DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY MEDICAL COMMAND
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REPLY TO
ATTENTION OF

MCCG

OTSG/MEDCOM Policy Memo 06-029

Expires 20 October 2008

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MEMORANDUM FOR Commanders, MEDCOM Major Subordinate Commands

SUBJECT: Behavioral Science Consultation Policy

1. Purpose: To discuss the background, definitions, mission, concept of operations, roles, training requirements, and ethics for personnel providing behavioral science consultation to intelligence collection and detention operations. The mission of a behavioral science consultant is to provide psychological expertise and consultation in order to assist the command in conducting safe, legal, ethical, and effective detention operations, intelligence interrogations, and detainee debriefing operations.

2. Proponent: The proponent for this policy is the Assistant Surgeon General for Force Projection, OTSG.

3. Policy details are attached.

4. The POC for this memorandum is COL Bernard DeKoning, Assistant Surgeon General for Force Projection, at (703) 693-5601.

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KEVIN C. KILEY
Lieutenant General, MC
The Surgeon General

US ARMY BEHAVIORAL SCIENCE CONSULTATION TO DETENTION OPERATIONS, INTELLIGENCE INTERROGATIONS, DETAINEE DEBRIEFING, AND TACTICAL QUESTIONING

1. References.

a. The Geneva Conventions of 1949.

b. DoD Directive (DoDD) 2310.1, DoD Program for Enemy Prisoners of War (EPW) and Other Detainees, 18 Aug 94.

c. DoDD 5100.77, DoD Law of War Program, 9 Dec 98.

d. DoDD 3115.09, DoD Intelligence Interrogations. Detainee Debriefings, and Tactical Questioning, 3 Nov 05.

e. DoDI 2310.08E, Medical Program Support for Detainee Operations, 6 Jun 06.

f. Health Affairs Policy 05-006, Medical Program Principles and Procedures for the Protection and Treatment of Detainees in the Custody of the Armed Forces of the United States, 3 Jun 05.

g. Health Affairs Policy Memorandum, Training for Health Care Providers in Detainee Operations (Coordinating Draft).

h. JP 3-63, Joint Doctrine for Detainee Operations, Final Coordination Draft. 23 Mar 05.

i. JP 4-02, Health Service Support in Joint Operations, Revised Second Draft, 21 Mar 05.

j. AR 190-8 (OPNAVIST 3461.6, AFJI 31-304, MCO 3461.1): Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, 1 Oct 97.

k. FM 3-19.40, Internment/Resettlement Operations, 1 Aug 01.

l. FM 3-19.401/MCRP 4-11.8/NTTP 3-07.8/AFTTP(1) 3-2.51, Multi-service Tactics, Techniques, and Procedures Detainee Operations (Draft).

m. FM 21-78, Resistance and Escape, 15 Jun 89.

n. FM 2-22.3, Human Intelligence Collector Operations, Sep 06.

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o. Ethical Principles of Psychologists and Code of Conduct, American Psychological Association, 2002 edition.

p. Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security, Jun 05 (Enclosure 1).

q. Military Medical Ethics. Textbooks of Military Medicine, The Borden Institute, Office of The Surgeon General, Department of the Army, 2003.

r. The Principles of Medical Ethics With Annotation Especially Applicable to Psychiatry, American Psychiatric Association, 2001 edition including Nov 03 amendments.

s. Opinions of the Ethics Committee on The Principles of Medical Ethics With Annotation Especially Applicable to Psychiatry, American Psychiatric Association, 2001 edition.

t. Ethics Primer of the American Psychiatric Association, American Psychiatric Association, 2001.

u. Report of the Council on Ethical and Judicial Affairs, CEJA Report 10-A-06, Physician Participation in Interrogation, 2006 (Enclosure 2).

v. US Army Field Manual 34-52, "Intelligence Interrogation, Detainee Debriefings and Tactical Questioning," 3 Nov 05.

2. Background.

a. Although psychologists have supported detention operations and interrogations for many years, the events of September 11, 2001 and the ongoing Global War on Terrorism (GWOT) have required the unprecedented and sustained involvement of Behavioral Science Consultants (BSCs) in support of both detention operations and intelligence interrogations and detainee debriefing operations. Prior to GWOT, support for these missions was provided by personnel organic to the intelligence and special operations communities. However, the expanded demand for BSCs to support these missions has required assignment of psychologists and psychiatrists from other mission areas within the Department of Defense (DoD).

b. The Army is the Executive Agent for the administration of DoD detainee policy. The GWOT has resulted in the detention by US forces of large numbers of detainees. The intelligence interrogation and debriefing of detainees is a vital and effective part of the GWOT and is designed to obtain accurate and timely intelligence in a manner consistent with applicable US and international law, regulations, and DoD policy. Behavioral science personnel provide expertise and consultation to Commanders to directly support the detention and interrogation/ debriefing operations.

c. The United States (US) is a signatory to the Geneva Convention Relative to the Treatment of Prisoners of War (GPW) and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC). The requirements of these conventions are delineated in AR 190-8; this multi-Service regulation is proscriptive for all US military forces, not only for the US Army.). Every BSC who supports detention operations must read and understand the specific requirements contained in AR 190-8. Details from AR 190-8 will not be discussed in detail herein, but the regulation expressly requires the humane treatment of all detainees, regardless of their status. Portions of the regulation are reprinted below:

1–5. General protection policy (AR 190-8):

a. US policy, relative to the treatment of enemy prisoners of war (EPW), civilian internees (CI) and retained personnel (RP) in the custody of the US Armed Forces, is as follows:

(1) All persons captured, detained, interned, or otherwise held in US Armed Forces custody during the course of conflict will be given humanitarian care and treatment from the moment they fall into the hands of US forces until final release or repatriation.

(2) All persons taken into custody by US forces will be provided with the protections of the EPW until some other legal status is determined by competent authority.

(3) The punishment of EPW, CI and RP known to have, or suspected of having, committed serious offenses will be administered IAW due process of law and under legally constituted authority per the GPW, the GC, the Uniformed Code of Military Justice, and the Manual for Courts Martial.

(4) The inhumane treatment of EPW, CI, and RP is prohibited and is not justified by the stress of combat or with deep provocation. Inhumane treatment is a serious and punishable violation under international law and the Uniform Code of Military Justice (UCMJ).

b. All prisoners will receive humane treatment without regard to race, nationality, religion, political opinion, sex, or other criteria. The following acts are prohibited: murder, torture, corporal punishment, mutilation, the taking of hostages, sensory deprivation, collective punishments, execution without trial by proper authority, and all cruel and degrading treatment.

c. All persons will be respected as human beings. They will be protected against all acts of violence to include rape, forced prostitution, assault and theft, insults, public curiosity, bodily injury, and reprisals of any kind. They will not be subjected to

medical or scientific experiments. This list is not exclusive. EPW/RP is to be protected from all threats or acts of violence.

d. Photographing, filming, and videotaping of individual EPW, CI and RP for other than internal Internment Facility administration or intelligence/counterintelligence purposes is strictly prohibited. No group, wide area or aerial photographs of EPW, CI and RP or facilities will be taken unless approved by the senior Military Police officer in the Internment Facility Commander's chain of command.

3. Definitions.

a. Behavioral Science Consultant (BSC). BSCs are psychologists and psychiatrists, not assigned to clinical practice functions, but to provide consultative services to support authorized law enforcement or intelligence activities, including detention and related intelligence, interrogation, and detainee debriefing operations.

(1) BSCs, who by definition are not engaged exclusively in the provision of medical care, may not qualify for special status accorded retained medical personnel by Article 33 of the GPW or carry DoD-issued identification cards identifying themselves as engaged in the provision of healthcare services. Analogous to behavioral science unit personnel of a law enforcement organization or forensic psychiatry or psychology personnel supporting the criminal justice, parole, or corrections systems, BSCs employ their professional training, not in a provider-patient relationship, but in relation to a person who is the subject of a lawful governmental inquiry, assessment, investigation, adjudication, or other proper action.

(2) BSCs function as Special Staff to the Commander in charge of both detention and interrogation operations. BSCs should be aligned to report directly to this Commander, not to a Commander charged solely with command of the detention facility or joint interrogation debriefing center (JDIC). This arrangement enhances the BSCs ability to provide comprehensive consultation regarding all subjects within the BSCs area of expertise on combined aspects of detention operations, intelligence interrogations and detainee debriefings.

b. Behavioral Science Technician (BST). Enlisted mental health technicians with at least 10 years experience in mental health field who have received specific training to function in support of, and under direct supervision of, BSCs. It is important to note that technicians are not licensed to function independently and may not operate except under direct supervision of the BSC. The scope of practice for these technicians will be at a level consistent with their knowledge and skill set and determined by the supervising BSC on site; under no circumstances will their practice exceed the limitations contained in this policy.

c. Behavioral Science Consultation Team (BSCT).

(1) Often behavioral science consultation to detention operations, intelligence interrogations, and detainee debriefings is conducted by individual BSCs working alone.

(2) In other situations, such as at a detention facility, one or more BSCs and one or more BSTs may form a team, the Behavioral Science Consultation Team or BSCT. The senior military BSC serves as team leader for any other military, civilian, or contractor employee, enlisted, or officer behavioral science personnel who serve on or assist the BSCT.

(3) In some situations other personnel, such as Judge Advocate General officers and/or medical officers may be tasked to support the BSCT.

d. Behavioral drift. This is the continual re-establishment of new, often unstated, and unofficial standards in an unintended direction. It often occurs as established, official standards of behavior are not enforced. Ambiguous guidance, poor supervision, and lack of training and oversight contribute to this change in observed standards. Certain psychological and social pressures can greatly increase the likelihood of behavioral drift. This phenomenon is commonly observed in detention and other settings in which individuals have relative control or power over others' activities of daily living or general functioning. Drift is detrimental to the mission and may occur very quickly without careful oversight mechanisms and training (discussed more fully in section on Mission Essential Tasks, Command Consultation).

4. Mission.

a. The mission of a BSC is to provide psychological expertise and consultation in order to assist the command in conducting safe, legal, ethical, and effective detention operations, intelligence interrogations, and detainee debriefing operations.

b. This mission is composed of two complementary objectives:

(1) To provide psychological expertise in monitoring, consultation, and feedback regarding the whole of the detention environment in order to assist the command in ensuring the humane treatment of detainees, prevention of abuse, and safety of US personnel.

