

COUNCIL OF REPRESENTATIVES

August 5 & 9, 2009

Agenda Item No. 4

ACTION

III. ETHICS

**Council Resolution Directing the Ethics Committee to Complete Action
From the August 2005 Meeting in Time for Council to Review the Ethics Committee
Recommendation at its August 2009 Meeting (NBI #34E)**

Issue

The Council is asked to consider the main motion of August 2008 Council New Business Item #34E (Exhibit 1), which recommends a proposed course of action to address a discrepancy between the language of the Introduction and Applicability section of the Ethical Principles of Psychologists and Code of Conduct (2002) and Ethical Standards 1.02 and 1.03, including establishment and funding of an ad hoc committee of the Ethics Committee for this purpose.

This item was referred to the Ethics Committee as lead group, as well as to the Committee on Legal Issues (COLI) as a referral group. The Ethics Committee reviewed the item at its October 2008 and March 2009 meetings, and implemented a broad consultation process in order to seek COLI's feedback as well as to invite comment from other interested governance groups. The Ethics Committee has assembled extensive resource materials on the Ethics Office website at www.apa.org/ethics/standard-102.

The Board of Directors has received an action item mirroring this item in its agenda of August 4 & 8, 2009 and will provide its recommendation to Council at the Council meeting.

The Ethics Committee recommends rejection of the main motion. The rationale for the Ethics Committee's recommendation is included as Exhibit 2.

Implementation Plan

To be determined.

Fiscal Implications

It is difficult to provide an accurate estimate of the cost of revising a particular standard in the Ethical Principles of Psychologists and Code of Conduct (2002). APA should assume that any revision would incur expenses.

The movers of New Business Item #34E cite an allocation of \$10,500 to support the work of the ad hoc committee, in addition to funds and time to be spent in implementing an Ethics Code revision.

Main Motion

- 1 Council directs the APA Ethics Committee to form an ad hoc committee to move forward
- 2 expeditiously to recommend language to Council that would resolve the discrepancy between the
- 3 language of the Introduction and Applicability Section of the Ethical Principles of Psychologists
- 4 and Code of Conduct and the Ethical Standards 1.02 and 1.03 and make a formal
- 5 recommendation for immediate action at the August 2009 meeting of Council.
- 6 WHEREAS in August 2005 following adoption by the Board of Directors of the PENS Task Force
- 7 Report, Council requested "that the APA Ethics Committee review the discrepancy between the
- 8 language of the Introduction and Applicability Section of the Ethical Principles of Psychologists
- 9 and Code of Conduct and Ethical Standard 1.02, and make a recommendation to the Board of
- 10 Directors concerning adding the words 'in keeping with basic principles of human rights' to Ethical
- 11 Standard 1.02."

WHEREAS when Council adopted the 2002 Ethics Code, it was never Council's intent that the language of Standards 1.02 and 1.03 be interpreted to mean that any psychologist in any role could use these standards as a defense for violating basic human rights.

WHEREAS Council requested "that this process [to recommend language] move forward as expeditiously as reasonably possible, recognizing that a proposed amendment to the Ethical Principles of Psychologists and Code of Conduct will be subject to the review procedures required by Association Rule 30-8, Standards and Guidelines, and final Council action."

WHEREAS Council took this action after it was informed that the Introduction and Applicability Section of the Ethics code is aspirational rather than enforceable. It states: "If psychologists' ethical responsibilities conflict with 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 the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing authority in keeping with basic principles of human rights." In contrast, Standard 1.02 states, "If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict. If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority." Standard 1.03 states "If the demands of an organization with which psychologists are affiliated or for whom they are working conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code."

WHEREAS according to The Association Rules (2008) Code 20-4.1, titled, Review of the Ethics Code, "The Ethics Committee shall have the responsibility from time to time of initiating a review of the latest formally adopted version of the ethics code or any part of the code and proposing necessary changes or additions. In carrying out such a review, the Ethics Committee may set up such ad hoc committees as it finds necessary."

WHEREAS Council acknowledges the Ethics Committee's work to implement Council's 2005 charge. In particular, Council appreciates the manner in which the Committee has considered suggested changes in language as well as the way that the Committee has reached out to various constituencies in its efforts.

WHEREAS Council remains committed to providing its support to the Ethics Committee to facilitate the entire review process including, as mandated by the Association's Rules, the subsequent review by Boards, Committees, and relevant constituencies and final action by Council.

THEREFORE BE IT RESOLVED that Council directs the APA Ethics Committee and the other relevant Boards, Committees and constituencies to move forward expeditiously to recommend language to Council that would resolve the discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code of Conduct and Ethical Standards 1.02 and 1.03.

BE IT RESOLVED that the language proposed for Council's action communicate clearly that Standards 1.02 and 1.03 can never be interpreted to justify violations of basic human rights. Council suggests the addition of the following text to both Standard 1.02 and 1.03: This Standard can never be interpreted to justify violations of basic human rights."

BE IT RESOLVED that this entire process be completed in time for the Ethics Committee to make a formal recommendation to Council in time for the August 2009 meeting and that this recommendation be included in the agenda for that Council meeting.

BE IT RESOLVED that, to expedite the process and in accordance with APA Association Rules, Council recommends that the Ethics Committee establish an ad hoc committee for this purpose.

BE IT RESOLVED that since this change in the Ethics Code would apply to all psychologists, Council recommends that this ad hoc committee shall include, in addition to representatives from the Ethics Committee, at least one representative from each of the Association's Boards to provide input from each of the Directorates. It is suggested that, where possible, a representative

65 from each group be a Council member. Furthermore, the ad hoc committee shall include a
66 representative from the Board of Directors and the Association of State and Provincial
67 Psychology Boards (ASPPB). This group shall work closely with APA Counsel and the Director of
68 Ethics as its work proceeds.

69 BE IT RESOLVED, as deemed timely by the ad hoc committee, these representatives keep their
70 constituencies alert to progress and seek input so that the entire review process can be informed
71 and efficient, and completed by July, 2009.

72 BE IT RESOLVED that Council demonstrates its resolve to expediting these actions by allocating
73 \$10,500 in funds to support the work of this ad hoc committee, in addition to the funds and time
74 that would be spent in implementing the 2005 Council action.

Recommendation

The Ethics Committee recommends rejection of the main motion. (The Board of Directors' recommendation will be provided at the meeting.)

At the Fall 2008 Consolidated Meetings, eighteen governance groups provided feedback regarding whether Ethical Standards 1.02 and 1.03 should be revised at the current time. Exhibit 3 provides the full comments of each group.

Commenting in favor of revision: The Committee on International Relations in Psychology (CIRP), the Committee on Aging (CONA), the Committee on Animal Research and Ethics (CARE), the Committee on Disability issues in Psychology (CDIP), the Committee on Lesbian, Gay, Bisexual, and Transgender Concerns (CLGBTC), the Committee on Women and Psychology (CWP), and the Membership Board.

Commenting against revision: The Board for the Advancement of Psychology in the Public Interest (BAPPI), the Board of Educational Affairs (BEA), the Board of Professional Affairs (BPA), the Board of Scientific Affairs (BSA), the Committee for the Advancement of Private Practice (CAPP), the Committee on Legal Issues (COLI), the Committee on Socioeconomic Status (CSES), and the Policy and Planning Board (P&P).

Providing feedback and suggestions without commenting for or against revision: The Committee on Ethnic Minority Affairs (CEMA), the Committee on Early Career Psychologists (CECP), and the Committee on Division and APA Relations (CODAPAR).

Exhibits

1. August 2008 Council New Business Item #34E
2. Rationale of the APA Ethics Committee, June 2009
3. Governance groups' comments from the Fall 2008 Consolidated Meetings, Rounds 1 & 2

Stephen H. Behnke, JD, PhD
Ethics Office

judith van hoorn

#2

34E

Exhibit 1

AUGUST 2008 LEGISLATIVE COUNCIL NEW BUSINESS FORM

Date Submitted: _____

Agenda Item #
(completed by staff)

Please follow the instructions on the right hand side. The back of this page provides the Guidelines for Council Resolutions; the APA priorities most recently identified by Council and a space for co-sponsors to sign. If you have questions, consult a staff person or a member of CSFC.

SUBJECT:

Council resolution directing the Ethics Committee to complete action from the August 2005 meeting in time for Council to review the Ethics Committee recommendation at its August 2009 meeting

MOVER:

Judith Van Hoorn
Corann Okorodudu
Bill Strickland
Beth Wiggins
Laurie Wagner
Allen Omoto
Martha Banks

→ Jennifer Kelly
→ Mia Scott

REPRESENTING: DIVISIONS 9, 19, 39, 41, 45, 48, 33

→ Georgia

ISSUE:

In August 2005 Council took the following action: "...that the APA Ethics Committee review the discrepancy between the language of the *Introduction and Applicability Section* of the Ethical Principles of Psychologists and Code of Conduct and *Ethical Standard 1.02*, and make a recommendation to the Board of Directors concerning adding the words 'in keeping with basic principles of human rights' to *Ethical Standard 1.02*."

This new business item reaffirms Council's commitment to resolve this discrepancy in a timely way. Council supports such action by funding a process to speed a comprehensive review to implement language that clarifies that all psychologists in all roles work in keeping with basic principles of human rights.

RELATION TO APA PRIORITIES:

10. Promote human welfare through social justice research, practice, policy, and/or education.

ESTIMATED COSTS/STAFF RESOURCES: \$10,500

MAIN MOTION:

INSTRUCTIONS

Subject: Concise title that accurately reflects the spirit/intent of the main motion.

Mover(s): Identify the author(s) of the item.

Representing: Identify the constituency the author(s) represent.

Issue: Provide a rationale for the motion as well as relevant background information. Avoid extraneous detail.

Relation to APA Priorities: Identify the priorities, if any, (see reverse side) to which your item is aimed.

Estimated Costs/Staff Resources: Provide, to the best of your ability, a realistic assessment of what this will cost. Consult with a staff person if needed.

