

**Comments and Feedback Requested on
the
Responses of the APA Ethics Committee to Questions, Comments, and
Vignettes
Regarding APA Policy on the Role of
Psychologists in National Security-Related
Activities**

June 2011

Note: This document was rendered out-of-date and invalid following the adoption of two relevant policy resolutions by the APA Council of Representatives in 2013 (<http://www.apa.org/ethics/programs/statement/national-security-comments.aspx>) and 2015 (<http://www.apa.org/independent-review/psychologists-interrogation.pdf>). It is not an official APA policy statement and should not be relied upon for guidance pertaining to the role of psychologists in national security-related activities.

Introduction

The American Psychological Association's (APA's) governing body, the Council of Representatives, directed the Ethics Committee to develop materials to provide guidance related to APA policies that address the role of psychologists in national security-related activities. To fulfill Council's directive, the Ethics Committee sent out a call for vignettes in December 2007 (<http://www.apa.org/monitor/dec07/ethics.aspx>), in which the Committee asked for

examples that will highlight points of ambiguity or aspects where the texts [relevant APA policies] appear to give insufficient direction. The Committee hopes to receive many vignettes, from which it will choose for discussion those that will best help illustrate APA's position and that best speak to where APA may not have provided sufficient clarity.

As explained in the Committee's December 2007 call, the Committee deemed it advisable to wait until Council completed its multiyear process of developing and refining policies related to the role of psychologists in national security-related activities before issuing its responses.

Council's work culminated in adopting two related policies in 2008 and 2009, and in amending the "Ethical Principles of Psychologists and Code of Conduct" (APA, 2002) in 2010. The 2008 Council policy prohibited specific techniques of interrogation and thus helped clarify and elaborate the strict prohibition of torture and other cruel, inhuman, or degrading treatment or punishment contained in previous APA policies, including the 2005 Report of the Presidential Task Force on Psychological Ethics and National Security. In addition, the 2009 Council action adopted as APA policy the petition resolution approved by the APA membership in the fall of the previous year with the title, "Psychologists and Unlawful Detention Settings with a Focus on National Security." Finally, Council took the rare step of amending the APA Ethics Code in 2010 to clarify that the Ethics Code may never be used to justify or defend violating human rights.

Following this most recent action of Council, the Ethics Committee, which had carefully followed Council's actions and deliberations, believed it was in a position to move

forward and complete its work on this document. The Committee now seeks comments and feedback on this text. The Committee believes that contributions on this subject from a broad range of perspectives will provide the most comprehensive and rich resource for psychologists facing ethical dilemmas in this area of practice.

The Ethics Committee received questions, comments, and vignettes both orally and in writing, each of which the Ethics Committee responds to herein. In its responses, the Committee relies on the “Ethical Principles of Psychologists and Code of Conduct” (APA, 2002; APA 2010) as well as official APA statements, policies, and resolutions that address the role of psychologists in national security-related activities.

In providing guidance, the Committee’s approach is to comment from the perspective of a psychologist in a dilemma who is requesting an ethics consultation. The Committee’s commentary is thus prospective rather than retrospective, insofar as the Committee addresses how a psychologist in the situation might move forward in a manner consistent with the APA Ethics Code and APA policy. The Committee thus does not render opinions regarding whether a particular action did or did not violate the Ethics Code but rather, according to the Committee’s usual process of offering consultation, offers guidance for psychologists in difficult and complex situations as psychologists determine what course of action is most consistent with APA policy.

The Committee’s commentary should not be considered practice guidelines for a specific practice area. Offering practice or specialty guidelines would go well beyond the Committee’s scope of expertise. Rather, the Committee’s commentary is meant to offer psychologists guidance in how to apply a thoughtful analysis based on the APA Ethics Code and APA policy. Consistent with its usual practice, the Committee offers processes for thinking through challenging situations and not definitive statements regarding specific behaviors. The Committee believes that recommending decision-making processes rather than providing specific directives best equips psychologists to address new situations they may encounter.

In virtually all cases, specific facts and circumstances of an actual situation will be highly relevant in determining an appropriate response. Thus, an actual consultation would address the specific situation in greater detail than is possible in this text. Given these limitations, the Committee’s responses do not represent the issuance of an official policy statement by the APA, the APA Ethics Committee, the APA Ethics Office, or any other APA governance group or component. Rather, official APA policies adopted by Council fulfill this important role.

Readers will encounter certain themes throughout the Committee’s responses. The first such theme is the importance of psychologists engaged in national security-related work becoming familiar with relevant APA policies. These policies were drafted with considerable care by members of APA governance holding various perspectives and working in close collaboration, and each word was chosen deliberately and after much thought. A list of all the APA policies directly relevant to the work of psychologists in national security-related contexts is found at the end of this [Introduction](#), with a link to the APA website. A second related theme is the value of consultation. The Ethics Code highlights the central role of consultation in the professional life of an ethical psychologist, and this guidance fully applies to the issues addressed here. These and other

themes are placed in the context of APA's clear and unequivocal stance against torture, first announced by APA in 1985.

It would defeat the purpose of this text for psychologists to be left with the sense that they must determine for themselves where the boundaries of ethical behavior lie. The Ethics Committee appreciates that the breadth of potential materials is vast and involves numerous APA policies, extensive legal materials, and an expanding body of psychological research. Throughout its responses, the Ethics Committee emphasizes the value of consulting both knowledgeable individuals and relevant texts. Psychologists engaged in this area of work who have questions are encouraged to consult with the APA Ethics Office and Committee to assist in determining the extent and contours of their ethical obligations. The APA Ethics Office and Committee are resources for psychologists who are committed to upholding the highest ethical standards of the profession. The Ethics Committee emphasizes that psychologists should not be left in the untenable position of believing that they will be held to an unrealistic standard of becoming familiar with an ill-defined and evolving body of knowledge. Consultation is thus central to psychologists' fulfilling their ethical responsibilities.

Since the time that many of these questions, comments, and vignettes were submitted to the Ethics Committee, the APA Ethics Code and relevant Council resolutions have been amended, and a petition resolution has been passed by the APA membership and adopted by Council as APA policy. In addition, important changes have taken place in the legal framework surrounding the treatment of detainees, the status of detention sites, and U.S. administration policies and legal analyses regarding interrogation. As a consequence, certain questions and vignettes may be based on a version of the Ethics Code, a Council resolution, or a law, legal analysis, or legal status that has changed. The Ethics Committee makes reference to specific changes in APA policy and the Ethics Code when these changes are relevant.

It is critical for psychologists to understand and appreciate the developmental aspect of APA's position on the role of psychologists in national security-related activities. Since 2005, Council has acted no fewer than five times to adopt policy in this area. Each of Council's actions has resulted from a strong consensus among a broad range of Council representatives and has constituted an important step forward in developing APA's position. As a consequence, APA's policy statements must be read as a whole. Taking any single Council action out of the context of the entirety of Council's work on this issue will inevitably yield an incomplete understanding of APA's position.

Format

For all of the 25 questions, comments, or vignettes that were submitted, the Committee provides the full text of the submission followed by the Committee's response. In certain instances, the Committee combines submissions when a single response addresses the relevant issues. For ease of reading, the questions, comments, and vignettes are provided with a shaded background. The submissions are numbered 1-25 for ease of reference; the ordering has no other significance.

