

**Analysis of the American Psychological Association's
Frequently Asked Questions Regarding APA's Policies and Positions on
the Use of Torture or Cruel, Inhuman or Degrading Treatment During
Interrogations
by the Coalition for an Ethical Psychology**

Introduction

In October 2007, the American Psychological Association issued a "clarification" of its position on psychologists and interrogations: *Frequently Asked Questions Regarding APA's Policies and Positions on the Use of Torture or Cruel, Inhuman or Degrading Treatment During Interrogations* [APA FAQ]. We found it incomplete and inadequate and have written a detailed commentary.

Before we released that commentary, however, we were made aware of a letter (10/26/07) from the Director of the APA's Ethics Office, Stephen Behnke to Council Representative Laurie Wagner in response to public criticisms of the Resolution¹ adopted by the APA Council last August. These criticisms focused upon three concerns:

1. Potential loopholes in the Resolution that could be interpreted as allowing continued psychologist involvement in abusive interrogations.
2. The APA's refusal to limit psychologist involvement to health provider roles in detention centers for "enemy combatants" where fundamental human rights are violated.
3. The APA's conflation of (a) legal issues regarding the definition of torture and cruel, inhuman, or degrading treatment with (b) ethical issues regarding psychologists' behavior. For example, exploitation of an interrogatee's fears may or may not be ethical for a professional interrogator but it is unethical for a psychologist.

Dr. Behnke's letter appears to close some loopholes in the Resolution (concern 1). He states, for example, that the August 2007 APA Resolution declares the CIA's "enhanced techniques" to be "immoral, unethical and ineffective."

In addition, we have learned of an unpublished letter (12/8/07 from APA President Sharon Brehm to the editors of the *New York Times*. In this letter, Dr. Brehm states that the APA condemns all "harsh interrogation tactics, including so-called "no-touch" torture and "torture light." She states that such techniques are "not only illegal they are ineffective."

¹ Entitled: *Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as "Enemy Combatants.*

We hope that Drs. Brehm and Behnke will move swiftly to make such declarations official APA policy by introducing language to amend the 2007 resolution to clearly preclude psychologists' participation in any such techniques. We provide suggested language for such a change in the commentary below. We remain disappointed that the APA has not banned APA psychologists' participation in national security detention centers that violate fundamental human rights (concern 2) and that APA policy continues to accommodate U.S. policy in the matter of torture, cruel, inhuman or degrading treatment (concern 3).

As the APA FAQ remains on the APA website, we regard it, at present (12-7-07), as the APA's official word on its position regarding psychologists, detainees and interrogations. Therefore we feel we must respond to its errors and disinformation. Unfortunately, the APA has historically condemned abusive interrogations while carefully crafting its resolutions to permit psychologists to continue to work and research the very interrogation strategies they purport to condemn.

We hope, nonetheless, that these letters from Drs. Behnke and Brehm herald a period of clarification, communication, and change for the APA and its membership. Until these changes are actually "on the books," however, it is our intention to sustain moral pressure on the APA. We look forward to the day when the APA – in the words of Anthony Romero, Executive Director of the ACLU – "...sever[s] the connection between healers and tormentors once and for all."

Format of Our Response

We maintain the entire content of the APA FAQ in question and answer format. Following each answer from the APA, we add **Coalition Comments** in a different font for readability purposes. We have provided an extensive reference section, so the reader can independently affirm or disconfirm our assertions. Our commentary aims to alert readers to subtle, complex, and often hidden features of APA policy on interrogations. We welcome feedback from readers.

Contacts:

Steven Reisner
SReisner@psychoanalysis.net

Brad Olson
b-olson@northwestern.edu

Stephen Soldz
ssoldz@bgsp.edu

Jean Maria Arrigo
jmarrigo@cox.net

FREQUENTLY ASKED QUESTIONS REGARDING APA'S POLICIES AND POSITIONS ON THE USE OF TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT DURING INTERROGATIONS:

An Analysis by the Coalition for an Ethical Psychology

Q. Does the American Psychological Association have a position on the use of torture or abuse by psychologists during interrogations?

APA: Yes. Over the past 20 years, APA's Council of Representatives, the association's governing body, has adopted no fewer than six resolutions regarding its absolute and emphatic prohibition against psychologist participation in any form of torture. These resolutions were passed in 1986, 2005, 2006 and 2007. APA has made it absolutely clear that it is always unethical for a psychologist to participate in torture or cruel, inhuman or degrading treatment in any setting for any purpose. Here are links to the most recent statements.

<http://www.apa.org/governance/resolutions/notortureres.html> and

<http://www.apa.org/governance/resolutions/councilres0807.html>.

Coalition Comment: Since 2004 there have been numerous reports in the press and from official sources of psychologists playing central roles in the design, implementation, and translation of abusive interrogation techniques into standard operating procedures². The same sources have implicated psychologists in the misuse of detainee medical information to make interrogation techniques more effective in individual cases. The issue at hand is not whether the APA condemns torture and prohibits participation in torture. The issue is whether the APA endorses psychologists' participation in the types of detainee abuses that have been sanctioned by the US government and practiced by psychologists in the Department of defense (DoD) and the Central Intelligence Agency (CIA). Although APA leadership has issued statements against torture and cruel, inhuman, and degrading treatment (not unlike the Bush Administration), it has never straightforwardly condemned psychologists' participation in these government-sanctioned, but abusive interrogation techniques and detention conditions. When the APA leadership **has** commented on psychologists known to have violated torture statutes, it has merely denied that those implicated were APA members. In cases where those implicated were, in fact, APA members, the organization has remained silent.

There is no longer any doubt that abusive techniques equivalent to torture have been sanctioned by the Bush Administration [3]. Nor is there any question that detainees and "enemy combatants" were subject to abusive interrogation techniques at Bagram Air Force Base in Afghanistan, at CIA "black sites," at Abu Ghraib in Iraq, and at Guantánamo (beginning in 2002 and continuing at least until mid-2004) [2-6]. The use of these techniques may be continuing to the present day; the recent Presidential Executive Order permits the CIA to continue to use certain of these "enhanced interrogation techniques."

² See, for example, reports from the Office of the Inspector General in the Department of Defense (DoD) [1] and the International Committee of the Red Cross [2].

These abusive techniques were derived from SERE (Survival, Evasion, Resistance, Escape) training methodologies. SERE is a form of military and Special Forces training that includes a regime of psychologist-designed torture techniques. The purpose is to give trainees an experience of abusive interrogation to help build resistance to collaboration in case they are captured by an enemy not following the Geneva Conventions. The military and intelligence communities called upon SERE psychologists to train and supervise interrogators using these abusive strategies at many of the above-listed detention sites. In some cases, according to eyewitness reports, psychologists directly performed the abusive interrogations [5]. The three resolutions issued by the APA on the ethics of psychologists' participation in detainee interrogations (2005, 2006, 2007) cannot be understood properly outside of the context of the history of psychologists' participation in these abuses in military and intelligence settings.

The 2005 resolution is known as the PENS Report, or the *Report of the Presidential Task Force on Psychological Ethics and National Security* [7]. The PENS Task Force was created in response to a report, leaked to the press, in which the International Committee of the Red Cross condemned the techniques of interrogations they discovered at Guantánamo [2]. The Red Cross reported on a combination of abusive interrogation techniques that were "tantamount to torture." The Red Cross also revealed the misuse of detainee medical records by psychologists and other health professionals supervising interrogations as members of Behavioral Science Consultation Teams (BSCTs) at Guantánamo in 2003 and 2004.

The PENS Report concluded that "*it is consistent with the APA Ethics Code for psychologists to serve in consultative roles to interrogation and information-gathering processes for national security-related purposes.*" The report went on to state that when faced with "*conflicts between ethics and law...psychologists may adhere to the requirements of the law,*" citing APA Ethics Standard 1.02.³ The PENS report contained no condemnation, or even discussion of the torture and abuse conducted by US forces with the assistance of psychologists. Thus, rather than taking a clear ethical stand against abusive interrogations, the PENS report was taken as justifying the status quo whereby psychologists continued to participate in potentially abusive interrogations. The PENS report took many psychologists by surprise since the APA stood alone among the health professions in encouraging its members to take an active role in detainee interrogations, giving no hint of the widespread acknowledgement that the interrogations overseen by BSCT psychologists were reported to be abusive.

