AMERICAN PSYCHOLOGICAL ASSOCIATION

Memorandum

To: Kristin A. Hancock, PhD, Chair
Policy and Planning Board (P&P)

Sarah Jordan, P&P Staff Liaison
Christine Chambers, P&P Staff Liaison

From: Terese A. Hall, JD, PhD, Chair
Committee on Legal Issues (COLI)

Donna J. Beavers, COLI Staff Liaison

Date: July 23, 2014

Re: COLI's Preliminary Response to Council New Business Item #23B: *Implementation of the 2008 Membership Vote to Remove Psychologists from All Settings That Operate Outside of International Law*

APA's Committee on Legal Issues (COLI) and the Policy and Planning Board (P&P) met during the March, 2014, APA Consolidated Meeting to review Council New Business Item #23B: *Implementation of the 2008 Membership Vote to Remove Psychologists from All Settings that Operate Outside of International Law*. The purpose of the joint meeting was to formulate a plan to respond as co-leads on the New Business Item. COLI has prepared its preliminary recommendation for P&P's consideration, as follows:

COLI respectfully views Item 23B as unacceptable and recommends that it be rejected. Item 23B is flawed in its basic assumptions and in its understanding and use of key concepts and terms chosen to support its arguments.

COLI carefully reviewed Item 23B, and because of the complexity and seriousness of the legal issues presented, sought outside legal review regarding this Item. The independent legal review, presented in a Memorandum dated June 16, 2014, is attached to this response as Appendix A.

The Memorandum provides a thorough analysis of a number of concerns with the Item, consistent with the issues that COLI has discussed, as well as with information furnished by the Memorandum. COLI recommends that interested stakeholders read the Memorandum and consider points made in COLI's response and in the attached Memorandum's analysis. COLI will not repeat points made in the Memorandum. Instead, COLI would offer the following brief comments about two major concerns with the Item. These concerns are identified below, with examples that are illustrative but by no means exhaustive.

First, the Item relies on outdated law that has changed in the past several years and ignores the current legal authority on the issue with which the Item is concerned. For example, the legal opinions formulated during the Bush Administration that the Item relies upon were wholly rescinded by President Obama through an Executive Order in 2009. The Item does not note the relevant executive orders. In addition, Common Article 3 has been established as the minimum standard of treatment for all detainees of the United States. Other examples could be cited, but in general the concerns which prompted the Item have been addressed and remediated by current law.

The second major problem area relates to the inaccurate use of some terminology, which has led to a significant misinterpretation of current law on the issue. This problem is discussed in depth in the Memorandum. An example is the confusion about signing the United Nations Convention "subject to reservations" vs. "subject to understandings." Another example would be the important definitional distinction between "torture" and "cruel, inhuman or degrading treatment or punishment." This is significant because, if the APA were to adopt the resolution presented in this Item, it would be adopting incorrect terminology and an inaccurate presentation of current law.

For the reasons stated, COLI recommends that Item 23B be rejected.

Enclosure: Appendix A

cc: Nathalie F.P. Gilfoyle, General Counsel
William A. Strickland, PhD, Board Liaison to COLI

COHEN MILSTEIN

MEMORANDUM

TO: Nathalie Gilfoyle, General Counsel, APA
FROM: Kit Pierson
Hiba Hafiz
DATE: June 16, 2014
RE: Independent Legal Review: Churchill New Business Item

Following up on our discussions, you have asked whether the proposed action items and commentary in the February 2014 Churchill New Business Item (the items and discussion are hereafter collectively referred to as the "NBI") accurately describe the current state of the law relating to Guantanamo (or any analogous facilities still in operation). We have not been asked to opine on the merits of the NBI and related APA policies; accordingly, this memorandum does not address those questions.

