SUMMARY

Council is asked to approve the substitute main motion below that includes a revised resolution with a new title, *Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings*. This resolution further aligns the APA policy definition for “cruel, inhuman or degrading treatment or punishment” (in the 2006 and 2013 Council resolutions) with the United Nations (UN) Convention Against Torture and ensures that the definition applies broadly to all individuals and settings; offers APA as a supportive resource for ethical practice for psychologists, including those in military and national security roles; prohibits psychologists from participating in national security interrogations; clarifies the intended application of the 2008 petition resolution (see [http://www.apa.org/news/press/statements/work-settings.aspx](http://www.apa.org/news/press/statements/work-settings.aspx)); and calls for APA letters to be sent to federal officials to inform them of these policy changes and clarifications of existing APA policy.

Council new business item #23B was submitted in February of 2014 by Drs. Scott Churchill (the primary mover), Jean Maria Arrigo, and Frank Farley. The substitute motion reflects the additional contributions of Dr. Steven Reisner and Dan Aalbers, along with Drs. Linda Woolf, Judith Van Hoorn, and Kathleen Dockett, who played instrumental roles in the drafting of prior APA policies in this area. The movers would also like to acknowledge the collaborative efforts of Dr. Ellen Garrison, APA Senior Policy Advisor, and Jesse Raben, J.D., Associate General Counsel, and the benefits derived from two outside expert legal analyses commissioned by APA. NBI #23B item was referred to the following governance groups for review: Committee on Legal Issues (COLI) and the Policy and Planning Board (P&P) as lead groups), along with the Ethics Committee and Board of Professional Affairs (BPA). Feedback from the review groups is summarized in the Recommendation section below and can be found in Exhibit 1.

At its June 2015 meeting, the Board of Directors recommended approval of the substitute motion as a significant policy response to the Hoffman Independent Review Report.

STRATEGIC GOALS/OBJECTIVES

Expand Psychology’s Role in Advancing Health (2c, e, and g)

FINANCIAL IMPLICATIONS

None.

IMPLEMENTATION PLAN

Upon approval by the Council of Representatives, this policy will be included in the APA Council Policy Manual, and the 2006 Council resolution ([http://www.apa.org/about/policy/chapter-3.aspx#torture-punishment](http://www.apa.org/about/policy/chapter-3.aspx#torture-punishment)) and
the 2013 Council Resolution (http://www.apa.org/about/policy/national-security.aspx) will be amended as stipulated.

APA letters will be sent to key federal government officials to inform them of this new policy and to convey its specific message, as well as to urge the U.S. government to further consider withdrawing its restrictions to the ratification of the UN Convention Against Torture.

Council asks the Ethics Committee to consider pursuing an appropriate course of action in as expeditious a manner as possible to incorporate into the Ethics Code the prohibitions surrounding psychologist participation in national security interrogations, as set forth in this policy.

RECOMMENDATION

The Board of Directors recommends approval of the substitute main motion. A recommendation from the Council Leadership Team will be provided at the Council meeting.

COLI commends the movers of NBI #23B for incorporating feedback from the outside legal review that they recommended in the fall of 2014 due to the complexity and importance of the issues involved and recommends continued thoughtful review of policy and law in determining the implications of adopting the UN definition of cruel, inhuman, or degrading treatment or punishment versus the stance of the US government’s Understanding and Reservations that qualified its 1994 ratification of the UN Convention Against Torture. (It should be noted that COLI’s review focused on an earlier draft of the NBI, which now addresses some of the findings of the Hoffman independent review report, including the interrogation prohibition.)

P&P did not have the opportunity to review the substitute main motion and therefore does not make a recommendation. Yet the Board appreciates the efforts of the movers to follow through on its recommendation at the 2015 Spring Consolidated meetings.

BPA voted in support of the proposed change in definition in APA policy for the term, “cruel, inhuman or degrading treatment or punishment” and requests that the language of the NBI be modified to clarify what is meant by the prohibition against psychologist participation in interrogations in the national security context, most notably to remove domestic law enforcement related activities (which has since been achieved in the NBI in response).

The Ethics Committee did not have the opportunity to carefully review the substitute main motion and therefore does not make a recommendation. The Ethics Committee considers the Principles of Beneficence and Nonmaleficence part of the very highest ideals of the profession. The Ethics Committee is committed to its role in enforcing the Ethics Code.