Strong public protests over the PENS Report prompted the APA Divisions for Social Justice and others to craft a new resolution prohibiting psychologists from participating in abusive detainee interrogations.⁴ In August 2006, after much discussion and debate, the APA'S Council of Representatives passed a *Resolution Against Torture, Cruel, Inhuman and Degrading Treatment*. However, the version published by the APA differed from the version discussed and passed by the Council, in at least one significant

³ Standard 1.02 had been revised as of 2002 to read: "*if psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority...psychologists may adhere to the requirements of the law, regulations, or other governing legal authority.*"

⁴ The protests were strengthened when it was revealed that the majority of the voting members of the Task Force were psychologists directly involved in interrogation practices at Bagram, Guantánamo and/or CIA black sites. (See below.)

respect: in the document reviewed by Council, psychologists were instructed to look to *the United Nations Principles of Medical Ethics* and international instruments for definitions of unethical behavior and "torture, cruel, inhuman, and degrading treatment." In the published document, the definition of torture, cruel, inhuman and degrading treatment instead was taken from the 5th, 8th and 14th amendments to the US Constitution, precisely the same definitions that had been used by the CIA, the DoD and the Bush Administration to assert that the abusive interrogation techniques in use at Guantánamo, CIA black sites, and elsewhere were not "torture, cruel, inhuman or degrading treatment." In fact, the Justice Department repeatedly turned to these constitutional amendments to assert that the abusive techniques were legal, even after an internal condemnation by the Inspector General of the CIA. His report, "*completed in the spring of 2004 warned that some C.I.A.-approved interrogation procedures appeared to constitute cruel, inhuman and degrading treatment, as defined by the international Convention Against Torture*" [8].

Neither the PENS Report, nor the 2006 or 2007 resolutions contains a single word discussing the real-world abuse conducted in real-world detention centers by US forces with the assistance of psychologists. APA consistently has acted as if abstract resolutions alone, in the absence of any action, are enough to address the real-world horrors that command our attention.

Q. Are psychologists forbidden from participating in interrogations involving torture or other forms of cruel, inhuman or degrading treatment?

APA: Yes they are, in all instances and circumstances. APA policy clearly states that the unequivocal condemnation of torture "includes an absolute prohibition against psychologists' knowingly planning, designing and assisting in the use of torture and any form of cruel, inhuman or degrading treatment or punishment." Furthermore, it says: "there are no exceptional circumstances whatsoever, whether induced by a state of war or threat of war, internal political instability or any other public emergency, that may be invoked as a justification for torture or cruel, inhuman or degrading treatment or punishment, including the invocation of laws, regulations or orders."

Coalition Comment: Insofar as this statement overrules the APA Ethics Code loophole provided by Code Standard 1.02 and reiterated in the PENS report, permitting psychologists to follow domestic law over ethics or international human rights law, it constitutes decided progress over previous APA statements and resolutions.

The 2007 resolution appears also to go further than earlier resolutions in its definition of "cruel, inhuman, or degrading treatment":

BE IT RESOLVED that this unequivocal condemnation includes all techniques defined as torture or cruel, inhuman or degrading treatment under the 2006 Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the United Nations Convention Against Torture, and the Geneva Convention.

Unfortunately, the APA has refused to align its policy with the determinations of the bodies that oversee these international agreements. For example, according to the 2006 United Nations Human Rights Council, *"uncertainty about the length of detention and prolonged solitary confinement, amount to inhuman treatment..."* (p. 24). However, when specifically asked about psychologists' participation in these conditions, the APA has refused to include uncertain length of detention or prolonged isolation (without qualifying clauses) among the prohibited techniques, nor has the ethics committee determined that psychologists supervising such conditions would be in violation of APA ethics. (See the penultimate question and comment below for further discussion of this passage.)

Moreover, the language in the resolution is not definitive. The resolution states that prohibited techniques are those defined as such under the APA's 2006 resolution, the *U.N. Convention Against Torture* **and** the *Geneva Convention*. We trust that the last four words were meant to read **"or** the *Geneva Convention*." Using "or" would indicate that the APA will abide by prohibitions derived from any of these standards, whereas "and" requires an agreement in all of them. It is essential that the APA clarify that actions that violate any of these standards are prohibited, including facilitating, for example, uncertainty about the length of detention or prolonged isolation.

Q. Part of the problem in protecting detainee welfare is the lack of clarity about what constitutes torture. Does the APA policy define precisely what acts it prohibits when it says psychologists shall not knowingly engage in torture?

APA: Yes. At the APA's 2007 convention, the Council of Representatives passed a resolution stating that APA's unequivocal condemnation includes all techniques defined as torture or cruel, inhuman or degrading treatment or punishment under the U.N. Convention Against Torture and the Geneva Conventions. The 2007 resolution states that prohibited techniques include but are not limited to at least 19 unethical interrogation techniques. These include: mock execution; water-boarding or any other form of simulated drowning or suffocation; sexual humiliation; rape; cultural or religious humiliation; exploitation of phobias or psychopathology; induced hypothermia; and the use of psychotropic drugs or mind-altering substances for the purpose of eliciting information. In addition, the following acts were banned for the purpose of eliciting information in an interrogations process: hooding; forced nakedness; stress positions; the use of dogs to threaten or intimidate; physical assault including slapping or shaking; exposure to extreme heat or cold; threats of harm or death; and isolation and/or sleep deprivation "used in a manner that represents significant pain or suffering or in a manner that a reasonable person would judge to cause lasting harm; or the threatened use of any of the above techniques to the individual or to members of the individual's family."

Coalition Comment: The paragraph above gets to the heart of our problems with the new APA resolution. It contains loopholes that are consistent with earlier APA statements, with the DoD and CIA positions, and its language is uncomfortably similar to that of the recent Executive Order signed by President Bush authorizing "enhanced" interrogations at CIA black sites.

The loopholes are evident in the resolution's categorization of its 19 "unethical" techniques into three classes: (1) techniques, such as waterboarding, rape, or hypothermia, religious or cultural humiliation, which are deemed by the APA to be always unethical; (2) techniques that are only unethical when used for "*the purpose of eliciting information in an interrogations process*," such as hooding, forced nakedness, stress positions, exposure to extreme heat or cold, threatening with dogs, physical assault, or threats of harm or death; and (3) those techniques that are only banned when used, both as part of an interrogation, and, additionally, "*...in a manner that represents significant pain or suffering or in a manner that a reasonable person would judge to cause lasting harm.*"

We have no problem with category (1), as these techniques are uniformly banned. Techniques listed under category (2), however, are not explicitly and universally condemned if used outside of interrogations, as part of the conditions of detention. But these abusive techniques, including stress positions, forced nakedness, exposure to extreme heat or cold, and worse, often are used just this way – outside of interrogations to break the spirit of the detainee with the intention of making interrogations more "effective." BSCT psychologists have used their expertise not only to supervise interrogations and to train interrogators, but also to advise on the conditions of detention. This is most evident in the following draft of BSCT psychologist instructions, distributed to members of the PENS Task Force:

Psychologists, with their expertise in human behavior, can advise interrogators, MPs [Military Police], and command on aspects of the detention environment that will assist in all aspects of detainee operations...The psychologist's goal is to assist in helping make sure that the environment maximizes effective detainee operations. **The psychologist can assist in making sure that everything that a detainee sees, hears, and experiences is a part of the overall interrogation plan.** (Emphasis added.) [9]

The conditional nature of category (2) prohibitions is its fundamental weakness. It would allow a military or intelligence psychologist to design detention settings and create situations that disrupt the detainee's consciousness and fosters dependence on interrogators, all the while claiming that the use of these techniques prior to an interrogation was not part of "*an interrogations process*" and therefore is not banned.⁵

We have a far greater difficulty, however, with the category (3) prohibitions, including isolation, sleep deprivation, sensory deprivation, and over-stimulation (e.g., prolonged exposure to extremely loud music, or strobe lights). These techniques are only prohibited when they are used (a) as part of an interrogation, and (b) "*in a manner that represents significant pain or suffering or in a manner that a reasonable person would judge to cause lasting harm.*" Consistent with category (2) prohibitions, this means that isolation, sensory deprivation, sleep deprivation and sensory overload are not prohibited as part of the conditions of detention, which is precisely how they tend to be employed. Furthermore, in isolating "significant harm," as opposed to "harm," the

⁵ Since the passing of the 2007 Resolution, Dr. Behnke has stated in email correspondence that category (2) prohibitions should not be interpreted in this way. Yet, in spite of the good faith attempts on the part of many negotiators to close this loophole before its finalization, the loophole remained in the document.

resolution applies an ethical standard derived from the definition of "torture" according to the U.N. Convention Against Torture. This is a much higher standard than the standard that applies to "cruel, inhuman and degrading treatment." According to the United Nations Special Rapporteur on Torture, any of these 19 techniques, used as part of detainee operations, beyond transient moments "incident to lawful sanctions, conditions or transfers," at the very least would reach the standard of "degrading" treatment and would thus be prohibited. [10]

These ethical exemptions are troubling in themselves, as they can be interpreted to permit psychologists to continue to use abusive techniques specifically condemned in both the ICRC report and the report of the Inspector General of the DoD. What is of even greater concern is that the wording of the 2007 resolution prohibiting these four techniques (if "*used in a manner that represents significant pain or suffering or... lasting harm*") appears to be derived from similar language originating in the infamous "Torture Memo" of August 1, 2002, [11] written by Jay Bybee, Office of Legal Counsel for Alberto R. Gonzales, Counsel to the President: to be prohibited the act must "*result in significant psychological harm of significant duration*".⁶ This memorandum provided the 'legal' basis for the Defense Department policy [12, 13] permitting abusive SERE techniques at Guantánamo and elsewhere. Furthermore, this language appears to be consistent with the recent, widely criticized Executive Order signed by President Bush, which permits enhanced interrogations at CIA black sites. The "enhanced techniques" tend to rely on the category (3) procedures [14], and rely, as well, on the Bybee definition of torture. As Michael McConnell, Director of National Intelligence, indicated when asked whether the CIA's "enhanced techniques" constituted torture: "*It is not torture...[because] there would be no permanent damage*" [15].