A compilation of materials related to APA's policies and activities can be found on the APA website (<http://www.apa.org/news/press/statements/interrogations.aspx>). Readers are encouraged to read the policies in their entirety, as well as the related materials on the website.

Relevant APA Policies and Statements

Following is a list of relevant APA policies and statements in chronological order. For full citation information, see the References at the end of this document.

“Against Torture: Joint Resolution of the American Psychiatric Association and the American Psychological Association.” 1985.

“American Psychological Association Human Rights Resolution Against Torture.” 1986.

“Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security.” 2005.

“Resolution Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment.” 2006.

“Reaffirmation of APA's 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.’” 2007.

“Amendment to the 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.’” 2008.

“Psychologists and Unlawful Detention Settings With a Focus on National Security.” 2009.

“Ethical Principles of Psychologists and Code of Conduct (2002, Amended June 1, 2010).” 2010.

Submission 1

Psychologists working with police departments may consult with hostage rescue teams. It may occur that a psychologist working with a hostage rescue team would render an assessment that leads to the injury or even death of the hostage taker. How would APA's resolutions against torture and cruel, inhuman, or degrading treatment and punishment apply to such an action by a psychologist?

Ethics Committee Response

In February 2008, the Council of Representatives adopted the "Amendment to the 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.'" This Council resolution prohibits specific activities. In setting forth its prohibitions, the 2008 resolution invokes several United Nations and World Medical Association texts: the United Nations "Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;" the "Geneva Conventions;" the "Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment;" the "Basic Principles for the Treatment of Prisoners;" and the "World Medical Association Declaration of Tokyo" (hereinafter "the five international texts cited in the 2008 resolution").

The Ethics Committee notes that the context of the scenario, a hostage situation, is not the context directly envisioned by Council resolutions prohibiting torture and cruel, inhuman, or degrading treatment or punishment (hereinafter "torture or CID"). Council resolutions were adopted in the context of examining the treatment of detainees in national security settings, which is a markedly different context. The United Nations "Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment" illustrates this point. It states in Article I:

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The purpose of such an act by the psychologist described in the scenario would not be to

- obtain from the hostage taker or a third person information or a confession,
- punish the hostage taker for an act he or a third person has committed or is suspected of having committed,
- intimidate or coerce the hostage taker or a third person, or

- inflict severe pain or suffering for any reason based on discrimination of any kind.

The purpose of the assessment and communication in the vignette is to assist law enforcement in protecting the safety of the hostages as well as the safety of the hostage taker. For this reason, the Committee concludes that Council's prohibitions against torture and CID are of limited application to this scenario.

The Committee stresses that because this psychologist is acting in a professional capacity, the Ethics Code nonetheless applies to these activities.

The Committee has provided a combined response to Submissions 2 and 3.

Submission 2

A psychologist stationed at Guantanamo observes that new detainees are sent to isolation cells where they are kept for up to two weeks. The psychologist is concerned that, according to the August 2007 Resolution as amended she has an obligation to report the use of this procedure. What constitutes ethical conduct in this situation? If it is unethical for a psychologist to participate in this instance, would a reduced length of isolation render the psychologist's participation ethical? What length of isolation would be acceptable? How extended does the isolation have to be in order for the psychologist's involvement to be regarded as unethical according to the August 2007 Resolution as amended?

Submission 3

A psychologist is sent to Guantanamo to be Chief Psychologist of the Joint Intelligence Group in order to put operating procedures in place for detainees. During the four months he or she is there and responsible for supervising the psychologists that advise on the conditions of detention, the following operating procedures are written and instituted: "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 ..." --Would it be ethical for a psychologist to write such procedures?-- Would it be ethical for a psychologist to institute such procedures? -- Would it be ethical for a psychologist to supervise psychologists or others instituting such procedures? --- Would it be ethical for a Chief Psychologist to claim that he/she did not know that such

things were written, instituted and/or practiced by psychologists under his/her command?
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Source: Camp Delta Standard Operating Procedures (SOP). 28 March 2003
http://wikileaks.org/wiki/Guantanamo_document_confirms_psychological_torture

Ethics Committee Response

The psychologists in these vignettes should seek consultation regarding how APA resolutions apply to their participation in certain procedures. The 2008 resolution directly addresses the issue of isolation:

BE IT RESOLVED that this unequivocal condemnation includes all techniques considered torture or cruel, inhuman or degrading treatment or punishment under [the five international texts cited in the 2008 resolution]. An absolute prohibition against the following techniques therefore arises from, is understood in the context of, and is interpreted according to these texts: mock executions, waterboarding . . . isolation . . .

As an initial matter, it is imperative to note that the 2008 resolution contains an absolute prohibition. This absolute prohibition is the foundation for the psychologists' behavior. The absolute prohibition in the 2008 resolution is the bedrock from which the psychologist would begin an analysis of the ethical aspects of the situation. The psychologists in the scenarios would therefore need to have a thorough knowledge of the five texts named in the 2008 resolution, which absolutely prohibit torture and CID, given that the resolution states, "An absolute prohibition against the following techniques therefore arises from, is understood in the context of, and is interpreted according to these texts."

In addition, the following three considerations would also be relevant to the psychologists in these scenarios.

First, the psychologists would be familiar with what avenues for reporting are available if their concerns have not been adequately addressed following their consultations and their review of the absolute prohibition and the five texts identified in the 2008 resolution. The psychologists would first bring their concerns to their superiors in the chain of command, including the chief psychologist for their military service. If this does not yield a satisfactory outcome, the psychologists may have other reporting possibilities that include a judge advocate, the appropriate inspector general, a chaplain, and a member of the U.S. Congress.

Second, the psychologists would be familiar with APA Council resolutions relevant to their work, including the 2007 "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,"" which states:

BE IT RESOLVED that the American Psychological Association commends those psychologists who have taken clear and unequivocal stands against torture and cruel, inhuman or degrading treatment or punishment, especially in the line of duty, . . . and that the American Psychological Association affirms the prerogative of psychologists under the Ethical Principles of Psychologists and Code of Conduct (2002) to disobey law, regulations or orders when they conflict with ethics.

Third, the psychologists would be familiar with the 2010 amendment to Standard 1.02 of the APA Ethics Code:

Standard 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

Thus, multiple APA policies are relevant to psychologists determining the most ethical course of action in this situation.

Submission 4

The Army Field Manual (AFM) allows the following interrogation techniques:

- a. Emotional Fear-Up Approach—"In the fear-up approach, the HUMINT collector identifies a preexisting fear or creates a fear within the source. He then links the elimination or reduction of the fear to cooperation on the part of the source."
- b. Emotional Fear-Down Approach – "In the fear-down approach the HUMINT collector mitigates existing fear in exchange for cooperation on the part of the source."
- c. Emotional-Pride and Ego-Up Approach – "It exploits a source's low self-esteem.
- d. Emotional-Pride and Ego-Down Approach- ". . . is based on attacking the source's ego or self image."
- e. Emotional-Futility Approach- ". . . the HUMINT collector convinces the source that resistance to questioning is futile. This engenders a feeling of hopelessness and helplessness on the part of the source."