Main Motion: Describe in succinct language what you are asking for. If requesting the formation of a task force or committee, specify its charge, size and expected duration. If requesting an amendment to the Association Rules or Bylaws, provide the current language and bracket material to be deleted and underline material to be added.

Expected Outcomes/Products: Define the expected outcome or product if the main motion is approved.

Council directs the APA Ethics Committee to form an ad hoc committee to move forward expeditiously to recommend language to Council that would resolve the discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code of Conduct and the Ethical Standards 1.02 and 1.03 and make a formal recommendation for immediate action at the August 2009 meeting of Council.

Whereas, in August 2005 following adoption by the Board of Directors of the PENS Task Force Report, Council requested "that the APA Ethics Committee review the discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code of Conduct and Ethical Standard 1.02, and make a recommendation to the Board of Directors concerning adding the words 'in keeping with basic principles of human rights' to Ethical Standard 1.02."

Whereas, when Council adopted the 2002 Ethics Code, it was never Council's intent that the language of Standards 1.02 and 1.03 be interpreted to mean that any psychologist in any role could use these standards as a defense for violating basic human rights.

Whereas, Council requested "that this process [to recommend language] move forward as expeditiously as reasonably possible, recognizing that a proposed amendment to the Ethical Principles of Psychologists and Code of Conduct will be subject to the review procedures required by Association Rule 30-8, Standards and Guidelines, and final Council action."

Whereas, Council took this action after it was informed that the Introduction and Applicability Section of the Ethics code is aspirational rather than enforceable. It states: "If psychologists' ethical responsibilities conflict with 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 the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing authority in keeping with basic principles of human rights." In contrast, Standard 1.02 states, "If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict. If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority." Standard 1.03 states "If the demands of an organization with which psychologists are affiliated or for whom they are working conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code."

Whereas, according to The Association Rules (2008) Code 20-4.1, titled, Review of the Ethics Code, "The Ethics Committee shall have the responsibility from time to time of initiating a review of the latest formally adopted version of the ethics code or any part of the code and proposing necessary changes or additions. In carrying out such a review, the Ethics Committee may set up such ad hoc committees as it finds necessary."

Whereas, Council acknowledges the Ethics Committee's work to implement Council's 2005 charge. In particular, Council appreciates the manner in which the Committee has considered suggested changes in language as well as the way that the Committee has reached out to various constituencies in its efforts.

Whereas, Council remains committed to providing its support to the Ethics Committee to

facilitate the entire review process including, as mandated by the Association's Rules, the subsequent review by Boards, Committees, and relevant constituencies and final action by Council.

Therefore, **BE IT RESOLVED** that Council directs the APA Ethics Committee and the other relevant Boards, Committees and constituencies to move forward expeditiously to recommend language to Council that would resolve the discrepancy between the language of the Introduction and Applicability Section of the Ethical Principles of Psychologists and Code of Conduct and Ethical Standards 1.02 and 1.03.

BE IT RESOLVED that the language proposed for Council's action communicate clearly that Standards 1.02 and 1.03 can never be interpreted to justify violations of basic human rights. Council suggests the addition of the following text to both Standard 1.02 and 1.03: "This Standard can never be interpreted to justify violations of basic human rights."

BE IT RESOLVED that this entire process be completed in time for the Ethics Committee to make a formal recommendation to Council in time for the August 2009 meeting and that this recommendation be included in the agenda for that Council meeting.

BE IT RESOLVED that, to expedite the process and in accordance with APA Association Rules, Council recommends that the Ethics Committee establish an ad hoc committee for this purpose.

BE IT RESOLVED that since this change in the Ethics Code would apply to all psychologists, Council recommends that this ad hoc committee shall include, in addition to representatives from the Ethics Committee, at least one representative from each of the Association's Boards to provide input from each of the Directorates. It is suggested that, where possible, a representative from each group be a Council member. Furthermore, the ad hoc committee shall include a representative from the Board of Directors and the Association of State and Provincial Psychology Boards (ASPPB). This group shall work closely with APA Counsel and the Director of Ethics as its work proceeds.

BE IT RESOLVED, as deemed timely by the ad hoc committee, these representatives keep their constituencies alert to progress and seek input so that the entire review process can be informed and efficient, and completed by July, 2009.

BE IT RESOLVED that Council demonstrates its resolve to expediting these actions by allocating \$10,500 in funds to support the work of this ad hoc committee, in addition to the funds and time that would be spent in implementing the 2005 Council action.

EXPECTED OUTCOMES/PRODUCTS:

Clarify that psychologists may never interpret Ethics Code Standards 1.02 and 1.03 to justify behaviors that violate basic human rights.

WHEN SUBMITTING A NEW BUSINESS ITEM -- IT IS IMPORTANT TO:

- ▶ Provide adequate information so that someone unfamiliar with the Issue can understand the need for Item and what it will accomplish.
- ▶ Adhere to grammatical and stylistic requirements of Standard English.
- ▶ Do your homework: make certain that what you are proposing does not replicate existing Association policy, that it is consonant with current Association priorities, and that it is fiscally realistic.

DESIGNATE COSPONSOR(S):

Ann E. Hancock PhD - Illinois
Doug Waldeman BOD
Jim Kinsman BOD
Norm S. John Div 29
Glen Div. 31
Gene Darrow Division 39
Jeff Division 40
David Barbary Div 39
Melba Vasquez BOD
Ann R. Carlson BOD
Dolores Amaris D. 39
Juan M. Lopez BOD
Brida Campbell Div 29
Marne Satter - PA
Dennis Kopp. Div 14

APA PRIORITIES

(As Identified by Council - August 2005)

1. Increase membership in APA (and its divisions, associations and/or affiliates), with a special focus on recruitment and/or retention of students, early career psychologists, diverse groups (race/ethnicity, gender, sexual orientation, age and aging, religious affiliations, and/or those with disabilities), basic and applied scientists, practitioners, retirees, university faculty, and/or psychologists in non-traditional roles.
2. Encourage the integration of scientific and practice psychology at all levels of psychology and for all psychologists.

DESIGNATE COSPONSOR(S):

An Aug Lynne Cooper
 James M. Astoria Janet Swin Jane P. de Torres
 Emma Mon, v.i. Florence Kaskaw M. K. Shing J. M. D.

M. E. D. 14
 Janet Barnes Farrell Div. 14
 Robert W. Ploy Div. 14
 David Johnson Div. 21

DESIGNATE COSPONSOR(S):

Maurice O. Connor, Div. 9 Art Lyons - Division 32
 D. B. D. 35 Mary Gregerson - Div 10
 Bonnie Strickland Div. 1
 John Moritsen Washington State

Michael E. Martinez Division 15 Laura Walker Div 46
 James R. Connor (Div. 30) Elmer L. L. Div 55
 Denny Wedding (Div. 52) Beth J. T. L. L. Div 55
 Stephen L. L. (DC)

Gary L. Brooks Div 51
 D. B. D. 35
 James L. L. Div 17
 J. L. L. Div 17 H. O. C. Div 17

Kate F. Hays
 Kathleen S. Brown
 Gwyneth Borchers

Ontario
 Div. 22
 Div 5

DESIGNATE COSPONSOR(S):

John Spivey RT
Josephine Johnson Div 42
Andrew Morris D. 39
Geri Lawrie Div. 39
Dwight Walker Div 46
Gordon [unclear] Div 29
Verna [unclear] Div 39

DESIGNATE COSPONSOR(S):

Sari [unclear] Div 44
Karen Sargent Div 37
Patricia [unclear] Rep from Oregon
Suzanne [unclear] Rep from Ohio

Ethics Committee's Response to the Council of Representatives' Directive to Review a Discrepancy Between the Aspirational and Enforceable Sections of the *Ethical Principles of Psychologists and Code of Conduct* (2002) Related to Conflicts Between Ethics and Law and Conflicts Between Ethics and Organizational Demands

APA Ethics Committee Statement
No Defense to Torture Under the APA Ethics Code

June 2009

There is no defense to torture under the *Ethical Principles of Psychologists and Code of Conduct* (2002).

The APA Ethics Committee will not accept any defense to torture in its adjudication of ethics complaints.

Torture in any form, at any time, in any place, and for any reason, is unethical for psychologists and wholly inconsistent with membership in the American Psychological Association.

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, legal compulsion or organizational demand, may be invoked as a justification for torture.

Addendum to the Ethics Committee's June 2009 Statement

The Ethics Committee considers the prohibition against torture to encompass the specific techniques prohibited by the Council of Representatives 2008 Resolution *Amendment to the Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as "Enemy Combatants."* The Committee finds this prohibition consistent with President Obama's January 22, 2009, executive order "Ensuring Lawful Interrogations."

I. Introduction to and History of the American Psychological Association's
Review of Ethical Standard 1.02

The Ethics Committee thanks all of the individuals and groups that have contributed in such a thoughtful manner to the American Psychological Association's (APA's) review of how the *Ethical Principles of Psychologists and Code of Conduct* (2002; Ethics Code) addresses conflicts between ethics and law and conflicts between ethics and organizational demands. That so many psychologists are willing to give their time and energies to APA is the Association's greatest strength and resource. The depth and

breadth of our membership is abundantly evident in the many contributions and comments the Committee has received. The Committee would like to stress that notwithstanding deep differences in APA members' opinions and positions, the Committee appreciates and recognizes the good intentions and good will of *all* APA members who have provided comments on this complex issue.

At its August 2005 meeting, the Council of Representatives directed the Ethics Committee to "review the discrepancy between the language of the Introduction and Applicability section of the *Ethical Principles of Psychologists and Code of Conduct* (2002) and Ethical Standard 1.02, Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority." The discrepancy arises because the phrase "in keeping with basic principles of human rights" is found in the *aspirational* section of the Ethics Code but not in the Code's *enforceable* ethical standard. Council requested that the Ethics Committee "make a recommendation to the Board of Directors concerning adding the words 'in keeping with basic principles of human rights' to Ethical Standard 1.02."

In its August 2005 directive, Council did not indicate whether it believed a change in Standard 1.02's language was advisable but rather directed the Ethics Committee to "review the discrepancy" and make a recommendation.