MAIN MOTION

That the Council of Representatives approves the following actions (see Exhibit 2 for supplemental material):

Action Item 1:

Whereas in 2008 the APA membership voted, by a margin of 59% to 41%, to prohibit psychologists from working at Guantanamo Bay, the CIA black sites and all other settings where people are held outside of or in violation of domestic and/or international law.
Whereas the United Nations High Commissioner for Human Rights has declared Guantanamo Bay, Cuba to be in clear violation of international law. [2]

Whereas the conditions at Guantanamo Bay have become so desperate that the detained persons are in the process of starving themselves to death in protest of their conditions of confinement. [3]

Be it resolved that the APA will direct staff to send out, within 30 days, the following letter to all relevant officials in the U.S. government including, the president, congress, the commander of the prison at Guantanamo Bay, the Department of Defense and the Central Intelligence Agency:

“The APA membership has voted to prohibit all psychologists from working at Guantanamo Bay, from the CIA black sites, and any other setting that the UN has declared to be in violation of international law, excepting those psychologists who are performing no task other than offering treatment to fellow soldiers. Please inform psychologists who are performing any task other than offering treatment to fellow soldiers in these settings that they must immediately seek to deploy elsewhere or find themselves in violation of APA policy.”

Be it resolved that the APA will direct staff to contact the licensing boards of all states and territories informing them that it is the sense of the Council of Representatives that any complaint against a psychologist who refuses to comply with the call to leave Guantanamo be reviewed ‘with prejudice’.

This should be done within 30 days of the passage of this motion.


[2] Navi Pillay says Guantanamo detention regime is in clear breach of international law and should be closed.


Action Item 2:

Whereas the United States ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with reservations that limit the scope of that treaty. [1]

Whereas the Committee Against Torture, the committee that oversees the Convention Against Torture, has called upon the U.S. to drop its reservations to that treaty. [2]

Whereas this call has been echoed by Amnesty International and numerous other human rights organizations. [3]

Whereas U.S. lawyers used these reservations to build a legal defense of torture that made psychologists complicit in acts of torture. [4]
Whereas the APA, despite the best of intentions, adopted the very same definition of Cruel, Inhuman or Degrading Treatment or Punishment as the one contained within the U.S. Reservations to the Convention Against Torture.

Be it resolved that the APA joins with the UN Committee Against Torture in calling on the U.S. to drop its reservations to the Convention Against Torture.

Be it resolved that the APA will no longer refer to the definition of torture contained in the U.S. reservations to the Convention Against Torture or any of the other similar reservations to any human rights treaties and will instead refer directly to the definitions contained within the treaty itself and to the rulings of international courts and tribunals.


SUBSTITUTE MAIN MOTION

That Council adopts the following Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings as APA policy:

Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings

WHEREAS the American Psychological Association (APA) is an accredited non-governmental organization (NGO) at the United Nations (UN) and is committed to promoting and protecting human rights in accordance with the UN Charter and the Universal Declaration of Human Rights;

WHEREAS APA policy dating back to 1985 “condemns torture wherever it occurs” and supports the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UN Convention Against Torture);
WHEREAS psychologists in organizational settings, including those in military and national security contexts, may be faced with challenges to ethical behavior as set forth in APA policy, most notably in the *Ethical Principles of Psychologists and Code of Conduct* (Ethics Code);

WHEREAS the United States ratified the UN Convention Against Torture in 1994 with an "understanding" (i.e., interpretation of a provision’s terms) regarding the definition of "torture" and a “reservation” (i.e., modification of a provision’s legal effects) to place the term “cruel, inhuman, or degrading treatment or punishment” in the context of the U.S. Constitution, which has limited, if any, applicability to detainees at facilities outside the U.S.;

WHEREAS the 2006 APA policy “Resolution Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment” defines “torture” according to the UN Convention Against Torture but invokes the U.S. reservation to define “cruel, inhuman or degrading treatment or punishment” in the absence of a clear definition in the UN Convention Against Torture;

WHEREAS the 2013 consolidated and reconciled APA resolution entitled, “Policy Related to Psychologists’ Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment,” retains the reference to the U.S. reservation related to “cruel, inhuman, or degrading treatment or punishment,” while stipulating that for the purposes of APA policy, the definition broadly applies to “any person” -- thereby intending to include detainees in national security settings;

WHEREAS the George W. Bush administration relied on its treaty understanding regarding torture to provide a legal justification for the use of “enhanced interrogation techniques” with national security detainees during the Global War on Terror;