Is it ethical for psychologists to participate, plan or assist in any of these techniques? If so, which ones? If it is unethical for a psychologist to participate, plan or assist in one or more of these techniques what is the psychologist's ethical responsibility if he/she is aware that such techniques are being used? Is it ethical or unethical for a psychologist to participate, plan or assist in an interrogation of a detainee who previously has been interrogated using any of the above techniques?

Ethics Committee Response

Ethical Standard 3.04 in the 2002 APA Ethics Code states:

3.04 Avoiding Harm

Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

A series of resolutions adopted by Council beginning in 1985 prohibit psychologist involvement in torture or CID. The techniques identified in this question could be used in such a manner to constitute torture or CID and so could represent a failure to take reasonable steps to avoid harm and violate multiple Council resolutions.

In assessing whether the techniques provided in this submission are used in a manner that constitutes torture or CID, the psychologist can examine a series of questions, including the following:

First, is the technique used in a manner that is harmful to the detainee? Answering this question will entail knowledge of psychological research and the psychologist's having a sufficient opportunity to determine how the detainee is being affected. This question is premised on a thorough knowledge of relevant Council resolutions, especially Council's 2008 resolution and the five international texts cited in the 2008 resolution.

Second, how does a detainee's culture and ethnicity affect whether the application of a technique identified in the submission will be harmful to the detainee?

Third, is the technique being applied in a manner that is consistent with the law? In particular, the Army Field Manual provides a test that reads, in part, "If the proposed approach technique were used by the enemy against one of your fellow soldiers, would you believe the soldier had been abused?" According to the Army Field Manual, if the answer to this question is yes, "the contemplated action should not be conducted." This test can be very helpful in determining whether a particular technique should not be used.

Fourth, are there data to support that the technique is effective in gathering accurate information?

With the benefit of consultation, the psychologist should explore these and related questions to determine whether the technique is being used in a manner that is consistent with relevant Council resolutions and the Ethics Code. If the psychologist determines that such is not the case, the psychologist should take steps to address the situation, beginning with bringing the matter to the attention of the chain of command. In this instance, the psychologist could request that the APA Ethics Committee provide clarification to the chain of command regarding the appropriate role for psychologists in an interrogation process.

Submission 5

Appendix M of the AFM [Army Field Manual] addresses the restricted interrogation technique of separation (AKA isolation). Separation is allowed as an interrogation technique with unlawful enemy combatants, but not lawful enemy combatants. Thus the AFM allows for the differential treatment of unlawful and lawful enemy combatants. Is it ethical for a psychologist to differentially treat lawful and unlawful enemy combatants?

Is it ethical for a psychologist to be involved in any way (participating, planning assisting) in the interrogation technique of separation of unlawful enemy combatants? If an unlawful enemy combatant has been separated as an interrogation technique is it ethical for a psychologist to participate subsequently, plan or assist in the interrogation of that unlawful enemy combatant? What is a psychologist's ethical responsibility if she/he has heard that separation as in interrogation technique is being used, but the psychologist has no personal knowledge herself/himself?

The AFM allows for separation to last for up to 30 days. If it is ethical for a psychologist to participate, plan or assist in separation as an interrogation technique is there any point in the length of the separation that it becomes unethical for psychologist?

With respect to the question: "What is a psychologist's ethical responsibility if she/he has heard that separation as an interrogation technique is being used, but the psychologist has no personal knowledge herself/himself?"

Ethics Committee Response

The focus of an ethical analysis of an interrogation technique is not the status of the detainee but rather whether the technique is consistent with the APA Ethics Code and APA policy. Thus, participation in a technique that is impermissible under the APA Ethics Code and APA policy does not become permissible by virtue of a detainee's legal status. Put another way, the touchstone for psychologists assessing the appropriateness of an interrogation technique is Ethical Standard 3.04, Avoiding Harm, and APA policies related to interrogation, not legal categories. An interrogation technique cannot be impermissible under the APA Ethics Code and APA policy and become permissible simply by virtue of a legal status. A particular legal status does not transform an unethical interrogation technique into an ethical interrogation technique. A technique is either ethical for both groups or unethical for both groups.

Psychologists working in national security settings may not have access to full information regarding what is occurring throughout the setting. If a psychologist receives information related to activities that appear to be illegal and/or unethical, the psychologist has multiple avenues for addressing concerns about the potentially illegal/unethical activities (see the Committee's response to Submissions 2 and 3).

Submission 6

A psychologist is deployed to a detainee center. The psychologist is familiar with APA Ethics code and in particular, 1.02, as well as APA's 2006 and 2007 Resolutions and the 2008 Amendment to the 2007 Resolution. The psychologist is told by her commanding officer:

“The law that governs the active duty military psychologist is the United States Constitution, Uniform Code of Military Justice (UCMJ), and applicable regulations of the branch of service. The Ethics Code is always subordinate to the law and regulations.”

The psychologist knows the 2007 Resolution states:

BE IT RESOLVED that the American Psychological Association affirms that there are no exceptional circumstances whatsoever, whether induced by a state of war or threat of war, internal political instability or any other public emergency, that may be invoked as a justification for torture or cruel, inhuman, or degrading treatment or punishment, including the invocation of laws, regulations, or orders;

The psychologist is ordered to assist interrogators who are employing interrogation techniques that are forbidden by APA's 2007 Resolution and the 2008 Amendment.

The psychologist informs her commanding officer that the techniques are unethical and should be stopped. The response by her CO is that she is to assist the interrogators who continue using these techniques. She is reminded that the Ethics code is subordinate to laws, regulations and orders.

What is the ethical way to resolve the conflict amongst the 2007 Resolution, as amended, Ethical Code 1.02 and the given orders? Which does she follow: the Resolution or Ethics Code 1.02, which allows following orders at odds with ethical standards?

Ethics Committee Response

As a starting point, the psychologist should determine whether these interrogation techniques are prohibited by the Army Field Manual. It is critical to note that many of the techniques prohibited by the 2008 resolution are also prohibited by the current version of the Army Field Manual.

Second, the psychologist should consider the test for assessing the appropriateness of an interrogation technique under the Army Field Manual, which states, “If the proposed approach technique were used by the enemy against one of your fellow soldiers, would you believe the soldier had been abused?” According to the Army Field Manual, if the answer to this question is yes, “the contemplated action should not be conducted.” This test may provide helpful guidance to the psychologist in this scenario because the techniques in question may fail this test.

Finally, the psychologist would consider the 2010 amendments to the 2002 Ethics Code. In February 2010, the Council of Representatives amended Ethical Standards 1.02 and

1.03. The text in the scenario reflects a prior version of Ethical Standard 1.02, which has been amended. Ethical Standard 1.02 now states:

Standard 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

In this scenario, it would be essential for the psychologist to obtain consultation regarding what techniques are ethical and legal and to bring this information to the attention of the commanding officer.

Submission 7

A psychologist is asked to advise interrogators who are using sensory over-stimulation (or sensory deprivation, isolation, or sleep deprivation) with a detainee. The psychologist is unsure if these four techniques are prohibited by APA. The psychologist wants to know if these four techniques, as interrogation techniques, are always prohibited, regardless of length or intensity, or are they allowed up until a certain point? For instance, can the psychologist consult to an interrogation where the detainee has been subjected to sensory over-stimulation or sensory deprivation or isolation or sleep deprivation for an hour, for four hours, for 12 hours, for 24 hours, for a day, or for any greater length of time? How does the psychologist make this ethical judgment? What is the ethical course of action for the psychologist when he/she knows these techniques are being used?

