

IV. BOARD OF DIRECTORS

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**IMPLEMENTATION OF THE 2008 MEMBERSHIP VOTE TO REMOVE PSYCHOLOGISTS  
FROM ALL SETTINGS THAT OPERATE OUTSIDE OF INTERNATIONAL LAW (NBI #23B)**

**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>); 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>) 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**

- 1 That the Council of Representatives approves the following actions (see Exhibit 2 for supplemental
- 2 material):
- 3
- 4 Action Item 1:
- 5 Whereas in 2008 the APA membership voted, by a margin of 59% to 41%, to prohibit
- 6 psychologists from working at Guantanamo Bay, the CIA black sites and all other settings where
- 7 people are held outside of or in violation of domestic and/or international law.

8 Whereas the United Nations High Commissioner for Human Rights has declared Guantanamo  
9 Bay, Cuba to be in clear violation of international law. [2]

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

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

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

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

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

27 [1] <http://www.apa.org/news/press/statements/work-settings.aspx>

28 [2] Navi Pillay says Guantanamo detention regime is in clear breach of international law and  
29 should be closed.

30 [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/6FB688744233B2CAC1257B44  
31 0051E83F?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/6FB688744233B2CAC1257B440051E83F?OpenDocument)

32 [3] <http://www.ccrjustice.org/get-involved/action/GTMOHungerStrike2013>

33

#### 34 Action Item 2:

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

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

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

41 Whereas U.S. lawyers used these reservations to build a legal defense of torture that made  
42 psychologists complicit in acts of torture. [4]

43 Whereas the APA, despite the best of intentions, adopted the very same definition of Cruel,  
44 Inhuman or Degrading Treatment or Punishment as the one contained within the U.S.  
45 Reservations to the Convention Against Torture.

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

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

52 [1] U.S. Reservations, Declarations, and Understandings, Convention Against Torture and Other  
53 Cruel, Inhuman or Degrading Treatment or Punishment, *Congressional Record* S17486-01 (daily  
54 ed., Oct. 27, 1990).

55 [2] Conclusions and Recommendations of the Committee against Torture: United States of  
56 America, 15/05/2000. A/55/44, paras. 175-180 (Concluding Observations/Comments). Available  
57 at: <http://www1.umn.edu/humanrts/usdocs/torturecomments.html>

58 [3] Amnesty International (author). Letter to President of United States, June 22, 2000.  
59 Available at: [www.amnesty.org/en/library/asset/.../2000/en/.../amr511072000en.pdf?](http://www.amnesty.org/en/library/asset/.../2000/en/.../amr511072000en.pdf?)

60 [4] cf. Bradbury, S. (2005). Application of United States Obligations Under Article 16 of the  
61 Convention Against Torture. Letter to John Rizzo. Office of the Principal Deputy Assistant  
62 Attorney General. Available at: <http://www.aclu.org/accountability/olc.html>

63

## **SUBSTITUTE MAIN MOTION**

1 That Council adopts the following Resolution to Amend the 2006 and 2013 Council Resolutions  
2 to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National  
3 Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against  
4 Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings  
5 as APA policy:  
6

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

11  
12 WHEREAS the American Psychological Association (APA) is an accredited non-governmental  
13 organization (NGO) at the United Nations (UN) and is committed to promoting and protecting  
14 human rights in accordance with the UN Charter and the Universal Declaration of Human Rights;  
15

16 WHEREAS APA policy dating back to 1985 “condemns torture wherever it occurs” and supports  
17 the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or  
18 Punishment (UN Convention Against Torture);  
19

20 WHEREAS psychologists in organizational settings, including those in military and national  
21 security contexts, may be faced with challenges to ethical behavior as set forth in APA policy,  
22 most notably in the *Ethical Principles of Psychologists and Code of Conduct* (Ethics Code);  
23

24 WHEREAS the United States ratified the UN Convention Against Torture in 1994 with an  
25 “understanding” (i.e., interpretation of a provision’s terms) regarding the definition of “torture”<sup>1</sup>  
26 and a “reservation” (i.e., modification of a provision’s legal effects) to place the term “cruel,  
27 inhuman, or degrading treatment or punishment” in the context of the U.S. Constitution, which  
28 has limited, if any, applicability to detainees at facilities outside the U.S.<sup>2</sup>;  
29