In February 2006, the Ethics Committee provided an initial report to Council that described the Committee's progress in examining this issue. In April 2006, the Ethics Committee began a process of collaborating with consecutive chairs of the Divisions for Social Justice and of eliciting feedback from APA governance groups. The Committee also continued to track resolutions with direct relevance to Ethical Standard 1.02. In the fall of 2006 and again in the fall of 2008, the Ethics Committee solicited responses from boards and committees for input regarding whether it would be advisable to modify Standard 1.02 and requested recommendations for specific language if governance groups believed a modification was indicated.

In August 2008, Council members introduced a new business item regarding a modification of Standards 1.02 and 1.03 and requested that the Ethics Committee provide a recommendation regarding language in these two ethical standards in preparation for Council's August 2009 meeting. In response to this new business item, the Ethics Committee created a Web site (<http://www.apa.org/ethics/standard-102/>). Among other materials, the Web site provided a complete history of Standard 1.02, input from governance groups regarding whether a change in the standard's language is indicated, a comparative analysis of how 55 other associations address conflicts between ethics and law, and guidance regarding when a change in the Ethics Code outside the regular revision process is indicated. The Web site also solicited comments from all interested parties.

At its spring 2009 meeting, the Ethics Committee reviewed 81 comments that had been received in response to its call for comments. Of these, 77 comments were submitted to the Web site. Four were submitted to the APA Ethics Office in hard copy. (Certain comments were submitted in both forms and were therefore not counted twice in the total number.) The Committee reviewed these comments in the context of the background

materials posted on the Web site, including materials relevant to changes to the Ethics Code outside the regular revision process.

This report and the accompanying Ethics Committee statement are the Committee's response to Council's directive that the Committee review the discrepancy between the aspirational and enforceable language in the Ethics Code and make a recommendation regarding adding the words "in keeping with basic principles of human rights" or some similar language to the Code's enforceable standards.

The Ethics Committee respectfully submits this report to Council for Council's consideration at its August 2009 meeting.

Note: Although differing in important respects, the language of Ethical Standard 1.03 closely tracks the language of Standard 1.02. Much of the Standard 1.02 analysis therefore applies to Standard 1.03. Because the Committee views it as critical that APA make clear there is no defense to torture under *any* section of the Ethics Code, including both Standards 1.02 and 1.03, the Committee includes the words "organizational demands" in the title of this text and in the accompanying Committee statement.

II. Background of Key Issues

A. Current Language

The Code's aspirational Introduction and Applicability section states:

If this Ethics Code establishes a higher standard of conduct than is required by law, regulations, or other governing legal authority, psychologists must meet the higher ethical standard. If psychologists' ethical responsibilities conflict with 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 the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing authority in keeping with basic principles of human rights.

Ethical Standard 1.02 from the enforceable section of the Code states:

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

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict. If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority.

The phrase "in keeping with basic principles of human rights" in the Introduction and Applicability section is absent from the enforceable ethical standard.

If the proposed language were added to Ethical Standard 1.02, the standard would state (added language in underline):

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

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict. If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority in keeping with basic principles of human rights.

B. 1992 Ethics Code Language

The 1992 *Ethical Principles of Psychologists and Code of Conduct* stated:

1.02, Relationship of Ethics and Law

If psychologists' ethical responsibilities conflict with law, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict in a responsible manner.

The 1992 standard placed an obligation on psychologists to engage in a process of attempting to resolve a conflict between ethics and law, were a conflict to arise.

The 1992 Ethics Code did not address what psychologists do if the conflict is not resolvable.

C. Meaning of "Conflict"

To understand Ethical Standard 1.02, it is essential to be clear about the meaning of "conflict." A psychologist's legal and ethical obligations will sometimes differ. In certain instances, the law will impose requirements that the Ethics Code does not; at other times, the Ethics Code may require more than the law, regulation, or other governing legal authority will require. A difference does not in and of itself constitute a Standard 1.02 conflict. The Introduction and Applicability section of the Ethics Code makes clear that if the Ethics Code establishes a higher standard of conduct than the law, psychologists are expected to meet the higher standard.

As used in Standard 1.02, conflict refers to mutually exclusive obligations. Such conflicts arise in the exceedingly rare instances when fulfilling a psychologist's legal obligations will necessarily entail violating the psychologist's ethical obligations, or vice versa. In other words, following the law will *necessarily* entail violating the Ethics Code, and conversely, following the Ethics Code will *necessarily* violate the law. The psychologist is in the position of choosing which—the law or the Ethics Code—to follow. In an Ethical Standard 1.02 conflict, the psychologist cannot abide by both.

D. Aspirational and Enforceable Language in the 2002 Ethics Code

A central distinction in the Ethics Code is between the Code's aspirational sections—the Introduction and Applicability, the Preamble, and the Ethical Principles—and the enforceable ethical standards. Language in the aspirational sections of the Code tends to be general rather than specific. Principle A, Beneficence and Nonmaleficence, for example, begins by stating “Psychologists strive to benefit those with whom they work and take care to do no harm.” Language in the enforceable standards, by contrast, is specific and directive as the standards apply the ethical principles to set forth specific obligations and specific prohibitions on psychologists’ behavior. Standards 3.10 and 10.05, for example, provide the specific elements of informed consent that psychologists are required to obtain and prohibit sexual involvements with therapy clients/patients (respectively). A natural discrepancy is therefore found between the language in the aspirational sections of the Ethics Code and the language in the Code’s enforceable sections in terms of how specific and directive the language is.

A discrepancy in language in and of itself may arise by virtue of the distinction between the aspirational and enforceable sections of the Code. A discrepancy does not, therefore, necessarily indicate a problem.

E. Civil Disobedience Under the 2002 Ethics Code

It is critical to note that civil disobedience is entirely compatible with the Ethics Code. Ethical Standard 1.02 states that in cases of an irreconcilable conflict between ethics and law, a psychologist “may” follow the law. Conversely, it is compatible with the Ethics Code for a psychologist *not* to follow the law when an irreconcilable conflict between ethics and law arises.

The role of civil disobedience in APA Ethics is underscored and highlighted in the 2007 Council resolution *Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as “Enemy Combatants”* (<http://www.apa.org/governance/resolutions/councilres0807.html>). This resolution states “The American Psychological Association affirms the prerogative of psychologists under the *Ethical Principles of Psychologists and Code of Conduct* (2002) to disobey law, regulations or orders when they conflict with ethics.” In adopting the Ethics Code and this Council resolution, Council has affirmed and reaffirmed that civil disobedience is compatible with the Ethics Code.

F. The Events of September 11, 2001, and Ethical Standard 1.02

There has been confusion regarding the relationship between the terrorist attacks of September 11, 2001, and the language of Ethical Standard 1.02. The history of Standard 1.02 (<http://www.apa.org/ethics/standard-102/>) makes clear there is no link. Although the Code as a whole was adopted in August 2002, the current language in Standard 1.02 was drafted in the fall of 2000, a year prior to the terrorist attacks. The comments on this

standard indicate that the issues of terrorism, torture, and interrogation were not part of the discussion, a conclusion that is confirmed by commentaries on the Ethics Code written by members of the Ethics Code revision task force. The recorded history of Standard 1.02 stands as a clear refutation to the claim that the standard's language was a response to the events of September 11, 2001. A review of the history of this standard indicates that disclosing confidential information in response to a legal demand (such as a subpoena or court order) was a primary concern behind the revision of Ethical Standard 1.02.

III. Comments in Response to the Ethics Committee's Call

The issue of how the APA Ethics Code addresses conflicts between ethics and law is deeply felt by many members. At the outset of its analysis, the Ethics Committee emphasizes again its strong belief that *all* who have submitted comments have done so in a spirit of ethical mindedness and genuine concern for maintaining the highest ethical standards in the profession. Reasonable, ethically minded, informed members of APA differ on how best to approach this complex question. The Committee strongly encourages all interested APA members to visit the website and read through the comments in their entirety (<http://www.apa.org/ethics/standard-102/>).

Eighty-one comments were submitted in response to the Ethics Committee's call. The Committee notes that 10 comments were submitted during the entire 5-year revision process leading up to the adoption of the current version of the Ethics Code.

The individual and group comments submitted in response to the Ethics Committee's call were divided in their recommendations. Some comments spoke strongly in favor of changing Ethical Standard 1.02, either by adding language such as "in keeping with basic principles of human rights" or by removing language that was included in the most recent ethics code revision process. Other comments spoke equally strongly against changing Standard 1.02.

The comments in favor of change in Ethical Standard 1.02 focused largely on one or a combination of two central issues: that the 2002 Code allows torture and abuse when a psychologist is under a legal compulsion to engage in these unethical acts and/or that the Ethics Code permits a wide range of unethical conduct that violates basic principles of human rights, such as discrimination. Although these two issues are related, they are distinct in terms of their scope. One set of comments favoring a change in language viewed Standard 1.02 as problematic almost exclusively in the context of torture. Another set of comments favoring a change in language viewed Standard 1.02 as problematic in a much broader context of allowing violations across a broad range of human rights issues. A comment submitted by the movers of the 2008 Council new business item is an example of comments favoring change that highlight broader issues:

Council has enacted numerous human rights policies, particularly policies against unfair discrimination as well as policies against torture. As Movers of New Business Item 34E, we urge the Ethics Committee to propose language that

communicates clearly that Standards 1.02 and 1.03 can never be interpreted to justify violations of basic human rights and, furthermore, that psychologists resolve such conflicts guided by principles of basic human rights and maximal compliance with the Ethical Standards.

In addition to these arguments in favor of changing the language of Standard 1.02, certain comments argued that changing the standard could be helpful in providing psychologists a bulwark against violating the Ethics Code should the psychologist be pressured to do so.

The Ethics Committee believes that there is great insight in these comments. The Ethics Committee strongly agrees that APA must make absolutely and unequivocally clear that the Ethics Code does not provide a defense to torture and specifically that Ethical Standards 1.02 and 1.03 do not provide a defense to torture. (Please see the Ethics Committee's June 2009 statement "No Defense to Torture Under the APA Ethics Code" on pages 1 and 13 of this document and at www.apa.org/ethics.)