Ethics Committee Response

The psychologist in this scenario would consider a number of APA policies and other texts in determining how to respond. Primary among these would be Ethical Standard 3.04:

3.04 Avoiding Harm

Psychologists take reasonable steps to avoid harming their clients/patients, students, supervisees, research participants, organizational clients, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

The Army Field Manual's test for assessing the appropriateness of a technique would also be relevant and provide helpful guidance, "If the proposed approach technique were used by the enemy against one of your fellow soldiers, would you believe the soldier had been abused?" If the answer to this question is yes, "the contemplated action should not be conducted."

The 2008 Council resolution prohibits a number of specific techniques, including “isolation; sensory deprivation and over-stimulation; sleep deprivation.” The resolution states that its absolute prohibition against these specific activities “arises from, is understood in the context of, and is interpreted according to these texts.” The resolution’s prohibition against inflicting torture and CID is therefore placed in the context of the five international texts invoked in the resolution.

A psychologist uncertain about whether a specific interrogation technique is prohibited by the 2008 resolution should become thoroughly familiar with the relevant aspects of the five texts named in the amendment. In addition to these texts, other resources may be available to the psychologist, such as psychological literature relevant to the specific technique, including whether the technique is effective in producing accurate information, as well as literature regarding the role of culture, ethnicity, and religion, and their interaction with the technique in question. This information can then be placed in the context of the texts cited in the amendment to help the psychologist determine the most ethical course of action. Consultation will be an invaluable resource for a psychologist in this situation.

In determining what to do regarding continued concerns about the use of the technique, the psychologist would be familiar with Council’s August 2007 resolution, which states:

BE IT RESOLVED that the American Psychological Association asserts that all psychologists with information relevant to the use of any method of interrogation constituting torture or cruel, inhuman, or degrading treatment or punishment have an ethical responsibility to inform their superiors of such knowledge, to inform the relevant office of inspector generals when appropriate, and to cooperate fully with all oversight activities, including hearings by the United States Congress and all branches of the United States government, to examine the perpetration of torture and cruel, inhuman, or degrading treatment or punishment against individuals in United States custody, for the purpose of ensuring that no individual in the custody of the United States is subjected to torture or cruel, inhuman, or degrading treatment or punishment;

The “Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security” (PENS) also imposes an obligation to report unethical behavior.

Thus, the APA Ethics Code, APA resolutions, the texts cited in the 2008 resolution, relevant psychological literature, and the Army Field Manual, combined with consultation, are resources available to the psychologist in determining the most ethical response.

The Committee has provided a combined response to Submissions 8, 9, and 10.

Submission 8

A clinical psychologist with a license to practice as a psychologist and health professional is deployed to work with personnel who are interrogating detainees, both lawful and unlawful enemy combatants. In preparing for his work he has read all APA resolutions regarding torture and other cruel, inhuman or degrading treatment or punishment and the documents cited in the 2006 and 2007 Resolutions. Reading Principles of Medical Ethics relevant to the Role of Health Personnel, particularly physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (particularly Principles 3 and 4) he becomes concerned that it is unethical for him to assist in any way with the interrogation of detainees, given that Principle 3 says “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.”

Additionally, he sees that the interrogations adversely affect the physical or mental health or condition of the detainees, as do the very conditions under which they detainees are being held. Is it ethical for the clinical psychologist to assist in interrogations? If it is ethical, how is it ethical?

Submission 9

A psychologist is assigned to Guantanamo. Upon arrival, she discovers that it is Standard Operating Procedure to place new detainees in prolonged isolation. One of her tasks is to monitor the mental health of these detainees, assess their readiness for interrogation, and watch over them. The psychologist is concerned that to perform this task would be to participate in a procedure that is prohibited by the August, 2007 resolution as amended in February, 2008. First, would it be ethical for a psychologist to be monitoring a detainee’s mental health for the purpose of getting them ready for interrogation and, in particular, as a means of breaking their inner resolve? If so, how does her activity not conflict with the August, 2007 Resolution as amended? If not, what are her options?

Submission 10

Psychologists treat detainees for various forms of mental distress and make notes in the detainees’ medical records. May psychologists share this information with interrogators? The psychologists are aware that the Department of Defense takes the position that medical records are not confidential for the purpose of protecting national security. Even if the psychologists do not share the information what is their ethical responsibility if they know the interrogators have access to the information, regardless of whether the psychologists provided it? If the psychologist knows interrogators are using this information, what is his ethical obligation?

Ethics Committee Response

The role of consultant to an interrogation and the role of health care provider are exclusive and must be kept separate. Separation of these two roles is grounded in the PENS report. According to the PENS report, “Psychologists are sensitive to the problems inherent in mixing potentially inconsistent roles such as health care provider and consultant to an interrogation, and refrain from engaging in such multiple relationships.”

Thus, to respond to the scenario most directly, a psychologist should not both provide health care and consult to an interrogation. The PENS report and the United Nations “Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment” are consistent on this point. As a consequence, a psychologist would not be in the dual position of providing health care and consulting to an interrogation.

A corollary of the incompatibility between these two roles is that interrogators should not examine a medical record in order to use information the psychologist has entered for the purposes of interrogating a detainee. The implication of the separation of these two roles for the handling of medical records was addressed in the PENS report, Statement 3: “Psychologists who serve in the role of supporting an interrogation do not use health care related information from an individual’s medical record to the detriment of the individual’s safety and well-being.” It will also be essential for the psychologist to be familiar with how relevant Army policy addresses the handling of medical records. If a psychologist becomes aware that interrogators are examining the psychologist’s notes in the medical record, the psychologist would inform the chain of command. Failing a satisfactory response, the psychologist would explore other reporting avenues (see the Ethics Committee’s response to Submissions 2 and 3).

In terms of the setting, the psychologist would be knowledgeable regarding the petition resolution, which Council adopted as APA policy in February 2010 and is titled “Psychologists and Unlawful Detention Settings With a Focus on National Security:”

Be it resolved that psychologists may not work in settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human rights [or military psychologists providing treatment for military personnel].

Thus, the psychologist should not conduct this activity in an unlawful detention setting. If the detention setting is unlawful, the psychologist should not be involved in interrogations processes of any kind at that setting because the setting is unlawful.

The Committee has provided a combined response to Submissions 11 and 12.

Submission 11

A psychologist is working in a detainee center and notes the following conditions under which the detainees are held: many have been held for up to five years without being charged; they are never given any information regarding the status of their imprisonment; they have had no communication with their families and loved ones and do not know if they are dead or alive; they lack habeas corpus and due process rights; and they have limited, inconsistent and unreliable access to their attorneys. In response to all of this

they have become despondent, hopeless, depressed, demoralized and for some, suicidal. She knows that numerous human rights organizations have decried the lack of rights for detainees as constituting torture or other cruel, inhuman or degrading treatment or punishment. The psychologist concludes that these conditions under which the detainees are held constitute, in and of themselves, torture or other cruel, inhuman degrading treatment or punishment, irrespective of what is happening in interrogations. She concludes it is unethical for her to participate in any way with the interrogation of detainees held under these conditions.