It is unacceptable to find that this very standard, used by our government to permit the use of these techniques, is the one applied by the APA in the 2007 resolution.

Q. What is APA doing to promulgate the policy adopted at its 2007 convention?

APA: APA has been actively engaged in efforts to inform the federal government, the scientific community, its own membership and the public about the 2007 resolution, as well as its longstanding policy in this area. APA has sent a copy of the policy to key members of Congress, to President Bush and to key officials within the Department of Defense and the CIA. APA is calling attention to the need for further research in this area and is sponsoring a symposium on the science of interrogations and confessions at the University of Texas, El Paso, at the end of September. APA is informing its wider membership through guest articles on the topic in the *APA Monitor on Psychology* in November. And APA staff and members continue to speak to the news media and in other public venues to explain the association's position and to help advance the cause of detainee welfare and humane treatment.

⁶ Bybee's language is itself a paraphrase of the *United States' Reservations and Understandings to the United Nations Convention Against Torture*: "... in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm..." [See 12].

Coalition Comment: We believe that many of the efforts to publicize the 2007 resolution have been limited in precisely the same way as the resolution itself is limited. For example, one month after the resolution was passed, the APA presented its position on psychologists and interrogations to the Senate Intelligence Committee. From a human rights perspective, the testimony was far from reassuring. Here is a core portion of the APA's statement:

The APA has drawn three central conclusions from its work on this complex and challenging issue:

First, psychologists have important contributions to make in eliciting information that can be used to prevent violence and protect our nation's security;

Second, there must be clear ethical guidelines governing processes by which information is elicited from an individual who may not be willing to provide the desired information;

Third, further research on all aspects of information-educing processes is critical. [16]

We believe that such publicizing of the APA's position amounts to little more than a public relations campaign, and squanders the genuine opportunity to use this public forum to condemn abuses, particularly those derived from psychological knowledge and perpetrated by psychologists. Squandered, too, is the opportunity to educate psychologists, the public, and government officials on ways to prevent similar abuses from taking place in the future. We would have preferred to see the APA use these opportunities to announce the gradual improvements of its policy since 2005 and to help close the loopholes that remained in the 2007 resolution itself.

We therefore hope that in their future publicity efforts, the APA states clearly:

1. That the 19 techniques listed in the resolution are all unethical— and unethical at all times— for psychologists, whether used as part of the conditions of confinement or as part of an interrogation process. The only exceptions are transient, temporary uses arising from, inherent in, or incidental to lawful sanctions, conditions, or transfers in accordance with both domestic and international law.
2. That abuses are defined by the techniques employed, and not by the severity or longevity of their effects. Sensory bombardment, for example, is unethical regardless of whether the detainee is strong enough to withstand its effects. Further, the notion that a psychologist can determine, during an interrogation, what will or will not cause significant or lasting harm is illusory.
3. That psychological research on interrogations has demonstrated that (a) only rapport building techniques are effective, and that (b) the likelihood of abuse is significantly reduced, for both the detainee and the interrogator, when interrogations are videotaped. Therefore, psychologists may only ethically consult to detention or interrogations processes that are authentically rapport-based, that are

conducted on detainees held under humane conditions of detention, and that are videotaped from the camera perspectives of both parties (except in those rare occasions where videotaping is impossible).

4. That "enhanced interrogation techniques," which by definition exceed those techniques authorized by the revised *Army Field Manual* [17], are categorically unethical. And further, that certain techniques included in the *Army Field Manual*, e.g., those that go beyond rapport-building, are unethical for psychologists.

Q. Does APA policy allow military psychologists to participate in torture if they are ordered to do so?

APA: No. As the 2007 resolution clearly states: "there are no exceptional circumstances whatsoever ... that may be invoked as a justification for torture or cruel, inhuman or degrading treatment or punishment, including the invocation of laws, regulations or orders." Moreover, if psychologists find themselves in such a situation, they have a professional and moral responsibility to try to stop such tactics. If they cannot prevail, then the psychologists must not participate in any way in such interrogations and have an ethical responsibility to report them to the appropriate authorities. APA is trying to help foster the adoption of policies and procedures across the federal government that define torture clearly and consistently and prohibit it under any circumstances.

Coalition Comment: This change written into the 2007 resolution must be put in its historical context. As of 2002, Standard 1.02 of the APA Ethics Code was revised in a manner that could allow military psychologists to follow orders or regulations to participate in abusive or coercive interrogations and not be in violation of the ethics code. As noted above, the 2005 PENS Report explicitly adhered to 1.02, also the same time placing domestic U.S. law above international human rights law. The preeminence of 1.02 is consistent, too, with a draft of BSCT psychologist instructions, distributed to members of the PENS Task Force, stating: "*The Ethics Code is always subordinate to the law and regulations.*" [9]

Apparently, with the 2007 resolution, the 1.02-related loophole has been closed, with regard to torture, cruel, inhuman, and degrading treatment.⁷ It remains in effect, however, for human rights violations that do not reach this standard. We believe, therefore, that this change is only a first step toward redrafting 1.02 such that participating in human rights violations of any sort is deemed unethical, even if required by domestic law, regulations, or other governing legal authority.

In other words, the 2007 resolution should not be considered a substitute for the requested change in the ethics code itself, as passed by Council in 2005, to add the words "*in keeping with basic principles of human rights*" to standard 1.02.

Q. Does APA policy apply to psychologists who observe other people engaged in torture or cruel, inhuman or degrading treatment or punishment? What responsibility do psychologists have?

⁷ It should be noted that State licensing Boards do not adhere to APA resolutions, but only to changes in the code itself.

APA: APA's policy applies to all psychologists in all contexts. The 2006 resolution against torture emphasizes that "psychologists shall be alert to acts of torture and other cruel, inhuman or degrading treatment or punishment and have an ethical responsibility to report these acts to the appropriate authorities."

Coalition Comment: This answer is unacceptable. Much, if not most, abusive treatment of detainees, including abusive interrogations, are ordered or subtly encouraged by "the appropriate authorities." From President Bush, Vice President Cheney, and National Intelligence Director Mike McConnell on down, much of the current US government has authorized interrogation techniques and detention conditions that have been widely condemned as torture or abuse. Although many in the military, the FBI, the Justice Department, and even some in the CIA have honorably opposed this administration's policies of torture and abuse, many others have aided and abetted these policies.

In any situation of officially sanctioned abuse, reliance upon reports to "the appropriate authorities" is, in many instances, an expectation that whistle-blowers will report abuses to those who originally ordered or sanctioned those abuses. It is, in effect, a non-policy. We suggest that the APA align its position with that found in the *"Report Of The Council On Ethical And Judicial Affairs"* of the American Medical Association which addressed this very issue quite explicitly:

If authorities are aware of coercive interrogations but have not intervened, physicians are ethically obligated to report the offenses to independent authorities that have the power to investigate or adjudicate such allegations. (CEJA 10-A-06, p.2) [18]

Q. A great deal of controversy has surrounded the definition of "torture" under U.S. law. Which law—U.S. or international—guides APA policy on the treatment of detainees?

APA: In 2000, in recognition of APA's efforts to promote human rights, APA received consultative status as a non-governmental organization at the United Nations. As such, APA is committed to the spirit, purposes and principles of the UN Charter and other relevant international instruments, such as the U.N. Convention Against Torture. In keeping with this commitment, APA's 2006 resolution states that psychologists "shall work in accordance with international human rights instruments relevant to their roles."

Coalition Comment: This assertion corrects a major weakness in all prior Association policies. The 2005 PENS Task Force was unable to reach agreement on this issue. As their report stated, *"some task force members felt strongly that international standards of human rights should be built into the ethics code and others felt that the laws of the United States should be the touchstone."* [7]

But a significant gap persists. To assess how well the resolution and APA policy accord with APA's commitment *"to the spirit, purposes and principles of the U.N. Charter and other relevant international instruments, such as the U.N. Convention Against Torture,"*

we consulted with the U.N. Special Rapporteur on Torture, and have incorporated his responses into our commentary.