The NBI is predicated on concerns about Guantanamo's compliance with international law, the Reservations and Understandings the United States has adopted relating to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), and the potential implications for the role played by psychologists. The relationship between international law and U.S. policy is both complex and controversial. There are aspects of the NBI and related discussion that reflect continuing criticisms about the operation of Guantanamo and the policy positions taken by the United States (including, in particular, concerns that indefinite confinement at Guantanamo violates international law, as well as concerns that the United States has limited its acceptance of the CAT's prohibition of torture and CIDTP). In addressing these matters, however, much of the legal discussion in the NBI is confused, inaccurate and/or incomplete. This memorandum will focus on the primary respects in which the NBI does not accurately or completely reflect the current state of the law.

Background

To evaluate the statements made in the NBI, an understanding of some basic principles of international law – and actions taken by the United States relating to Guantanamo and interrogation – is required. Specifically:

The Distinction Between "Torture" and "Cruel, Inhuman or Degrading Treatment or Punishment" ("CIDTP"). It is important to understand that torture and CIDTP are distinct legal concepts under the CAT and other international human rights instruments, with the latter being the *lesser crime* to the former. The Convention Against Torture does not define "cruel, inhuman or degrading treatment or punishment" (CIDTP). It only defines "torture" and states in Article 16 that acts falling short of the definition of torture may constitute

CIDTP. *See* CAT, A/63/175, at ¶ 46.[1] Thus, torture is understood as a severe form of inhuman treatment, but there is no *objective* element of distinction between the two categories, and the acts at stake in analyzing torture claims are usually identical – only the level of intensity/severity of the ill-treatment, taking into account the vulnerability of the victim, may vary. To determine whether events or acts rise to the level of torture, factors such as the powerlessness of the victim, the severity of the victim's treatment (its duration, physical and mental effects, the sex, age and state of health of the victim), and the purpose of the treatment are ordinarily considered. As explained below, for purposes of understanding international law, United States law and policy, existing APA policy, and the discussion in the NBI, the legally distinct nature of torture and CIDTP has fundamental importance.

The Distinction Between "Reservations" and "Understandings." When a nation adopts a treaty, its adoption is sometimes subject to "Reservations" and/or "Understandings." Again, these are distinct legal concepts. A "reservation" is "a unilateral statement made by a State, when signing, accepting, approving or acceding to a treaty, whereby it purports to exclude or … modify the legal effect of certain provisions of the treaty in their application to that State." A reservation represents a State's intent to *exclude* or *modify* the legal effects of provisions in a treaty while at the same time acceding to the rest of the treaty's provisions as a State Party. Some obligations under international law, however, are absolute and nonderogable – meaning that a state cannot adopt a treaty but opt out of those obligations through a "reservation."

Alternatively, a state can clarify the meaning or scope of a treaty's provisions upon ratification through an "understanding." An "understanding" merely specifies how a State Party interprets a given treaty provision's terms; it does not indicate a State Party's intent to exclude or modify the legal obligation imposed by that provision as applied to it. International bodies have differentiated between "reservations" and "understandings" by evaluating a State Party's intent. If a finding is made that a State Party intended to exclude or modify its legal obligations under the treaty as applied to it, a State Party's declaration would constitute a "reservation," but

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[1] The Committee Against Torture (the body that adjudicates complaints alleging violations of the CAT), regional human rights tribunals, and other international bodies have subsequently refined the definition of CIDTP in General Comments and through case law. For example, the Committee Against Torture, has issued a General Comment stating that the main distinction between CIDTP and torture is that, "[i]n comparison to torture, ill-treatment differs in the severity of pain and suffering." Committee Against Torture, General Comment No. 2, CAT/C/GC/CRP.1/REV.4, para. 10. Regional human rights tribunals have distinguished torture and CIDTP by limiting torture to specific acts while viewing the concept of "treatment" more broadly to include neglect, failure to act, or a failure to protect. See, e.g., Inter-American Court of Human Rights, Children's Rehabilitation Institute v. Paraguay, judgment of September 2, 2004, Series C No112, para.171. Like the definition of torture, the definition of CIDTP is evolving and subject to ongoing reassessment, so the definition of CIDTP in the U.S. Reservation is one of many options available to the APA for a more specific elucidation of the definition of CIDTP. World Organization Against Torture (OMCT), The Prohibition of Torture and Ill-treatment in the Inter-American Human Rights System: A Handbook for Victims and Their Advocates (2006), p. 107 (citing Inter-American Court of Human Rights, Cantoral-Benavides v. Peru, Series C, No. 69 (2000), para. 99); ECHR, Selmouni v. France, Application No. 25803/94 (1999), para. 101.

if the intention is found to be merely interpretive, the declaration would constitute an "understanding" and the State Party's obligations would be unaltered.