Does her professional organization, the American Psychological Association, reach the same conclusion regarding the ethics of participating in interrogations where detainees are kept in conditions which constitute torture or other cruel, inhuman or degrading treatment or punishment? If not, please explain why these conditions do not fit these criteria and how you would advise the psychologist. The psychologist refuses to participate and is ordered to. What is her ethical responsibility?

Submission 12

A psychologist is ordered to report to a detention center. He reads the APA Resolutions and, in particular, the following in the 2007 Resolution:

“BE IT RESOLVED that the American Psychological Association, in recognizing that torture and other cruel, inhuman or degrading treatment and punishment can result not only from the behavior of individuals, but also from the conditions of confinement, expresses grave concern over settings in which detainees are deprived of adequate protection of their human rights, affirms the prerogative of psychologists to refuse to work in such settings, and will explore ways to support psychologists who refuse to work in such settings or who refuse to obey orders that constitute torture;”

The psychologist, who believes the conditions of confinement for the detainees do result in torture or other cruel inhuman or degrading treatment or punishment, feels that the above paragraph offers him no protection for the repercussions of refusing his duty assignment. He turns to the APA Ethics Office and Committee to conclude, as he has, that such conditions are unethical, as they constitute torture or cruel inhuman or degrading treatment or punishment. What response does he get from the Ethics Committee? The psychologist refuses his assignment, is given an unsatisfactory fitness report and denied promotion. If he turned to the Ethics Committee for help, what would the committee do?

Ethics Committee Response

The 2007 resolution states explicitly that in addition to specific behaviors, the conditions of confinement can also constitute torture and CID:

BE IT RESOLVED that the American Psychological Association, in recognizing that torture and other cruel, inhuman or degrading treatment and punishment can result not only from the behavior of individuals, but also from the conditions of confinement.

In this resolution, Council expressed “grave concern over settings in which detainees are deprived of adequate protection of their human rights,” and affirmed “the prerogative of psychologists to refuse to work in such settings.” Thus, Council explicitly recognized that conditions of confinement can constitute torture and CID, expressed grave concern over a deprivation of human rights, and affirmed the prerogative of psychologists not to work in such settings.

In 2009, Council adopted as APA policy the petition resolution “Psychologists and Unlawful Detention Settings With a Focus on National Security.” The petition resolution addresses directly the legal framework of the setting:

Be it resolved that psychologists may not work in settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human rights [or providing treatment to military personnel].

It is contrary to APA policy for a psychologist to work in an unlawful detention setting, other than in the specific roles excepted above.

APA has written numerous letters to governmental officials, including U.S. presidents, members of Congress, and heads of federal agencies, to ensure they are informed of APA policy. APA has ensured that the relevant governmental entities are fully informed regarding APA policy. A list of government officials who were contacted by APA is available at <http://www.apa.org/ethics/programs/position/outreach/index.aspx>.

It would also be important to ensure that the psychologist has an accurate understanding of the current legal framework governing habeas corpus, following actions by the U.S. Supreme Court and President Obama’s executive order “Ensuring Lawful Interrogations.”

Submission 13

A detainee in isolation suffers from severe symptoms, including suicide attempts. He is referred for mental health treatment and is seen by psychologists who are not part of the interrogation. The detainee begs to be out of isolation. The psychologists can make recommendations, but the interrogators do not have to follow the recommendations. Does the psychologist have an obligation to treat this detainee? Does the psychologist have an obligation to determine if the detainee’s condition is a product of interrogation? Does the psychologist have an obligation to report the conditions of confinement? What should the psychologist do if he concludes that after treating the detainee he will be further exposed to the interrogation techniques that contributed to emotional mental deterioration? What is his ethical responsibility in this case? How can the psychologist protect his/her clinical independence?

Ethics Committee Response

This scenario raises the question of a psychologist's responsibilities when the psychologist is providing health care to a detainee and has reason to believe that the detainee's suicide attempts are the direct result of how the detainee is being treated at the facility.

In this instance, this psychologist would continue to provide health care to the detainee. The psychologist would immediately report concerns about the detainee's mental status. Finally, the psychologist would take the steps necessary to stop any form of interrogation that was resulting in the detainee's suicidal behavior.

In this scenario, the psychologist's ethical responsibility would be to take the immediate steps necessary to protect the detainee's life.

Submission 14

A BSCT [behavioral science consultant] team member (a psychologist) does a psychological evaluation of a detainee, as permitted by current regulations and APA policy, with the proviso that it can't be used for torture or other cruel, inhuman or degrading treatment or punishment. The interrogator says, "Thank you very much" and does not disclose what form of interrogation will be used. What bearing does ignorance of interrogation methods have on the psychologist duty to act ethically? In the same scenario suppose the psychologist asks what interrogation methods are or will be used and the interrogators says, "Sorry, I can't share that information because it is classified." What is the ethical responsibility of the psychologist in this scenario?

Ethics Committee Response

In this scenario, the psychologist is not given information about how the evaluation the psychologist conducted is being used in the interrogation. If the psychologist has reason to believe that methods of interrogation constituting torture and CID are being used in the interrogation, the psychologist will bring these concerns to the chain of command. The psychologist will take this action based, in part, on Council's 2006 resolution, which states:

BE IT RESOLVED that psychologists shall be alert to acts of torture and other cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment and have an ethical responsibility to report these acts to the appropriate authorities;

A reporting obligation is also imposed by the PENS report. In accordance with the 2006 resolution and the PENS report, the psychologist should notify the chain of command if the psychologist had cause to believe that the interrogation involved torture or CID. The ethical obligation to report would not be limited to the psychologist's concerns over how the psychological evaluation was being used but would rather extend to the conduct of the interrogation as a whole. If the psychologist was not satisfied with the result of

reporting such concerns, the psychologist would consider other reporting avenues such as the judge advocate and/or the inspector general (see the Ethics Committee’s response to Submissions 2 and 3).

The Committee has provided a combined response to Submissions 15 and 16.

Submission 15

A BSCT team member (a psychologist) is asked to advise an interrogator. The psychologist is aware that the detainee was subjected to sleep deprivation and isolation in the past, but the interrogator assures the psychologist that these techniques are not part of the current interrogation plan. Can the psychologist engage in the evaluation? Does it make a difference if the psychologist determines that past use of these methods had a deleterious effect on the detainee? Does the psychologist have an ethical obligation to report the use of sleep deprivation and isolation in the past?

Submission 16

A psychologist works for the CIA. He is assigned to a CIA secret prison—a so-called “black site.” A detainee is brought in for interrogation. For the previous thirty days, he had been confined in a small cell that was totally dark, with no human contact except for meal delivery by men in black whose faces were covered and who refused to answer any questions and never spoke to him. The psychologist is told that he will not be returned to that cell but that, after the interrogation, he will be put in a cell with a light source, though still alone. He will henceforth be allowed an hour of exercise each day and will be able to speak to his guards, though he will have no contact with other prisoners. The psychologist is asked to observe the interrogation through a one-way mirror and afterwards, give his impressions of the mental state of the prisoner and of his veracity. Is it ethical for the psychologist to agree to a consultative role in this interrogation?

