychologists have argued that the presence of psychologists in these settings protects the detainee from abuse. Yet, in the six years since captives began arriving at Guantanamo, there have been few documented cases of psychologists speaking up on the behalf of detainees. There is significant evidence of many more cases of silence. While we commend anyone who has acted heroically, a reliance on individual heroism is an unsound basis for policy.

We stress that the referendum does not exclude any psychologist from working in any settings where international law and human rights are fundamentally upheld. Imperfect as our U.S. domestic justice system may be, people held within the present system have basic legal protections, including the right to know the charges against them, meet with an attorney, receive family visits and, most importantly, to be free of torture. This is in sharp contrast to the individuals gathered up and illegally taken to CIA blacksites. For the past 60 years, international law has held professionals responsible for upholding basic human rights. This referendum would thus protect psychologists from risk of future prosecutions.

Your vote in favor of the referendum will increase the independence of psychologists and protect the reputation of our discipline. The policy puts psychology and psychologists on the side of those who are the most vulnerable to mental harm. On behalf of *Psychologists for an Ethical APA* and all the APA members who have petitioned for this referendum, we strongly encourage you to research this topic through books, websites and articles, and to vote “yes” -- to support human rights and to restore the integrity of American psychology.

CON STATEMENT

Robert J. Resnick, PhD

This Overbroad Petition Will Harm Vulnerable Populations and Put Ethical Psychologists at Risk

1. This petition seeks to prohibit APA member psychologists from working in settings that are inconsistent with international law and/or the US Constitution. The petition's “Be It Resolved” clause sets forth this prohibition even though a psychologist may adhere to *all* APA ethical standards, and despite the difficulty in determining whether a particular site meets the petition's ambiguous criteria.
2. The petition thus threatens to restrict the scope of practice for psychologists whose work in psychiatric hospitals, US correctional facilities, and countless other settings serves the public good each day.
3. The petition is unnecessary given APA's strongly worded Council resolutions against torture and concerted federal advocacy directed at the Bush administration and Congress.
4. The unintended consequences arising from a resolution prohibiting *locations* of employment rather than unethical behavior make this petition impossible for us to support. Many psychologists are employed in settings where constitutional challenges arise. Such settings include jails, prisons, psychiatric hospitals and emergency rooms, and forensic units. Likewise, many psychologists work in settings that could be considered inconsistent with international standards, for example, settings where the death penalty

may be administered. The “Be It Resolved” clause potentially affects thousands of APA members.

5. While APA is clear that the petition, if adopted, is not enforceable, allegations that a psychologist was violating APA policy could arise in multiple venues (civil court; a licensing board; state psychological association, hospital, and other professional organizations' ethics committees). Especially given the petition's ambiguity regarding whether international standards and/or the US Constitution apply in a given instance, the petition places APA members doing good and ethical work in an untenable position of uncertainty regarding whether their practice is consistent with APA policy.

6. The clause “unless they are working directly for the persons being detained or for an independent third party working to protect human rights” would prevent psychologists in a prohibited setting from providing services to a person in psychological distress, since in most all settings psychologists work for the institution and not for the individual being held. Unlike the Ethics Code, the petition does not provide a way to resolve this ethical dilemma, i.e., between a prohibition from providing services and the need for services. (See e.g., Ethical Standard 2.02, Providing Services in Emergencies, allowing psychologists without the necessary training to provide services in emergent situations when other services are not available.) A psychologist who, in all good faith, assisted an individual in distress could nonetheless be in violation of APA policy.

7. The sponsors' good and noble intentions notwithstanding, for over two decades APA has held that torture is unethical and always prohibited. Five APA resolutions provide clear, explicit condemnations of torture. The last sentence of the 2008 resolution states: *Psychologists are absolutely prohibited from knowingly planning, designing, participating or assisting in the use of all condemned techniques [Note: nearly two dozen techniques are enumerated] at any time and may not enlist others to employ these techniques in order to circumvent this resolution's prohibition.* APA has stated emphatically: Following orders is *never* a defense to torture.

8. In August, 2007, the APA Council passed one of several resolutions condemning torture and other cruel, inhuman, and degrading treatment and punishment. Council expressed “grave concern over settings in which detainees are deprived of adequate protection of their human rights” and “affirmed the prerogative of psychologists to refuse to work in such settings.” Council noted that “APA will explore ways to support psychologists who refuse to work in such settings or who refuse to obey orders that constitute torture.” APA has called upon US courts to reject testimony resulting from torture or abuse.