WHEREAS APA policy should clearly and consistently reflect the highest standard of human rights and should not be dependent upon a given statute (e.g., The Detainee Welfare Act of 2005) or Presidential Executive Order (e.g., the 2009 Executive Order 13,491 “Ensuring Lawful Interrogations” of the Obama administration), which could be rescinded at the will of a given Congress or President (even by the original author);

WHEREAS the UN Committee Against Torture (the body that adjudicates complaints alleging violations of the convention) and numerous human rights organizations have called upon the U.S. to rescind its understandings and reservations to the treaty related to the definitions of torture and cruel, inhuman, or degrading treatment or punishment;

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1 The definition of the term “torture” in the U.S. Reservations, Declarations and Understandings to the UN Convention Against Torture can be found at: [http://www1.umn.edu/humanrts/usdocs/tortres.html](http://www1.umn.edu/humanrts/usdocs/tortres.html)

2 The definition of the term “cruel, human or degrading treatment or punishment” in the U.S. Reservations, Declarations and Understandings to the UN Convention Against Torture can be found at: [http://www1.umn.edu/humanrts/usdocs/tortres.html](http://www1.umn.edu/humanrts/usdocs/tortres.html)

3 In Article 1 of the UN Convention Against Torture, the term "torture" is defined as “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 capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”
BE IT RESOLVED that the 2013 APA Policy Related to Psychologists’ Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment will be revised as follows:

**Fifth and Sixth Paragraphs of Statement 3 to be Rescinded**

APA defines the term "cruel, inhuman, or degrading treatment or punishment" to mean treatment or punishment of any person 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."\textsuperscript{vi}

APA further unequivocally condemns all techniques considered torture or cruel, inhuman or degrading treatment or punishment under the United Nations Convention Against Torture; 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.

**New Replacement Clauses to be Added**

APA defines the term "cruel, inhuman, or degrading treatment or punishment" in accordance with the UN Convention Against Torture as “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" or with the U.S Constitution or other domestic law.

This definition continues to evolve with international legal understandings of this term as defined by the UN Committee Against Torture, UN and regional human rights tribunals (e.g., the European Court of Human Rights and the Inter-American Court of Human Rights), or other international legal bodies (e.g., the International Criminal Court) based on legal findings and jurisprudence. When legal standards conflict, APA members are held to the highest of the competing standards.

In addition, this definition extends to all techniques and conditions of confinement considered torture or cruel, inhuman or degrading treatment or punishment under the UN Convention Against Torture; 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.

**Accompanying Footnote VI to be Rescinded**

Specifically, United States Reservation I.1of the Reservations, Declarations, and Understandings to the UN Convention Against Torture stating, “the term ‘cruel, inhuman or degrading treatment or punishment’ means the cruel, unusual and inhumane treatment or
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 [sic], 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.

BE IT RESOLVED that the 2006 APA Resolution Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment will be revised as follows:

Fourth “Be It Resolved” Clause to be Rescinded

BE IT RESOLVED, that the term “cruel, inhuman, or degrading treatment or punishment” means treatment or punishment by a psychologist that, in accordance with the McCain Amendment 3, is of a kind that would be “prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.”

New Fourth “Be it Resolved” Clause to be Added

BE IT RESOLVED that APA defines the term “cruel, inhuman, or degrading treatment or punishment” in accordance with the UN Convention Against Torture as “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” or with the U.S Constitution or other domestic law.

This definition continues to evolve with international legal understandings of this term as defined by the UN Committee Against Torture, UN and regional human rights
tribunals (e.g., the European Court of Human Rights and the Inter-American Court of Human Rights), or other international legal bodies (e.g., the International Criminal Court) based on legal findings and jurisprudence. When legal standards conflict, APA members are held to the highest of the competing standards.

In addition, this definition extends to all techniques and conditions of confinement considered torture or cruel, inhuman or degrading treatment or punishment under the UN Convention Against Torture; 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.

To be Rescinded Footnote 4 (with remaining three footnotes to be renumbered in text as well)

Specifically, U.S./ Reservation I.1 of the Reservations, Declarations and Understandings to the United Nations Convention Against Torture (http://www.unhchr.ch/html/menu2/6/cat/treaties/convention-reserv.htm) 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."

BE IT RESOLVED that APA will continue to serve as a supportive resource for psychologists in organizational settings, including in military and national contexts, to assist them in abiding by APA policy and the Ethics Code, while recognizing that APA members, including military and national security psychologists, strive to achieve and are responsible to uphold the highest levels of competence and ethics in their professional work.