(2) To provide psychological expertise to assess the individual detainee and his environment and provide recommendations to improve the effectiveness of intelligence interrogations and detainee debriefing operations.

c. These mission objectives contain four critical components of operations that BSCs must manage as they work in this arena;

(1) Safety. BSCs, like any other military personnel, DoD civilian, or contractor employee help to ensure the safety of both DoD personnel and detainees. BSCs use their knowledge of social psychology, group behavior, and the dynamics of captivity to reduce the likelihood of abuse by providing behavioral science expertise, and to establish processes that reduce the opportunity for behavioral drift and inappropriate behavior.

(2) Law. Although BSCs are not legal experts, they must be familiar with applicable US and international law, regulations, and DoD policies, as well as mission-specific guidance and direction set forth in applicable Execute Orders (EXORDs), Operations Orders (OPORDs), and Operations Plans (OPLANs) that govern detention operations, intelligence interrogations, and detainee debriefing operations. In addition, given their special knowledge; education, training, and experience; and status, as well as their unique vantage point on the conduct of detention operations, intelligence interrogations, and detainee debriefings, BSCs are obligated to report any actual, suspected or possible violations of applicable laws, regulations, and policies, to include allegations of abuse or inhumane treatment in accordance with DoDD 5100.77, DoDD 3115.09, DoDD 2310.08E (Medical Program Support for Detainee Operations) and this policy statement. BSCs shall report those circumstances to the chain of command. BSCs who believe that such a report has not been acted upon properly should also report the circumstances to the technical chain, including the Military Department Specialty Consultant. Technical chain officials may inform the Joint Staff Surgeon or Surgeon General concerned, who then may seek senior command review of the circumstances presented. As always, other reporting mechanisms, such as the Inspector General, criminal investigation organizations, or Judge Advocates, also may be used. BSCs shall make a written record of all reports of suspected or alleged violations in a reportable incident log maintained by the detention facility commander (or other designated senior officer).

(3) Ethics. BSCs must regularly monitor their behavior and remain within professional ethical boundaries as established by their professional associations, by their licensing State, and by the military.

(4) Effectiveness. BSCs add value to detention operations, intelligence interrogation, and detainee debriefing missions because of their ability to provide detailed assessments of individual detainees, their environment, and the interactions between detention facility guards and interrogators and detainees. BSCs enhance detention operations by providing assessments and consultative services to the Command with a view to supporting a safe, stable, and secure detention facility, developing strategies for improving detainee behavior and compliance with camp rules, and increasing positive detainee-guard/staff interactions. Similarly, with regard to interrogators, BSCs assist in maximizing the effectiveness of eliciting accurate, reliable, and relevant information during the interrogation and debriefing processes.

5. Concept of Operations.

a. What BSCs will do:

(1) BSCs adhere to applicable US and international law, regulations, and DoD policies, as well as accepted professional ethical standards with regard to proper and ethical conduct in support of detention operations, intelligence interrogations, and detainee debriefings.

(2) BSCs provide consultative services to detention operations. intelligence interrogations, and detainee debriefings in a manner that:

(a) Supports authorized law enforcement or intelligence activities, including detention, interrogation, and debriefing operations in a manner that promotes the safety and security of both detainees and US personnel.

(b) Is within applicable legal, regulatory, and DoD policy guidelines.

(c) Is within the individual practitioner's professional ethical guidelines.

(d) Increases the effectiveness of the missions.

(3) BSCs function as Special Staff to the Commander in charge of both detention and interrogation operations. BSCs should be aligned to report directly to the Commander, not to a Commander charged solely with command of the detention facility or joint interrogation debriefing center (JIDC). This arrangement enhances the BSCs ability to provide comprehensive consultation regarding all subjects within the BSCs area of expertise on combined aspects of detention operations, intelligence interrogations and detainee debriefings.

(4) No matter the setting, BSCs have a responsibility to report information that constitutes a clear and imminent threat to the lives and welfare of others. Such information acquired from detainees should be treated no differently, and must be reported through proper channels.

(5) BSCs will become aware of all applicable policies and procedures regarding circumstances for protection and release of detainee medical information. The Health Insurance Portability and Accountability Act (HIPAA) does not apply to the medical records of detainees (DoD 6025 C5.1, C7.10, C7.11). Under US and international law and applicable medical practice standards, there is no absolute confidentiality of medical information for any person. However, the handling, disposition, and release of all types of medical records are governed by US Army regulation and theater-specific policies. Generally, only healthcare personnel engaged in a professional provider-patient treatment relationship with detainees shall have access to detainee medical records. However, whenever patient-specific medical information concerning detainees

is disclosed for purposes other than treatment, healthcare personnel shall record the details of such disclosure, including the specific information disclosed, the person to whom it was disclosed, the purpose of the disclosure, and the name of the medical unit commander (or other designated senior medical activity officer) approving the disclosure. Analogous to legal standards applicable to US citizens, permissible purposes include to prevent harm to any person, to maintain public health and order in detention facilities, and any lawful law enforcement, intelligence, or national security related activity. In any case in which the medical unit commander (or other designated senior medical activity officer) suspects that the medical information to be disclosed may be misused, he or she should seek a senior command determination that the use of the information will be consistent with applicable standards. For example, it would likely be necessary to reveal to detention and interrogation/debriefing staff information regarding food restrictions and allergies to ensure no inadvertent harm to a detainee. Likewise guards and interrogation teams would need to be advised about contagious conditions in order to take appropriate precautions to prevent the spread of disease from one detainee to others and to US personnel. It would also be necessary to release medical information to appropriate personnel about medications and other medical conditions prior to travel.

(6) BSCs will be alert for signs of maltreatment or abuse of detainees and report alleged or suspected abuse to proper authorities in accordance with DoDD 5100.77, DoDD 3115.09, and this policy. BSCs are obligated to report any actual, suspected or possible violations of applicable laws, regulations, and policies, to include allegations of abuse or inhumane treatment in accordance with DoDD 5100.77, DoDD 3115.09, and this policy statement. BSCs shall report those circumstances to the chain of command. BSCs who believe that such a report has not been acted upon properly should also report the circumstances to the technical chain, including the Military Department Specialty Consultant. Technical chain officials may inform the Joint Staff Surgeon or Surgeon General concerned, who then may seek senior command review of the circumstances presented. As always, other reporting mechanisms, such as the Inspector General, criminal investigation organizations, or Judge Advocates, also may be used.

(7) BSCs are authorized to make psychological assessments of the character, personality, social interactions, and other behavioral characteristics of detainees, including interrogation subjects, and, based on such assessments, advise authorized personnel performing lawful interrogations and other lawful detainee operations, including intelligence activities and law enforcement.

(8) BSCs may provide advice concerning interrogations of detainees when the interrogations are fully in accordance with applicable law and properly issue interrogation instructions. Sources of information on lawful interrogation procedures include DoDD 3115.09, FM 2-22.3 and other applicable law, regulation, and policy.

(9) BSCs may observe interrogations.

(10) BSCs may provide training for interrogators in listening and communications techniques and skills, results of studies and assessments concerning safe and effective interrogation methods, and potential effects of cultural and ethnic characteristics of subjects of interrogation.

(11) BSCs may advise command authorities on detention facility environment, organization, and functions, ways to improve detainee operations, and compliance with applicable standards concerning detainee operations.

(12) BSCs may advise command authorities responsible for determinations of release or continued detention of detainees of assessments concerning the likelihood that a detainee will, if released, engage in terrorist, illegal, combatant, or similar activities against the interests of the US.

(13) BSCs may consult at any time with the psychology or other applicable specialty consultant designated by The Surgeon General concerned for this purpose regarding the roles and responsibilities of BSCs and procedures for reporting instances of suspected noncompliance with standards applicable to detainee operations.

b. What BSCs will not do:

(1) BSCs will not support intelligence interrogations or detainee debriefings that are not in accordance with applicable law.

(2) BSCs will not use or facilitate the use, directly or indirectly, of physical or mental health information regarding any detainee in a manner that would result in inhumane treatment or would not be in accordance with applicable law.

(3) Although BSCs are qualified as healthcare providers, they do not hold clinical privileges to practice at the local command/staff or detainee healthcare facility (they may, however, maintain privileges at their parent medical facility). BSCs will take necessary steps to avoid multiple relationships that conflict with professional ethical guidelines.

(a) BSCs will not routinely provide medical care or behavioral healthcare to members of the command/staff they support.

(b) BSCs will not ordinarily provide medical care or behavioral healthcare to detainees (except in emergency circumstances in which no other healthcare providers can respond adequately). They may not provide medical screening to detainees (which is a healthcare function), nor be a medical monitor during interrogation.

(c) Absent compelling circumstances requiring an exception to the rule, healthcare personnel shall not within a three-year period serve in the same location both in a clinical function position and as a BSC.

(4) BSCs will not conduct any form of research that involves detainees (DoD 3216.2, para 4.4.2). Research includes any systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Certain kinds of descriptive studies and retrospective analyses that are not experimental in nature, but are based on experiences and observations, would not be prohibited.

(5) As in any setting, behavioral science personnel will not perform any duties they believe are illegal, immoral, or unethical. If behavioral science personnel feel they have been ordered to perform such duties, they should voice their concerns to and seek clarification from the chain of command. If the chain of command is unable to resolve the situation, BSCs should seek alternate means of resolution by contacting their Specialty Consultant. As always, other mechanisms, such as the Inspector General, criminal investigation organizations, or Judge Advocates, also may be used.

(6) BSCs will not display recognizable patches or other designations on uniforms identifying them as healthcare providers or medical personnel while supporting detention operations, intelligence interrogations, or detainee debriefings so as to avoid any misperceptions of the BSCs function or role.

(7) BSCs shall not conduct or direct interrogations.

