

# **EXHIBIT A**

**False Statements (Exact Quotations) from Three Versions of the Report  
Per Se Defamatory Statements in Bold Font**

Statement # Jul 2 version of Report	False Statement from the Hoffman Report (HR)	Evidence in Hoffman's Possession Showing Statement to be False When Hoffman and Sidley made the Statement  (page references herein to HR 7/2/15 version)	Admissibility
1	<p><b>APA made these ethics policy decisions as a substantial result of influence from and close relationships with the U.S. Department of Defense (DoD), the Central Intelligence Agency (CIA), and other government entities, which purportedly wanted permissive ethical guidelines so that their psychologists could continue to participate in harsh and abusive interrogation techniques being used by these agencies after the September 11 attacks on the United States. Critics pointed to alleged procedural irregularities and suspicious outcomes regarding APA's ethics policy decisions and said they resulted from this improper coordination, collaboration, or collusion. Some said APA's decisions were intentionally made to assist the government in engaging in these "enhanced interrogation techniques." Some said they were intentionally made to help the government commit torture.</b></p> <p>Allegations along these lines had been most recently and most prominently made in a book by New York Times reporter James Risen, published in October 2014, based in part on new evidence he had obtained.</p>	<p><b>**PENS Listserv discussion of efforts to prevent abusive interrogation techniques. PENS Listserv (pp.17-27; 41-56, HR Binder 5 pp.469-479; 493-508).</b></p> <p>Lt. Gen. Kiley 7/7/2005 press conference describing results of the Martinez-Lopez Report—"no collusion" (<a href="https://www.c-span.org/video/?187520-1/detainee-medical-operations">https://www.c-span.org/video/?187520-1/detainee-medical-operations</a>) and discussed at length on PENS Listserv (pp.128-135, HR Binder 5 pp.580-587).</p> <p><b>**Behnke prepared extensive reading materials for PENS TF members identifying allegations of detainee abuse (hereinafter "Materials Informing PENS TF"):</b></p> <p>HR p.244 references full set of "background materials that totaled nearly 500 pages" provided to each TF member: "Several of the materials described specific interrogation techniques that were used at the time and the controversy surrounding them, for example: (1) Bloche and Mark's articles that mentioned sensory and sleep deprivation and stress positions;<sup>1059</sup> (2) Washington Times and Boston Globe articles that described the conflict between NCIS and the DoD over harsh interrogation techniques (the Washington Times article also alluded to waterboarding) and the DoD's revised categories of approved interrogation techniques;<sup>1060</sup> (3) a Lancet article that described the abuses at Abu Ghraib with an overview of the harsh tactics used against prisoners;<sup>1061</sup> (4) a transcript of an interview with Neil Lewis in which he described the FBI's concerns with the abusive methods being used at Guantanamo Bay;<sup>1062</sup> and (5) the Istanbul Protocol, which outlined specific torture techniques more broadly and how one could identify the signs of each.<sup>1063</sup> [See specifically material about Michael Gelles, member of the PENS task force "who publicly criticized some interrogation practices," and also references to Larry James (HR p.239 FN 1034) selected for the PENS task force because 'he'd gone into Abu Ghraib on a 'cleanup' mission after publicity on bad behavior by MPs and he'd been outspoken about problems he'd witnessed.]"</p> <p><b>**Three policy-related documents distributed during PENS Task Force meeting (hereinafter "Policies Distributed at PENS TF") and contained in Arrigo archives required humane treatment of detainees and reporting by medical personnel of even suspected abuse or violations [Arrigo Binder 1 pp.20-30, on file with Plaintiffs' attorney; HR includes excerpts of Arrigo archives (HR Binder 3 pp.805-830; HR Binder 5 pp.738-800) and references other portions (HR p.24 FN 9; HR p.259 FN 1161) but intentionally omits others.]:</b></p> <p><b>1. Policy Memorandum 8-02: U.S. Southern Command Confidentiality Policy for Interactions Between Health Care Providers and Enemy Persons Under