Ethics Committee Response

The psychologists in these scenarios would begin with two texts: First, the 2008 APA resolution that imposes an absolute ban on isolation (see the Ethics Committee’s response to Submissions 2 and 3); and second (relevant to Submission 16), “Psychologists and Unlawful Detention Settings With a Focus on National Security.” These two texts provide the foundation for the psychologists’ response to these scenarios.

The psychologists in these scenarios would also examine Council’s 2006 resolution.

BE IT RESOLVED that psychologists shall be alert to acts of torture and other cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment and have an ethical responsibility to report these acts to the appropriate authorities;

The PENS report also has a reporting requirement. Thus, in accordance with the 2006 resolution and the PENS report, a psychologist who is aware that torture and CID have occurred should report such acts to the appropriate authorities.

Council's 2006 resolution also states:

BE IT RESOLVED that based upon the APA's long-standing commitment to basic human rights including its position against torture, psychologists shall work in accordance with international human rights instruments relevant to their roles;

Pursuant to this aspect of Council's 2006 resolution, the psychologists would examine Council's 2008 resolution and the five international texts invoked therein. Taking the Council resolutions into account, and with the aid of consultation, the psychologists would determine what manner of proceeding is most consistent with the APA Ethics Code and APA policy.

Regarding the setting, the psychologists would be knowledgeable regarding the petition resolution, which Council adopted as APA policy in February 2010 and is titled "Psychologists and Unlawful Detention Settings With a Focus on National Security:"

Be it resolved that psychologists may not work in settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human rights [or military psychologists providing treatment for military personnel].

Thus, the psychologists would determine whether the detention setting is a lawful detention setting. If the setting is an unlawful setting, APA policy prohibits the psychologists from working at the setting, except in the roles identified in the petition resolution as exceptions to the prohibition. President Obama's January 2009 executive order, "Ensuring Lawful Interrogations" would be relevant to this determination.

The Committee has provided a combined response to Submissions 17 and 18.

Submission 17

A military psychologist has been assigned to a detention facility (e.g. Gitmo) and has been ordered by his commanding officer to consult with an interrogation team in the pre-interrogation treatment process of a detainee consisting of sleep deprivation, sensory deprivation, over-stimulation and isolation designed to soften the detainee up for interrogations. The psychologist tells his commanding officer that in his opinion the infliction of mental stress involved in this procedure violates his professional code of conduct. His commanding officer responds that in fact the August 2007 APA resolution allows for the infliction of minor or moderate pain or suffering as long as the pain or suffering is not "significant." Part of his role as consultant is to insure the pain or suffering does not obtain at a "significant" level of suffering or that it causes the detainee to "break down." A goal therefore is to actually prevent torture, or cruel, inhuman, or

degrading suffering. He instructs the psychologist that the Commander-in-Chief of the U.S. armed forces has defined “significant” or “severe” pain or suffering (i.e. torture) as treatment that is likely to result in organ failure, death, or permanent bodily damage. Furthermore the Administration’s Office of Legal Council (OLC) has informed the Commander-in-Chief that this threshold for permissible infliction of pain or suffering is legally justified within his Constitutional authority as Commander-in-Chief. The psychologist realizes that if he refuses to participate, APA will “support” his decision not to participate in some vague way, but it does not affirm that his decision is based upon a clear ethical foundation since he could also choose to participate in the order without violating the APA Code of Conduct. If he refuses he realizes his military career is either essentially over or seriously jeopardized. Even if he is not kicked out of the army, his chances for advancement are poor. Note: Re. use of male pronouns: both the psychologist and the commanding officer could be either male or female. This vignette is...based on the opinion that the 2007 Resolution on torture is flawed and should be revised. A separate statement of this opinion will be made later.

Submission 18

First, do no harm. Although, that principle alone should resolve the question, apparently the APA requires other reasons to prohibit its members from engaging in torture. The United Nations Convention Against Torture defines torture as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” Aiding and abetting so-called “harsh interrogation techniques” is torture. Do not kid yourselves. You are not talking about asking a guy questions for 26 hours. You are talking about torture. Behavior that is just short of “likely to result in organ failure, death, or permanent bodily damage” includes severe beatings, sensory deprivation, rape, waterboarding, kidnapping of children and spouses and other activities that, in the past, the United States has itself prosecuted as war crimes. The American Military and the CIA know from experience that the result of torture is not information, it is confession. While there are many examples, our experiences in Vietnam are the most documented. Our officers found that conventional interrogation was the most effective method of obtaining information and the most likely way to assist with counter-insurgency. Confessions waste time, resources and lives. Torture only produces notoriously unreliable confessions - not information. Thus, the APA’s current position on aiding “harsh interrogation techniques” does not produce the desired result. “Harsh interrogation techniques” also harm the questioner. Torturers are themselves harmed by the events. They suffer psychological effects. Torturers are more likely to become batterers, sexual predators, serial killers, and are more likely to physically harm themselves. Hopefully, the APA will protect its own members from such harmful circumstances. Torture also harms wider society. It represents a breakdown in the rule of law. The perception that you can be picked up and tortured at the whim of the ruler

divorces people from feeling a part of a wider society. Torture breaks down the essential mutual trust necessary for a functioning modern society. Finally, I would refuse treatment from and would urge others to refuse treatment from someone who was a member of an organization that assisted its members in actively harming another person. Even if you do not accept the premise that long-term sleep deprivation, “stress” positions, waterboarding, child/spousal kidnapping (yes, it is documented that it was policy for the US to imprison the spouse and/or children of certain targets to get them to turn themselves in) and other activities used by the Administration in Iraq is torture, there is no argument that it is harmful.

Ethics Committee Response

These vignettes make reference to law that may no longer be valid and to a Council resolution that has been updated. The author of Submission 17 states, “This vignette is . . . based on the opinion that the 2007 Resolution on torture is flawed and should be revised”; whereas the author of Submission 18 addresses “harsh interrogation techniques.” In 2008, Council addressed specific techniques of interrogation.

Council’s 2008 resolution was written precisely to address concerns regarding the 2007 resolution. The 2008 resolution states:

BE IT RESOLVED that this unequivocal condemnation includes all techniques considered torture or cruel, inhuman or degrading treatment or punishment under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Geneva Conventions; the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Basic Principles for the Treatment of Prisoners; or the World Medical Association Declaration of Tokyo. An absolute prohibition against the following techniques therefore arises from, is understood in the context of, and is interpreted according to these texts: mock executions; water-boarding or any other form of simulated drowning or suffocation; sexual humiliation; rape; cultural or religious humiliation; exploitation of fears, phobias or psychopathology; induced hypothermia; the use of psychotropic drugs or mind-altering substances; hooding; forced nakedness; stress positions; the use of dogs to threaten or intimidate; physical assault including slapping or shaking; exposure to extreme heat or cold; threats of harm or death; isolation; sensory deprivation and over-stimulation; sleep deprivation; or the threatened use of any of the above techniques to an individual or to members of an individual’s family. Psychologists are absolutely prohibited from knowingly planning, designing, participating in or assisting in the use of all condemned techniques at any time and may not enlist others to employ these techniques in order to circumvent this resolution’s prohibition.

Council agreed with these authors regarding the need to set forth a clear and absolute prohibition on specific interrogation techniques and so in 2008 amended the 2007 resolution.