To fully align itself with "*the spirit, purposes and principles of the UN Charter and other relevant international instruments*", the APA should state explicitly that the UN *Principles of Medical Ethics relevant to the Role of Health Personnel...* applies to psychologists at all times, and in all situations, particularly where it states:

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

And:

It is a contravention of medical ethics for health personnel, particularly physicians: (a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments. [19]

Q. What steps would APA take if it learned that a psychologist participated in designing or implementing cruel, degrading or inhuman interrogation techniques?

APA: APA members have a responsibility to intervene to stop abuse and to report abusive incidents to appropriate authorities. The APA Ethics Committee will investigate, under well-established procedures, any allegation that a member has violated APA's strict prohibition against engaging in torture or cruel, inhuman or degrading treatment or reporting relevant information. The chair of the Ethics Committee has made clear that any member found to have engaged in unethical behavior will face committee sanction, up to and including expulsion from APA. Such an action could also lead to revocation by the relevant state agency of the psychologist's license to practice.

Coalition Comment: Given that the Ethics Committee proceedings are confidential until the resolution of a case, this claim is hard to assess. However, we do know that one military psychologist and APA member, Major John Leso, was reported as far back as July 2005 [20] to have participated in the torture of Guantánamo detainee Mohammed al-Qahtani. *Time* magazine had already published an extensive extract of Mr. al-Qahtani's interrogation log, detailing the abuses to which he was subjected, and identifying the BSCT supervisor occasionally present as Major L-. [21]^{8,9}. We are aware of at least four formal ethics complaints that have been filed against Major Leso since August 2006. Yet, over a year later, there has been no statement of any kind regarding any investigation. On the contrary, APA officials asserted publicly until very recently,

⁸ APA officials, including the President-elect and the Director of its Ethics Office, as well as members of the PENS Task Force, were well aware of this accusation at least as early as June 2005, when the Bloche and Marks article, naming 'Major L-' as Major Leso, was published online. [20]

⁹ A detailed account of Mr. Al-Qahtani's treatment is provided in the recent paper by bioethicist Steven Miles: Medical Ethics and the Interrogation of Guantánamo 063 [22]

that there had been no ethics complaints filed over alleged participation in detainee abuses. Therefore, APA's professed commitment to pursue *"any allegation that a member has violated APA's strict prohibition against engaging in torture or cruel, inhuman or degrading treatment"* is inconsistent with its public record.

The APA's tendency to shy away from acknowledging any culpability of military or intelligence psychologists is also evident in its silence with regard to the investigation into interrogation abuses from the Office of the Inspector General of the DoD [OIG]. That report concluded that psychologists responded to a call from the Bush Administration and Defense Secretary Rumsfeld's office to reverse-engineer abusive SERE interrogation techniques. The psychologists transformed those strategies into abusive interrogation techniques to be applied to detainees at Guantánamo, and later in Afghanistan and Iraq. According to the OIG report, this operation was undertaken first by Guantánamo BSCTs, after receiving training from SERE psychologists. As stated, *"Guantánamo Behavioral Science Consultation Team personnel understood that they were to review documentation and standard operating procedures for SERE training in developing the standard operating procedure for the JTF-170..."* (OIG Report, p. 25). [1]

To date, the APA has made no public acknowledgment of the OIG report, nor has it called for a specific investigation into the role of psychologists in SERE and interrogation abuses. Nor has the APA taken the logical step of commissioning its own independent Task Force to determine how psychological knowledge and expertise was abused in military and CIA interrogations, in order to prevent psychologists from enacting similar abuses in the future.

Q. Has APA disciplined the psychologists who, according to media reports, reverse-engineered the SERE (Survival, Escape, Resistance and Evasion) [sic] training techniques that were used by the CIA as the basis for interrogation procedures?

APA: Two psychologists have been identified by the media as developers of these interrogation tactics. They are not members of the American Psychological Association. Therefore, we have no ability to discipline them. APA continues to state publicly, however, that their alleged tactics have been discredited by responsible psychologists everywhere, including within the military.

Coalition Comment: The "two psychologists" referred to here are James Mitchell and Bruce Jessen, who have been named in *Salon* [23], *Vanity Fair*, [5] and the *New Yorker* [24] as designing and conducting the torture of several detainees in the CIA's custody¹⁰.

It is apparently correct that they are not APA members, and that, therefore, the APA can neither bring ethics charges against them nor discipline them. It is correct, as well, that the APA *"continues to state publicly... that their alleged tactics have been discredited."* But to discredit torture as an ineffective interrogation technique distracts from the real issue: that the APA has never stated outright that any psychologist who

¹⁰ The interrogation of one of these detainees, Abu Zubaydah, was recently in the news when it was reported that the CIA destroyed videotapes of his interrogation, including waterboarding, possibly conducted by Mitchell and Jessen.

has made use of abusive and coercive SERE-based techniques has violated psychologists' ethics whether the psychologist is an APA member or not. In fact, it was suggested to the APA leadership that the 2007 resolution include a clause encouraging psychologists to report non-APA members participating in torture or cruel, inhuman or degrading treatment to state licensing boards. The APA leadership flatly rejected the suggestion.

Moreover, there are facts about the case of Mitchell and Jessen that do refer to APA members. These, too, have been met with silence by the APA leadership. For example, the Spokane, WA newspaper, the *Spokesman Review*, reported that one of the principals of Mitchell Jessen and Associates, the firm allegedly conducting these abusive interrogations under CIA contract, was a former APA President [25]. When confronted with this information, the APA expressed no concern, nor did it call for an investigation. Instead, the APA simply denied that this former President plays any role in current association governance. Here the standard has changed: when the alleged ethical breach involves non-APA members, the APA asserts that they have no jurisdiction over non-members; when a potential ethical breach involves an APA member and former APA President, the response is that he plays no current role in governance. In a related incident, the psychologist in charge of counterterrorism psychology for the CIA stated that he witnessed the unethical actions of his subordinates, Mitchell and Jessen. While allegedly disgusted, this psychologist reported no steps taken to stop Mitchell and Jessen's abusive interrogation practices. Furthermore, the figure who disengaged from the situation remained Chief Psychologist in the CIA branch responsible for this and other abusive interrogations for months afterward [5]. The APA neither condemned that apparent lack of action, nor called for an investigation, even though this psychologist was, and remains a member of the APA. After moving on to the counterintelligence office at the DoD, this psychologist was appointed a member of the PENS task force.

Additionally, the report of the Office of the Inspector General of the DoD implicated psychologists from at least two military commands in the development, training, and supervision of abusive SERE interrogation techniques [1]: APA members held positions of authority in these DoD commands. The APA has not only avoided calling for an investigation of the APA members who held supervisory positions in both the military and CIA commands implicated in the abuse, but it previously had appointed three of these very command supervisors to the PENS Task Force, giving them responsibility for writing the ethics policy applicable for such interrogations. APA has never expressed any doubts about the wisdom of having these individuals form ethics policy for the Association.

Q. Isn't it true that APA's prohibitions against torture apply only when psychologists act as health service providers?

APA: No, this is precisely the position rejected by the APA's Task Force on Psychological Ethics and National Security (PENS) in its June 2005 report. Also, both the 2006 and 2007 APA resolutions emphasize that the prohibitions against torture and abuse apply to psychologists in all settings and in all roles.

Coalition Comment: This position represents one positive outcome of the PENS task force report, in that the Association has declined to create two different sets of ethics, one for health service providers and the other for other psychological roles.

Q. Who were the members of the PENS task force and did any of them have ties to the military establishment?

APA: The task force was composed of psychologists from varied backgrounds, including forensic, behavioral and clinical psychology. The members were:

- Olivia Moorehead-Slaughter, PhD - Chair
- Jean Maria Arrigo, PhD
- Army Col. Morgan Banks, PhD
- Robert A. Fein, PhD
- Michael G. Gelles, PsyD
- Army Col. Larry C. James, PhD
- Navy Capt. Bryce E. Lefever, PhD
- R. Scott Shumate, PsyD
- Nina K. Thomas, PhD
- Michael G. Wessells, PhD

In addition, there were two liaisons from the APA board of directors: Barry S. Anton, PhD, and Gerald P. Koocher, PhD.

As indicated by the above titles, three of the task force members are active duty military. Several other members have consulted to various military agencies. Other members of the Task Force had no ties to the military. The diversity of professional expertise and experience among the task force members enabled them to analyze the issues effectively and make informed recommendations.

Coalition Comment: The composition of the PENS task force, including the voting members, the observers, liaisons, and APA staff present, constitutes one of the major scandals in the history of the Association. This is due to the fact that (a) the vast majority of these participants had allegiances to the DoD and/or to promoting the APA's relationship with the DoD, and (b) two-thirds of the "voting members"¹¹ of the task force were directly or indirectly engaged in the very interrogation practices under ethical investigation.

In spite of the grievous conflicts-of-interests (see APA ethics code) built into the PENS process, the PENS Task Force Report continues to be the basis of APA's ethical position with regard to detainee interrogations. The biases, distortions and conflicts-of-interest inherent in that process continue to affect APA policy-making with regard to psychologists and detainee interrogations at Guantánamo, CIA "black sites", and elsewhere. That is why PENS deserves special scrutiny.