6. Mission Essential Tasks. Understanding the limits of each of the functions below and establishing clear boundaries around these functions will allow BSCs to perform ethically in a field with many potential challenges. These boundaries also assist in establishing clear and proper relationships with command and staff.

a. Interrogation/Debriefing Assessment and Consultation. BSCs function in intelligence interrogation and detainee debriefing assessment is to evaluate the psychological strengths and vulnerabilities of detainees, and to assist in integrating these factors into a successful interrogation/debriefing process. BSCs who consult to the interrogation/debriefing processes are an embedded resource. They consult as the process unfolds and do not simply react to problems or obstacles that arise. This consultative process normally begins well before the actual interrogation.

b. Environmental Setting Consultation. BSCs, with their expertise in human behavior, can act as consultants to advise detention facility guards, military police, interrogators, military intelligence personnel, and the command on aspects of the environment that will assist in all interrogation and detention operations. The detention environment includes physical aspects of the facilities as well as social and behavioral aspects of detained population. The physical environment includes holding cells, hallways, toilet and bathing facilities, vehicles, and interrogation rooms. BSCs can provide insight into the likely effects of this environment and how changes may affect detainees. The social and behavioral aspects of the environment may include access to recreational and social activities, educational incentive programs, disciplinary plans and

procedures and strategies for increasing positive behavior and compliance with camp rules. The goal is to ensure that the environment maximizes effective detention and interrogation/debriefing operations, while maintaining the safety of all personnel, to include detainees. BSCs can assist in ensuring that everything that a detainee sees, hears, and experiences is a part of the overall interrogation plan. The purpose of this consultation is to optimize the conditions and maximize the interventions that elicit accurate and reliable information.

c. Indirect Assessment. BSCs may be called upon to provide psychological assessments of individual detainees. These assessments can be delivered in a written format, but more often are verbally communicated to detention operations/interrogation personnel in an informal and timely manner. These products will routinely address both basic personality characteristics and the detainee's strengths and vulnerabilities. This assessment is usually conducted as part of the interrogation assessment, but may be conducted independently of an interrogation, for example, for purposes of assessing the ability of a particular detainee to integrate with detainees in an established cell-block. This assessment is usually conducted by direct observation rather than direct interaction, interview, or administration of psychometric instruments.

d. Information Operations. BSCs may assist the command in developing and executing information operations plans.

e. Training.

(1) Another key function for BSC personnel is the training of guards, interrogators, interpreters, and other staff. Periodic training sessions reiterate standards and reinforce awareness of the subject matter, as well as foster a culture conducive to behavioral correction, peer monitoring, and self-assessment. The concomitant healthy training environment can prevent "behavioral drift" that, in the long term, would be detrimental to the mission. "Behavioral drift" is the continual reestablishment of new, often unstated and unofficial standards in an unintended direction. In addition, BSCs provide training to other personnel regarding the cultural aspects of behavior that impact on interrogations.

(2) BSCs may also conduct training on topics such as:

(a) Social and cultural characteristics of behavior considered acceptable in the target countries.

(b) Psychological aspects of detention and the impact of confinement.

(c) Psychological aspects of exploitation.

(d) Recognizing the use of resistance techniques by the detainee.

(e) Establishing and clarifying the roles of the supervisor, interrogator, guard, and the BSC.

(f) Identifying, interpreting, and managing behavioral drift.

(g) The psychology of persuasion and influence.

(3) In addition to providing training on the psychological aspects of detention, intelligence interrogation, and detainee debriefing, BSCs also serve as another set of "eyes and ears" for the Commander to ensure that guards and interrogators are regularly conducting training on Standing Operating Procedures. BSCs should identify and recommend to the chain of command areas of training that have either been neglected or are in need of review.

f. Command Consultation. Direct BSC consultation to the chain of command may help prevent the inclination of guards and interrogators to drift behaviorally from the proper execution of their mission. Essential to proper command consultation is the ability of BSCs to access directly, consult with, and advise, all personnel involved in detention operations, intelligence interrogations, and detainee debriefings (from the Commander to the most junior private, including DoD civilians and contractor employees). Ideally, while the BSC must coordinate with and interact productively with all members of the command and staff, as a member of the Commander's Special Staff a BSC must have the means to advise the Commander directly on matters that affect mission integrity. BSCs may serve as the Commander's on-site representatives and should have unrestricted access to detention, interrogation, and debriefing areas. In fact, BSCs should assist the Commander in monitoring as much of the detainee and interrogation/debriefing operations as possible. Behavioral drift can occur extremely rapidly and must be quickly corrected when it occurs. The goal is to address problems with tact and at the lowest level possible, while ensuring that the Command is informed of all issues and concerns noted, when appropriate. Although minor deviations can be corrected at the individual level and typically on the spot, more significant issues or a pattern of deviations should be addressed with the command. Passive oversight reinforces inappropriate behavior. Drift begins in as early as 36 hours without oversight. Again, intervention should occur at the lowest level. Safety should never be compromised. What is tolerated will occur. Issues must be documented as they arise.

g. Psychological Screening. Under some circumstances, it is possible for the BSC to provide screening of DoD military or civilian personnel, contractor employees, and other personnel prior to their assignment to a role interacting with detainees. This can greatly assist, though not eliminate, the risk of inappropriate behavior. The screening of interrogators may include an interview, objective and projective assessment instruments, and an estimate of intellectual functioning. The assessment should evaluate the prospective interrogator's qualities, including, but not limited to, motivation, alertness, patience and tact, credibility, objectivity, self-control, adaptability, perseverance, and personal appearance and demeanor. Individuals considered for an

assignment in which they would be required to interact with detainees also should possess more than adequate ability for conceptualization and problem solving, situational awareness, emotional stability, integrity, and a good self-concept. As well, they should also be open to criticism and feedback and have self-awareness.

7. Training Requirements. Note: any exceptions require approval by Assistant Surgeon General for Force Projection.

a. Prerequisites.

(1) Licensed for independent practice.

(2) Volunteer for the training and BSC mission. This does not imply that the BSC must be a volunteer for a specific assignment, rather that they understand the nature of the mission, the shift from non-combatant to combatant status and, if strongly opposed to the role, be afforded the opportunity to deploy in a non-BSC assignment.

(3) Final TOP SECRET security clearance. (This is not essential for the training, which can be conducted at the SECRET level, but will be essential for actual employment as a BSC).

(4) Completion of training required for designation of Skill Identifier M6 (Repatriation/Reintegration Psychologist). In lieu of this training, psychiatrists may be fellowship trained in forensic psychiatry with graduate level coursework in social psychology and learning theory.

b. Training in Interrogation Support will take approximately 136 hours and be conducted in a combination of distance learning (approximately 40 hours) and in-residence (approximately 12 days) phases. Training includes instruction in the following topics:

(1) US and international law, regulations, and DoD policy applicable to detention operations, intelligence interrogations, and detainee debriefings, including:

(a) AR 190-8.

(b) The Geneva Convention Relative to the Treatment of Prisoners of War and The Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

(c) How to keep abreast of those legal actions and policy decisions that are rendered during an assignment, e.g., policies on legal status of detainees or approved interrogation techniques, that may influence operations or result in procedural changes.

(d) Definitions and standards of acceptable treatment of detainees.

(2) Ethical standards for psychologists or psychiatrists applicable to detention operations, intelligence interrogations, and detainee debriefings. This will include a discussion of common ethical issues and how to resolve ethical conflicts.

(a) Current ethical guidance provided by professional associations.

(b) Discussion of examples of ethical dilemmas.

(3) Fundamentals of US Army doctrine on detainee operations. This includes the structure, organization, and functions of Military Police and other guard force personnel in detention operations.

(4) Fundamentals of US Army doctrine on intelligence interrogation and detainee debriefing operations. This includes the structure, organization, and functions of Military Intelligence within the DoD, as well as reporting mechanisms and systems, nomenclature and missions of Military Intelligence personnel, and security classification guidelines for anticipated assignment location(s).

(5) An overview of information operations and the roles they play in interrogation/ detention operations.

(6) Application of the following areas of behavioral science to the interrogation/ debriefing processes (note: professional level expertise in these areas is a prerequisite to training).

(a) Personality development with particular attention to relevant cultural factors.

(b) Personality assessment with particular attention to relevant cultural factors.

(c) Learning theory.

(1) Operant conditioning.

(2) Classical conditioning.

(3) Cognitive behavior theories.

(d) Learned helplessness.

(e) Cognitive dissonance theory.

(f) Psychology of influence and persuasion.

(7) Review of the psychology research on the social processes that may lead to detainee abuse. This will include instruction on moral disengagement, the potential of psychological drift, and successful control processes that may reduce the incidence of abuse, as well as a review of the research on the social effects of disparate power relationships.

(8) Instruction on providing psychological oversight of detention operations, intelligence interrogations, and detainee debriefings. This instruction will build on material described in paragraphs noted above and will discuss, in detail, the manner and methods of establishing oversight, and how to put into practical use the theoretical knowledge of the group processes that may lead to detainee abuse.

(9) Review of the psychological aspects of captivity, capitalizing on the previous training the student has received. Particular attention will be paid to the emotional effects of captivity and the use of resistance techniques, including, but not limited to, a discussion of the Al Qaeda Training Manual.

(10) Instruction in the indirect and observational assessment of detainees. This will include a review of personality factors, cultural issues, and an update on current populations.

(11) Instruction and role playing in behavioral science consultation to the interrogation process.

(12) Instruction on providing consultation to Commanders concerning detention operations, intelligence interrogations, and detainee debriefings.

(13) Cultural, religious, and ideological issues regarding the specific populations under consideration, e.g., history of Islam, development of radical Islam and extremism. This would also include the impact of cultural issues on detention operations.

(14) Education on the missions and roles of various US Government departments and Agencies, foreign government organizations, and non-governmental organizations present in the theater.

8. Ethics.

a. Psychologists and psychiatrists are bound by both legal and ethical constraints when supporting detention operations, intelligence interrogations, and detainee debriefings. Every BSC who supports such operations must know the requirements of applicable US and international law, regulation, and DoD policy regarding the treatment of detainees. The BSCs involved in interrogation/debriefing support strive to help DoD to develop informed judgments and choices concerning human behavior. Further, because of the particularly sensitive and dynamic nature of detention operations.

intelligence interrogations and detainee debriefing operations, it is important to emphasize the ethical standards associated with BSC support to such.

b. BSCs have specific knowledge, training, and experience that can ensure the ethical treatment of detainees. A clear understanding of the social and behavioral forces that influence power relationships is essential when operating in this environment. Ethical standards are similar as to the separate professions of psychology and psychiatry, but they are not identical. Because of this, each profession will be addressed separately.

c. Psychologists:

(1) The ethical requirements for psychologists are contained in the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct (APA, 2002) and in the Report on the American Psychological Association Presidential Task Force on Psychological Ethics and National Security (2005).

(2) The ethical principles are guidance for the professional activities of psychologists. The Ethics Code is binding on all psychologists who are members of the APA and all those who are licensed by a State Psychology Licensing board that requires adherence to the code. All military psychologists are required to maintain State licensure. Therefore, the Ethics Code is an applicable guideline for military psychologists. Sanctions for violations of the Ethics Code can include the revocation of a psychologist's State license, placing the psychologist's military standing in jeopardy.