BE IT RESOLVED that APA reaffirms the central themes of the 2006 and 2013 Council Resolutions and hereby clarifies that psychologists may not engage directly or indirectly in any act of torture or cruel, inhuman, or degrading treatment or punishment and that this prohibition applies to all persons (including foreign detainees) and to all settings, including those outside of the U.S. (such as the Guantanamo Bay detention facility, “black sites,” and vessels in international waters).

BE IT FURTHER RESOLVED that, in keeping with Principle A (Beneficence and Nonmaleficence) of the Ethics Code to “take care to do no harm,” psychologists shall not conduct, supervise, be in the presence of, or otherwise assist any national security interrogations for any military or intelligence entities, including private contractors working on their behalf, nor advise on conditions of confinement insofar as these might facilitate such an interrogation. This prohibition does not apply to domestic law enforcement interrogations or detention settings that are unrelated to national security interrogations.5

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5 For the purposes of this policy statement, “national security interrogations” refer to the interrogation of any detainee in the custody of any agency or subsidiary agency that reports to the Director of National Intelligence, the Secretary of Defense, the Director of Homeland Security, or the National Security Council, including joint elements such as the High-Value Detainee Interrogation Group. This also
BE IT FURTHER RESOLVED, that in keeping with the “Actions to be Undertaken by APA” as stipulated in the 2013 Council Resolution, APA shall send official correspondence to the appropriate officers of the U.S. government, including the President, Secretary of Defense, Attorney General, CIA Director, and Congress, to inform them that APA has adopted policy changes to expand its human rights protections to safeguard detainees in national security settings against torture and cruel, inhuman, or degrading treatment or punishment.6

1) The first of these communications will be sent as soon as possible after this amended policy is passed, and will state – It is a violation of APA policy for psychologists to conduct, supervise, be in the presence of, or otherwise assist any individual national security interrogation, nor may a psychologist advise on conditions of confinement insofar as those might facilitate such an interrogation. Furthermore, based on current reports of the UN Committee Against Torture and the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, it is also a violation of APA policy for psychologists to work at the Guantánamo Bay detention facility, “black sites,” vessels in international waters, or sites where detainees are interrogated under foreign jurisdiction “unless they are working directly for the persons being detained or for an independent third party working to protect human rights” or providing treatment to military personnel. To protect these psychologists from the consequences of violating their obligations under the APA Ethics Code, APA requests that psychologists be withdrawn from any role in individual national security interrogations or conditions of confinement that might facilitate such an interrogation. Furthermore, APA requests that psychologists working at prohibited sites, as described above, be offered deployment elsewhere.

2) Subsequent letters shall be sent whenever the APA becomes aware of the existence of detention sites determined by the UN Committee Against Torture and/or the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to be utilizing practices that are considered unlawful by the UN Convention Against Torture or the Geneva Conventions and therefore in violation of APA policy.

3) APA shall also write to appropriate federal officials to urge the U.S. government to give further consideration to withdrawing its understandings and reservations to the UN Convention Against Torture, in keeping with the recent recommendation of the UN Committee Against Torture.

BACKGROUND/HISTORY

As introduced at the February 2014 Council meeting, the original version of NBI #23B posed a number of legal complexities, which prompted COLI to commission an outside expert legal analysis to determine whether the NBI accurately described the current state of the law relating to the Guantánamo Bay detention facility. The

includes any operations by those agencies with any allied governments or non-state actors, including private contractors. This does not include those detainees held under domestic law enforcement where Miranda Rights and the U.S. Constitution apply.

6 This prohibition includes interrogation techniques related to “separation,” e.g., solitary confinement and sleep deprivation, as authorized in Appendix M of the Army Field Manual, which can be accessed at: http://fas.org/irp/doddir/army/fm2-22-3.pdf
movers incorporated the feedback received, as well as that from a subsequent outside legal analysis on the definition of “cruel, inhuman, and degrading treatment or punishment” under U.S. and international law. The movers are now submitting a significantly amended version of their NBI for Council approval with the new title: “Amendments to the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings.”