The Pens Task Force was made up of a non-voting Chairperson, nine voting members, two Board Liaisons, a "rapporteur," and about ten "observers" to the process.

¹¹ We emphasize the number of 'voting' members of the PENS Task Force to make clear that the numbers guaranteed a military/intelligence majority should matters come to a vote. In fact, the PENS Task Force actually conducted only one formal vote

Of the nine voting members, selected by APA President Ronald Levant and Ethics Office Director Stephen Behnke, three have been mentioned in other contexts above:

Scott Shumate, Ph.D. was, at the time of PENS, the chief psychologist for the Counterintelligence Field Activity (CIFA), the intelligence arm of the DoD [26]. From April 2001 until May of 2003 he was the chief operational psychologist for the CIA's Counter Terrorism Center (CTC), and held that position during the period when Mitchell and Jessen were contracted by the CTC to introduce SERE-based techniques into CIA counterterrorist operations. Dr. Shumate, by his own account, was present during the first such interrogation [5]. Although he says he "left in disgust," he does not say that he interfered with the abusive interrogation, which became more severe after his departure. Nor has he claimed to have restrained CIA psychologists working under him from continuing to employ SERE-based "enhanced techniques," which remain a part of the CIA's program of "enhanced interrogation techniques."

During the period of the PENS Task Force, Dr. Shumate was Director of CIFA's Behavioral Science directorate. He directed a group of 20 intelligence psychologists (including Robert Fein— see below), whose research interests included "effective" detainee interrogations techniques. The Pentagon confirmed that his group played a role in guiding Guantánamo interrogations [27]. According to notes taken during the PENS task Force meeting, Dr. Shumate stated (in abbreviated paraphrase): *"We don't truly know what is effective or not effective. It's an empirical matter what works. Don't rule out until we know."* [9]

Col. Morgan Banks, Ph.D. was, at the time of PENS, the Command Psychologist and Chief of the Psychological Applications Directorate of the U.S. Army Special Operations Command (USASOC), providing technical supervision and oversight to all USASOC psychologists involved in SERE training and in the repatriation of former detainees and prisoners of war [26]. He was also the senior Army Survival, Evasion, Resistance, and Escape (SERE) Psychologist, responsible for the training and oversight of all Army SERE Psychologists. In addition, he provided technical support and consultation to all Army psychologists providing interrogation support. Thus, he held the Senior Psychologist position in the very command that, according to the Inspector General's report [1], *"co-hosted a SERE psychologist conference at Fort Bragg for JTF-170 [responsible for interrogations at Guantánamo] interrogation personnel. Joint Personnel Recovery Agency personnel briefed JTF-170 representatives on the exploitation techniques and methods used in resistance (to interrogation) training at SERE schools"*. Banks was, according to the OIG report [1], part of the chain of command that brought SERE techniques to Guantánamo. He had already drafted a document entitled, *Providing Psychological Support for Interrogations* [9] to be distributed to BSCT psychologists. He was not a member of the APA, and yet was selected to be a member of the APA Task Force charged with assessing whether such interrogations were ethical.

Col. Larry James, Ph.D. had been the Chief Psychologist for the Joint Intelligence Group (JIG) at Guantánamo from January 2003 until at least May 2003 [26]. He was responsible for the supervision of Guantánamo BSCT psychologists, who in turn supervised detainee interrogations and detainee confinement conditions. According to James, he was sent to Guantánamo in January 2003 to put procedures in place that would prevent further abuses. He has stated, "since Jan 2003, where ever we have had psychologists no abuses have been reported" [9]. However, during this period,

according to leaked Guantánamo documents, as well as reports of the Behavioral Analysis Unit of the FBI, the International Committee of the Red Cross, and the Inspector General of the DoD, abusive confinement conditions and interrogation techniques were, in fact, systematically implemented.

For example, a recently leaked Guantánamo document, the *Camp Delta Standard Operating Procedure*, details the "Behavior Management Plan" developed for arriving detainees. This document was completed in late February 2003 and instituted in late March 2003, precisely the time when James was brought in to oversee psychological operations implemented by JIG. The document lays out techniques of isolating and fostering severe dependency to prepare detainees for interrogation, and prohibits contact with representatives of the Red Cross:

4-20. Behavior Management Plan

a. *Phase One Behavior Management Plan (First thirty days or as directed by JIG)*. The purpose of the Behavior Management Plan is to enhance and exploit the disorientation and disorganization felt by a newly arrived detainee in the interrogation process. It concentrates on isolating the detainee and fostering dependence of the detainee on his interrogator. During the first two weeks at Camp Delta, classify the detainees as Level 5 and house in a Maximum Security Unit (MSU) Block. During this time, the following conditions will apply: ...Restricted contact: No ICRC [Red Cross] or Chaplain contact... No Koran, prayer beads, prayer cap.

b. *Phase Two Behavior Management Plan*. The two-week period following Phase 1 will continue the process of isolating the detainee and fostering dependence on the interrogator. Until the JIG Commander changes his classification, the detainee will remain a Level 5 with the following: ...Continued MSU...Koran, prayer beads and prayer cap distributed by interrogator...[28].

In addition, multiple reports from FBI agents at Guantánamo document abusive interrogations during this period:

In late 2002 and continuing into mid-2003, the Behavioral Analysis Unit raised concerns over interrogation tactics being employed by the U.S. Military. As a result, an EC dated 5/30/03, was generated summarizing the FBI's continued objections to the use of SERE (Search, Escape, Resistance, and Evasion) [sic] techniques to interrogate prisoners [6].

The International Committee of the Red Cross suspected, as early as January 2003 that "psychological torture" was taking place at Guantánamo [2]. Later on, according to the New York Times, the Red Cross found the interrogation techniques and confinement conditions had become steadily "more refined and repressive":

[I]nvestigators had found a system devised to break the will of the prisoners at Guantánamo... and make them wholly dependent on their interrogators through "humiliating acts, solitary confinement, temperature extremes, use of forced positions...[2]

Furthermore, the OIG report states that in August 2003 interrogators from Guantánamo attempted to teach these abusive techniques to interrogators in Iraq:

In August 2003, the Joint Chiefs of Staff J3 requested the U.S. Southern Command to send experts in detention and interrogation operations from Guantánamo to Iraq to assess the Iraq Survey Group's interrogation operations...Based on interviews with cognizant personnel, the JTF-Guantánamo assessment team reportedly discussed the use of harsher counterresistance techniques with Iraq Survey Group personnel [1].

There were, aside from Drs. Shumate, Banks, and James, seven other Task Force members, including the Chair. Three of these were in the employ of the DoD:

Captain Bryce Lefever, Ph.D. had been a SERE psychologist (from 1991-1993) and SERE trainer. He had been deployed as the Joint Special Forces Task Force psychologist to Afghanistan in 2002, where, according to the biographical statement he provided for PENS, "he lectured to interrogators and was consulted on various interrogation techniques" [26]. It should be noted that in February 2002, the Bush administration determined that the Geneva conventions did not apply to the treatment of detainees captured in Afghanistan [29].

At least two DoD investigations, describe SERE-based interrogation abuses taking place during this period. The OIG report states, "from 2002-2004... counterresistance [SERE] techniques [influenced] interrogation operations" [1]. In addition, the Fay-Jones investigation states:

Policies for interrogation techniques including policies for Counter-Resistance [SERE] Techniques, were provided for different theaters of operation—namely Guantánamo, Afghanistan, and Iraq [1, 30].

Michael Gelles, Ph.D. was, according to his PENS biographical statement [26], the chief psychologist for the Naval Criminal Investigative Service, and the "lead psychologist for the behavioral consultation team for the Criminal Investigations Task force" at Guantánamo. Dr. Gelles has been rightly lauded for bringing abuses he observed at Guantánamo in 2002 to the attention of his superiors in the Navy, who, in turn, voiced concerns up the chain of command. Apparently, the Navy's concerns caused Defense Secretary Rumsfeld to rescind his approval for the tactics on Jan. 15, 2003 [31], and to commission a working group to reconsider the techniques. The working group report, relying on legal arguments offered in the Bybee memo, justified harsh interrogation tactics as legal under the 5th, 8th, and 14th amendments to the US constitution [12]. In April 2003, Rumsfeld re-authorized 24 techniques, including prolonged isolation, "environmental manipulation," "sleep adjustment," and threats to send the detainee to a country allowing torture [32]. BSCT psychologists continued to employ these abusive techniques, as well as others, and helped spread them to Iraq [1, 30]. In other words, despite Dr. Gelles role in bringing abuses to the attention of his superiors, he, too, had a distinct conflict of interest, in that, like Drs. James, Banks, and Shumate, he was a psychologist directly involved in military/intelligence interrogation processes during the period when abuses continued to be reported.