Comments opposing a change in Ethical Standard 1.02 made several arguments. These arguments largely focused on the language "basic principles of human rights" as overly difficult to operationalize and/or vague in the context of an enforceable standard as opposed to an aspirational statement. These comments argued that the language "basic principles of human rights" has uncertain application to many issues about which there are deep societal disagreements, such as abortion, end of life/assisted suicide, and the death penalty. The comments also raised questions regarding how the proposed language would apply to specific practice contexts and issues, such as work in correctional settings, obtaining consent to treat minors, and terminating parental rights. In responding to suggestions regarding texts such as the *Universal Declaration of Human Rights* that might offer an authoritative interpretation of the language "basic principles of human rights," certain commentators pointed out that these texts themselves have clauses that allow for the suspension of their own provisions. An example of such a clause is found in Article 29, paragraph 2 of the *Universal Declaration*, which allows limitations of the Declaration's "rights and freedoms" for the purpose of "meeting the just requirements of morality, public order and the general welfare in a democratic society." According to this argument, a document which allows exceptions to its own provisions potentially raises the very issues that proponents of changing Standard 1.02 seek to remedy. The comments also raised a question of where the locus of ethical responsibility and accountability for action most properly belongs, in the individual member or in the Association, and whether it is appropriate for the Association to *require* a member to engage in civil disobedience. In other words, the question was raised whether the role of the Association through its Ethics Code is to *assist* psychologists in making complex decisions or rather to *direct* psychologists what to do.

IV. Ethics Committee's Analysis

The Committee believes that there is significant wisdom and insight in comments both favoring and opposing a change in the language of Ethical Standard 1.02. The Committee

strongly agrees with proponents of a change in language that APA must make absolutely and unequivocally clear that “following orders” and following institutional demands are never a defense to torture under the Ethics Code. The Committee likewise agrees that adding the words “in keeping with basic principles of human rights” to Ethical Standard 1.02 has implications across a broad range of psychologists’ work that have yet to be fully explored. The Ethics Committee believes that to appreciate fully the implications of adding such language to enforceable standards in the Ethics Code, a careful review of the entire Code will be necessary, which will require the assistance and active involvement of psychologists across the entire profession to explore how this language may be applied to their areas of work.

In short, the Ethics Committee does not believe it is advisable to add the proposed phrase “in keeping with basic principles of human rights” to Ethical Standard 1.02 without exploring the implications of this addition across the broad range of psychologists’ activities and in relation to the Ethics Code as a whole in the context of a regular and full revision of the entire Ethics Code.

A. Other Professions’ Ethics Codes

How other health and mental health professions address conflicts between ethics and law, although by no means dispositive for APA, is nonetheless informative. The Ethics Committee reviewed 55 ethics codes for language addressing how members should respond when faced with a conflict between obligations under their ethics code and obligations under the law. The Committee’s review indicated that the vast majority of ethics codes fall into one of three categories:

1. codes that require members to follow the law,
2. codes that allow member discretion regarding whether to follow the law or the ethics code, and
3. codes that do not address the issue of conflicts between ethics and law.

The Committee’s review was not exhaustive. Nonetheless, the review strongly suggests that language in the APA Ethics Code is highly consistent with how other associations’ ethics codes address conflicts that arise between ethics and law. (For the Committee’s methodology and information regarding specific associations’ codes, please see <http://www.apa.org/ethics/standard-102/associations.pdf>.)

B. Locus of Ethical Decision Making

At the center of this issue is the question of whether the locus of ethical decision making in complex situations more properly belongs in the individual member or in the Association. This question, in turn, rests upon one’s conception of the role of an association ethics code. From one perspective, the purpose of an ethics code is to set forth ethical prohibitions and requirements that restrict and mandate member behavior. From another perspective, the role of an ethics code is to provide ethical guidance to members who face difficult and complex dilemmas. These two perspectives are not mutually

exclusive and both may simultaneously coexist in a single ethics code, as they do in APA's Ethics Code.

It is important to recognize that adding the proposed language "in keeping with basic principles of human rights" to the enforceable section of the Ethics Code potentially mandates that APA members engage in civil disobedience.

The question of whether a code of ethics should mandate or rather permit civil disobedience is a question with no apparent or easy answer. The Ethics Committee believes this discussion is important for the Association to have. The Ethics Committee believes that if the Ethics Code were to be construed as mandating civil disobedience, it would be important for the Ethics Code to give clear guidance to members regarding when civil disobedience is required.

The Ethics Committee believes that its June 2009 statement "No Defense to Torture Under the APA Ethics Code" provides clear guidance to psychologists regarding their behavior.

C. Adoption of the Ethics Code by State, Provincial, and Territorial Licensing Boards

Adding the language "in keeping with basic principles of human rights" potentially creates a mandate that in certain situations psychologists must disobey the law. At the present time, approximately 28 jurisdictions adopt or follow the APA Ethics Code according to their statutes or regulations. APA would need to determine whether a clause in the Ethics Code potentially requiring psychologists to disobey the law will affect the likelihood that a jurisdiction will incorporate or make reference to the Ethics Code in its statutes or regulations.

APA must also determine the extent to which it wants to encourage jurisdictions to use the APA Ethics Code as the jurisdiction's standard of ethical care. The Ethics Committee strongly supports jurisdictions adopting the APA Ethics Code.

An additional consideration is that many individuals who sit on licensing boards and ethics committees may have little training in applying international human rights instruments to the work of psychologists. Training in how to apply these texts will be essential if the phrase "in keeping with basic principles of human rights" is added to Standards 1.02 and 1.03.

D. The Role of International Human Rights Standards

A theme that arose in the comments addressed the role of international human rights standards in the APA Ethics Code. From one perspective, international human rights standards should be central to the Ethics Code and should trump any competing law. Other comments questioned whether international human rights standards should be included in the Code's enforceable section. During the next revision of the Ethics Code,

APA should address the appropriate role of international human rights standards in the Code.

V. Statement by the Ethics Committee Regarding Torture and No Defense to Torture

It is critical that all APA members and the public understand that there is no defense to torture under the APA Ethics Code.

The current language of Ethical Standard 1.02 was drafted in the fall of 2000. The language was neither intended nor foreseen to justify or provide a defense to torture or abuse. A primary concern of the Ethics Code revision task force was the disclosure of confidential information in response to a legal demand such as a subpoena or a court order.

Given that in the public discourse there is uncertainty regarding a defense to torture under the Ethics Code, the Committee believes it is critical to make clear that the Ethics Code does not provide a defense to torture.

For this reason, the Ethics Committee has adopted a statement that following orders or any legal mandate or organizational demand is not a defense to torture under Ethical Standard 1.02, Ethical Standard 1.03 or any section of the Ethics Code.

The statement accompanies this response to Council. The Ethics Committee has directed the Ethics Office to place this statement on the Ethics Web page of the APA Web site (please see www.apa.org/ethics) and to provide this statement to all interested parties who wish information regarding the Committee's position on the issue of torture and conflicts between ethics and law.

VI. Work for Future Revisions of the Ethics Code

A. Report of the APA Presidential Advisory Group on the Implementation of the Petition Resolution

The Ethics Committee wholeheartedly endorses several recommendations made in the *Report of the APA Presidential Advisory Group on the Implementation of the Petition Resolution*. The Committee strongly supports the recommendation for education regarding international human rights at all levels of psychologists' professional development. The Ethics Committee welcomes the opportunity to work with other groups within APA to develop syllabi and curricula for training and continuing education regarding psychology and human rights. The Ethics Committee likewise strongly endorses the recommendation for the Ethics Office and Committee to develop ways of providing ethical guidance to psychologists who work in settings relevant to the APA policy *Psychologists and Unlawful Detention Settings With a Focus on National Security* and all settings where psychologists may experience pressure to engage in behaviors that violate the APA Ethics Code, especially settings that are not transparent to outside observers. The Committee also believes it important for the drafters of the

casebook/commentary on the role of psychologists' in national-security-related interrogations to address the implications of the APA policy *Psychologists and Unlawful Detention Settings With a Focus on National Security* for psychologists' work.

The Committee will continue its review of the *Report of the APA Presidential Advisory Group on the Implementation of the Petition Resolution* and will consider additional recommendations at its next meeting in October 2009.

B. Questions for the Next Revision of the 2002 Ethics Code

The Committee's review of Ethical Standard 1.02 and proposals for modifying the standard's language have raised a number of questions for APA to address during the next revision of the Ethics Code. These questions include

- Where does the locus of ethical decision making for psychologists most properly belong in difficult and complex situations: in individual members or in the Association? Put another way, in difficult and complex situations does the Ethics Code better serve the membership when it provides guidance for sound ethical decision making or when it directs members what to do?
- What role should international standards play in establishing aspirational principles and enforceable standards for members of the APA?
- Can/should APA support psychologists who engage in civil disobedience? Is the nature and type of the civil disobedience relevant to this question?
- How would a proposed change in the Ethics Code that potentially mandates violating laws affect the willingness of state, provincial, and territorial psychology licensing boards to adopt or follow the APA Ethics Code? Does APA have an interest in state, provincial, and territorial licensing boards adopting the APA Ethics Code as the standard of ethics in the respective jurisdiction?
- What should the Association's position be regarding working to change laws that are inconsistent or potentially inconsistent with the Ethics Code?
- Do all of the current ethical standards provide sufficient direction regarding what is expected behavior of APA members?

These are complex issues that the Ethics Committee believes call for Association-wide discussions in the context of a full Ethics Code revision process.