Submission 19

A psychologist, who recently joined the military, found out that she is being sent to Guantanamo and is assigned to a Behavioral Science Consultation Team (BSCT). Having read that the United Nations Human Rights Commission has determined that treatment equivalent to torture is taking place there and that the International Committee of the Red Cross has said that the conditions of detention in themselves are tantamount to torture, she fears that human rights are being violated in Guantanamo Bay and she is concerned that her work at this site will compromise her and inevitably lead to violations of the APA ethics code. Does being part of this team at such a site violate the APA ethics code?

Ethics Committee Response

Prior to accepting this voluntary assignment, psychologists would be able to consult with the APA Ethics Committee and Office regarding APA policy and the APA Ethics Code as they relate to this work. Council has emphasized the importance of APA's providing such consultation, and a psychologist in this role is encouraged to make use of APA as a resource.

Based on the petition resolution, psychologists may not work in unlawful settings, other than specific roles such as working directly for the person being detained, providing treatment to military personnel, or working for an independent third party. If psychologists have questions regarding whether it is appropriate to work in a particular detention setting, they should examine relevant APA policy and other resources, such as authorities on U.S. and international law, to help make this determination. In 2009, Council adopted as APA policy a petition resolution that directly addresses the issue of unlawful detention settings. The petition resolution, "Psychologists and Unlawful Detention Settings With a Focus on National Security," states:

Be it resolved that psychologists may not work in settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human rights [or the psychologist is providing treatment to military personnel].

Prior to accepting the assignment, the psychologist should consult if it is unclear whether the detention setting is lawful. In such an instance, consultation would be an important and helpful part of the process in determining whether the detention setting is lawful. If the detention facility is not lawful, the psychologist should request an alternate assignment, in keeping with the petition resolution, unless the psychologist is acting in one of the excepted roles specified in the petition resolution.

Submission 20

According to international instruments and their accompanying jurisprudence, “disappearance,” i.e., the capture and transport of a human being to a place of detention without acknowledgement of the capture or detention, is a form of torture. It is a form of torture directed at both the detainee’s family and the detainee himself or herself. Detainees held at CIA black sites are considered “disappeared” according to the UN definition (i.e., the detainee, “by being subjected to prolonged incommunicado detention in an unknown location, is the victim of torture and cruel and inhuman treatment,” *El-Megreisi v Libya*, Report of the United Nations Human Rights Committee). The Inter-American Court of Human Rights states that, “prolonged isolation and deprivation of communication are themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person.” ---- May a psychologist at a CIA black site supervise the interrogation of a detainee kept in such conditions? Or must the psychologist follow the 2006 resolution, which asserts that “should torture or other cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment evolve during a procedure where a psychologist is present, the psychologist shall attempt to intervene to stop such behavior, and failing that exit the procedure”? --> Sources: The U.N. Human Rights Committee, the European Court of Human Rights, and the Inter-American Court of Human Rights have all issued decisions on individual petitions that deal with the issue of “disappearances” amounting to possible acts of torture. For example, *Mojica v. Dominican Republic* (“the disappearance of persons is inseparably linked to treatment that amounts to a violation of Article 7”) (449/1991, para 5.7). The European Court of Human Rights has also held that the extreme pain and suffering inflicted on the mother of the “disappeared” person is a violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (*Kurt v. Turkey*, Eur. Ct. Hum. Rts, Case No.15/1997/799/1002, 25 May 1998, para.134). Similarly, the Inter-American Court of Human Rights, in the well-known case of *Velasquez Rodriguez*, held that “the mere subjugation of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment” (Inter-American Court H.R., *Velasquez Rodriguez* case, Judgment of July 29, 1988. Series C N° 4, para. 187)

Ethics Committee Response

First, President Obama’s executive order “Ensuring Lawful Interrogations” is directly relevant to this scenario. In light of this executive order, and as part of the process of obtaining a consultation if the psychologist remained unclear whether a detention setting was lawful, the psychologist would review the petition resolution “Psychologists and Unlawful Detention Settings With a Focus on National Security”:

Be it resolved that psychologists may not work in settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human rights [or to provide treatment to military personnel].

It is contrary to APA policy for a psychologist to work in a detention setting that is unlawful, with the exceptions noted in the petition resolution. As a consequence, the psychologist in the scenario would need to determine whether the site is a lawful or unlawful detention setting. It would be essential in this circumstance for the psychologist to pay particular attention to executive orders issued by President Barack Obama in January 2009, to determine whether the detention facility in question is consistent with current U.S. law.

Submission 21

In 2003, the CIA acknowledged that it had kidnapped two children of a suspected terrorist, ages 7 and 9, and held them at a CIA “black site.” Before their father was captured, the children were interrogated so that the CIA might discover from them their father’s whereabouts. After their father was captured, the detained children were held as hostages to pressure their father into giving up information. By one account, the two children were pressured into giving up information by having insects put on their legs to scare them. [Testimony of Ali Khan, father of Guantanamo prisoner Majid Khan, submitted to the Combatant Status Review Tribunal at Guantanamo in March 2007.] CIA interrogators stated at the time that, “We have child psychologists on hand at all times and they are given the best of care.” -- Is it ethical for a child psychologist to offer care in such a circumstance? --- Is it ethical for a child psychologist to assert that children who have been kidnapped and are being held as hostages, away from home and family, in order to facilitate the interrogation of their father, be considered to be held under “the best of care”? -- Is it ethical for the child psychologist to allow the dissemination of such a statement to legitimize the governmental use of children for coercive purposes? -->
Source: <http://intellnet.org/news/2003/03/08/17655-1.html>

Ethics Committee Response

A psychologist in this situation should be aware that law and APA policy speak directly to the behaviors described: kidnapping children, transporting them to a detention facility, and using insects to scare them in order to assist in an interrogation. APA policy clearly prohibits these activities.

Council’s 2008 resolution directly addresses the involvement of a detainee’s family: BE

IT RESOLVED that this unequivocal condemnation includes all techniques considered torture or cruel, inhuman or degrading treatment or punishment under the [five international texts]. An absolute prohibition against the following techniques therefore arises from, is understood in the context of, and is interpreted according to these texts:... exploitation of fears, phobias or psychopathology...or the threatened use of any of the above techniques to an individual or to members of an individual’s family [emphasis added]. Psychologists are absolutely prohibited from knowingly planning, designing, participating in or assisting in the use of all condemned techniques at any time and may not enlist others to employ these techniques in order to circumvent this resolution’s prohibition.

These texts make absolutely clear that the behaviors described in the submission, that is, kidnapping children, transporting them to an unlawful detention facility, and then using insects to scare them in order to aid in the interrogation of a parent, would constitute violations of APA policy.

Submission 22

Two psychologists are interrogating a prisoner using techniques which include isolation, humiliation, forced nakedness, and waterboarding. Their supervisor, also a psychologist, enters the room, sees what the two are doing, and leaves in disgust. The supervisor takes no further action and the interrogation techniques continue. ---What ethical violations, if any, have been committed by the supervisor?