Robert A. Fein, Ph.D. was a consultant to Counterintelligence Field Activity (CIFA) on "effective" interrogation methods [26], responsible to Dr. Shumate. Of these six PENS members in the employ of the DoD, only one, Dr. Fein, can plausibly be described as a "consultant" to the military.

There were only four PENS members with no affiliation to the DoD:

Mike Wessells, Ph.D. resigned from the PENS Task Force on January 15, 2006, "because continuing work with the Task Force tacitly legitimates the wider silence and inaction of the APA on the crucial issues at hand." His objections appear obliquely in an addendum to the PENS Report that lists topics on which the group did not reach consensus: "The role of human rights standards in an ethics code..."; "The degree to which psychologists may ethically disguise the nature and purpose of their work..."; and "Whether the discussions of the Task Force should have been made available outside the Task Force."

Jean Maria Arrigo, Ph.D. attempted to include a dissenting, minority opinion in a PENS task force document delivered to the APA Council in February 2006, but the minority opinion was omitted. Dr. Arrigo has spoken extensively on "procedural irregularities" in the PENS process [33]. She archived the PENS listserv and her PENS meeting notes at Hoover Institution Archives, Stanford University, and released them to human rights investigators and the Senate Armed Services Committee. Drs. Arrigo and Wessells have both called for the PENS report to be rescinded.

Nina Thomas, Ph.D. has frequently expressed her disappointment in the PENS process, particularly in its adherence to Ethics standard 1.02 and because she believes that it is not possible for a psychologist to function ethically in sites that deny human rights protections to detainees.

Olivia Moorehead-Slaughter, Ph.D. functioned as the PENS Chair. At the time of PENS, Dr. Moorehead-Slaughter was vice-chair of the APA Ethics Committee. She has steadfastly defended the PENS report and process.

In the room during the PENS deliberations were numerous non-members, acknowledged and unacknowledged in the published proceedings of the Task Force. Acknowledged members included:

Stephen Behnke, Ph.D., Director of the APA Ethics Office, and 'rapporteur' for the PENS meeting. Dr. Behnke selected which of the issues raised in the group discussion were included in the report drafts, which he wrote during breaks (the first draft was said to be written during lunch on the first day of the meeting).

Barry Anton, Ph.D., Board-liaison. The Board liaison's role is to remind the Task Force members of the Board's mandate, should the process stray from the designated track, and to report back to the Board. Dr. Anton went beyond this role in his insistence during the meeting that proceedings be kept confidential. In addition, he was the first Task Force member to recommend that Russ Newman be invited to the meeting as a Task Force "observer" (see below).

Gerald Koocher, Ph.D., APA President-elect, second Board-liaison. The PENS Task Force is the only APA task force, to our knowledge, to have had two board liaisons. Rather than staying within the official role of the liaison, Dr. Koocher played a leadership role from the beginning of listserv communication until well after the PENS Report was published, establishing priorities, articulating positions, and squelching dissent. Dr. Koocher's positions on the issues raised were invariably accepted by the Chairperson. Here are two examples of his comments on the PENS listserv, one from early in the process and one from late in the process:

May 6, 2005: "In many of the circumstances we will discuss when we meet the psychologist's role may bear on people who are not "clients" in the traditional sense. Example, the psychologist employed by the CIA, Secret Service, FBI, etc., who helps formulate profiles for risk prevention, negotiation strategy, destabilization, etc., or the psychologist asked to assist interrogators in eliciting data or detecting dissimulation with the intent of preventing harm to many other people. In this case the client is the agency, government, and ultimately the people of the nation (at risk). **The goal of such psychologists' work will ultimately be the protection of others (i.e., innocents) by contributing to the incarceration, debilitation, or even death of the potential perpetrator, who will often remain unaware of the psychologists' involvement.**" [9; emphasis added.]

July 6, 2005: "I have zero interest in entangling APA with the nebulous, toothless, contradictory, and obfuscatory treaties that comprise "international law." Rather, I prefer to see APA take principled stands on policy issues where psychology has some scientific basis for doing so." [9]

Present as "observers," but never acknowledged publicly, were the following:

Susan Brandon, Ph.D., at the time of PENS, was Assistant Director of Social, Behavioral, and Educational Sciences for the White House Office of Science & Technology Policy. Before moving to the White House Office, Dr. Brandon had done extensive lobbying on behalf of the APA with the DOD, and the Office of Homeland Security. In addition, Dr. Brandon helped organize joint APA conferences Countering Terrorism: Integration of Practice and Theory with the FBI, and a follow-up Science of Deception Workshop with the CIA [34]. Dr. Brandon currently gives her affiliation as "Department of Defense."

Steven Breckler, Ph.D., Executive Director for APA Science Policy. Dr. Breckler, as Science Policy Director, had lobbied the DoD for increases in psychology funding. Not long after the publication of the PENS report, Dr. Breckler, along with Geoff Mumford and Heather Kelly, lobbied the Associate Director of National Intelligence for increases in psychology funding [35].

Rhea Farberman, APA Office of Public Affairs (present by speaker phone on Sunday).

Mel Gravitz, Ph.D., former National Security Agency (NSA) Psychologist and Former Director, Navy Internship Program.

Heather Kelly, Ph.D., APA Science Policy Staff. Dr. Kelly had done extensive lobbying with the DoD, the DNI, and with CIFA. She and Geoff Mumford had lobbied PENS member Dr. Shumate directly *"about collaborative opportunities such as advisory panels, fellowships, and training programs"* [36].

Geoff Mumford, Ph.D., Director of APA Science Policy. Dr. Mumford, too, had performed extensive lobbying on behalf of the APA with the DOD, CIFA, and the Office of Homeland Security [36]. He was a member of the team that organized the joint APA-FBI conference on counterterrorism [37].

Russ Newman, Ph.D., Director of the APA Practice Directorate. Dr. Newman is reported by members of the Task force to have played a dominant role during the meeting itself. Dr. Newman's conflict of interest is not readily apparent; however, a reading of the PENS listserv reveals that Dr. Newman's wife, Dr. Debra Dunivin, was an active duty SERE-trained psychologist [38], who, along with Drs. Banks and James, was responsible for developing the practice and training models for psychologists involved in detainee interrogations at Guantanamo: As Dr. Banks wrote on the PENS Listserv (8/12/05):

Last Friday, I spent eight hours with the Army's Surgeon General, LTG Kiley, along with Larry James, Debra Dunivin, and several others. We were trying to establish the doctrinal guidelines and training model for psychologists performing this job. The TF [Task Force] report provided, again, a solid anchor to use in our deliberations. [9]

Given his wife's involvement in the military's interrogations policy-making, Dr. Newman had a direct personal interest in the outcome of the PENS process.

Therefore, at the time of the PENS deliberations, Drs. Shumate, Banks, James, Gelles, Lefever, and Fein all were in the employ of the DoD, all were receiving or had received paychecks for their work on detainee interrogations and interrogation research, all were beholden to the policies of the Secretary of Defense, and most were on record as defending those policies. Furthermore, none of these DoD employee or consultants, based on their employment restrictions, could approve a statement that challenged DoD policies without putting their careers, jobs, and/or security clearances in jeopardy. In addition, there were four APA lobbyists present who had been actively engaged in DoD funding (including two who lobbied a PENS task force member directly, a former psychologist with the National Security Agency, and an APA leader whose wife was working with other DoD/PENS task force members to design DoD policy on psychologists and interrogations. Not one human rights advocate was invited to be a PENS observer.

Not surprisingly, the conclusions of the Task Force report emphasized support for the very specific roles the DoD Task Force members played in intelligence and military interrogation processes. Aside from the blanket support for psychologists' *"consultative roles to interrogation and information-gathering processes for national security-related purposes"* [7] the report went on to assert that *"psychologists should encourage and engage in further research to evaluate and enhance the efficacy and effectiveness of the application of psychological science to...operations relevant to national security. One focus of a broad program of research is to examine the efficacy and effectiveness*

of information-gathering techniques, with an emphasis on the quality of information obtained." The Report suggests that it is an ethical responsibility for psychologists to research effective interrogation techniques. However, there is no mention of the ethical questions that may arise if such research involves the efficacy and effectiveness of abusive techniques.¹²

We therefore take exception to the APA statement that: *"The diversity of professional expertise and experience among the task force members enabled them to analyze the issues effectively and make informed recommendations."* What we found instead was a Task Force rife with conflicts of interest and predetermined to arrive at an APA policy that accommodated Bush Administration and DoD policy.