VII. Conclusion and Recommendation

At the current time, the Committee recommends against adding the words "In keeping with basic principles of human rights" to Ethical Standard 1.02 or Ethical Standard 1.03. The Ethics Committee's recommendation is based on a number of factors including the following:

1. The Ethics Committee has issued a statement that there is no defense to torture under the APA Ethics Code.

2. APA's 2002 Ethics Code allows for civil disobedience, which the Council of Representatives has explicitly recognized in its 2007 resolution *Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as "Enemy Combatants"* (<http://www.apa.org/governance/resolutions/councilres0807.html>)
3. The language in APA's Ethics Code regarding conflicts between ethics and law is highly consistent with language in other health and mental health associations' codes of ethics to the extent these codes address such conflicts.
4. The language proposed, "in keeping with basic principles of human rights," has potentially far-reaching consequences that would affect psychologists' work in many areas across the Association. The appropriate venue to address this language is during a full Ethics Code revision process when psychologists from all areas of the profession have an opportunity to examine how this proposed language may affect their ethical obligations under the Code.
5. Given the Code's current structure, in which language in the enforceable sections contains greater specificity and direction than does language in the aspirational sections of the Code, the current discrepancy between the aspirational and enforceable language "in keeping with basic principles of human rights" may be appropriate.

The process of revising the Ethics Code, consistent with Association Rule 30-8, may begin in a preliminary and cost-effective manner by creating a mechanism whereby APA members can submit comments regarding areas of the Ethics Code that they believe should be considered for revision. The Committee has directed the APA Ethics Office to create such a mechanism and to retain all comments regarding Ethical Standard 1.02 for the purpose of the next Ethics Code revision.

The Ethics Committee emphasizes that the APA's work on this issue is not complete. The Committee looks forward to a discussion of this issue at Council. The Committee welcomes input from both individual psychologists and groups that agree and disagree with the Committee's recommendation.

APA Ethics Committee Statement
No Defense to Torture Under the APA Ethics Code

June 2009

There is no defense to torture under the *Ethical Principles of Psychologists and Code of Conduct* (2002).

The APA Ethics Committee will not accept any defense to torture in its adjudication of ethics complaints.

Torture in any form, at any time, in any place, and for any reason, is unethical for psychologists and wholly inconsistent with membership in the American Psychological Association.

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, legal compulsion or organizational demand, may be invoked as a justification for torture.

Addendum to the Ethics Committee's June 2009 Statement

The Ethics Committee considers the prohibition against torture to encompass the specific techniques prohibited by the Council of Representatives 2008 Resolution *Amendment to the Reaffirmation of the American Psychological Association Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and Its Application to Individuals Defined in the United States Code as "Enemy Combatants"* (<http://www.apa.org/governance/resolutions/amend022208.html>). The Committee finds this prohibition consistent with President Obama's January 22, 2009, executive order "Ensuring Lawful Interrogations" (http://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations/).

**Amendment to the Reaffirmation of the American Psychological Association
Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or
Punishment and Its Application to Individuals Defined in the United States Code as
“Enemy Combatants”**

Resolution Adopted by APA on
February 22, 2008

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

Participating Groups
APA Fall Consolidated Meetings – First Round 2008

Group	RSVP: No Comment	Comment Provided
Committee on Aging		X
Committee on Animal Research and Ethics		X
Committee on Children, Youth and Families	X	
Committee on Disability Issues in Psychology		X
Committee on Division/APA Relations		X
Committee on Early Career Psychologists		X
Committee on Ethnic Minority Affairs		X
Committee on International Relations in Psychology		X
Committee on Lesbian, Gay, Bisexual and Transgender Concerns		X
Committee on Psychological Tests and Assessment	X	
Committee on Psychology and AIDS		
Committee on Rural Health	X	
Committee on Socioeconomic Status		X
Committee on Women in Psychology		X
Continuing Education Committee	X	
Psychology Teachers @ Community Colleges	X	
Teachers of Psychology in Secondary Schools	X	

Participating Groups
APA Fall Consolidated Meetings – Second Round 2008

Group	RSVP: No Comment	Comment Provided
American Psychological Association of Graduate Students	X	
Board for the Advancement of Psychology in the Public Interest		X
Board of Convention Affairs	X	
Board of Educational Affairs		X
Board of Professional Affairs		X
Board of Scientific Affairs		X
Committee for the Advancement of Professional Practice		X
Committee on Legal Issues		X
Committee on Structure and Function of Council	X	
Membership Board		X
Policy and Planning Board		X
Publications and Communications Board	X	



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

MEMORANDUM

November 4, 2008

TO: Stephen H. Behnke, JD, PhD, Director, Ethics Office
Staff Liaison, Ethics Committee

FROM: Sue Houston, Staff Liaison
Board for the Advancement of Psychology in the Public Interest (BAPPI)

RE: **BAPPI Response to CC-5 Request for Feedback Regarding Ethical Standard 1.02**

During the October 2008 Consolidated Meetings the Board for the Advancement of Psychology in the Public Interest (BAPPI) discussed the request from the Ethics Committee for feedback regarding the proposed amendment of Standard 1.02 of the Ethical Principles of Psychologists and Code of Conduct (2002), and recommends the following Main Motion: "That the Board for the Advancement of Psychology in the Public Interest recommends that Standard 1.02 and Standard 1.03 of the Ethical Principles of Psychologists and Code of Conduct (2002) should not be revised."

During the Board's deliberations of this item, it was noted that were a change to occur in the wording of Standard 1.02, adding "provided that psychologists do not violate Ethical Standard 3.04, Avoiding Harm" seemed the least problematic as this is already included within the enforceable part of the Code and therefore, does not add any new requirement. In general, Board members were concerned about the more far reaching implications for psychologists who practice in many complex areas and settings such as prisons, divorce and custody matters, and specialized treatment centers who could find themselves caught between the requirements of following a law and violating a basic human right. There was ample concern that there is insufficient guidance for psychologists in making these determinations in their practice.

BAPPI members appreciate the opportunity to comment on this important matter.

MEMORANDUM

To: Stephen Behnke, PhD
Director, Ethics Office

FROM: Board of Educational Affairs (BEA)
Luis Espinoza, Governance Officer, Staff Liaison to BEA
Education Directorate

Date: November 10, 2008

Subject: Request for Feedback Regarding Ethical Standard 1.02 (cross-cutting item 5)

BEA recommends Standards 1.02 not be revised at the current time.

BEA understands that inherent in this request is the need to serve the membership and protect the public. In principle, the merit of the proposed revision adds important language to the ethical standard. However, it is BEA's understanding that APA has yet to define what constitutes "basic principles of human rights." It is for this reason that BEA does not recommend the proposed revision. Further, should the proposed language continue through the governance process, significant consideration should be given to the impact of adding such language to Standard 1.02, an enforceable rule for psychologists.

BEA is interested to learn how other health and mental health associations address conflicts between ethics and law to determine whether APA is mostly consistent or inconsistent with other association ethics codes.

BEA appreciates the opportunity to provide input into this important issue. Should you have questions regarding this memorandum, please contact Luis Espinoza at (202) 336-5783 or Lespinoza@apa.org. Thank you.

cc: Cynthia Belar, PhD, Executive Director, Education Directorate
Louise Douce, PhD, BEA Chair-elect
Gilbert Newman, PhD, BEA Chair
Deborah Perry, Administrative Associate, Education Directorate
Jackie Tyson, Associate Executive Director of Administration, Education Directorate



MEMORANDUM

TO: Stephen H. Behnke, JD, PhD, Director, Ethics Office
Executive Office, American Psychological Association

FROM: Mary G. Hardiman, Director of Board Operations
Practice Research & Policy, Practice Directorate

RE: Unapproved Minute, Board of Professional Affairs Fall 2008 Meeting

DATE: Friday, November 07, 2008

Below, please find an unapproved minute from the Board of Professional Affairs Fall 2008 Meeting. The Board of Professional Affairs appreciates the opportunity to comment on this governance item.

- Item No. 18. Request for Feedback Regarding Ethical Standard 1.02
(CC-05) BPA discussed the issue of a potential conflict in language in Ethical Standard 1.02 and language in the Introduction and Applicability section. During the discussion regarding possible revision, BPA expressed some concern that the term “basic principles of human rights” was not clearly defined, and could be used against psychologists in cases such as child custody and other evaluations unrelated to the issue of torture. Following attendance at the Conference Committee addressing this item, and based on the opinions exchanged there, BPA believes that there is not a conflict between language in Standard 1.02 and the Introduction and Applicability section that requires immediate reconciliation. The former is considered enforceable and the latter is considered aspirational. BPA also believes that the additional language suggested in the four revision versions, while intended to strengthen a commitment to protecting human rights, might inadvertently create complications for psychologists in various practice situations, where the term “basic principles of human rights” does not have a universally accepted definition. BPA reaffirms the language in the amended APA resolution passed that explicitly communicates the association's strict prohibition against torture or other forms of cruel, degrading or inhumane treatment.

November 6, 2008

MEMORANDUM

TO: Ethics Committee

FROM: Board of Scientific Affairs (BSA)

SUBJECT: CC-05 Request for Feedback Regarding Ethical Standard 1.02

Below is the minute from the October 24-26, 2008 meeting of the Board of Scientific Affairs regarding CC-05 Request for Feedback Regarding Ethical Standard 1.02:

Board of Scientific Affairs (BSA)
Unapproved Draft Minute
October 24-26, 2008

CC-5 Request for Feedback Regarding Ethical Standard 1.02

BSA members agreed that Standard 1.02 and 1.03 of the *Ethical Principles of Psychologists and Code of Conduct* (2002) should not be revised. BSA members reported from the conference committee meeting that the Committee on Legal Issues (COLI) had very strong arguments against revising the two standards. BSA members agreed with COLI's arguments that the proposed language was ambiguous and therefore unenforceable. So placing the wording in an enforceable part of the *Code* doesn't make sense. BSA agreed with COLI that discussion of this issue should continue but that any revision should take place during the already scheduled time for the revision and not now.



AMERICAN
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Memorandum

Date: October 28, 2008

To: Stephen Behnke, JD, PhD
Ethics Office

From: Committee for the Advancement of Professional Practice (CAPP)

Subject: CC-05: Request for Feedback Regarding Ethical Standard 1.02

At its October 24-26, 2008 meeting, the Committee for the Advancement of Professional Practice (CAPP) was asked to review and provide feedback regarding revisions considered to Ethical Standard 1.02 of the *Ethical Principles of Psychologists and Code of Conduct* (2002).