The United States' "Reservations" and "Understandings" Relating to the CAT. The prohibition on torture under the CAT is absolute and non-derogable. That means that no signatory to the treaty can exclude, opt out of or modify the legal effects of its obligations to prohibit torture through a reservation. However, the United States made its agreement to the CAT subject to a number of "*understandings*" relating to torture, including the following:

> (1)(a) That with reference to Article 1, the United States understands that, in order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering and that mental pain or suffering refers to prolonged mental harm caused by or resulting from: (1) the intentional infliction or threatened infliction of severe physical pain or suffering; (2) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses of the personality; (3) the threat of imminent death; or (4) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

The United States' agreement to the CAT is subject to "reservations" relating *only* to CIDTP. The reservations relating to CIDTP do create material differences between U.S. policy and the protections against CIDTP provided in the CAT:

> (1) That the United States considers itself bound by the obligation under Article 16 to prevent "cruel, inhuman or degrading treatment or punishment," only insofar as the term "cruel, inhuman or degrading treatment or punishment" means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.

Executive Order 13,491. There are two other aspects of the United States' implementation of CAT that are particularly relevant here. First, while the reservation limits the prohibition of CIDPT to punishments "prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States" – which ordinarily would have limited or no application to detainees at facilities outside the United States – U.S. federal law has extended the prohibition on CIDTP to those "in the custody or under the physical control" of the U.S., without "any geographic limitation," through the passage of the Detainee Treatment Act of 2005. Further, Executive Order 13,491 specifically applies Common Article 3 standards as a baseline to the treatment of individuals detained in armed conflict that are "in the custody or under the effective control of the Government, and that treatment must be "consistent with " the CAT and the Federal Torture statute implementing the CAT. 74 Fed. Reg. 16, sec. 3(a).[2]

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[2] We should note that under international law, there is an analytical distinction between a State's commitment to act in a manner "consistent with" treaty requirements and a commitment to act in "compliance with" international law. Without addressing the complexities of this distinction here, it is probably sufficient to note that the United States would likely regard itself as acting "consistent with" the CAT as long as it adheres to the substantive requirements of the

Second, Executive Order 13, 491 revoked interpretations of the law governing interrogations that were "issued by the Department of Justice between September 11, 2001 and January 20, 2009 … to the extent of [those interpretations'] inconsistency with" that Order. This revocation applies to certain memoranda prepared by the Department of Justice ("Yoo/Bradbury Memoranda") that, *inter alia*, rejected the applicability of the CAT to interrogations conducted outside of the United States by the CIA, and cited medical monitoring as a factor supporting the view that certain "enhanced interrogation techniques" did not "shock the conscience" in violation of the 5th Amendment.

Existing APA Policy. In response to concerns about interrogation practices at Guantanamo and other facilities (and the role of psychologists in those settings), APA has adopted certain policies designed to address these issues. These are set forth in the APA's 2013 "Policy Related to Psychologists' Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment," which is appended as Attachment A.

Discussion

Because of the complexity of the issues raised, we will discuss a number of the statements in the NBI with specificity (as explained below, the precise language used in the NBI has significant implications for its accuracy and legal significance). We reprint the statements from the NBI in italics, and then provide comments on that language:

NBI: Preface

Statement: Aside from individual cases of participation in torture, there is still one enormous problem of a systemic nature that threatens the credibility of our policies against torture, and that is the very fact that the presence of a psychologist during an interrogation by definition makes that interrogation not qualify as torture – even if interrogation techniques that would otherwise qualify as torture are being utilized.