30 WHEREAS the 2006 APA policy “Resolution Against Torture and Other Cruel, Inhuman, and  
31 Degrading Treatment or Punishment” defines “torture” according to the UN Convention Against  
32 Torture<sup>3</sup> but invokes the U.S. reservation to define “cruel, inhuman or degrading treatment or  
33 punishment” in the absence of a clear definition in the UN Convention Against Torture;  
34 WHEREAS the 2013 consolidated and reconciled APA resolution entitled, “Policy Related to  
35 Psychologists’ Work in National Security Settings and Reaffirmation of the APA Position Against  
36 Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment,” retains the  
37 reference to the U.S. reservation related to “cruel, inhuman, or degrading treatment or  
38 punishment,” while stipulating that for the purposes of APA policy, the definition broadly  
39 applies to “any person” -- thereby intending to include detainees in national security settings;  
40

41 WHEREAS the George W. Bush administration relied on its treaty understanding regarding  
42 torture to provide a legal justification for the use of “enhanced interrogation techniques” with  
43 national security detainees during the Global War on Terror;  
44

45 WHEREAS APA policy should clearly and consistently reflect the highest standard of human  
46 rights and should not be dependent upon a given statute (e.g., The Detainee Welfare Act of  
47 2005) or Presidential Executive Order (e.g., the 2009 Executive Order 13,491 “Ensuring Lawful  
48 Interrogations” of the Obama administration), which could be rescinded at the will of a given  
49 Congress or President (even by the original author);  
50

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

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<sup>1</sup> 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>

<sup>2</sup> 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>

<sup>3</sup> 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.”

55 BE IT RESOLVED that the 2013 APA Policy Related to Psychologists' Work in National Security  
56 Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or  
57 Degrading Treatment or Punishment will be revised as follows:  
58

59 ***Fifth and Sixth Paragraphs of Statement 3 to be Rescinded***  
60

61 APA defines the term "cruel, inhuman, or degrading treatment or punishment" to mean  
62 treatment or punishment of any person in accordance with the United States Reservation  
63 I.1 of the Reservations, Declarations and Understandings to the United Nations Convention  
64 Against Torture, which defines this term as "the cruel, unusual and inhumane treatment or  
65 punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the  
66 Constitution of the United States."<sup>vi</sup>  
67

68 APA further unequivocally condemns all techniques considered torture or cruel, inhuman  
69 or degrading treatment or punishment under the United Nations Convention Against  
70 Torture; the Geneva Conventions; the Principles of Medical Ethics Relevant to the Role of  
71 Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees  
72 against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the  
73 Basic Principles for the Treatment of Prisoners; or the World Medical Association  
74 Declaration of Tokyo.  
75

76 ***New Replacement Clauses to be Added***  
77

78 APA defines the term "cruel, inhuman, or degrading treatment or punishment" in  
79 accordance with the UN Convention Against Torture as "other acts of cruel, inhuman or  
80 degrading treatment or punishment which do not amount to torture as defined in article 1,  
81 when such acts are committed by or at the instigation of or with the consent or  
82 acquiescence of a public official or other person acting in an official capacity" or with the  
83 U.S Constitution or other domestic law.  
84

85 This definition continues to evolve with international legal understandings of this term as  
86 defined by the UN Committee Against Torture, UN and regional human rights tribunals  
87 (e.g., the European Court of Human Rights and the Inter-American Court of Human Rights),  
88 or other international legal bodies (e.g., the International Criminal Court) based on legal  
89 findings and jurisprudence. When legal standards conflict, APA members are held to the  
90 highest of the competing standards.  
91

92 In addition, this definition extends to all techniques and conditions of confinement  
93 considered torture or cruel, inhuman or degrading treatment or punishment under the UN  
94 Convention Against Torture; the Geneva Conventions; the Principles of Medical Ethics  
95 Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of  
96 Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading  
97 Treatment or Punishment; the Basic Principles for the Treatment of Prisoners; or the World  
98 Medical Association Declaration of Tokyo.  
99

100 ***Accompanying Footnote VI to be Rescinded***  
101

102 Specifically, United States Reservation I.1 of the Reservations, Declarations, and  
103 Understandings to the UN Convention Against Torture stating, "the term 'cruel, inhuman or  
104 degrading treatment or punishment' means the cruel, unusual and inhumane treatment or

105 punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the  
106 Constitution of the United States.”