Source: Vanity Fair: Rorschach and Awe

[<http://w.vanityfair.com/politics/features/27/07/torture200707>]

Ethics Committee Response

The psychologist would be familiar with Council's 2006 resolution, which states:

BE IT RESOLVED that psychologists shall be alert to acts of torture and other cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment and have an ethical responsibility to report these acts to the appropriate authorities;

The PENS report states "Psychologists are alert to acts of torture and other cruel, inhuman, or degrading treatment and have an ethical responsibility to report these acts to the appropriate authorities."

Thus, the 2005 and 2006 APA policies speak directly to a psychologist's responsibilities in such a scenario.

Submission 23

A prisoner is held in a cell that measures nine feet by seven feet. The windows are covered over ... No pillow is given. There is no sheet. No clock. No calendar. No telephone calls. No visitors. These conditions have continued for two years, during which time he has been denied contact with lawyers. He is fed through a slot in the door. If prison staff enter the cell, their identifying information is covered. In preparation for trial, a psychologist evaluates the prisoner through a rectangular slot in his isolation cell for two minutes. The psychologist concludes, based on that interview and the reports of the guards, that there are no signs of "distress" or "lethality" and there have been no significant changes since a previous assessment two years earlier. This report is offered as testimony that the prisoner is competent to stand trial. -- Is it ethical for the psychologist to neglect to report the isolation and sensory deprivation? -- Is it ethical to make any form of assessment based on such minimal information? -- Is it ethical for the psychologist to support the sensory deprivation plan by not entering the room and by not

identifying him or herself? --> Source: USA Today,
http://www.usatoday.com/printedition/news/20070228/a_padil1a28art.htm

Ethics Committee Response

Several APA policies speak directly to the specific questions raised in this submission. This submission asks whether the psychologist should report isolation and sensory deprivation and whether a 2-minute interview under restricted conditions is sufficient to assess the detainee's mental status and competence to stand trial.

First, it is important to recognize that the 2008 Council resolution prohibits specific activities, including isolation and sensory deprivation:

BE IT RESOLVED that this unequivocal condemnation includes all techniques considered torture or cruel, inhuman or degrading treatment or punishment under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Geneva Conventions; the Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment; the Basic Principles for the Treatment of Prisoners; or the World Medical Association Declaration of Tokyo. An absolute prohibition against the following techniques therefore arises from, is understood in the context of, and is interpreted according to these texts: . . . isolation; sensory deprivation . . .

With respect to the reporting issue, Council's 2006 resolution states:

BE IT RESOLVED 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.

The PENS report also requires psychologists to notify the chain of command if they believe that an interrogation involves torture or CID.

With respect to the assessment issue, the psychologist would review the literature and research regarding what constitutes an appropriate assessment for rendering an opinion regarding competence to stand trial, and review Ethical Standard 9.01, Bases for Assessments, which states:

9.01 Bases for Assessments

(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings. (See also Standard 2.04, Bases for Scientific and Professional Judgments.)

(b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations. (See also Standards 2.01, Boundaries of Competence, and 9.06, Interpreting Assessment Results.)

(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

Thus, in order to determine an ethical course of action regarding the request to assess this detainee, the psychologist would review the 2006 and 2008 Council resolutions, Ethical Standard 9.01, and the relevant literature regarding what examination is adequate to render an opinion regarding the detainee's mental status and competence to stand trial.

Submission 24

According to draft instructions written for military intelligence psychologists at detainee sites, including Guantanamo, operational psychologists supervising interrogations and detention conditions, "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." However, according to a report issued by the United Nations Human Rights Commission, "the general conditions of detention [at Guantanamo], in particular the uncertainty about the length of detention and prolonged solitary confinement, amount to inhuman treatment and to a violation of the right to health as well as a violation of the right of detainees under article 10, paragraph 1, of ICCPR [International Covenant on Civil and Political Rights] to be treated with humanity and with respect for the inherent dignity of the human person." Another report by the U.N. Committee on Torture stated that "The Committee, noting that detaining persons indefinitely without charge, constitutes per se a violation of the Convention [The U.N. Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment], is concerned that detainees are held for protracted periods at Guantanamo Bay, without sufficient legal safeguards and without judicial assessment of the justification for their detention"-- Must operational psychologists at sites such as Guantanamo, where, according to reports by Human Rights First and Amnesty International, a majority of detainees continue to be held in indefinite detention and prolonged isolation, follow the requirements of the 2006 APA resolution, which asserts that "should torture or other cruel, inhuman, or degrading treatment or cruel, inhuman, or degrading punishment evolve during a procedure where a psychologist is present, the psychologist shall attempt to intervene to stop such behavior, and failing that exit the procedure"? --- In other words, do APA ethical principles and standards

require operational psychologists at sites where such conditions are chronic and systematic to request transfer? --- How does the APA ethics committee assess a psychologist's "willful ignorance" of such circumstances? For example, is it acceptable for a chief psychologist working at a site where a majority of detainees are held in conditions that the UN deems "inhuman treatment" to state, "I learned a long, long time ago, if I'm going to be successful in the intel community, I'm meticulously - in a very, very dedicated way - going to stay in my lane ... So if I don't have a specific need to know about something, I don't want to know about it. I don't ask about it.?" ---- Is such willful ignorance ethical? -> Sources: International Herald Tribune, <http://www.iht.com/articles/2006/02/16/america/web.0216un.php>---Human Rights First, <http://www.acsblog.org/guest-bloggers-hamdan-wants-out-from-solitary-confinement-debates-on-classified-evidence.html> ---- CBS News and Associated Press, <http://www.cbsnews.com/stories/2008/02/07/national/main3800426.shtml> ---Amnesty International, Cruel and Inhuman: Conditions of isolation for detainees at Guantanamo Bay <http://web.amnesty.org/library/index/engAMR510512007>--United Nations Committee on Torture, <http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.USA.Co.2.pdf>United Nations Human Rights Commission, http://w.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.120_.pdf

Ethics Committee Response

Psychologists are expected to be aware of and abide by all APA policies related to their roles. Thus, in response to the question about whether psychologists are expected to be familiar with and to follow relevant APA policies, the answer is an emphatic yes.

This vignette addresses several aspects of a legal framework, some of which no longer apply. Policies relevant to the legal framework regarding detention sites include the petition resolution "Psychologists and Unlawful Detention Settings With a Focus on National Security," which states:

Be it resolved that psychologists may not work in settings where persons are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human rights [or provide treatment to military personnel].

The petition resolution prohibits psychologists from working at unlawful detention sites unless in roles that are excepted by the resolution.

Submission 25

The 2008 "Amendment to the 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'" prohibits "forced nakedness." In a detention facility, detainees

may be strip searched when there is cause to believe they may be hiding a weapon. Would a strip search violate this 2008 amendment?

Ethics Committee Response

The 2008 resolution prohibits specific activities, including forced nakedness.

For the purpose of considering how the prohibition against forced nakedness would apply to a strip search as described in the vignette, the resolution's invocation of the five international texts provides guidance. The resolution states that its absolute prohibition against specific activities, including forced nakedness, "arises from, is understood in the context of, and is interpreted according to these texts."

A strip search as described in the vignette is conducted for the purpose of maintaining a safe detention environment and preventing acts of violence. A psychologist is not involved in conducting the strip search, and the strip search is not part of the process of interrogating the individual. For these reasons, the Committee concludes that the prohibitions against torture and CID are of limited application to a strip search as described in this scenario.

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