U.S. lawyers such as John Yoo and Steven Bradbury opined that torture could only be defined as an act specifically intended to cause severe pain and suffering. Any interrogation session that had psychologist [sic] *involved – as author of the protocol, as an observer, a consultant or simply as healer prepared to respond to an emergency session – was, by definition, not a torture session.*

These lawyers built a legal defense of torture on the foundation of the U.S. Reservations to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Comment: The preceding discussion raises a number of concerns. First, it is not correct that the legal defense of torture was based on "U.S. Reservations" to the CAT. The United States did not, and could not, adopt reservations relating to torture; it only adopted reservations relating to CIDTP. However, the United States did adopt "understandings" regarding torture – which were used to construct a legal defense for

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5th, 8th and 14th amendments, but would reject having a legal obligation under the CAT to extend protections beyond those available in the U.S. Constitution.

using “enhanced interrogation techniques” – but, as explained above, this is a materially different concept under international law than “reservations” and has different legal implications.

Second, this distinction is particularly relevant here because the APA policy statements indicate that “APA defines torture in accordance with Article I of the [CAT],” rather than the more limited view expressed in the United States Understandings of the term “torture” under the CAT. *See* Statement 3. (In contrast, the APA does define CIDTP in accordance with the definition adopted in the United States’ Reservation to the CAT).

Third, the NBI references the Yoo/Bradbury Memoranda as grounds for concern but does not explain that those memoranda were effectively revoked by Executive Order 13,491 more than five years ago (on January 22, 2009).. While nothing can foreclose a future argument that the analysis in those memoranda was correct – i.e., that the United States’ “understanding” of torture supports the conclusions reached therein – the fact is that those memoranda do not reflect current Department of Justice policy and Executive Order 13,491 provides that “unless the Attorney General with appropriate consultation provides further guidance,” officers, agents and employees of the United States “may not, in conducting interrogations, rely upon any interpretation of the law governing interrogation … issued by the Department of Justice between September 11, 2001 and January 20, 2009.

NBI: Action Item 1:

Statement: Whereas in 2008 the APA membership voted, by a margin of 59 to 41 to prohibit psychologists from working at Guantanamo Bay, the CIA black sites and all other settings where people are held outside of or in violation of domestic and/or international law.

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

Comments: The United Nations High Commissioner for Human Rights has stated that indefinite detention at Guantanamo is a clear violation of international law. APA’s existing policy prohibits psychologists from working in certain facilities[3] for

[3] The Action Item states that pursuant to the 2008 vote, psychologists are prohibited from working in settings where people are held outside of or in violation of domestic and/or international law. There is someuncertainty about the application of this to facilities outside the United States where a legal framework is in place to address these issues. The intended reach of existing APA policy is not an issue addressed in this memorandum, but we simply note that this is an issue for your consideration. For example, in the “pro rebuttal statement” that was submitted in support of the 2008 resolution, members were informed that the resolution would not apply to domestic facilities for the following reasons: “[A] judge reading the full text of this referendum would be hard pressed to interpret it as barring psychologists from working at sites that neither the U.N. nor the Supreme Court have found to be in violation of the law. The referendum is specific, provides clear context and sets a high bar. In settings where people are detained outside of the law – places where treaties such as the Geneva Conventions and

persons other than detainees and it is for APA to consider whether that policy adequately addresses the issue discussed in this Action item. APA's existing policy statement (Statement 1) provides:

> According to the 2008 APA Petition Resolution Policy, Psychologists and Unlawful Detention Settings with a Focus on National Security …, "psychologists may not work in settings where people are held outside of, or in violation of, either International Law (e.g., the UN Convention Against Torture and the Geneva Conventions) or the US Constitution (where appropriate), unless they are working directly for the persons being detained or for an independent third party working to protect human rights."
>
> APA recognizes that torture and other cruel, inhuman or degrading treatment or punishment can result from conditions of confinement and the behavior of individuals. Psychologists are prohibited from working in unlawful detention settings as defined in Statement 1 (see Footnote ii), except when working directly for the persons being detained, for an independent third party working to protect human rights or when providing psychological services to military personnel working at the site(s).