As Dr. Moorehead-Slaughter, Chair of the PENS Task Force, made clear in her response to concerns raised by non-military Task Force members about the PENS Report's lack of international human rights standards:

[W]e discussed the role of human rights standards for the document, and it seems that our colleagues from the military were clear that including such standards in the document would likely (perhaps definitely) put the document at odds with United States law and military regulations. (July 29, 2005) [9]

¹² On the contrary, alongside the 2002 Ethics Code revision to standard 1.02 were analogous changes into the ethics of research protocols. Whereas Standard 1.02 was cited in the PENS Report to support psychologists following military regulations over ethics, the revised Standard 8.07 (*Deception in Research*) was similarly cited in the *PENS Report*, permitting deception when performing "research that is classified" [7]. In language reminiscent of the 2007 Resolution, which permits abusive interrogation tactics so long as they do not cause "significant" harm, the 2002 Ethics Code permits deception so long as it does not cause "severe" emotional distress:

1992 ETHICS CODE: (6.15) Deception in Research. "Psychologists never deceive research participants about significant aspects that would affect their willingness to participate, such as physical risks, discomfort, or unpleasant emotional experiences" [45].

2002 ETHICS CODE: (8.07) Deception in Research. "Psychologists do not deceive prospective participants about research that is reasonably expected to cause physical pain or severe emotional distress [46].

Of equal concern are changes in the requirements for informed consent for research subjects. Much like Standard 1.02, Standard 8.05, *Dispensing With Informed Consent in Research* states "Psychologists may dispense with informed consent only (1) where research would not reasonably be assumed to create distress or harm ... or (2) where otherwise permitted by law or federal or institutional regulations" [46]. Thus, both the 2002 Ethics Code and the PENS Report give sanction to the *Instruction for BSCT Psychologists* when it states: "[I]t is not appropriate, given the functions of the psychologist in this role... to inform the detainee that he is being assessed by a psychologist..." [9].

Q. Why has the APA stopped short of prohibiting psychologists from any participation whatsoever in military interrogations?

APA: Based on years of careful and thorough analysis, APA has affirmed that psychology has a vital role to play in promoting the use of ethical interrogations to safeguard the welfare of detainees and facilitate communications with them. By staying engaged, APA is able to work with the many parties, both within and outside of the military, who are dedicated to preventing torture and other forms of cruel, inhuman and degrading treatment.

The cost of disengagement is that one loses any ability to influence policy or practices. In fact, the work of several APA members, including Dr. Michael Gelles, who was hailed by a medical ethicist for his "successful medical protest of prisoner abuse" at Guantánamo Bay, and Dr. Larry James, who was sent to Abu Ghraib to implement procedures to prevent future abuse, illustrate the value of our strategy of engagement to safeguard the welfare of detainees.

Coalition Comment: The "*years of careful study and thorough analysis*" refers to the conclusions of the PENS Task Force Report, a report written by a majority of military and intelligence psychologists involved in CIA, Guantánamo, and Afghanistan detainee interrogations, some of whom then went on to rewrite the rules and protocols for the very interrogations and interrogation techniques they purported to analyze. Thus far, the APA has consistently accommodated the interrogation policies of the current administration. In contrast, professional associations of American physicians, anthropologists, nurses, psychiatrists, and even ethnomusicologists, have all taken stances against the manipulation of their expertise for purposes of abuse. Only the APA has supported its members' continued participation in these activities. It was as a result of this position that the DoD decided to use psychologists exclusively, where possible, as detainee interrogation consultants [39].

The APA argument that psychologists might somehow "*influence those policies and practices*" where human rights are being violated, where the Geneva Conventions do not apply, and, in the case of CIA black sites, where the International Committee of the Red Cross is not permitted to enter – is decisively flawed for these reasons:

1. Psychologists' presence and participation in the mechanisms of interrogation at sites where the Geneva Conventions are not honored lends support and legitimacy to these violations of ethics and international law. According to the U.N. Special Rapporteur on Torture, any non-therapeutic participation in the operation of a CIA "black site" constitutes "*acquiescence*" to the human rights violation of "*disappearance*," in addition to other human rights violations that may be taking place [10].
2. It is an overreach of the mission of psychologists to conduct ethics oversight of the military or the intelligence agencies responsible for interrogations. That responsibility rightly belongs to the *Inspectors General* of the various services, the military police, and, potentially, military judges (part of the *Judicial Advocate General [JAG] Corps*). Psychologists are no more qualified for this position than any other service; they are not legally trained, nor do they have the authority to challenge military law.

3. Where the APA asserts that psychologists need to be present in detainee interrogations to prevent abuse, the public record reveals that, to the contrary, the psychologists themselves have contributed to the creation and implementation of the abusive techniques. **In fact, as currently written, the 2007 APA Resolution explicitly permits psychologists to implement laws, regulations, and Executive Orders that authorize what would otherwise be considered abuses, so long as they are not expected to cause significant or long-lasting harm.**

4. The concept of psychologists as "safety officers" places psychologists in the ethically compromised position of determining how much abuse a given detainee will sustain. It is a far cry from the APA's ethics code aspiration of "do no harm" for psychologists to instead take on the role of determining "how much harm" detainees will receive.

5. Finally, there are groups whose appropriate role is to protect the rights and welfare of detainees. These groups include the *International Committee of the Red Cross*, the *American Bar Association*, which has offered volunteer legal representation for detainees, and the *Justice Department's* own lawyers assigned to Guantánamo cases. Members of each of these groups have determined, unlike the APA, that there *are* times when their presence does more harm than good for the detainees, insofar as their presence appears to legitimize the conditions of detention. For example, the APA has asserted, in support of "engagement," that Colonel Larry James's presence protected Guantánamo detainees. There is no evidence in the public record that it did so. There is evidence, however, that after his stay there, the International Committee of the Red Cross found the interrogation and detention processes to be "*an intentional system of cruel, unusual and degrading treatment and a form of torture.*" The ICRC was so outraged by the egregious violations of human rights and international law committed by the BSCTs [2] during that period that it chose disengagement, rather than their usual mandate of engagement, and refused to return for six months [40]. Similarly, the American Bar Association has found the detainees' legal restrictions so contrary to its legal principles that William Neukom, President of the ABA wrote to the Department of Justice in September 2007 that it had become "*necessary for the ABA to terminate its involvement*" rather than remain and "*lend support and credibility*" to such conditions [41]. At the same time, 25% of the Department of Justice's own lawyers assigned to appeal the government's case against Guantánamo detainees refused to take the cases for fear of supporting an insupportable legal argument [42].

There are numerous other examples that contradict the APA's contention that "*The cost of disengagement is that one loses any ability to influence policy or practices.*" One of the most significant comes from the example consistently offered by the APA to rationalize "engagement", the case of Michael Gelles having brought abuses at Guantánamo to the attention of his superiors. The APA uses the case of Dr. Gelles to "*illustrate[s] the value of our strategy of engagement to safeguard the welfare of detainees.*" Yet Dr. Gelles' superiors' admirable response to Dr. Gelles' report was not one of engagement, but one of disengagement. When Dr. Gelles reported abuses at Guantánamo to his commander, Col. Brittain P. Mallow, "*the colonel ordered his agents to **disengage** from any inhumane interrogation*" [43]. When Mallow himself reported

up the chain of command to David L. Brant, the director of the Naval Criminal Investigative Service, Brant "said he told the Army, *"if there's anything that's beyond the boards, we'll just pull our people out."* Air Force cops on the task force, from the Office of Special Investigations, said they would go along with a Navy walkout."

The evidence from the Red Cross, The American Bar Association, the Justice Department lawyers, the Navy and the Air Force supports the view that it is not only the ethical position to refuse to participate in processes where human rights and the Geneva Conventions are being violated, but it may be the most effective policy as well. It is certainly more likely to effect change for the Association to take the principled stance of disengagement from all interrogation practices and conditions of detention that violate human rights and international law, than to hope that individual psychologists will risk their careers to condemn such practices.

Further, according to the United Nations Rapporteur on Torture, "The holding of detainees at Guantánamo Bay as such constitutes a violation of the rights to personal liberty and a fair trial. Every participation of doctors and psychologists (other than for purely therapeutic purposes), therefore, amounts to acquiescence with these human rights violations" [10]. If it is true, as the 2007 Resolution states, that *"the American Psychological Association is an accredited non-governmental organization at the United Nations and so is committed to promote and protect human rights in accordance with the United Nations Charter and the Universal Declaration of Human Rights,"* then **disengagement** with such human rights violations would be in keeping with that commitment as well.

Q. What is the APA stance on testimony derived from torture?

APA: Research has shown that information obtained through torture or cruel, inhuman or degrading interrogation is unreliable. APA believes it is also unethical to use testimony obtained under immoral conditions or through techniques that are prohibited by the Geneva Conventions and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. APA's 2007 resolution calls on all U.S. courts to reject any and all testimony resulting from torture or other forms of inhumane treatment.

Coalition Comment: International law and civilized societies throughout the world, including our own, have determined that torture is a violation of basic human rights and is not a permissible form of interrogation. The reliability of evidence obtained by such means is irrelevant as torture and abuse would remain unethical even if they were found effective.

