



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

MEMORANDUM

TO: APA Board of Directors

FROM: Committee on Legal Issues

DATE: May 25, 2018

RE: NBI 35B: Resolution to Amend Council's 2009, 2013, and 2015 Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings

During its Spring 2018 meeting, COLI discussed the Council New Business Item #35B, "Resolution to Amend Council's 2009, 2013, and 2015 Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings." We appreciated that Drs. Kennedy and Harvey moved this item forward and agree that the Resolution as originally approved should be revisited.

Level 1 Concerns:

COLI agrees with the suggested language explicitly allowing psychologists to provide treatment services to detainees even when those individuals are "held outside of... either International Law... or the US Constitution." We unanimously supported this provision.

Beyond approving the amendment, COLI encourages broadening the provision to also allow psychologists to be involved in the practice and policy of humane interrogations. We recognized that footnote 6 of the Resolution allows psychologists to "provide consultation... pertaining to information gathering methods which are humane," but the text that the footnote refers to too broadly prohibits psychologists from being present at "any national security interrogations." The implication of these two pieces of text together is that psychologists are not to be present at all during interrogations but can provide guidance on information-gathering policies at an abstract level. The Committee on Legal Issues questions this distinction and recommends that the Resolution be revised to more explicitly allow for the inclusion of psychologists in the practice of humane information-gathering approaches.

We recognize that this Resolution was written during a time when the APA felt compelled to assert its strong opposition against torture in the wake of the IR. However, the practice of interrogations and information-gathering approaches has been informed by a wealth of

psychological science. Psychologists can provide guidance on best practices to promote the humane treatment of detainees during efforts to gather information from these individuals, and it is inconsistent with the APA mission to promote public welfare to remove psychologists from contributing their expertise in this way. In fact, the APA has multiple sources of guidance for psychologists working in this field, including but not limited to, our Ethics code, research concerning false confessions, and other guidelines concerning best practices.

Level 2 Concerns:

None

Board Response to NBI #35B on Detainee Treatment

The Board recommends adoption of a substitute motion in response to Council New Business Item #35B, entitled “*Resolution to Amend Council’s 2009, 2013, and 2015 Resolutions to Clarify that Psychologists May Provide Treatment to Detainees or Military Personnel in National Security Settings,*”

The substitute motion includes the following changes:

- 1) The following is clarified in the text recommended for revision:

Military psychologists providing mental health treatment to detainees in national security settings are able to do so ethically, in full adherence to our profession’s *Ethical Principles of Psychologists and Code of Conduct* (Amended effective June 1, 2010 and January 1, 2017) (the “Ethics Code”) and are able to obtain any information or ask any questions necessary to act competently and ethically.

Rationale: In accordance with the highest ethical ideals of the profession, including **Beneficence and Non-Maleficence, Justice, and Respect for People’s Rights and Dignity**, psychologists respect the dignity and worth of all people, practice within the boundaries of their competence, benefit those with whom they work, and take care to do no harm. Similarly, the AMA Principles of Medical Ethics require that “A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.”

Furthermore, the language about military psychologists not being restricted in their communication with the detainees is included in response to reports that military psychologists at the Guantanamo Bay detention facility did not ask about, or document, histories of torture, abuse, or resultant PTSD symptoms, in contrast to information obtained from independently-examined detainees. They also need to have access to the detainee’s full medical record available to the federal government.

- 2) The following clause is included:

BE IT RESOLVED that APA strongly encourages the Department of Defense to make independent psychologists working for the detainees or for a human rights organization available as health care providers to detainees at sites identified in the 2015 resolution as operating outside of, or in violation of, the U.S. Constitution or international law.

Rationale: This clause is derived from the 2009 Council petition resolution and was included in an earlier NBI that Council considered in a “mega-issue” discussion in August of 2016, which had been drafted with input from diverse groups. The intent of this provision is to take into account the concern that detainees who had been abused or tortured are unlikely to build a therapeutic alliance with health care professionals who work for the military at settings that do not offer human rights protections under the Constitution or international law. Military psychologists who provided mental health care to detainees (which has been on a voluntary basis) at such settings received specialized training to do so. While there are important security clearance issues to consider at military detention facilities, it can be argued that arranging for independent

forensic psychologists who are competent multiculturally and linguistically (when feasible) are trained and experienced in working with torture victims and others in a detention setting would be beneficial. Such an action would also enable more military psychologists to provide care to other military personnel in keeping with their principal training and mission.

3) The following clause is included:

APA recommits to its anti-torture policy dating back to 1985 (which has explicitly been incorporated into the Ethics Code as Standard 3.04 (b) as part of the implementation of the 2015 Council policy) and to continue to take strong action to oppose torture or cruel, inhuman, or degrading treatment or punishment of detainees held in U.S. custody and to safeguard their welfare.

Rationale: On the hoped-for future, there will be no threat or risk of national security detainees being abused in U.S. custody (as there is no evidence that they are now). Were this to be the case, the Board recognizes that the above-stated caveats to NBI 35B would be rendered moot. This is because our current APA policy dating back to 2009 only prohibits military psychologists from treating detainees “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 [as deemed by U.N. authorities as clarified by the 2015 Council resolution] or the US Constitution (where appropriate).”