107  
108 **Amendment V.**

109  
110 No person shall be held to answer for a capital, or otherwise infamous crime, unless  
111 on a presentment or indictment of a Grand Jury, except in cases arising in the land or  
112 naval forces, or in the Militia, when in actual service in time of War or public danger;  
113 nor shall any person be subject for the same offence to be twice put in jeopardy of  
114 life or limb; nor shall be compelled in any criminal case to be a witness against  
115 himself [sic], nor be deprived of life, liberty, or property, without due process of law;  
116 nor shall private property be taken for public use, without just compensation.

117  
118 **Amendment VIII.**

119  
120 Excessive bail shall not be required, nor excessive fines imposed, nor cruel and  
121 unusual punishments inflicted.

122  
123 **Amendment XIV.**

124  
125 Section 1. All persons born or naturalized in the United States, and subject to the  
126 jurisdiction thereof, are citizens of the United States and of the State wherein they  
127 reside. No State shall make or enforce any law which shall abridge the privileges or  
128 immunities of citizens of the United States; nor shall any State deprive any person of  
129 life, liberty, or property, without due process of law; nor deny to any person within  
130 its jurisdiction the equal protection of the laws.

131  
132 BE IT RESOLVED that the *2006 APA Resolution Against Torture and Other Cruel, Inhuman, and*  
133 *Degrading Treatment or Punishment* will be revised as follows:

134  
135 ***Fourth “Be It Resolved” Clause to be Rescinded***

136  
137 BE IT RESOLVED, that the term “cruel, inhuman, or degrading treatment or punishment”  
138 means treatment or punishment by a psychologist that, in accordance with the McCain  
139 Amendment 3, is of a kind that would be “prohibited by the Fifth, Eighth, and  
140 Fourteenth Amendments to the Constitution of the United States, as defined in the  
141 United States Reservations<sup>4</sup>, Declarations and Understandings to the United Nations  
142 Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment  
143 or Punishment done at New York, December 10, 1984.”

144  
145 ***New Fourth “Be it Resolved” Clause to be Added***

146  
147 BE IT RESOLVED that APA defines the term "cruel, inhuman, or degrading treatment or  
148 punishment" in accordance with the UN Convention Against Torture as “other acts of  
149 cruel, inhuman or degrading treatment or punishment which do not amount to torture  
150 as defined in article 1, when such acts are committed by or at the instigation of or with  
151 the consent or acquiescence of a public official or other person acting in an official  
152 capacity" or with the U.S Constitution or other domestic law.

153  
154 This definition continues to evolve with international legal understandings of this term  
155 as defined by the UN Committee Against Torture, UN and regional human rights

156 tribunals (e.g., the European Court of Human Rights and the Inter-American Court of  
157 Human Rights), or other international legal bodies (e.g., the International Criminal  
158 Court) based on legal findings and jurisprudence. When legal standards conflict, APA  
159 members are held to the highest of the competing standards.

160  
161 In addition, this definition extends to all techniques and conditions of confinement  
162 considered torture or cruel, inhuman or degrading treatment or punishment under the  
163 UN Convention Against Torture; the Geneva Conventions; the Principles of Medical  
164 Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection  
165 of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading  
166 Treatment or Punishment; the Basic Principles for the Treatment of Prisoners; or the  
167 World Medical Association Declaration of Tokyo.

168  
169 ***To be Rescinded Footnote 4 (with remaining three footnotes to be renumbered in text***  
170 ***as well)***

171  
172 Specifically, U.S/ Reservation I.1 of the Reservations, Declarations and Understandings  
173 to the United Nations Convention Against Torture  
174 (<http://www.unhcr.ch/html/menu2/6/cat/treaties/convention-reserv.htm>) stating,  
175 "the term 'cruel, inhuman or degrading treatment or punishment' means the cruel,  
176 unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or  
177 Fourteenth Amendments to the Constitution of the United States."

