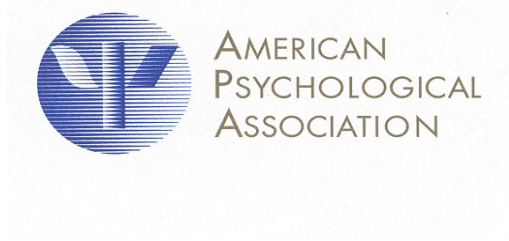


**Participating Groups**  
**APA Fall Consolidated Meetings – First Round 2008**

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	



## 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)

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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](mailto: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

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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

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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  
PSYCHOLOGICAL  
ASSOCIATION

## 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

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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



## 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

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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  
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[shwang@apa.org](mailto:shwang@apa.org)  
<http://www.apa.org/pi/aging>





## 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

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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."



## 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

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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

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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**

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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

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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

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### **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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.”<sup>4</sup> 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....”<sup>5</sup> 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.

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

<sup>5</sup> <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.<sup>6</sup> 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

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<sup>6</sup> 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

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**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 (OSES)

Date: October 8, 2008

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

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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

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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

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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)

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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)