Given the options presented in item CC-05, CAPP does not support any changes. However, CAPP would be open to considering alternative language that would avoid unintended adverse consequences.

CAPP appreciates the opportunity to review and provide comment.

cc: Katherine Nordal, PhD
Randy Phelps, PhD



AMERICAN
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MEMORANDUM

To: Stephen Behnke
Ethics Office

From: Committee on Aging (CONA)

Date: October 1, 2008

Subject: CC-05: Request for Feedback Regarding Ethical Standard 1.02

The Committee on Aging (CONA), at its September 19-21, 2008 meeting, reviewed Cross Cutting Agenda Item CC-05: Request for Feedback Regarding Ethical Standard 1.02.

CONA recommends that Standard 1.02 and Standard 1.03 of the Ethical Principles of Psychologists and Code of Conduct should be revised with the following recommended phrase "in keeping with basic principles of human rights" inserted at the very end of each standard.

Susie Hwang
Office on Aging
American Psychological Association
750 First Street, NE
Washington, DC 20002
P: (202) 336-6046 F: (202) 336-6040
shwang@apa.org
<http://www.apa.org/pi/aging>



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

Science Directorate

MEMORANDUM

To: Stephen Behnke
Director, Ethics Office

From: Committee on Animal Research and Ethics

CC: Board of Scientific Affairs (BSA)

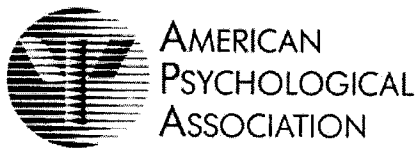
Subject: CC-05 – Request for feedback regarding ethical standard 1.02

Date: December 23, 2008

The Committee on Animal Research and Ethics reviewed and discussed the proposed revision to Ethical Standard 1.02 and voted unanimously to recommend revision of the standard to include the proposed phrase "in keeping with basic principles of human rights."

750 First Street N.E.
Washington, D.C. 20002-4242
Tel: (202) 336-6000
Fax: (202) 336-5953

Email: science@apa.org
Web: www.apa.org



MEMORANDUM

TO: Stephen Behnke, JD, PhD
Ethics Office Director

FROM: Committee on Disability Issues in Psychology (CDIP)

DATE: October 10, 2008

RE: CC-Item 5: Request for Feedback Regarding Ethical Standard 1.02

At the spring 2008 consolidated meetings the Committee on Disability Issues in Psychology, (CDIP), reviewed Cross Cutting Agenda Item 5, *Request for Feedback Regarding Ethical Standard 1.02*. CDIP appreciates the attention given to this issue by the ethics office. CDIP recognizes that the revision of the language of the ethics code is a complex and daunting task. Below we provide our responses to the two questions posed in Cross Cutting Item 5. If you need additional information please do not hesitate to contact me.

(1) Should Standards 1.02 and 1.03 be revised at the current time?

CDIP believes the standards should be revised at the current time. We feel that revision would serve to provide psychologists with more specific guidance in responding to current ethical dilemmas.

(2) If so, what specific language should be used to revise Standards 1.02 and 1.03?

CDIP supports the addition of the words **"in keeping with basic principles of human rights"** to the Introduction and Applicability section, as well as ethical standards 1.02 and 1.03. In addition, CDIP supports adding a sentence to specifically address current concerns related to psychologists engaging in cruel and inhuman activity such as torture. Our proposed revision for each ethical principle is provided below with additional language noted in parenthesis.

Ethical Standard 1.02:

If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict. If the conflict is irresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority **[in keeping with basic principles of human rights.] [Psychologists refrain from participation in activities designed to deprive individuals of basic human rights, e.g. physical and/or psychological forms of torture.]**

Ethical Standard 1.03:

If the demands of an organization with which psychologists are affiliated or for whom they are working conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and to the extent feasible, resolve the conflict in a way that permits adherence to the Ethics Code **[in keeping with basic principles of human rights.]**
[Psychologists refrain from participation in activities designed to deprive individuals of basic human rights, e.g. physical and/or psychological forms of torture.]

To: Stephen Behnke, PhD
Ethics Office

From: Committee on Division / APA Relations

Re: CCAI – 5: Request for Feedback Regarding Ethical
Standard 1.02

Date: September 29, 2008



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

CODAPAR

Division Services

750 First Street Northeast
Washington, D.C. 20002

At its Fall Consolidated Meeting, September 19-21, CODAPAR was asked to review and submit comments to the Cross Cutting Agenda Item #5: Request for Feedback Regarding Ethical Standard 1.02. The Committee discussed this item and is sending forward the following comments:

CODAPAR does not take a stance on whether or not Ethical Standards 1.02 and 1.03 should be revised at this time. However, the Committee would like to remind the Ethics Committee that revisions to the Ethical Standards will have a lot of bearing, positive and negative, on various divisions. CODAPAR asks the Ethics Committee to solicit the expertise and involvement from the divisions.

MEMORANDUM

TO: Emily Laumeier

FROM: Committee on Early Career Psychologists

DATE: October 10, 2008

SUBJECT: CC-05 Request for Feedback Regarding Ethical Standard 1.02

The Committee on Early Career Psychologists (CECP) needs more information on the proposed Ethical Standards changes before recommending or not recommending revisions to Ethical Standards 1.02 and 1.03.

MEMORANDUM

DATE: October 10, 2008

TO: Stephen Behnke, JD, PhD, Director, APA Ethics Office

FROM: APA Committee on Ethnic Minority Affairs (CEMA)

SUBJECT: CC05 - Request for Feedback Regarding Ethical Standard 1.02

The APA Committee on Ethnic Minority Affairs (CEMA), during its September 19-21, 2008 meeting, was very pleased to review and consider action in response to the call for comment/feedback from the APA Ethics Committee relative to Ethical Standard 1.02, *Ethical Principles of Psychology Code of Conduct* (2002). As CEMA has come to understand this dialogue, the new language has been deemed necessary in order to address any issues related to national security, including the evaluation of the effectiveness of methods of gathering information which minimizes risk to individuals such as emotional distress to research participants as well as individuals involved in the interrogation process.

Substantive dialogue among CEMA's members and its liaisons resulted in the formulation of ideas and perspectives that CEMA believes are germane to your needs. Specifically, the following may be implications of concern derived from the insertion of the statement "*in keeping with basic principles of human rights*," at the end of Ethical Standard 1.02:

1. When APA defines Human Rights, how will that definition coincide with a language and conceptualization that is relevant for psychologists?
2. Psychologists are involved in high risk situations particularly researchers and practitioners who either collect data or provide services to communities where there is the increase probability of police raids, various forms of violence, and difficult and potentially threatening situations. Consequently, the possibility that these high risk situations may elicit increased ethical violations is high. As a result, there likely may be increased reports of ethical violations requiring more specific guidance (e.g., a casebook) about how psychologists should handle various scenarios given this language change.
3. There might be psychological implications with regard to the reporting or failure to report when human rights are violated. As a result, malpractice insurance may be impacted by this situation.
4. Change in language to reflect "human rights dialogue" may mean the increase need for APA to develop workshops that will attend to this shift in language and the implication it will have for our Association members.

5. Training and education also may be deemed necessary as a result of this language change as psychologists may be called on to provide an assessment of human rights violations. What this assessment would look like, the necessary data gathered, any relevant testing deemed appropriate, may be a likely outcome as a result of the language change.
6. Ethnic minority communities and social justice issues are frequently intertwined in dialogue that occurs in our scholarship, our training and education modules, and in community practice. Consequently, what relevance may this language change have for these communities and how should those professionals who work in these areas incorporate an understanding of human rights relative to practice?

CEMA supports the dialogue that the APA Ethics Committee has done with this proposed change and the arduous process of coming to grips with the impact of this language change for the profession. We hope that our comments are helpful to you in the implementation of this new language in the APA Ethics Standards.

cc:
BAPPI
Gwendolyn P. Keita, PhD
Bertha G. Holliday, PhD

CEMA stresses the importance and value of including a multicultural/ethnic minority perspective in the development of all APA related projects, activities, initiatives, and policy. Accordingly, CEMA's comments and recommendations in this memorandum reflect another example of the importance of ethnic minority representation, expertise, and participation on all APA task forces, work groups, initiatives, and other APA projects. CEMA strongly recommends that as a matter of conventional practice, commitment to multicultural/ethnic minority concerns and inclusion of ethnic minority expertise shall be consistently a high priority in all APA related endeavors.



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

Memorandum

To: Stephen H. Behnke, JD, PhD, Ethics Office

From: Committee on International Relations in Psychology (CIRP)

Date: September 26, 2008

Re: Ethical Standard 1.02

Thank you for the opportunity to provide feedback on revising Ethical Standard 1.02.

CIRP supports adding the phrase “in keeping with basic principles of human rights” in standard 1.02. We understand, however, that this phrase can be ambiguous without some referenced definition of what those “basic principles” are. Accordingly, CIRP strongly supports also adding a footnote that references the Universal Declaration of Human Rights (*United Nations General Assembly resolution 217 A (III) of 10 December 1948*) and other relevant international human rights treaties and instruments.



AMERICAN PSYCHOLOGICAL ASSOCIATION

MEMORANDUM

To: Stephen H. Behnke, JD, PhD
Director, Office of Ethics

From: Donna Beavers, Staff Liaison
on behalf of the Committee on Legal Issues

Date: December 12, 2008

Re.: COLI Feedback on Proposal to Revise Ethical Standard 1.02

I. Background

The *ad hoc* Committee on Legal Issues (COLI) received a "Request for Feedback Regarding Ethical Standard 1.02" as COLI Agenda Item No. 05 for the Fall, 2008 consolidated meetings. According to the request:

COLI has specifically been designated as a referee group charged with reviewing and issuing recommendations on the proposed amendment to the ethics code given that the relevant ethical standard in question pertains to conflicts between ethics and law. (COLI Agenda, Fall 2008 Consolidated Meetings, p. 51)

At the Fall, 2008 consolidated meetings, a document containing four different proposed revisions to Ethical Standard 1.02 was circulated. The proposed revision, styled "Version 1," added the following sentence to the end of the principle, "This standard can never be used to justify violations of basic human rights." Version 2 would have modified the Standard such that the last sentence was expanded to read, "If the conflict is unresolvable via such means, psychologists may adhere to the requirements of the law, regulations, or other governing legal authority in keeping with basic principles of human rights." Version 3 would have changed the standard to read, "...or other governing legal authority, provided that the psychologists do not violate Ethical Standard 3.04, Avoiding Harm." Version 4 would have expanded this further so that the standard reads, "...or other governing legal authority, provided that the psychologists do not violate Ethical Standard 3.04, Avoiding Harm. Standard 1.02 can never be used to justify violations of basic human rights."