(3) The following identifies several aspects of the Ethics Code that necessitate interpretation, given the practice of support for detention operations, intelligence interrogations, and detainee debriefings: Relevant sections of the Introduction, Preamble, General Principles, and Ethics Code are discussed and interpreted as well as the relevant legal requirements.

(4) The Balance of Law, Duty, and the Ethics Code.

(a) DA military, civilian, and contractor employee psychologists are governed by applicable US and international law, regulations, and DoD policy. The Ethics Code also applies as discussed above.

(b) The Ethics Code pertains only to a psychologist's activities that are "part of their scientific, educational or professional roles" pertaining to the profession of psychology. The Code does not, therefore, have purview over the psychologist's role as a Soldier, civilian, or contractor employee that is unrelated to the practice of psychology. For instance, the dictum for beneficence does not pertain to actions against the enemy in combat.

(c) Conversely, the Ethics Code is broad in its application. It pertains to all psychologists (military, civilian, or contractor employee) in the performance of their profession. US State licensing boards use the Ethics Code as a standard for behavior, requiring compliance with the code to maintain licensure. The Ethics Code does not supersede applicable US and international law, regulations, or DoD policy.

(d) Ignorance of the Ethics Code does not excuse violations. A lack of awareness or misunderstanding of an Ethical Standard is not itself a defense to a charge of unethical conduct.

(e) The method of resolving conflicts between the law and regulations with the Ethics Code are addressed by the Code, as follows: "When the psychologist's responsibilities conflict with the law, regulations, or other governing legal authority, psychologists make known their commitment to this Ethics Code and take steps to resolve the conflict in a responsible manner. If . . . irresolvable . . . , psychologists may adhere to the requirements of the law, regulations . . . in keeping with basic principles of human rights (Introduction; 1.02; 1.03)." A process for maintaining adherence to the Code when it conflicts with applicable law, regulation, and policy is outlined below:

(i) Address and attempt to resolve the issue.

(ii) If initially not resolvable, consult with a psychologist experienced in detention operations/interrogation and debriefing support.

(iii) If the issue continues to elude resolution, adhere to law, regulations, and policy in a responsible manner.

(iv) Again, as noted above, applicable US and international law, regulations, and DoD policy require the humane treatment of all detainees, regardless of status. This tenet is completely consistent with the Ethics Code.

(5) Issues of Harm and Exploitation.

(a) The Ethics Code (3.04), states, "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."

(b) This is consistent with the GPW, GC, and AR 190-8, all of which require the humane treatment of all detainees. The psychologist must make a reasonable effort to prevent unavoidable harm to detainees and to treat all persons with dignity and respect. One function of the psychologist supporting detention operations, intelligence interrogations, and detainee debriefings is to assist the command in preventing abuse of detainees and in monitoring the detention environment. This does not preclude the psychologist from assisting in interrogations or debriefings, even if they may result in

consequences to the detainee such as: a determination that the detainee will not be recommended for early release prior to the termination of the conflict; or long-term post-trial confinement pursuant to conviction of war crimes or acts of terrorism.

(6) Boundaries of Competence.

(a) The Ethics Code states that "Psychologists provide services . . . with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study or professional experience (2.01 Boundaries of Competence)." There is no certification process, to date, that exists for detention operations or interrogation/debriefing support. Furthermore, there is little information and research published on this practice. Often, psychologists are pushed forward on the battlefield, beyond readily accessible supervision or consultation, or are otherwise placed in positions without access to other psychologists trained in this area.

(b) As paragraph 2.01 of the Ethics Code states, in those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect . . . others from harm." Therefore, the psychologist should make attempts to regularly consult with other psychologists experienced in this area. When confronted with an ethical dilemma, the psychologist must make attempts at consultation. If unable to consult because of time constraints, isolation from other psychologists, or Operational Security requirements, the psychologist will later make attempts to seek consultation. The Military Department Specialty Consultant should review, prior to their submission, all recommended policies related to detention operations, interrogations, or debriefings, originating from the individual BSC or BSCT supporting those operations. If mission requirements prevent review, any such documents should be presented to the Specialty Consultant as soon as practicable.

(c) Furthermore, the psychologist must be cognizant of changes and developments within the field of psychological support for detention operations, intelligence interrogations, and detainee debriefings. The psychologist should take every opportunity to "develop and maintain their competence (paragraph 2.03)" in this emerging field. The psychologist has a responsibility to evaluate and improve his or her job performance. The psychologist must be aware of all current policy requirements and command guidance concerning the conduct of interrogations and detention operations. Cultural awareness is also necessary to provide psychological support to interrogation operations.

(7) Multiple Relationships.

(a) While performing the duties related to detention operations, intelligence interrogations, or detainee debriefings, the BSC functions as a Command Psychologist. The client is the command and the DoD. It is not possible, in this environment, to avoid all multiple relationships. Psychologists employed by the military (military, civilian, and

contractor employees), like psychologists in small communities, must be keenly aware of the nature of these multiple relationships.

(b) Except under emergency circumstances, the psychologist consulting for detention or interrogation/debriefing operations does not conduct mental health evaluations or provide mental health treatment to detainees. All medical treatment for detainees, to include mental health evaluation and treatment, is provided by a designated medical element. The psychologist will take all reasonable steps to ensure that he or she is not perceived as a healthcare provider for detainees.

(c) When concerns about health status or medical condition of detainees are raised through observation by the psychologist, through inquiries by others involved in detention operations, by interrogators, or through other reporting mechanisms, these concerns will be conveyed to medical personnel for evaluation, treatment, and disposition.

(d) The issue of multiple relationships is addressed in paragraph 3.05 of the Ethics Code. "A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness . . . or otherwise risks exploitation or harm to the person with whom the professional relationship exists." The Code goes on to say that, "Multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical."

(e) Only in case of an emergency (for example, when no other healthcare providers can respond adequately) will the psychologist supporting detention operations, intelligence interrogations, or detainee debriefings break with their function and provide emergency services "to ensure that services are not denied (paragraph 2.02)." Furthermore, 'the services are discontinued as soon as the emergency has ended or appropriate services are available (paragraph 2.02)."

(f) Psychologists supporting detention operations, intelligence interrogations, and detainee debriefings must always be alert to the risk of multiple relationships. For example, it would probably be inappropriate for a psychologist to conduct long-term psychological therapy with an interrogator that is working alongside the psychologist. On the other hand, brief consultation with the same interrogator on a personal issue relevant to the interrogators ability to interrogate effectively may be appropriate in certain circumstances. The psychologist, in consultation with other psychologists, if possible, must evaluate each situation and act in order to minimize the risk of harm.

(8) Informed Consent.

(a) Except as discussed above, psychologists supporting detention operations, intelligence interrogations, or detainee debriefings do not have a medical or mental health relationship with detainees. Ordinarily, they do not directly interact with

detainees, they do not provide services to detainees, nor do they routinely engage in psychological testing of detainees. The DoD is the identified client, the organization the psychologist is supporting. Although it is possible for exceptions to be made to the above proscriptions, it should only be done after careful thought and consultation with other experienced psychologists.

(b) The Code of Ethics (3.11(a)) states, "Psychologists delivering services to or through organizations provide information beforehand to clients and when appropriate those directly affected by the services about . . ." Psychologists supporting interrogations will discuss with the organization the limits and purpose of the assessment; it is not appropriate, given the functions of the psychologist in this role and the DoD, to inform the detainee that he is being assessed by a psychologist. In fact, it would increase the likelihood of misunderstanding by the detainee of the psychologist's role.

(c) The Code of Ethics (3.10(b)) also states, "When consent by a legally authorized person is not permitted or required by law, psychologists take reasonable steps to protect the individual's rights and welfare." Any psychologist, whether supporting interrogations or not, has a duty to ensure the humane treatment of all detainees. This duty is not diminished by the nature of the detainee's acts prior to detainment.

(9) The June 2005 Report of the American Psychological Association Presidential Task Force on Psychological Ethics and National Security issued the following twelve statements concerning the work of BSCs to interrogation and detention operations:

(a) Psychologists do not engage in, direct, support, facilitate, or offer training in torture, or other cruel, inhuman, or degrading treatment.

(b) 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.

(c) Psychologists who serve in the role of supporting an interrogation do not use healthcare-related information from an individual's medical record to the detriment of the individual's safety and well-being.

(d) Psychologists do not engage in behaviors that violate the laws of the United States, although psychologists may refuse for ethical reasons to follow laws or orders that are unjust or that violate basic principles of human rights.

(e) Psychologists are aware of and clarify their role in situations where the nature of their professional identity and professional function may be ambiguous.

(f) Psychologists are sensitive to the problems inherent in mixing potentially inconsistent roles such as healthcare provider and consultant to an interrogation and refrain from engaging in such multiple relationships.

(g) Psychologists may serve in various national security-related roles, such as a consultant to an interrogation, in a manner that is consistent with the Ethics Code, and when doing so psychologists are mindful of factors unique to these roles and contexts that require special ethical consideration.

(h) Psychologists who consult on interrogation techniques are mindful that the individual being interrogated may not have engaged in untoward behavior and may not have information of interest to the interrogator.

(i) Psychologists make clear the limits of confidentiality.

(j) Psychologists are aware of and do not act beyond their competencies, except in unusual circumstances, such as set forth in the Ethics Code.

(k) Psychologists clarify for themselves the identity of their client and retain ethical obligations to individuals who are not their clients.

(l) Psychologists consult when they are facing difficult ethical dilemmas.

d. Psychiatrists:

(1) The ethical requirements for psychiatrists are contained in the American Psychiatric Association's Opinions of the Ethics Committee on The Principles of Medical Ethics with annotations especially applicable to Psychiatry (2001) (including November 2003 amendments) and in the Ethics Primer of the American Psychiatric Association (2001), particularly the chapter devoted to Ethics and Forensic Psychiatry. These do not directly address the question of physician involvement in behavioral science consultation, as discussed in this document.

(2) The Council on Ethical and Judicial Affairs of the American Medical Association met in June 2006 and produced a report with the subject of: Physician Participation in Interrogation. This report contains five recommendations. These guidelines are listed and discussed here. The entire report follows as an enclosure.

(a) First Guideline. Physicians may perform physical and mental assessments of detainees to determine the need for and to provide medical care. When so doing, physicians must disclose to the detainee the extent to which others have access to information included in medical records. Treatment must never be conditional on a patient's participation in an interrogation.