The revised NBI sets out to achieve the following critical objectives, among others: 1) To define “cruel, inhuman or degrading treatment or punishment” (CIDTP) in the 2006 and 2013 Council resolutions in accordance with the UN Convention Against Torture (rather than the misused U.S. Reservations to this treaty) and to ensure that this term applies to everyone, everywhere, including foreign detainees held outside of the U.S.; 2) To continue to offer APA as a supportive resource for the ethical practice of psychologists (including military and national security) in organizational settings; 3) To prohibit psychologists from participating in national security interrogations and to clarify the intended application of the 2008 petition resolution; 4) To inform federal officials of this expanded APA human rights policy, while stipulating prohibited detention settings and requesting that psychologists at these sites be offered deployment elsewhere; and 5) To urge the U.S. government to withdraw its understandings and reservations to the UN Convention Against Torture in keeping with the recent recommendation of the UN Committee Against Torture.

With respect to the prohibition against psychologist participation in national security interrogations, it is instructive to consider the related policies of the American Medical Association (AMA) and the American Psychiatric Association (ApA). In its Code of Medical Ethics, the AMA includes the provision entitled, “Physician Participation in Interrogation” (Opinion 2.068) that prohibits physicians from participating in interrogations “defined as questioning related to law enforcement or to military and national security intelligence gathering” but allows participation “in developing effective interrogation strategies of general training purposes” that do not cause harm. (See http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion2068.page.)

The ApA has a similar provision in a “policy statement” entitled, “Psychiatric Participation in Interrogation of Detainees” (This link brings you to the search page where you select the second link for original 2006 or the reaffirmed version (2014). Although this statement is not part of the ApA ethics code, psychiatrists would need to abide by the AMA Code as physicians. In a similar manner to the AMA policy, the ApA states that psychiatrists should not “participate directly in the interrogation of persons held in custody by military or civilian investigative or law enforcement authorities, whether in the United States or elsewhere” and also allows psychiatrists to train military or civilian investigative or law enforcement personnel by applying their expertise related to particular techniques or conditions of interrogation. There are also differences between the policies related to the provision of treatment to detainees and reporting obligations.

In response to guidance offered by P&P at the 2014 Fall Consolidated meetings, Dr. Ron Levant (on behalf of Dr. Dianne Salter, the primary mover of the related NBI 23A) reached out to Dr. Churchill (principal mover of NBI #23B) to explore avenues to resolve the differences between the two items and perhaps combine them in some way. In the spirit of collaboration, Dr. Churchill and his fellow movers removed the key provision at issue related to state licensing boards and added both a new “Whereas” clause and an associated “Be it resolved” clause to NBI #23B to reflect the spirit of NBI 23A to provide support to military psychologists. Despite some further communication about specific wording, these
two items are still distinct from one another. It should be noted that the movers of NBI #23A have decided to delay consideration of their item until the February 2016 Council meeting.

EXHIBITS

1. Summary of Feedback Received from Boards and Committees Regarding NBI #23B
2. Council New Business Item #23B (submitted February 2014)
SUMMARY OF BOARD AND COMMITTEE FEEDBACK ON NBI #23B

COMMITTEE ON LEGAL ISSUES

Amended Version of NBI #23B

New Title: Amendments to the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings

The Committee on Legal Issues (COLI) commends the movers of NBI #23B for incorporating feedback from the outside legal review recommended by COLI in Fall 2014 due to the complexity and importance of the issues involved. The issue of psychologists in national security settings has recently come to national attention after the scathing findings in the Hoffman Report and those findings are deeply intertwined with the stated purpose of NBI #23B. Per discussion with APA that the movers of NBI 23B do not seek to withdraw NBI 23B to amend and expand it in response to the Hoffman Report, COLI proceeds as follows:

Level I Concerns: Legal Considerations

COLI recommends continued thoughtful review of policy and law in determining implications of adopting the UN definitions of torture and cruel, inhumane, or degrading treatment or punishment as versus the stance of the US government’s Understanding and Reservations that qualified the US 1994 ratification of the UN Convention Against Torture. However, the US Understandings and Reservations should not prohibit APA from adopting the UN definitions without reservation or from advocating for the US government’s removal of its Understanding and Reservations.

Level II Concerns: Other Considerations

None

BOARD OF PROFESSIONAL AFFAIRS

The Board of Professional Affairs (BPA) appreciates the opportunity to comment on New Business Item 23B, as amended, entitled Amendments to the 2006 and 2013 Council Draft proposed resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Draft proposed resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings. The issues presented are critically important and, as written, have significant implications for psychology and the Association.

In its consideration of several drafts-in-progress, BPA believes the changes being crafted are moving the item and the concepts noted therein in the right direction. BPA had several comments to offer the writing group which are summarized below.