As a preliminary matter, we applaud the proponents of these changes for their sensitivity to the underlying ethical issues. We are concerned, though, that the proposed revisions will do little to provide clear guidance as to conduct that is prohibited or required. Indeed, we worry that the proposed language will render a clear standard ambiguous. This is so because of the lack of clarity surrounding the concept of "basic principles of human rights." The document circulated at the consolidated meetings containing the various versions of proposed changes correctly points out that the Ethical Principles of Psychologists and Code of Conduct (hereafter, EPPCC) already embraces the concept in the "Introduction and

Applicability” section. However, we do not see that the absence of this language in the Standards creates a problem demanding a solution.

II. Arguments against the Proposed Changes

a. *The proposed changes result in an impermissibly vague Ethical Standard*

We note that there are significant differences between the hortatory, preambular language preceding the Ethical Standards and the Standards themselves. These differences inhere not only in enforceability (i.e., only the Standards are enforceable), but also in clarity. This, of course, is no coincidence; requiring or forbidding conduct requires considerably more precision in defining the conduct at issue than motivating it does. Put simply, there may be very good reasons for having certain language in the aspirational part of an ethics code, and other language in the enforceable aspect. We turn now to the issue of ambiguity.

Incorporating aspirational language into the enforceable provisions is problematic if that language does not clearly communicate the prohibited or required conduct. The proposed change would result in language that is impermissibly ambiguous. If revised, the new standard would authorize psychologists to follow the law only under circumstances that are consistent with basic human rights—either directly (e.g., “basic human rights”) or indirectly (e.g., “basic principles of human rights”). Therefore, a psychologist would have to have a precise understanding either of “basic human rights” or the “principles of basic human rights” in order to make an ethical decision. This, we think, is untenable and is the reason we cautioned against this very change two years ago in our meeting with Dr. Brad Olson. Simply put, there is no shared understanding of “basic human rights” as the proponents of the amendment presuppose.

Some have suggested that questions regarding the nature of basic human rights can be answered by reference to international instruments such as the Universal Declaration of Human Rights.¹ This recommendation, we think, may be far more complex than the proponents recognize. First, the Universal Declaration of Human Rights is not a treaty or convention and, consequently, has no parties to it. It is more akin to a resolution than a law. Moreover, we are not sure APA members would agree to all of the principles. Article 3, for example says, “Everyone has the right to life, liberty, and security of person.” We are concerned about how one might interpret “the right to life,” and about the implications of such an interpretation. Some state statutes, for example, authorize minors to seek confidential counseling relating to reproductive decision making without parental consent.² Under the current version of the EPPCC, a clinician would be able to follow the law and provide such counseling services notwithstanding Ethical Standards that ostensibly require parental consent (EPPCC, Std. 3.10). Under the proposed change in the code, however, a mental health professional might be discouraged from providing such services because a statute authorizing abortion counseling is not consistent with the “right to life” articulated in the Universal Declaration of Human Rights.³

Even fairly routine activities of forensic psychologists might be called into question if the proposed change is adopted. Forensic clinicians regularly conduct evaluations for the courts and provide testimony

¹ E.g., Electronic mail correspondence from Dr. Brad Olson to Dr. Stephen Behnke et al. dated October 23, 2006. Fall, 2008 Consolidated Meetings Cross-Cutting Agenda, pp. 66-67.

² See, e.g., Pagliocca, P. M., Melton, G. B., Lyons, P. M., Jr., & Weisz, V. (2002). Parenting and the law. In Marc H. Bornstein (Ed.), *Handbook of Parenting: Vol. 5: Practical Issues in Parenting*, 463-485.

³ It is worth noting that this interpretation of various international instruments as conferring a fetal right to life has already been offered by some. Such a right has been grounded, *inter alia*, in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child. Indeed the travaux préparatoires associated with the latter document make clear that states parties are free to adopt this interpretation of “child” as including both those born and unborn.

to inform decision making about matters of competence, sanity, or risk. This testimony often results in criminal trials, incarcerations, and pre- or post-conviction commitments that involve substantial harm in the form of significant restrictions on liberty. Would the revised Standard 1.02 now require the psychologist to refrain from such involvement because of the prohibition of harm contained in Standard 3.04? After all, the psychologist could no longer avail herself of the defense that she was acting pursuant to the law.

Moving beyond declarations and toward instruments that do bind states parties, it is still difficult to determine which should be construed as serving as a basis for basic human rights. Do treaties qualify if we have signed them? Or only if ratified by the Senate as per the provision in the U.S. Constitution (cf. the Convention on the Rights of the Child which was signed by President Clinton—but has not been ratified). And what of the numerous Executive Agreements that are not subject to Senate ratification? Moreover, what if the United States has taken no steps toward recognizing something that many other countries have recognized as a fundamental human right—such as the right not to be put to death. Surely it is ethnocentric of us to think that ratification by the United States is the *sine qua non* of basic human rights. Would the proposed language preclude a psychologist from any involvement in death penalty proceedings, for example?

Even if the language of a particular international instrument is clear, and even if that instrument is intended to bind, it may be less clear whether that language has been agreed to by various states parties to the instrument. States parties commonly enter into these agreements with Reservations Understandings and Declarations which “would exclude or vary the legal effect of one or more of the provisions of the treaty.”⁴ In some instances, these reservations may have the practical effect of gutting the key provisions of the instrument altogether, as happened, for example, when the “Islamic Republic of Iran reserve[d] the right not to apply any provisions or articles of the Convention [on the Rights of the Child] that are incompatible with Islamic Laws....”⁵ Thus, specific provisions of various international treaties, covenants, and conventions are of questionable force because of uncertainty as to how many countries intend to follow them; after all, it is difficult to say consensus has emerged concerning the existence of a human right when we cannot assess how many countries recognize that right.

Adding further confusion are potential loopholes within the instruments themselves. Article 29 of the Universal Declaration of Human Rights, for example, reads:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

This provision seemingly brings us right back to law as the arbiter of what is right, for if the law determines that, in order to “secur[e] ... respect for the freedoms of others,” someone should be subjected to harsh interrogation techniques or even tortured, the Declaration would seem to allow it. For all of the foregoing reasons, we frankly believe that the true status of international law as it relates to basic human rights is not knowable. Even if we could succeed at getting an accurate snapshot at any moment in time, the concepts are in a constant state of flux and evolution and by the time we fully understood the contours of the rights, those contours will have changed.

⁴ United States Senate, 2008 (Retrieved from the web, <http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm#4>, October 30, 2008).

⁵ <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=132&chapter=4&lang=en>

Given that the proposed language would *require* psychologists to violate the law in certain circumstances (i.e., where the law violates basic principles of human rights), it would be essential for psychologists to know with a reasonable degree of certainty what such circumstances are. For the reasons above, the suggested phrasing provides neither such certainty, nor adequate notice to psychologists regarding their obligations under the APA Ethics Code.

b. The ambiguity of the language will result in negative consequences

As noted in our introductory comments, we are concerned that the proposed changes will lead to language that is impermissibly ambiguous. This ambiguity will fail to provide the needed guidance to psychologists as to what to do or refrain from doing. This can result in negative consequences for the psychologist as well as negative social consequences. Consider the following examples:

- i. A clinician is treating a very outgoing, gregarious, thrill seeking client through insight-oriented psychotherapy without much progress. The client's sexual promiscuity and substance abusing behavior catch up with him when his wife files for divorce. A custody battle ensues and the clinician is called to the stand to testify about facts revealed to her over the course of therapy. When she contacts the client in advance of her testimony, he tells her that he will not waive confidentiality and he expects her not to reveal any confidential information disclosed during the course of therapy. She reminds him of some of the discussion surrounding the informed consent procedure, specifically, that disclosure of confidential information would occur as required by law. He makes it clear to her that he intends for her to keep the information confidential, consistent with her ethical duty, and he will take appropriate action against her if she testifies about confidential information that hurts him on the stand. She takes the stand and the opposing counsel begins asking questions, the answers to which will unquestionably affect her client adversely. When she invokes privilege, the judge rules against her and directs her to answer the question under pain of contempt of court liability. Can she? U.S. Constitutional law is clear that the right to familial relationships (i.e., between a father and his child) is a fundamental right. Following the judge's order, therefore, would seem to be inconsistent with that fundamental right of the psychologist's client.
- ii. A consulting forensic psychologist is called to the scene where a highly agitated, college student has taken his teacher and classmates hostage. He has shot and killed two of the classmates already, but has begun to talk to the psychologist *qua* hostage negotiator. The psychologist grows increasingly concerned about the safety of the hostages as he sees the offender's agitation level increase and his thinking become less organized. Apparently, the police share the concern because the Incident Commander calls the psychologist and asks, "Are you gonna be able to talk him down, Doc?" The psychologist knows that this means that the police are trying to inform their decision whether to direct their sniper to shoot the hostage taker. On the one hand, the psychologist realizes that the law authorizes him to communicate his grave fears for the safety of the hostages (i.e., because of the nature of his relationship to the offender and the fact that he is not disclosing any confidential information). On the other hand, he knows he has an ethical obligation to minimize harm to those with whom he works (EPPCC, Std. 3.04). He believes the proper balancing is to give his duty of social responsibility priority over his obligation to minimize harm to the hostage taker. Moreover, he firmly believes that the hostages are at serious risk if something is not done. He also knows that his answer may lead directly and immediately to the killing of

the hostage taker with no due process, finding of guilt, opportunity to appeal, representation by counsel, and so on. Can he act as the law authorizes?