(i) Various Opinions in the AMA's Code of Medical Ethics suggest that physician interactions under the authority of third parties are governed by the same ethical principles as interactions involving patients.

(ii) Physicians who provide medical care to detainees should not be involved in decisions whether or not to interrogate because such decisions are unrelated to medicine or the health interests of an individual.

(b) Second Guideline. Physicians must neither conduct nor directly participate in an interrogation, because a role as physician-interrogator undermines the physician's role as healer and thereby erodes trust in the individual physician-interrogator and in the medical profession.

(i) Physicians are not trained as interrogators, and to function as an interrogator would potentially cause significant role confusion that would generalize to other physicians.

(ii) Although physicians who provide medical care to detainees should not be involved in decisions whether or not to interrogate because such decisions are unrelated to medicine or the health interests of an individual, physicians who are not providing medical care to detainees may provide such information if warranted by compelling national security interests.

(iii) Specific guidance by a physician regarding a particular detainee based on medical information that he or she originally obtained for medical purposes constitutes an unacceptable breach of confidentiality. However, a physician functioning as a BSC should never be providing medical care to detainees, and would therefore never obtain medical information for treatment purposes.

(c) Third Guideline. Physicians must not monitor interrogations with the intention of intervening in the process, because this constitutes direct participation in interrogation.

(i) The presence of a physician at an interrogation, particularly an appropriately trained psychiatrist, may benefit the interrogatees because of the belief held by many psychiatrists that kind and compassionate treatment of detainees can establish rapport that may result in eliciting more useful information.

(ii) A physician may be requested or required to treat a detainee to restore capacity to undergo interrogation. If there is no reason to believe that the interrogation was coercive, this is not unethical. As with all patients, physicians should not treat detainees without their consent (see Opinion E-8.08, "Informed Consent"), unless there is an emergency situation. Moreover, in obtaining consent for treatment, implications of restoring health, including disclosure that the patient may be interrogated or an interrogation may be resumed, must be disclosed.

(iii) If a physician identifies physical or psychological injuries that are likely to have occurred during an interrogation, the physician must report such suspected or known abusive practices to appropriate authorities, as must any other service member or DoD employee.

(d) Fourth Guideline. Physicians may participate in developing effective interrogation strategies for general training purposes. These strategies must not threaten or cause physical injury or mental suffering and must be humane and respect the rights of individuals.

(i) The Army defines training as instruction of personnel to increase their capacity to perform specific military functions and associated individual and collective tasks. General training is herein defined as the education, instruction, or discipline of a person or thing that is being trained. The Army conducts general training every day in all environments and after every mission, including interrogations.

(ii) Some physicians, most often psychiatrists, may engage in activities that are closely linked to interrogations. As in the civilian world, physicians sometimes provide consultations to law enforcement officers, for example, in criminal profiling and hostage negotiations.

(iii) Physicians could enhance the likelihood of successful interrogation by identifying useful strategies, by providing information that may be useful during questioning. Furthermore, physicians may protect interrogatees if, by monitoring, they prevent coercive interrogations.

(iv) Physicians have long dealt with problems of dual loyalties in forensic roles and as employees of government and business. The same ethical considerations that guide physicians under those circumstances also guide them in matters related to interrogation. The question of whether it is ethically appropriate for physicians to participate in the development of interrogation strategies may be addressed by balancing obligations to society against those to individuals.

(e) Fifth Guideline. When physicians have reason to believe that interrogations are coercive, they must report their observations to the appropriate authorities. If authorities are aware of coercive interrogations but have not intervened, physicians are ethically obligated to report the offenses to independent authorities that have the power to investigate or adjudicate such allegations.

(i) Any physician involved with individuals who will undergo or have undergone interrogations should have current knowledge of known harms of interrogation techniques. If responsible authorities do not prohibit a clearly harmful interrogation strategy, physicians are ethically obligated to report the offenses to

independent authorities that have the power to investigate or adjudicate such allegations.

(ii) If a physician identifies physical or psychological injuries that are likely to have occurred during an interrogation, the physician must report such suspected or known abusive practices to appropriate authorities.

(iii) A physician may help to develop general guidelines or strategies, as long as they are not coercive and are neither intended nor likely to cause harm, and as long as the physician's role is strictly that of consultant, not as caregiver. It is unethical for a physician to provide assistance in a coercive activity.

Report of the American Psychological Association Presidential Task Force

on Psychological Ethics and National Security

June 2005

Encl 1

REPORT OF THE PRESIDENTIAL TASK FORCE ON PSYCHOLOGICAL ETHICS AND NATIONAL SECURITY

I. Overview of the Report

The Presidential Task Force on Psychological Ethics and National Security (PENS) met in response to the Board of Directors' February 2005 charge. that the Task Force:

> [E]xamine whether our current Ethics Code adequately addresses [the ethical dimensions of psychologists' involvement in national security-related activities], whether the APA provides adequate ethical guidance to psychologists involved in these endeavors. and whether APA should develop policy to address the role of psychologists and psychology in investigations related to national security.

Recognizing the ethical complexity of this work. which takes place in unique settings and constantly evolving circumstances. the Task Force was nonetheless able to set forth 12 clear and agreed-upon statements about psychologists' ethical obligations.

As a context for its statements, the Task Force affirmed that when psychologists serve in any position by virtue of their training, experience, and expertise as psychologists, the APA Ethics Code applies. The Task Force thus rejected the contention that when acting in roles outside traditional health-service provider relationships psychologists are not acting in a professional capacity as psychologists and are therefore not bound by the APA Ethics Code.

The Task Force noted that the Board of Directors' charge did not include an investigative or adjudicatory role, and as a consequence emphasized that it did not render any judgment concerning events that may or may not have occurred in national security-related settings. Nonetheless. the Task Force was unambiguous that psychologists do not engage in. direct, support, facilitate. or offer training in torture or other cruel, inhuman. or degrading treatment and that psychologists have an ethical responsibility to be alert to and report any such acts to appropriate authorities. The Task Force stated that it is consistent with the APA Ethics Code for psychologists to serve in consultative roles to interrogation and information-gathering processes for national security-related purposes, as psychologists have a long-standing tradition of doing in other law enforcement contexts. Acknowledging that engaging in such consultative and advisory roles entails a delicate balance of ethical considerations, the Task Force stated that psychologists are in a unique position to assist in ensuring that these processes are safe and ethical for all participants.

The Task Force Report concludes with a series of recommendations to the American Psychological Association Board of Directors.

II. Introduction to the Report

The Task Force believes it is critical for the American Psychological Association to address the ethical challenges facing psychologists whose work involves national security-related activities. APA is the world's largest association of psychologists. Article I of the Association Bylaws states:

> The objects of the American Psychological Association shall be to advance psychology as a science and profession and as a means of promoting health, education and human welfare by the...improvement of the qualifications and usefulness of psychologists through high standards of ethics...[and] by the establishment and maintenance of the highest standards of professional ethics and conduct of the members of the Association...[1]

Many association members work for the United States government as employees or consultants in national security-related positions. It is the responsibility of APA to think through and provide guidance on the complex ethical challenges that face these psychologists, who apply their training, skills, and expertise in our nation's service.

The Task Force addressed the argument that when psychologists act in certain roles outside traditional health-service provider relationships, for example as consultants to interrogations, they are not acting in a professional capacity as psychologists and are therefore not bound by the APA Ethical Principles of Psychologists and Code of Conduct (hereinafter the Ethics Code).[2] The Task Force rejected this contention. The Task Force believes that when psychologists serve in a position by virtue of their training, experience, and expertise as psychologists, the APA Ethics Code applies. Thus in any such circumstance, psychologists are bound by the APA Ethics Code.

Principle B of the Ethics Code, Fidelity and Responsibility, states that psychologists "are aware of their professional and scientific responsibilities to society." Psychologists have a valuable and ethical role to assist in protecting our nation, other nations, and innocent civilians from harm, which will at times entail gathering information that can be used in our nation's and other nations' defense. The Task Force believes that a central role for psychologists working in the area of national security-related investigations is to assist in ensuring that processes are safe, legal, and ethical for all participants.

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[1] American Psychological Association (2004). *Bylaws of the American Psychological Association* [Brochure]. Washington, DC: Author. (Also available at http://www.apa.org/governance/)

[2] American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist, 57,* 1060–1073. (Also available at http://www.apa.org/ethics/)

The Task Force looked to the APA Ethics Code for fundamental principles to guide its thinking. The Task Force found such principles in numerous aspects of the Ethics Code, such as the Preamble, "Psychologists respect and protect civil and human rights" and "[The Ethics Code] has as its goals the welfare and protection of the individuals and groups with whom psychologists work"; Principle A, Beneficence and Nonmaleficence, "In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons"; Principle D, Justice, "Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices"; and Principle E, Respect for People's Rights and Dignity. "Psychologists respect the dignity and worth of all people." The Task Force concluded that the Ethics Code is fundamentally sound in addressing the ethical dilemmas that arise in the context of national security-related work.

III. Twelve Statements Concerning Psychologists' Ethical Obligations in National Security-Related Work and Commentary on the Statements

1. Psychologists do not engage in, direct, support, facilitate, or offer training in torture or other cruel, inhuman, or degrading treatment. The Task Force endorses the 1986 Resolution Against Torture of the American Psychological Association Council of Representatives.[3] and the 1985 Joint Resolution Against Torture of the American Psychological Association and the American Psychiatric Association.[4] (Principle A. Beneficence and Nonmaleficence, and Ethical Standard 3.04, Avoiding Harm) The Task Force emphasizes that the Board of Directors' charge did not include an investigative or adjudicatory role and so the Task Force does not render any judgment concerning events that may or may not have occurred in national security-related settings. The Task Force nonetheless feels that an absolute statement against torture and other cruel, inhuman, or degrading treatment is appropriate.