178  
179 BE IT RESOLVED that APA will continue to serve as a supportive resource for psychologists in  
180 organizational settings, including in military and national contexts, to assist them in abiding by  
181 APA policy and the Ethics Code, while recognizing that APA members, including military and  
182 national security psychologists, strive to achieve and are responsible to uphold the highest levels  
183 of competence and ethics in their professional work.

184  
185 BE IT RESOLVED that APA reaffirms the central themes of the 2006 and 2013 Council Resolutions  
186 and hereby clarifies that psychologists may not engage directly or indirectly in any act of torture  
187 or cruel, inhuman, or degrading treatment or punishment and that this prohibition applies to all  
188 persons (including foreign detainees) and to all settings, including those outside of the U.S. (such  
189 as the Guantanamo Bay detention facility, "black sites," and vessels in international waters).

190  
191 BE IT FURTHER RESOLVED that, in keeping with Principle A (Beneficence and Nonmaleficence) of  
192 the Ethics Code to "take care to do no harm,"<sup>4</sup> psychologists shall not conduct, supervise, be in  
193 the presence of, or otherwise assist any national security interrogations for any military or  
194 intelligence entities, including private contractors working on their behalf, nor advise on  
195 conditions of confinement insofar as these might facilitate such an interrogation. This  
196 prohibition does not apply to domestic law enforcement interrogations or detention settings  
197 that are unrelated to national security interrogations.<sup>5</sup>

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<sup>4</sup> Ethical Principles of Psychologists and Code of Conduct. (2002, as amended in 2010), *American Psychologist*, 57, 12, p. 3.

<sup>5</sup> 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



199 BE IT FURTHER RESOLVED, that in keeping with the “Actions to be Undertaken by APA” as  
200 stipulated in the 2013 Council Resolution, APA shall send official correspondence to the  
201 appropriate officers of the U.S. government, including the President, Secretary of Defense,  
202 Attorney General, CIA Director, and Congress, to inform them that APA has adopted policy  
203 changes to expand its human rights protections to safeguard detainees in national security  
204 settings against torture and cruel, inhuman, or degrading treatment or punishment.<sup>6</sup>  
205

- 206 1) The first of these communications will be sent as soon as possible after this amended  
207 policy is passed, and will state – It is a violation of APA policy for psychologists to  
208 conduct, supervise, be in the presence of, or otherwise assist any individual national  
209 security interrogation, nor may a psychologist advise on conditions of confinement  
210 insofar as those might facilitate such an interrogation. Furthermore, based on current  
211 reports of the UN Committee Against Torture and the UN Special Rapporteur on torture  
212 and other cruel, inhuman or degrading treatment or punishment, it is also a violation of  
213 APA policy for psychologists to work at the Guantánamo Bay detention facility, “black  
214 sites,” vessels in international waters, or sites where detainees are interrogated under  
215 foreign jurisdiction “unless they are working directly for the persons being detained or  
216 for an independent third party working to protect human rights” or providing treatment  
217 to military personnel. To protect these psychologists from the consequences of violating  
218 their obligations under the APA Ethics Code, APA requests that psychologists be  
219 withdrawn from any role in individual national security interrogations or conditions of  
220 confinement that might facilitate such an interrogation. Furthermore, APA requests that  
221 psychologists working at prohibited sites, as described above, be offered deployment  
222 elsewhere.  
223
- 224 2) Subsequent letters shall be sent whenever the APA becomes aware of the existence of  
225 detention sites determined by the UN Committee Against Torture and/or the UN Special  
226 Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment  
227 to be utilizing practices that are considered unlawful by the UN Convention Against  
228 Torture or the Geneva Conventions and therefore in violation of APA policy.  
229
- 230 3) APA shall also write to appropriate federal officials to urge the U.S. government to give  
231 further consideration to withdrawing its understandings and reservations to the UN  
232 Convention Against Torture, in keeping with the recent recommendation of the UN  
233 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 Guantanamo Bay detention facility. The

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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.

<sup>6</sup> 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” <http://www.psychiatry.org/home/search-results?k=interrogation>. (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

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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 the 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 the majority report issued by the Senate Intelligence Committee (citation) ~~relied on its treaty understanding regarding torture to provide a~~ criticized the 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.