Q. Can an interrogation be done in an ethical manner?

APA: Yes, absolutely. Interrogations are conducted for the purpose of eliciting information that can be used to solve crimes and to prevent acts of violence. Ethical and effective interrogations are based on building rapport with the individual, as well as respecting his or her human dignity and cultural differences. Conducting an interrogation is an inherently psychological endeavor, because understanding an individual's psychology, motivations and culture is central to forming a relationship and building rapport. There is no room for abuse in forming the kind of

relationship that will result in gathering useful information, and respecting the individual's dignity is essential to facilitate this process.

Coalition Comment: No one questions whether it is possible to conduct ethical interrogations. The questions facing the APA are (a) whether ethical interrogations can take place in conditions where basic human rights and international law are being violated, and (b) whether psychologists can ethically participate in individual interrogations.

Our position is that when the conditions of confinement violate human rights and international law, any interrogation is an abusive interrogation. Furthermore, any interrogation that utilizes "enhanced" techniques is by definition an abusive, and therefore, unethical interrogation. It is worth noting that Steven Kleinman and Mike Gelles, two seasoned interrogators quoted frequently by the APA, have each clearly stated that rapport-building interrogations are impossible in environments where human rights and international law are being violated. The absurdity of the alternative is demonstrated in the following section of the interrogation log of Mohammed al-Qahtani, overseen by BSCT psychologist and APA member John Leso, giving a sense of what "rapport building" comes to mean in abusive environments:

23 November 2002

0225: The detainee arrives at the interrogation booth at Camp X-Ray. His hood is removed and he is bolted to the floor. SGT A and SGT R are the interrogators. A DoD linguist and MAJ [John] L[eso] (BSCT) are present.

0235: Session begins. The detainee refuses to look at SGT A 'due to his religion.' This is a **rapport building** session [21, p. 1; *emphasis added*].

The second question, whether it is ethical for a psychologists to participate in any individual interrogation is a matter for debate. Many APA critics believe that the APA's standard should be no less rigorous than that of the American Medical Association, the American Psychiatric Association, and the World Medical Association, which prohibit members from such participation. Most are united, however, in the belief that the APA's position must be at least as strong as that of the United Nations, described above, which states that it is unethical for a health professional (a) *"to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees"* and (b) *"to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health."*

We believe further that if only rapport-building interrogations are ethical then (a) the APA should prohibit participation in all other forms of interrogation, and (b) the APA should prohibit psychologists from advising on conditions of detention that violate human rights and international law, or which may adversely affect physical or mental health, as there can be no ethical interrogations in conditions that violate these ethical standards.

Q. Does the latest policy adopted by APA include a "loophole" that allows torture in some instances?

APA: No. Torture is never, ever permissible. The list of prohibited techniques in APA's most recent policy statement includes any defined as torture under the APA's 2006 and 2007 resolutions, the U.N. Convention Against Torture and the Geneva Convention. The 19 examples provided are not intended to be exhaustive. Furthermore, psychologists having knowledge of the use of any prohibited technique or combination of techniques, whether during or outside the scope of interrogations, must inform their superiors.

Coalition Comment: It is true that according to the 2007 resolution, "*torture is never permissible.*" We hope, however, that the APA agrees that the intent of the resolution is to prohibit psychologists from participating not only in torture, but also in any cruel, inhuman, or degrading treatment. Unfortunately, as noted earlier, the resolution does indeed contain loopholes that still permit the latter, in that certain listed techniques are only prohibited if they reach the standard of causing "*significant*" or "*lasting*" harm. But, in fact, all 19 techniques violate *U. N. Convention Against Torture* if they are employed at all (other than in incidental, temporary ways, in accordance with international law) [10].

The APA has stated that these are not loopholes, but rather are attempts to prevent psychologists who might use such techniques in non-abusive normal detainee operations from being charged with ethical violations. If this is really the intent, simple adjustments in language should suffice to close the loopholes and maintain the spirit and intent of the resolution.

We therefore encourage the APA to disseminate a policy document that clarifies the APA's position with regard to these apparent loopholes. In addition, we respectfully submit the following Resolution language change, along with two amendments, which we believe are necessary if the APA is to achieve a truly ethical position for psychologists in national security interrogations. We stand willing to work with APA to craft the language of such a policy document and in updating the 2007 resolution.

Our proposed changes to the 2007 Resolution plus three amendments to that Resolution is as follows:

BE IT RESOLVED that this unequivocal condemnation includes- all techniques defined as torture or cruel, inhuman or degrading treatment under any or all of the following: the 2006 Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the United Nations Convention Against Torture and the related jurisprudence, as well as the Geneva Conventions. This unequivocal condemnation includes, but is by no means limited to, an absolute prohibition for psychologists against direct or indirect participation in interrogations or in any other detainee-related operations in mock executions, water-boarding or any other form of simulated drowning or suffocation, sexual humiliation, rape, cultural or religious humiliation, exploitation of phobias or psychopathology, induced hypothermia, the use of psychotropic drugs or mind-altering substances, hooding, forced nakedness, stress positions, the use of dogs to threaten or intimidate, physical assault including slapping or shaking, exposure to extreme heat or cold, threats of harm or death, isolation, sensory deprivation and over-stimulation and/or sleep deprivation. These prohibitions do not include occasional temporary experiences of isolation, nakedness, or sensory

deprivation arising only from, inherent in, or incident to lawful sanctions, conditions or transfers in accordance with both domestic and international law.

Be it further resolved that psychologists may only take part in interrogation operations that exclusively make use of rapport-building techniques, and employ, wherever possible, safeguards derived from psychological research, such as dual-video-taping of interrogations;

Be it further resolved that psychologists may have no part in overseeing or consulting on detainee interrogations or conditions of confinement that violate or undermine the Geneva Conventions, the United Nations Convention Against Torture, or the 5th, 8th or 14th amendments to the U.S. Constitution; nor may psychologists train or supervise others to assist in such interrogations and conditions.

Be it further resolved that psychologists may not conduct, supervise, or consult on research into the effectiveness of interrogation techniques deemed abusive under these standards.

Q. The 2007 resolution's title refers to the application of policy to individuals defined in the U.S. Code as "enemy combatants." Are policies included that are not related to interrogations?

APA: Yes. In recognizing that torture and other cruel, inhuman and degrading treatment or punishment can result not only from the behavior of individuals but also from the conditions of confinement, the APA expresses grave concern over settings in which detainees are deprived of adequate protection of their human rights. APA affirms the prerogative of psychologists to work in such settings within strict ethical guidelines and a "no exceptions" prohibition against torture and other forms of cruel or inhuman treatment. But it also will explore ways to support psychologists who refuse to work in such settings and/or who refuse to obey orders that constitute inflicting torture.

Coalition Comment: Here the APA has, apparently for the first time, expressed "grave concern" over human rights violations of detainees in these detention centers. We believe that it is incumbent on the APA to go further and condemn the use of psychological knowledge and techniques to violate human rights at these detention centers.

But we find it unacceptable that the APA has determined that it is the individual psychologist's "prerogative" to acquiesce in human rights violations of this magnitude (including but not limited to torture, cruel, inhuman, and degrading treatment, disappearance, and interminable incarceration without due process). In so doing, APA is shirking its ethical responsibility, in a manner equivalent to permitting individual psychologists the "prerogative" of working in settings where therapists routinely have sexual relations with their clients. Such a position contradicts every standard enshrined in the Ethics Code's First Principle:

Principle A: Beneficence and Nonmaleficence

Psychologists strive to benefit those with whom they work and take care to do no harm. In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons, and the welfare of animal subjects of research. When conflicts occur among psychologists' obligations or concerns, they attempt to resolve these conflicts in a responsible fashion that avoids or minimizes harm. Because psychologists' scientific and professional judgments and actions may affect the lives of others, they are alert to and guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence. Psychologists strive to be aware of the possible effect of their own physical and mental health on their ability to help those with whom they work.

What is even more dangerous in making the decision the individual psychologist's "prerogative" is that it takes away what is perhaps the only support a military or intelligence psychologist may have in refusing to participate in such activities, particularly when such human rights violations are "standard operating procedures." The psychologist must be able to say: *"I am precluded from taking part in these operations because it is a violation of my professional Ethics Code."* Let us remember that the instruction for BSCT psychologists states: *"All Military psychologists are required to maintain state licensure; therefore the Ethics Code is applicable to all Military psychologists."*[9] The military requires licensure and cannot require of licensed professionals to participate in activities that would cause them to risk their licensure. Thus, after the American Psychiatric, Medical, and Nursing Associations all prohibited their members from participation in these activities, military psychiatrists, physicians, and nurses were no longer preferred for BSCT positions; but following the release of the PENS Report, psychologists were preferred. [44]

Thus, it is our view that not only does the APA have the ethical responsibility to prohibit its members from participating in human rights violations, but such a prohibition on the part of the APA would provide a reaffirmation of basic, civilized values at times, like these, when our nation has lost sight of them.

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