2. 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. This ethical responsibility is rooted in the Preamble, "Psychologists respect and protect civil and human rights...the development of a dynamic set of ethical standards for psychologists' work-related conduct requires a personal commitment and lifelong effort to act ethically [and] to encourage ethical behavior by...colleagues." and Principle B. Fidelity and Responsibility, which states that psychologists "are concerned about the ethical compliance of their colleagues' scientific and professional conduct." (Ethical Standard 1.05, Reporting Ethical Violations) The Task Force notes that when fulfilling the obligation to respond to unethical behavior by reporting the behavior to appropriate authorities as a prelude to an adjudicatory process, psychologists guard against the names of individual psychologists being disseminated to the public. Inappropriate or premature public dissemination can expose psychologists to a risk of harm outside of established and appropriate legal and adjudicatory processes. (Ethical Standard 3.04, Avoiding Harm)

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. While information from a medical record may be helpful or necessary to ensure that an interrogation process remains safe, psychologists do not use such information to the detriment of an individual's safety and well-being. (Ethical Standards 3.04, Avoiding Harm, and 3.08, Exploitative Relationships)

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[3] American Psychological Association Council of Representatives. (1986). American Psychological Association resolution against torture. Retrieved from http://www.apa.org/about/division/cpmintermatl.html#3

[4] American Psychiatric Association & American Psychological Association. (1985). Against torture: Joint resolution of the American Psychiatric Association and the American Psychological Association. Retrieved from http://www.psych.org/edu/other_res/lib_archives/archives/198506.pdf

4. Psychologists do not engage in behaviors that violate the laws of the United States, although psychologists may refuse for ethical reasons to follow laws or orders that are unjust or that violate basic principles of human rights. Psychologists involved in national security-related activities follow all applicable rules and regulations that govern their roles. Over the course of the recent United States military presence in locations such as Afghanistan, Iraq, and Cuba, such rules and regulations have been significantly developed and refined. Psychologists have an ethical responsibility to be informed of, familiar with, and follow the most recent applicable regulations and rules. The Task Force notes that certain rules and regulations incorporate texts that are fundamental to the treatment of individuals whose liberty has been curtailed, such as the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Geneva Convention Relative to the Treatment of Prisoners of War.[5]

The Task Force notes that psychologists sometimes encounter conflicts between ethics and law. When such conflicts arise, psychologists make known their commitment to the APA Ethics Code and attempt to resolve the conflict in a responsible manner. If the conflict cannot be resolved in this manner, psychologists may adhere to the requirements of the law. (Ethical Standard 1.02) An ethical reason for psychologists to not follow the law is to act "in keeping with basic principles of human rights." (APA Ethics Code, Introduction and Applicability) The Task Force encourages psychologists working in this area to review essential human rights documents, such as the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Geneva Convention Relative to the Treatment of Prisoners of War.[6]

5. Psychologists are aware of and clarify their role in situations where the nature of their professional identity and professional function may be ambiguous. Psychologists have a special responsibility to clarify their role in situations where individuals may have an incorrect impression that psychologists are serving in a health care provider role. (Ethical Standards 3.07, Third-Party Requests for Services, and 3.11, Psychological Services Delivered to or Through Organizations)

The Task Force noted that psychologists acting in the role of consultant to national security issues most often work closely with other professionals from various disciplines. As a consequence, psychologists rarely act alone or independently, but rather as part of a group of professionals who bring together a variety of skills and experiences in order to provide an ethically appropriate service. (Ethical Standard 3.09, Cooperating with Other Professionals)

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[5] United Nations. (1987, June 26). *Convention against torture and other cruel, inhuman or degrading treatment or punishment.* Retrieved from http://www.unhchr.ch/html/menu3/b/h_cat39.htm
United Nations. (1950, October 21). *Geneva convention relative to the treatment of prisoners of war.* Retrieved from http://www.unhchr.ch/html/menu3/b/91.htm

[6] Ibid.

Regardless of their role, psychologists who are aware of an individual in need of health or mental health treatment may seek consultation regarding how to ensure that the individual receives needed care. (Principle A. Beneficence and Nonmaleficence)

6. 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. (Ethical Standard 3.05. Multiple Relationships. "A psychologist refrains from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's objectivity, competence, or effectiveness in performing his or her functions as a psychologist, or otherwise risks exploitation or harm to the person with whom the professional relationship exists.")

7. Psychologists may serve in various national security-related roles, such as a consultant to an interrogation, in a manner that is consistent with the Ethics Code, and when doing so psychologists are mindful of factors unique to these roles and contexts that require special ethical consideration. The Task Force noted that psychologists have served in consultant roles to law enforcement on the state and federal levels for a considerable period of time. Psychologists have proven highly effective in lending assistance to law enforcement in the vital area of information gathering and have done so in an ethical manner. The Task Force noted special ethical considerations for psychologists serving as consultants to interrogation processes in national security-related settings, especially when individuals from countries other than the United States have been detained by United States authorities. Such ethical considerations include:

- How certain settings may instill in individuals a profound sense of powerlessness and may place individuals in considerable positions of disadvantage in terms of asserting their interests and rights. (Ethical Standards 1.01. Misuse of Psychologists' Work, and 3.08. Exploitative Relationships)
- How failures to understand aspects of individuals' culture and ethnicity may generate misunderstandings, compromise the efficacy and hence the safety of investigatory processes, and result in significant mental and physical harm. (Principle E, "Psychologists are aware of and respect cultural, individual, and role differences, including those based on...race, ethnicity, culture, national origin... and consider these factors when working with members of such groups"; Ethical Standard 2.01(b). Boundaries of Competence, "Where scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with...race, ethnicity, culture, national origin...is essential for effective implementation of their services or research, psychologists have or obtain the training, experience, consultation, or supervision necessary to ensure the competence of their services, or they make appropriate referrals..."; and Ethical Standard 3.01, Unfair Discrimination, "In their work-related activities, psychologists do not engage in unfair discrimination based on...race, ethnicity, culture, national origin...")

- How the combination of a setting's ambiguity with high stress may facilitate engaging in behaviors that cross the boundaries of competence and ethical propriety. As behavioral scientists, psychologists are trained to observe, respond to, and ideally correct such processes as they occur. (Principle A. Beneficence and Nonmaleficence, and Ethical Standard 3.04, Avoiding Harm)

8. Psychologists who consult on interrogation techniques are mindful that the individual being interrogated may not have engaged in untoward behavior and may not have information of interest to the interrogator. This ethical obligation is not diminished by the nature of an individual's acts prior to detainment or the likelihood of the individual having relevant information. At all times psychologists remain mindful of and abide by the prohibitions against engaging in or facilitating torture and other cruel, inhuman, or degrading treatment. Psychologists inform themselves about research regarding the most effective and humane methods of obtaining information and become familiar with how culture may interact with the techniques consulted upon. (Principle E, Respect for Peoples' Rights and Dignity; Ethical Standards 2.01, Boundaries of Competence; 2.03, Maintaining Competence; and 3.01, Unfair Discrimination)

9. Psychologists make clear the limits of confidentiality. (Ethical Standard 4.02, Discussing the Limits of Confidentiality). Psychologists who have access to, utilize, or share health or mental health related information do so with an awareness of the sensitivity of such information, keeping in mind that "Psychologists have a primary obligation and take reasonable precautions to protect confidential information..." (Ethical Standard 4.01, Maintaining Confidentiality) When disclosing sensitive information, psychologists share the minimum amount of information necessary, and only with individuals who have a clear professional purpose for obtaining the information. (Ethical Standard 4.04, Minimizing Intrusions on Privacy) Psychologists take care not to leave a misimpression that information is confidential when in fact it is not. (Ethical Standards 3.10, Informed Consent, and 4.02, Discussing the Limits of Confidentiality)

10. Psychologists are aware of and do not act beyond their competencies, except in unusual circumstances, such as set forth in the Ethics Code. (Ethical Standard 2.02, Providing Services in Emergencies) Psychologists strive to ensure that they rely on methods that are effective, in addition to being safe, legal, and ethical. (Ethical Standards 2.01, Boundaries of Competence; 2.04, Bases for Scientific and Professional Judgments; 9.01, Bases for Assessments)

11. Psychologists clarify for themselves the identity of their client and retain ethical obligations to individuals who are not their clients. (Ethical Standards 3.07, Third-Party Requests for Services, and 3.11, Psychological Services Delivered to or Through Organizations) Regardless of whether an individual is considered a client, psychologists have an ethical obligation to ensure that their activities in relation to the individual are safe, legal, and ethical. (Ethical Standard 3.04, Avoiding Harm) Sensitivity to the entirety of a psychologist's ethical obligations is especially important where, because of a setting's unique characteristics, an individual may not be fully able to assert relevant rights and interests. (Principle A. Beneficence and Nonmaleficence. "In their professional

actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons..."; Principle D. Justice. "Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases, the boundaries of their competence, and the limitations of their expertise do not lead to or condone unjust practices"; Principle E, Respect for People's Rights and Dignity, "Psychologists are aware that special safeguards may be necessary to protect the rights and welfare of persons or communities whose vulnerabilities impair autonomous decision making"; Ethical Standard 3.08. Exploitative Relationships)

12. Psychologists consult when they are facing difficult ethical dilemmas. The Task Force was emphatic that consultation on ethics questions and dilemmas is highly appropriate for psychologists at all levels of experience, especially in this very challenging and ethically complex area of practice. (Preamble to the Ethics Code. "The development of a dynamic set of ethical standards for psychologists' work-related conduct requires a personal commitment and lifelong effort to act ethically...and to consult with others concerning ethical problems"; and Ethical Standard 4.06. Consultations)

The Task Force drew several other conclusions:

- The development of professional skills and competencies, ethical consultation and ethical self-reflection, and a willingness to take responsibility for one's own ethical behavior are the best ways to ensure that the national security-related activities of psychologists are safe, legal, ethical, and effective.
- It is critical to offer ethical guidance and support especially to psychologists at the beginning of their careers, who may experience pressures to engage in unethical or inappropriate behaviors that they are likely to find difficult to resist.
- APA should develop a process whereby psychologists whose work involves classified material and who need ethical guidance or consultation may consult their national organization for assistance and support.
- Psychologists should encourage and engage in further research to evaluate and enhance the efficacy and effectiveness of the application of psychological science to issues, concerns and operations relevant to national security. One focus of a broad program of research is to examine the efficacy and effectiveness of information-gathering techniques, with an emphasis on the quality of information obtained. In addition, psychologists should examine the psychological effects of conducting interrogations on the interrogators themselves to explore ways of helping to ensure that the process of gathering information is likely to remain within ethical boundaries. Also valuable will be research on cultural differences in the psychological impact of particular information-gathering methods and what constitutes cruel, inhuman, or degrading treatment.
- The Task Force noted a potential area of tension between conducting research that is classified or whose success could be compromised if the research purpose and/or methodology become known and ethical standards that require

debriefing after participation in a study as a research subject. (Ethical Standards 8.07, Deception in Research, and 8.08, Debriefing) APA should identify and further examine the ethical dimensions of such tensions.

- Psychologists working in this area should inform themselves of how culture and ethnicity interact with investigative or information-gathering techniques, with special attention to how failing to attend to such factors may result in harm.