9. APA has strongly and unequivocally condemned the abuse of detainees in letters to President Bush, Attorney General Mukasey, CIA Director Hayden, and members of Congress, and in articles in the media, and has urged the establishment of policies and procedures that fully protect the human rights of detainees, including judicial review of their detentions.

10. The petition seeks to prevent psychologists from working where the federal, state, or local government is acting wrongly. The precedent-setting nature of this petition, which restricts the settings in which psychologists may work, raises insurmountable concerns. A highly unfortunate side effect of the petition will be to place at risk APA members who serve vulnerable populations and behave in legal, ethical, and entirely moral ways. This petition harms the very groups it seeks to protect: Vulnerable populations and ethical psychologists.

REBUTTAL TO THE PRO STATEMENT

Robert J. Resnick, PhD

As psychologists, we are dedicated to serving vulnerable and at risk individuals and populations. Were this petition adopted, APA members who work in hospitals, correctional facilities, and rehabilitation programs across the country would now need to assess whether they are out of compliance with APA policy. This burden will neither promote ethical practice nor protect vulnerable populations.

The petition's "Be it resolved" clause goes far beyond the sponsors' intent as expressed in their "pro" statement. While the petition's introductory "Whereas" clauses refer to specific work sites, the "Be it resolved" clause contains no limiting language whatsoever regarding context. The clause makes no reference to interrogations, torture, the military, or the CIA, and thus applies broadly to wherever "persons are held" outside of international law or the US Constitution. This exclusive focus on settings makes little sense given the "pro" statement's emphasis on specific unethical behaviors—all of which APA has already prohibited.

The ambiguous criteria for distinguishing permissible from impermissible work settings compound this problem for ethical psychologists. The "Be it resolved" clause indicates the defining criteria are either international law or the US Constitution "where appropriate"—yet fails to indicate when using the Constitution, as opposed to international law, is "appropriate." APA members cannot reasonably be expected to determine whether their work setting complies with ill-defined, legal standards.

Moreover, much institutional reform in this country has been brought about by claims of Constitutional violations. It would be a bitter irony if psychologists who support reform now risk violating APA policy because they work in a setting, such as a hospital or a prison, alleged to violate the Constitution. Such an outcome would hardly benefit vulnerable populations or psychology.

Their humanitarian intentions notwithstanding, the sponsors' goals cannot be reconciled with the petition's language. The "pro" statement argument, that the petition will "protect" psychologists, dangerously assumes that APA policy will be understood and applied in precisely the manner intended. Rather, entities far removed from APA would now have a broad and ambiguous "Be it resolved" to apply against APA members.

This petition threatens ethical APA members who work each day in less-than-ideal settings to serve vulnerable populations. Our colleagues should be praised—not punished—for their efforts.

We strongly urge a "no" vote on this petition.

REBUTTAL TO THE CON STATEMENT

Ruth Fallenbaum, PhD

The *con statement* pointedly misconstrues the meaning of the referendum. We therefore encourage you to closely read the resolution in its entirety. Every concern raised is answered within its text: the first citation discusses the scope and applicability of international law; the "whereas" statements provide context for the "resolved" statement. No portion is unimportant. Given the short space allowed, we will address two major concerns.

A flood of domestic lawsuits?

This is not at all likely. While anyone can file a frivolous lawsuit, a judge reading the full text of this referendum would be hard pressed to interpret it as barring psychologists from working at sites that neither the U.N. nor the Supreme Court have found to be in violation of the law. 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.

Dangers of “unintended consequences?”

“Unintended consequences” attend any policy. In fact, this referendum is itself a response to the consequences of the APA's policy of “engagement.” By promoting the participation of psychologists at sites like Guantánamo, the policy has tarnished our profession and provided cover for those who have engaged in torture.

The moral issue of our time has landed at our doorstep, and we cannot turn away.

When a governing authority opts out of the rule of law, psychologists need to speak out for human rights. Psychologists working within unjust settings deserve a professional organization that protects them against participating in and legitimizing unethical and illegal behavior. You can make this happen by voting “yes”.