NBI Action Item 2.

Statement: Whereas the United States ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with reservations that limit the scope of that treaty.

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

Whereas this call has been echoed by Amnesty International and numerous other human rights organizations.

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

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

Convention Against Torture are ignored or declared not to apply – psychologists can work only for those detained. U.S. `jails, prisons, psychiatric hospitals …' all function *within* the legal system. Even if they are found to be in violation of the constitution, they can be challenged openly in U.S. courts, and everyone held there holds the rights of habeas corpus; thus, they differ significantly from the secret, extra-legal settings that are the subject of this referendum." The application of existing APA policy to facilities such as Guantanamo in light of legal developments since 2007 (such as the decision in *Boumediene v. Bush*, 553 U.S. 723 (2008), would require a separate legal analysis.

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

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

Comments: It appears that this statement is designed to address the reservations the United States adopted in connection with CIDTP (not torture). As noted above, the Reservations adopted by the U.S. with respect to CIDTP create material differences between U.S. policy and the protections against CIDTP in the CAT. Policy Statement 3 adopted by APA defines the term CIDTP "in accordance with the United States Reservation." In discussing this issue, however, the NBI confuses the distinction between CIDTP and torture, as well as that between reservations and understandings. As a result, it is legally inaccurate and/or confusing in several respects.

First, as explained above, the United States' reservations apply to CIDTP, not torture. The NBI incorrectly states that "U.S. lawyers used these reservations to build a legal defense of torture." That is not correct – U.S. lawyers relied on the understandings to the CAT as the basis for that defense. Moreover, the NBI does not mention the action taken in Executive Order 13,491 described above, which revoked Bush-era legal memoranda on this point. Although there is room for debate about the scope and import of the Executive Order, it is a material event in this discussion.

Second, the confusion of this distinction between torture and CIDTP – and between reservations and understandings – becomes critical to understanding the ensuing statement that APA "adopted the very same definition" of CIDTP as the one contained within the U.S. reservations. It is correct that APA adopted that definition; it is incorrect, however, that the definition adopted by APA (i.e., inclusive of the U.S. Reservations relating to CIDTP) was the definition used to create a legal defense to torture. As explained, that was based on the U.S. Understandings relating to torture, and the APA has *not* adopted those understandings. To the contrary, the APA statements adopt the CAT definition of torture.

Third, this is compounded by the statement that "APA will no longer refer to the definition of torture contained in the U.S. reservations" to the CAT. This is not accurate. Statement 3 of APA policy states that "APA defines torture in accordance with Article I of the UN Declaration and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment."

<u>NBI Discussion: Location:</u>

*Statement: [After explaining that the U.S. Reservations limit CIDTP to treatment or punishment prohibited by the 5th, 8th and 14th Amendments to the U.S. Constitution, the NBI states:] "Thus, CIDTP becomes reduced to `Cruel, Unusual, and Inhumane Punishment' – the **T** disappears. This seemingly minor change has drastic implications because, U.S. lawyers argue, the 5th, 8th and 14th amendments only restrict the application of Punishment and are silent on Treatment. Further, these amendments only*

apply to citizens and persons within the U.S. As Stephen Bradbury states: `As construed by the courts, the Fifth Amendment does not apply to aliens outside of the United States.' (p. 2). The eighth amendment, argues Bradbury, only applies to those convicted of a crime – thus, detainees held at GITMO or the CIA black sites are not being punished for crimes (cf. p. 26, 23-24). And while the 5th amendment does apply to certain pre-trial conditions, those conditions cannot be considered punishment if the state has a `compelling governmental interest' in keeping a given person in certain pre-trial conditions.