The Task Force engaged in vigorous discussion and debate and did not reach consensus on several issues:

- *The role of human rights standards in an ethics code.* While all Task Force members felt that respect for human rights is critical, some task force members felt strongly that international standards of human rights should be built into the ethics code and others felt that the laws of the United States should be the touchstone.
- *The degree to which psychologists may ethically disguise the nature and purpose of their work.* While all members of the Task Force agreed that full disclosure of the nature and purpose of a psychologist's work is not ethically required or appropriate in every circumstance, members differed on the degree to which psychologists may ethically dissemble their activities from individuals whom they engage directly.
- *Whether the discussions of the Task Force should have been made available outside the Task Force.* Some members believed that sharing the substance of the discussions, debates, and disagreements of the Task Force would be helpful to others in fostering the development of professional ethics in other areas of national security. Others felt that not sharing information beyond this report and other public statements would facilitate richer and more productive exchanges during the Task Force meeting. The Task Force voted on this issue. By a vote of seven to one, with one abstention, the Task Force voted to limit what information is disclosed concerning its deliberations to this report and other public statements made by the Task Force as a whole.

III. Recommendations

The Task Force recommends that APA:

1. Publicly reaffirm its 1986 Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment.
2. Develop a document that will serve as a companion to the 12 statements contained in this report, for the purpose of providing illustrative examples and commentary. Such a document will be especially important if APA adopts the statements as guidelines or if the Ethics Committee deems the statements appropriate interpretations and applications of the Ethics Code.
3. Continue to examine the goodness of fit between the Ethics Code and this area of practice. While the Task Force believes the Ethics Code is fundamentally sound and adequately addresses the great majority of ethical dilemmas that arise in national security-related settings, there are certain aspects in which the Code does not speak as well to this area of practice as the Code speaks to other areas of practice. The Task Force believes the Ethics Committee could undertake this task.
4. Develop a process to offer ethics consultation to psychologists whose work involves classified material and who seek ethical guidance.
5. Continue to develop a strong relationship with psychologists working in national security-related settings, with special attention to the unique ethical challenges these psychologists confront in their daily work, and collaborate with organizations having national security-related responsibilities to promote psychological practice consistent with APA Ethical Standards.
6. Forward a copy of this Task Force Report, or a summary of the report, to the United States Department of Defense and other relevant government agencies and bodies, as the government develops policy on these complicated and challenging ethical issues.
7. Encourage psychologists to engage in further research relevant to national security, including evaluation of the efficacy and effectiveness of methods for gathering information that is accurate, relevant, and reliable. Such research should be designed to minimize risks to research participants such as emotional distress, and should be consistent with standards of human subject research protection and the APA Ethics Code.
8. Recognize that issues involving terrorism and national security affect citizens in all countries and so encourage behavioral scientists to collaborate across disciplines, cultures, and countries in addressing these concerns.
9. Consider supporting the creation of a repository to record psychologists' contributions to national security. Such information, divided into classified and unclassified sections, could serve as a historical record and a resource concerning how psychologists involved in national security-related activities have met the ethical challenges of their work.

10. View the work of this Task Force as an initial step in addressing the very complicated and challenging ethical dilemmas that confront psychologists working in national security-related activities. Viewed as an initial step in a continuing process, this report will ideally assist APA to engage in thoughtful reflection of complex ethical considerations in an area of psychological practice that is likely to expand significantly in coming years.

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*[2]
CEJA Report 10-A-06

Subject: Physician Participation in Interrogation (Res. 1, I-05)

Presented by: Priscilla Ray, MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws

(Joseph H. Reichman, MD, Chair)

INTRODUCTION

At the 2005 Interim Meeting, the House of Delegates adopted amended Resolution 1, I-05, "Physician Participation in the Interrogation of Prisoners and Detainees," which directed the Council on Ethical and Judicial Affairs to delineate the boundaries of ethical practice with respect to physicians' participation in the interrogation of prisoners and detainees.

The resolution arose from concerns in recent years regarding the role of physicians in interrogation practices, including involvement as Behavioral Science Consultants to advise interrogators.[i, ii, iii, iv, v] This report focuses on the role of physicians in the interrogation process in the specific contexts of domestic law enforcement and military or national security intelligence gathering.

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* Reports of the Council on Ethical and Judicial Affairs are assigned to the reference committee on Constitution and Bylaws. They may be adopted, not adopted, or referred. A report may not be amended, except to clarify the meaning of the report and only with the concurrence of the Council.

[2] NOTE: The Council on Ethical and Judicial Affairs presents CEJA Report 10, A-06, "Physician Participation in Interrogation," as a Late Report, acknowledging that this limits the time during which Delegates can review the full report. However, the Council sought input from a large number of interested organizations and individuals by sharing an early draft of the Report. Because this topic has been the focus of considerable ongoing public debate, the Council believes it is in the best interest of the AMA and particularly of colleagues currently serving in the military to present the Report to the House at this time, as a Late Report.

The Council considers that the time required to process the wide range of comments that were solicited, which resulted in the delay in submitting this Report to the House, was time well spent. After thorough reflection and deliberation on the broad spectrum of sharply conflicting opinions of reviewers, the Report now strongly and clearly describes the ethics of physicians as they relate to interrogations. The Council members are deeply grateful to all those who participated in this process.

Encl 2

ELEMENTS OF THE DEBATE

Interrogation: Definition and Description

For the purpose of this Report, we define a "detainee" as a criminal suspect, prisoner of war, or any other individual who is detained and is potentially subject to interrogation. An individual who undergoes interrogation is referred to as an "interrogatee." Most broadly, interrogation has been defined as formal and systematic questioning.[vi] However, in this Report, we define interrogation more narrowly, as questioning related to law enforcement or to military and national security intelligence gathering designed to prevent the occurrence or recurrence of harm or danger to individuals, the public, or national security. The interrogation aims to elicit information from a detainee that is useful to the purposes of the interrogators. Interrogations are also distinct from questioning used to assess the medical condition of an individual or to determine mental status. Accordingly, forensic medicine practices that include assessing competence to stand trial or criminal responsibility, and pre-sentencing evaluations are excluded from this report. Appropriate interrogations should be carefully distinguished from those coupled with coercive acts that are intended to intimidate and that may cause harm through physical injury or mental suffering. In general, this Report does not address participation of physicians in developing strategies to deal with individuals who are not in detention, such as negotiations with hostage takers and profiling of criminal suspects. From the physician's perspective, an interrogation is distinct from questioning conducted for purposes of making a diagnosis, assessing physical capacity, or determining mental capacity related to legal status.

The military and related government agencies refer to interrogations, debriefings and tactical questioning as a means to gain intelligence from captured or detained personnel.[vii] The Army Field Manual further defines interrogation as "the process of questioning a source to obtain the maximum amount of usable information. The goal is to obtain reliable information in a lawful manner, in a minimum amount of time, and to satisfy intelligence requirements of any echelon of command."[viii]

Interrogation Techniques

The Army Field Manual provides detailed guidance on interrogations and describes methods to establish rapport with or exert control over a detainee. Specific psychological strategies that rely primarily on incentives, emotions, fear, pride and ego are generally considered acceptable, although it is recognized that approaches that rely on fear presents "the greatest potential to violate the law of war." [viii]
Significant concerns regarding interrogations arise from the risk of abuse. Domestic and international law prohibit the use of coercive interrogations that might involve the application of mild to severe physical or mental force. [ix, x]

In criminal law, coercion or undue intimidation violates the rights of individuals being interrogated. Moreover, such abuses can undermine the veracity of information derived

from an interrogation and can jeopardize subsequent legal proceedings intended to establish true facts about a crime.xi Therefore, safeguards of due process have been placed on interrogatory powers in order to protect against coercive techniques.xii Actions by law enforcement agents may be legally reviewed, and information gathered by coercive means may be rejected from court proceedings.

Policies that traditionally have governed military or national security interrogations expressly prohibit "acts of violence or intimidation, including physical or mental torture, threats, insults, or exposure to inhumane treatment as a means of or aid to interrogations." [viii] Thus, there are limits to manipulating or exploiting an individual's physical and mental status to elicit information. These limits are grounded in the Geneva Conventions, which in part state: "No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind."[xiii]

Similar limitations are found in the United Nations' Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which prohibits "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 [...]." [xiv] Accordingly, determining the point at which any interrogation becomes coercive is of great significance. While physicians can provide insights into the physically and mentally harmful effects of interrogation practices, they alone cannot authoritatively define the tipping point between appropriate and inappropriate interrogation practices.

PHYSICIANS AND THE INTERROGATION PROCESS

Some physicians, most often psychiatrists, may engage in activities that are closely linked to interrogations. For example, in the course of criminal proceedings, physicians may be asked to assess the mental condition of an individual who is to be interrogated, either to prevent an interrogation that would be harmful to the individual's healthxv or to identify mental impairments that could negate the value of disclosed information. Other assessments may include the determination of an individual's mental competency to stand trial, or the availability of the insanity defense. Physicians sometimes provide consultations to law enforcement officers regarding fruitful approaches to interacting with suspects, for example, in criminal profiling and hostage negotiations. Specific guidelines for ethical behavior of psychiatrists serving as forensic consultants have been developed by the American Academy of Psychiatry and the Law.[xvi] In most of these examples, a physician's training and skills help determine whether a mental impairment exists that would have some bearing on legal proceedings.[xvii] The physician's primary aim is not to persuade the individual to reveal incriminating information, although such information may be revealed as a secondary consequence of questioning. Similarly, the determination of physical or mental impairments may bear

on administrative proceedings, such as eligibility to receive funds or services, but these assessments are also distinct from interrogations as defined in this report.

General Arguments for and against Physician Involvement in the Interrogation Process

Without being coercive, interrogations rely on psychological manipulation producing stress, anxiety, or other forms of discomfort. The physical or mental impact of these practices may justify a role for physicians in interrogations. [xviii] Physicians could enhance the likelihood of successful interrogation by identifying useful strategies, providing information that may be useful during questioning, or putting interrogatees at ease. Furthermore, physicians could protect interrogatees if, by monitoring, they prevent coercive interrogations. However, physician involvement could also lead to the belief on the part of interrogators that they can escalate the use of force until the physician intervenes. [xix, xx]

From the perspective of ethical responsibilities, all physicians who engage in activities that rely on their medical knowledge and skills must uphold the principles of beneficence and non-malfeasance and refrain from participating in situations that may cause harm without corresponding benefit. They must also respect patient autonomy and must protect the confidentiality of personal information, unless breaching them is clearly justified by tenets of medical ethics. Some benefits of interrogation may accrue to the detainee or to other individuals (e.g., exoneration from a crime), but the intention of interrogation is not to benefit the detainee; rather, it is to protect the public or other individuals from harm due to domestic or foreign threats. These are laudable goals, but it is not clear that the medical knowledge and skills of physicians should be used for purposes unrelated to medicine or health to further the interests of groups against those of individuals, such as detainees. Striking a balance between obligations to individuals and obligations to society may be difficult, but when the obligations seem approximately equal, the weight should shift toward individuals.