1. The Board of Professional Affairs (BPA) supports the New Replacement Clause (p.2) that “defines the term cruel, inhuman, or degrading treatment or punishment” in accordance with...
“The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (commonly known as the United Nations Convention against Torture.) BPA appreciates that this is a positive step by the Association to safeguard prisoners and detainees the world over.

2. BPA expressed concerns about the expanded scope of the draft proposed resolution and the implications for practice in national security settings beyond what is described or meant by the draft proposed resolution. As such, greater clarity and precision in the language governing practice settings, interrogations, among others, may be needed. For example, the writing group may want to consider qualifying the word, “interrogation.”

In researching this, BPA finds other professional association policies may offer some guidance against member involvement in “interrogation that is coercive” vs. a wholesale ban of members involved in interrogation. This consideration may create an opportunity to limit the scope to the settings and circumstances of relevance in the draft proposed resolution.

While the draft proposed resolution is focused on military and national security settings, as drafted it may have implications for psychologists practicing in correctional settings, inpatient psychiatric hospitals, forensic contexts, and other settings which, in themselves, raise other issues and concerns (e.g., seclusions and restraints, administrative segregation, involuntary medication, evaluation or treatment without informed consent or under coercive circumstances). There may also be implications for psychological profiling and counterintelligence surveillance or communications strategies activities beyond what was intended by this draft proposed resolution.

3. BPA expressed concerns about the definition of key concepts within the draft proposed resolution which may be open to a range of interpretations (e.g., national security settings, interrogations, among others.)

4. BPA offers several comments, concerns and considerations, including new or modified language, which may clarify and strengthen the draft proposed resolution. As follows:

   a. The need to acknowledge the important roles of professional psychologists in service delivery with a broad range of populations in varied settings.

   b. The issue of the implications of the document beyond what was intended, and scope of the document, particularly in the last section, that may need clarification.

   c. Greater specificity in the language presented, including an operational definition for “national security,” “national security interrogation,” “interrogation,” among others.

   d. Concerns that when “interrogation” is not modified by some narrow or specific use, it can convey a broad set of behaviors around questioning.

   e. First Whereas: Change “APA is an accredited nongovernmental organization at the United Nations” to “APA is an accredited nongovernmental organization (NGO) at the United Nations” (an addition of the acronym to make this language consistent with APA’s official description)

   f. Second Whereas: Insert citation (APA, 1987) and adjust the given language in accordance with existing CoR policy on the UN and human rights: *language from CPM below
That the discipline of psychology, and the academic and professional activities as psychologists, are relevant for securing and maintaining human rights. That it therefore be resolved that APA applauds the ongoing efforts of the United Nations to defend and promote human rights and undertakes to commend the main UN human rights instruments and documents to the attention of its boards, committees, and membership at large.

g. Fifth Whereas: Insert citation (APA, 2006) vs. frontloading the date

h. Sixth Whereas: Insert citation (APA, 2013) vs. frontloading the date

i. Seventh Whereas: Awkwardly stated. And, in 2014, the Senate released a 6000 page report that questioned the administration’s program and techniques which was widely covered in the media. So, the media didn’t “reveal” this information, the report did. Change to WHEREAS national media revealed that the George W. Bush administration’s legal justification for and defense of the use of “enhanced interrogation techniques” with national security detainees during the Global War on Terror; (Citation: Committee Study of the Central Intelligence Agency's Detention and Interrogation Program together with Foreword by Chairman Feinstein and Additional and Minority Views (December 9, 2014))

j. Eighth Whereas: May be important to assert the principle vs. highlighting the limitations of US law, connection to APA policy, etc. As such, change to WHEREAS APA policy should clearly and consistently reflect the highest standard of human rights and should not be dependent upon a given statute (e.g., The Detainee Welfare Act of 2005) or Presidential Executive Order (e.g., the 2009 Executive Order 13,491 “Ensuring Lawful Interrogations” of the Obama administration), which could be rescinded at the will of a given Congress or President (even by the original author);

k. Ninth Whereas: Change to read, Add acronym: Committee Against Torture (CAT) to make it consistent with the way the committee describes itself in official docs.

l. Last Therefore be it resolved: Change “letters” to “official correspondence” (or would you direct APA to notify the entities of (what?)) This section would benefit from further review given its emphasis on implementation vs. an assertion of Association policy that would frame or guide implementation.

In closing, the Board of Professional Affairs (BPA) appreciates consideration of this feedback relevant to the item’s implications for professional practice. BPA applauds the writing the group and original item movers for their efforts to propose policy that moves the Association ahead in this important area.