In brief, as long as you never charge or convict anyone you do not violate the 5th and 8th amendments; this is why so many in GITMO has [sic] *languished without even being charged with a crime and why they are subject to `tribunals' and not courts.*

Bradbury gives shortest shrift to the 14th amendment, only noting that he does not believe it applies to persons not residing in a state. In sum, ***as long as interrogation takes place in GITMO or a Black Site[,] the prohibitions of the Convention against Torture do not apply****. This is the portion of the reservations that is directly quoted in current APA policies."* (Emphasis in original).

Comment: The foregoing statement is confusing, incomplete and/or inaccurate in the following respects:

First, in stating that the U.S. prohibitions on CIDTP under the CAT do not extend to facilities outside the United States, it includes no discussion of the fact that U.S. federal law has extended the prohibition on CIDTP to those "in the custody or under the physical control" of the U.S., without "any geographic limitation," through the passage of the Detainee Treatment Act of 2005. Further, Executive Order 13,491 specifically applies Common Article 3 standards as a baseline to the treatment of individuals detained in armed conflict that are "in the custody or under the effective control of the Government, and that treatment must be "consistent with" the CAT and the Federal Torture Statute implementing the CAT. 74 Fed. Reg. 16, sec. 3(a).

Second, the references to the Bradbury memoranda do not mention that Executive Order 13,491 provides that, absent further authorization by the Attorney General, individuals involved in interrogations may not rely on interpretations of the law governing interrogations issued by the Department of Justice between September 11, 2001 and January 20, 2009.

Third, the statement that "***as long as interrogation takes place in GITMO or a Black Site the prohibitions of the Convention against Torture do not apply"*** and "this is the portion of the reservations that is directly quoted in current APA policies," is incomplete and inaccurate in the following respects. With respect to *torture*, APA's existing policy makes clear that it adopts the definition set forth in the CAT. Thus, for purposes of APA policy, the statement that "as long as interrogation takes place in GITMO … the prohibitions of the Convention against Torture" do not apply, is not accurate. With respect to *CIDTP*, the United States has more limited restrictions than the CAT (the U.S. reservations have the effect of limiting the substantive restrictions on CIDTP to that provided by the 5th, 8th and 14th amendments and limiting the remedies available). APA's policy statement adopts the United States' reservation relating to CIDTP. The protections afforded by the 5th, 8th and 14th amendments are extended to Guantanamo pursuant to the Executive Order**.**

Fourth, these issues become especially problematic when considered in conjunction with Action Item 2. As explained above, there are a number of problems in Action Item 2 because it confuses the distinctions between torture and CIDTP and between reservations and understandings (and as a result misstates APA's existing policy). This is compounded by the confusion described above in the discussion of "location," which is intended to help explain the meaning of Action Item 2.

NBI Discussion: "Intent" and "Harm."

Statement: ***Intent.*** *Lawyer John Yoo argues that torture is defined by the mental state of the interrogator – if the interrogator does not intend to torture, he does not torture. An interrogator can demonstrate his or her good intent by involving a psychologist in the interrogation. To understand this you need to understand Yoo's interpretation of the CAT's definition of torture ….*

Harm. *The U.S. reservations limit the definition of mental suffering [the language then quoted is the U.S. understanding, not a reservation]. Yoo (2003) seizes on the phrase* prolonged mental harm *and opines that it sets such a high bar that only two DSM diagnoses qualify: Post-Traumatic Stress Disorder (PTSD) and (untreated) Depression. Thus, clinical psychologists and psychiatrists were the best possible consultants to an interrogation because their involvement legitimized the proceedings in ways that no other profession could do.*

The problems in the foregoing discussion are similar to those discussed earlier and can be stated succinctly here. First, the discussion relates to U.S. Understandings relating to torture, not reservations; the APA has not adopted the U.S. Understandings related to torture (and instead accepts the CAT definition). Second, the discussion again omits reference to the revocation of the Yoo/Bradbury memoranda in the subsequent Executive Order. While it is possible that in the future a defendant might again assert such reasoning in defense of an action brought under U.S. law, this would not appear to prevent the APA from taking disciplinary action under existing policy based on APA's adoption of the definition of torture in the CAT.