The principles of respect for autonomy, beneficence, non-malfeasance and protection of confidentiality are at risk of being violated during interrogations. Therefore, it is essential that the ethical role of physicians in interrogations be clearly defined.

Physicians' Dual Loyalties

In the clinical setting, physicians' obligations are first to their patients. However, in many other settings, physicians confront dual loyalties, which place the medical interests of the individuals with whom they interact in tension or conflict with those of third parties to whom the physicians are accountable. For example, when a physician assesses an employee's health for an employer, the physician has certain ethical responsibilities to the examinee as well as contractual responsibilities to the employer. However, the AMA's Code of Medical Ethics makes clear that the physician must not fulfill responsibilities to the employer in a manner that is detrimental to the employee's

medical condition,xxi nor disclose medical information without the consent of the employee. [xxii]

Physicians who provide medical care in detention or correctional facilities face divided loyalties: to the medical interests of the detainees and respect for their (legally limited) autonomy, and to the correctional facility's control over detainees and need for information. Concerns are heightened when interrogations are conducted. [xxiii] Some, including military and government officials,[xxiv, xxv] have suggested that physicians who do not provide medical care to interrogatees are not bound by physicians' ethical obligations to patients because they act outside of the patient-physician relationship. However, various Opinions in the AMA's Code of Medical Ethics suggest that physician interactions under the authority of third parties are governed by the same ethical principles as interactions involving patients.[xxvi] Physicians must apply medical knowledge and skills within the profession's ethical standards, which are distinct from and often more stringent than those of the law.

Confidentiality of Detainee Information

Confidentiality is of particular concern when physicians provide medical care in settings where interrogations might occur. Interrogators might believe that interrogation will be more effective if informed by medical information, and might pressure physicians to share information obtained in the course of a patient-physician encounter. Opinion E-5.05, "Confidentiality," places great emphasis on the confidentiality of personal information that patients provide to physicians. The Opinion recognizes limited circumstances in which breaching confidentiality may be justifiable, for example, disclosures related to foreseeable and preventable harm to identifiable third parties. It is otherwise unethical to divulge personal information without the authorization of the patient. When medical records belong to the detention facility, physicians should warn detainee-patients that the information they provide for the medical record is accessible to facility authorities.

Moreover, in the context of physician employment by third parties, information should not be communicated to the third party without prior notification of the interrogatee that any information they provide may be passed on to a third party. [xxii] The fact that interrogation may be legally mandated or protected does not ethically justify communication of confidential information by a physician without notification and the individual's approval.

Specific Roles

To assess the ethics of physician involvement in interrogations, it is useful to distinguish various activities in which physicians may be involved.

Physicians are ethically justified in acting to prevent harm to individuals. In this regard, the suggestion that physicians should observe or monitor interrogations to prevent harm

requires careful scrutiny. As defined in this report, appropriate interrogations present no reason for medical monitoring, because interrogators ought to abstain from coercive questioning. Physicians can determine that harm has been inflicted but, in many instances, cannot predict whether an interrogation practice will or will not cause harm.

Physicians may be asked to determine the overall medical fitness of detainees or their mental capacity, and to use their knowledge and skills to assess the health of detainees; questioning to elicit medical information of this kind is distinct from interrogations and is appropriate. The presence of a physician at an interrogation, particularly an appropriately trained psychiatrist, may actually benefit the interrogatee because of the belief held by many psychiatrists that kind and compassionate treatment of detainees can establish trust that may result in eliciting more useful information. However, physicians who provide medical care to detainees should not be involved in decisions whether or not to interrogate because such decisions are unrelated to medicine or the health interests of an individual.

A physician may be requested or required to treat a detainee to restore capacity to undergo interrogation. If there is no reason to believe that the interrogation was coercive, there is no ethical problem. As with all patients, physicians should not treat detainees without their consent (see Opinion E-8.08, "Informed Consent"). Moreover, in obtaining consent for treatment, implications of restoring health, including disclosure that the patient may be interrogated or an interrogation may be resumed, must be disclosed. If a physician identifies physical or psychological injuries that are likely to have occurred during an interrogation, the physician must report such suspected or known abusive practices to appropriate authorities.

Development of interrogation strategies constitutes indirect involvement in interrogation. Specific guidance by a physician regarding a particular detainee based on medical information that he or she originally obtained for medical purposes constitutes an unacceptable breach of confidentiality. Moreover, it is unethical for a physician to provide assistance in a coercive activity, because such activities fundamentally undermine the respect for individual rights that is basic to medical ethics. The question of whether it is ethically appropriate for physicians to participate in the development of interrogation strategies may be addressed by balancing obligations to society against those to individuals, as noted in the above section on "General Arguments". Direct participation in an individual interrogation is not justified, because physicians in the role of interrogators undermines their role as healers and thereby erodes trust in both themselves as caregivers and in the medical profession, and non-medical personnel can be trained to be expert interrogators. But a physician may help to develop general guidelines or strategies, as long as they are not coercive and are neither intended nor likely to cause harm, and as long as the physician's role is strictly that of consultant, not as caregiver.

Any physician involved with individuals who will undergo or have undergone interrogations should have current knowledge of known harms of interrogation

techniques. For example, some research has shown that isolation is a harmful interrogation tactic.[xxvii] Once an interrogation strategy is shown to produce significant harm, whether immediate or long term, it should be reported to appropriate authorities so that its use can be prohibited. If responsible authorities do not prohibit a clearly harmful interrogation strategy, physicians are ethically obligated to report the offenses to independent authorities that have the power to investigate or adjudicate such allegations.

CONCLUSION

The practice of medicine is based on trust. Physicians are expected to care for patients without regard to medically irrelevant personal characteristics. This fundamental tenet of medical ethics underlies the doctrine of medical neutrality, whereby in times of war physicians are expected to treat casualties within triage protocols, irrespective of patients' military or civilian status.

Any physician involvement with detainees who may undergo interrogation must be guided by the same ethical precepts that govern the provision of medical care, never using medical skills and knowledge to intentionally or knowingly harm a patient without corresponding benefit, and respecting patient autonomy by obtaining consent to the provision of care and protecting confidential information. Physicians have long dealt with problems of dual loyalties in forensic roles and as employees of government and business. The same ethical considerations that guide physicians under those circumstances also guide them in matters related to interrogation. Physicians in all circumstances must never be involved in activities that are physically or mentally coercive. If physicians engage in such activities, the whole profession is tainted.

Questions about the ethical propriety of physicians participating in interrogations and in the development of interrogation strategies may be addressed by balancing obligations to society with obligations to individuals. Direct participation in interrogation of an individual detainee is not justified, because non-medical personnel can be trained to be expert interrogators, minimizing the need for presence of a physician. But, out of an obligation to aid in protecting third parties and the public, a physician may help to develop general guidelines or strategies for interrogations, as long as the strategies are not coercive, and as long as the physician's role is strictly that of consultant, not as caregiver.

RECOMMENDATIONS

The Council on Ethical and Judicial Affairs recommends that the following be adopted and the remainder of this report be filed:

For this report, we define interrogation as questioning related to law enforcement or to military and national security intelligence gathering, designed to prevent harm or danger to individuals, the public, or national security. Interrogations are distinct from

questioning used by physicians to assess the physical or mental condition of an individual. To be appropriate, interrogations must avoid the use of coercion — that is, threatening or causing harm through physical injury or mental suffering. We define a "detainee" as a criminal suspect, prisoner of war, or any other individual who is being held involuntarily by legitimate authorities.

Physicians who engage in any activity that relies on their medical knowledge and skills must continue to uphold ethical principles. Questions about the propriety of physician participation in interrogations and in the development of interrogation strategies may be addressed by balancing obligations to individuals with obligations to protect third parties and the public. The further removed the physician is from direct involvement with a detainee, the more justifiable is a role serving the public interest. Applying this general approach, physician involvement with interrogations during law enforcement or intelligence gathering should be guided by the following:

1. Physicians may perform physical and mental assessments of detainees to determine the need for and to provide medical care. When so doing, physicians must disclose to the detainee the extent to which others have access to information included in medical records. Treatment must never be conditional on a patient's participation in an interrogation.

2. Physicians must neither conduct nor directly participate in an interrogation, because a role as physician-interrogator undermines the physician's role as healer and thereby erodes trust in the individual physician-interrogator and in the medical profession.

3. Physicians must not monitor interrogations with the intention of intervening in the process, because this constitutes direct participation in interrogation.

4. Physicians may participate in developing effective interrogation strategies for general training purposes. These strategies must not threaten or cause physical injury or mental suffering and must be humane and respect the rights of individuals.

5. When physicians have reason to believe that interrogations are coercive, they must report their observations to the appropriate authorities. If authorities are aware of coercive interrogations but have not intervened, physicians are ethically obligated to report the offenses to independent authorities that have the power to investigate or adjudicate such allegations. (New HOD/CEJA Policy)

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[ix] Galvin R. The Complex World of Military Medicine: A Conversation with William Winkenwerder. *Health Aff*. 2005;W5:353-360.
[x] Elsner A. Experts see medical ethics violations at Guantanamo. *Reuters*. February 24, 2006.
[xi] American courts recognize that confessions elicited by physical intimidation are involuntary and may not be admitted against the confessor at trial. Additionally, under certain circumstances threats, deception, and trickery may render a confession involuntary and inadmissible. 29 Am. Jur. 2d Evidence § 731.
[xii] The Fifth and Fourteenth Amendments to the Constitution protect individuals against involuntary self-incriminating statements. *Dickerson v. United States*, 530 U.S. 428 (2000); *Miranda v. Arizona*, 384 U.S. 436 (1966).
[xiii] Geneva Convention III, Article 17
[xiv] UN Convention Against Torture, Pt. I, Art. 1, § 1.
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Incident #2 orders for Guantanamo Bay