One of the negative consequences of the proposed changes is that it will alter the ethics landscape such that, for the first time, psychologists will not be able to follow the dictates of the law in resolving the conflict between ethics and law. COLI takes the position that adherence to the law should not be unethical for psychologists. Indeed, we agree with legal scholars who opine that we have an obligation to obey the law in legal systems that are fundamentally fair.⁶ Moreover, we are not aware of a single other professional association that *requires* its members to break the law in the service of professional ethics. Psychologists have no right to claim some special prerogative of exemption from the moral obligation attendant on all in this country to obey the law. If a psychologist *chooses* to disobey the law by virtue of a moral or ethical concern, the psychologist may do so entirely consistent with Ethical Standard 1.02, which allows for civil disobedience.

c. We see no justification for circumventing the standard process of review for the EPPCC

We believe that changes to the ethics code should follow the systematic, thoughtful, and deliberative process that has been in place for decades. Without the customary input points and opportunities to reflect on the ethical principles and standards in a context of cool reflection, there is danger that the potential consequences of these changes will be given short shrift. Having said this, a change to the ethics code outside the customary review process would certainly be warranted if it would cure a significant, widespread problem about which contributors to earlier iterations of the ethics code could not have known (i.e., emergent issues). We are not aware of evidence of profound problems arising from psychologists following law that is not based on basic principles of human rights. Although concerns have been expressed recently about psychologists working in extra-legal detention settings, we have seen little evidence of a profound problem, and are not aware of situations in which psychologists have been ordered to engage in unethical behavior.

Assuming, *arguendo*, that there is a profound problem, there is no evidence that this problem is widespread. To the extent there is a profound problem, even those most concerned about the problem concede that it is one that involves at most around 1/100 of 1% of our membership. This observation is not intended to minimize the problem at all, but rather, to point out that the problem, to the extent it exists, has not grown to such an extent as would warrant circumvention of the customary process for reviewing the ethics code—the document most reflective of our core values. We note that history has shown us that it is almost always a bad idea to implement a policy or law of general applicability in order to address a single case. Laws and policies have applications and unintended consequences far beyond the facts of individual cases and the notion that we could somehow remedy those problems later is of little consolation to our members who will find themselves at legal risk because of a violation of an ethical standard that APA did not really intend.

Not only are we concerned about the extent of the problem, but also we are unpersuaded that the revision would effect a cure. As noted above, to whatever extent there are currently loopholes in the ethics code, an incorporation of international treaties and conventions may simply substitute one loophole in the ethics code for myriad loopholes in international law (e.g., Article 29 of the Universal Declaration of Human Rights). Some have suggested that, by placing the proscription in the ethics code, it will have more “teeth” in terms of enforcement. This is only true if the provisions would be enforceable which, in

⁶ Rawls, J. (1964). Legal obligation and the duty of fair play. In Sydney Hook (Ed.), *Law and Philosophy*, 3-18. New York: New York University Press; Rawls, J. (1969). The justification of civil disobedience. In Hugo A. Bedau (Ed.), *Civil disobedience: Theory and Practice*, 240-255. New York: Pegasus Books.

turn, will depend on how specific the language is. We are suggesting the proposed language will not meet this criterion.

In response to our concerns about the limits of enforceability, we have heard some suggest that requiring a psychologist to defend against such an allegation would have other consequences that might discourage such conduct even if the provision was ultimately not upheld (e.g., the time, money, and stress associated with defending against the action even if the action is without merit). We do not believe this approach is an appropriate use of legal and ethical procedures and intensifies our concerns that the proposed change is inconsistent with the Preamble of the EPPCC because the imposition of legal consequences to psychologists—through the good faith of the complainants or otherwise—for violating vague, ambiguous, and poorly-defined behavioral standards does not “respect [the] ... civil ... rights” of those psychologists.



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

MEMORANDUM

TO: Stephen Behnke, JD, PhD, Staff Liaison
Ethics Committee

FROM: Clinton W. Anderson, PhD, Staff Liaison
Committee on Lesbian, Gay, Bisexual, and Transgender Concerns

DATE: October 17, 2008

SUBJECT: CC-05: Request for Feedback Regarding Ethical Standard 1.02

Committee on Lesbian, Gay, Bisexual, & Transgender Concerns

Unapproved Draft Minutes

September 19-21, 2008

CC-5. Request for Feedback Regarding Ethical Standard 1.02 and Ethical Standard 1.03. The Committee recommended that Ethical Standard 1.02 and 1.03 be revised, because some psychologists have engaged in practices relevant to these standards that have raised concerns and because of the recent adoption by referendum of the policy Prohibit psychologists from any involvement in interrogations or any other operational procedures at detention sites that are in violation of the U.S. Constitution or international law. The Committee did not, however, have specific language to propose.



AMERICAN PSYCHOLOGICAL ASSOCIATION

MEMORANDUM

To: Stephen Behnke, JD, PhD
Ethics Office Director

From: Helena Dagadu
Program Coordinator, Office on Socioeconomic Status (OSSES)

Date: October 8, 2008

Subject: CC-5 Request for Feedback Regarding Ethical Standard 1.02

Among the issues discussed by the Committee on Socioeconomic Status (CSES) during the September 19-21, 2008 consolidated meetings was CC-5 Request for Feedback Regarding Ethical Standard 1.02.

First, CSES wishes to express its sincere appreciation to the Ethics Committee and the Ethics Office for the diligent work that you have done in response to the request to amend the language of Standard 1.02. CSES also wishes to state that we are cognizant of the importance of this issue and recognize that it has great implications for the profession and for psychologists. For this reason, CSES does not believe it is in the best interest of the profession to revise the Code at this time (out of its normal revision cycle). Accordingly, the CSES is not prepared to recommend specific language at this time.

Rather the CSES offers the following five suggestions to the Ethics Committee and the Ethics Office:

1. Continue to engage the membership in dialogue about potential wording with the aim of identifying language that has the utmost clarity;
2. Carryout a review of the ethics codes of other healthcare organizations;
3. Carefully define any proposed language in order to avoid confusion and debate about the meaning and possible application of such language;
4. Provide examples of potential problematic situations to the membership as explanatory material so that questions may be anticipated and reconciled in a thoughtful and meaningful way.
5. Revise the Code within its normal revision cycle.

Thank you again for the very difficult work that has been undertaken on behalf of the membership and thank you for the opportunity to comment on this important issue.

cc: Gwendolyn Keita, PhD
Keyona King-Tsikata

October 9, 2008

MEMORANDUM

TO: Stephen Behnke, PhD
Ethics Office

FROM: Committee on Women in Psychology (CWP)

CC: Board for the Advancement of Psychology in the Public Interest (BAPPI)

SUBJECT: CC #5. Request for Feedback Regarding Ethical Standard 1.02

The Committee on Women in Psychology (CWP) reviewed CC #5, Request for Feedback Regarding the Ethical Standard 1.02. This memo is a follow-up to comments made by CWP representatives at the conference committee held during the consolidated meetings.

CWP agrees that the language of the code should be revised. In addition, we invite the Ethics Committee to review the process of changing the ethical code between major revisions and the implications that result based upon such changes.

In addition, the committee supports the continuation of gathering information on international codes to seek information on the ways other countries address these ethical issues in their codes.

CWP appreciates the opportunity to review and provide comment to the Ethics Committee. If you have any questions or require additional information, please contact staff liaison Tanya Burrwell.

Cc: BAPPI



MEMORANDUM

To: Stephen Behnke, PhD
Director, Ethics Office

From: Membership Board

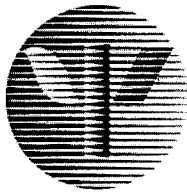
Date: November 13, 2008

Subject: Feedback Regarding Ethical Standard 1.02

The Membership Board had several concerns with the proposal to add language to standard 1.02 referring to "basic principles of human rights." The Membership Board supports only 1.02 Version 3, because we have concerns that:

1. Ethical standards are enforceable whereas aspirational guidelines are not; and
2. Unanticipated escalated risks with this language may emerge for many psychologists practicing in diverse settings.

We do, however, encourage active involvement of relevant parties to modify the language of standard 1.02 to include the aims of 3.04, "Avoiding Harm" [as it relates to all situations psychologists are in], but that does not add unintended liability risks.



AMERICAN PSYCHOLOGICAL ASSOCIATION

Memorandum

To: Ethics Committee

From: Policy and Planning Board

Date: November 4, 2008

Re: Request for Feedback Regarding Ethical Standard 1.02 (CC#5)

The Policy and Planning Board took up the item **Request for Feedback Regarding Ethical Standard 1.02** at its October 24-26, 2008 meeting. The following unapproved draft minute is being forwarded to the Ethics Committee:

Request for Feedback Regarding Ethical Standard 1.02 (Item CC#5)

The Ethics Committee requests feedback from APA boards and committees on a proposed revision to the *Ethical Principles of Psychologists and Code of Conduct* Ethical Standard 1.02 as part of the review process outlined in Association 30-8: Standards and Guidelines. The Council of Representatives will take this item up at its August 2009 meeting. The focus of the review is a proposal that would add the wording "in keeping with basic principles of human rights" to Ethical Standard 1.02.

The Ethics Committee has been working on this issue since August 2005 and has been consulting with the leadership of the Divisions for Social Justice since April 2006. Open meetings were held on this topic in fall of 2006 and will again be held at the current meeting. Dr. Nelson attended the open meeting as P&P's representative.

The Ethics Committee asked APA groups to respond as to whether the language of Ethical Standard 1.02 and 1.03 should be revised and if so what language they would recommend. P&P's decision upon reviewing the language was not to support a wording change for Ethical Standard 1.02 and 1.03. P&P thought that the language regarding human rights should remain aspirational and not be revised to make it enforceable. (5-for, 1-opposed, 1-abstained)