U.S. Control, Detained in Conjunction with Operation ENDURING FREEDOM (SOUTHCOM policy memo 8/6/2002):</b> Detainees at GTMO "will be treated humanely and, to the extent appropriate and consistent with military necessity, in a manner consistent with the principles of the Geneva Convention Relative to the Treatment of Prisoners of War." (policy p.1, Arrigo Binder 1 p.25) <a href="https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDON000781.pdf">https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDON000781.pdf</a></p> <p><b>2. ASD(HA) Policy 05-006 6/3/2005:</b> "Medical Program Principles and Procedures for the Protection and Treatment of Detainees in the Custody of the Armed Forces of the United States" establishes a "duty to protect....uphold the humane treatment of detainees....[and] report....circumstances indicating a possible violation of applicable standards." (policy pp.2-3; cited in HR FN 1350 and distributed during the PENS TF meeting) <a href="http://web.archive.org/web/20051211164457/http://www.phrusa.org/research/torture/pdf/dodpolicy.pdf">http://web.archive.org/web/20051211164457/http://www.phrusa.org/research/torture/pdf/dodpolicy.pdf</a></p> <p><b>3. Letter from ASD(HA) Winkenwerder 6/15/2005 to AMA</b> detailing elements of 6/3/2005 policy and requires humane treatment, reporting abuse or suspected abuse distributed during PENS TF meeting and included in Arrigo archives Binder 1 pp.21-24. HR includes excerpts of Arrigo archives (Binder 3 pp.805-830; Binder 5 pp.738-800) and references other portions (HR p.24 FN 9; HR p.259 FN 1161) but intentionally omits others.</p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><a href="https://www.c-span.org/video/?187520-1/detainee-medical-operations">https://www.c-span.org/video/?187520-1/detainee-medical-operations</a> links to the official website of C-SPAN and provides a true and correct copy of the interview. The court may take judicial notice of the interview capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="https://tinyurl.com/y6ndqo9g">https://tinyurl.com/y6ndqo9g</a> links to true and correct copies of the materials given to the PENS Task Force.</p> <p><a href="https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDON000781.pdf">https://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDON000781.pdf</a> provides a true and correct copy of an official DoD public record/report.</p> <p><a href="http://web.archive.org/web/20051211164457/http://www.phrusa.org/research/torture/pdf/dodpolicy.pdf">http://web.archive.org/web/20051211164457/http://www.phrusa.org/research/torture/pdf/dodpolicy.pdf</a> provides a true and correct copy of an official DoD public record/report.</p> <p>Official DoD public record/report.</p>

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2	<p><b>Among other things, the critics have charged that the policy set few meaningful limits on the participation of psychologists in interrogations, despite widespread concerns about abusive conduct in such interrogations, and must therefore have been closely coordinated with the government (perhaps principally the Defense Department and the CIA) and motivated by a desire to curry favor with the government. (p.2)....They describe APA's apparent motive and intent in different ways, from a desire to curry favor with the government to an intent to help government officials engage in torture. (p.4)</b></p>	<p><b>**Statement Four of the PENS Guidelines (PENS Report p.5, HR Binder 5 p.731) references local rules and regulations (such as policies in Afghanistan, Iraq, and Cuba) and makes it an ethical responsibility for psychologists to be familiar with those local policies—which made it clear that the Geneva Conventions and the Convention Against Torture (CAT) applied. Those regulations prohibiting abusive interrogation tactics, including sleep deprivation and stress positions, were quite specific and gave the PENS guidelines a force that was very specific and <i>more</i> restrictive than DoD policy, not “loose and high-level.” (hereinafter “<b>PENS Statement Four Incorporation of Restrictive Policies &amp; Regulations.</b>”)</b></p> <p><b>Materials Informing PENS TF</b></p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a></p> <p>links to the official website of the APA and provides a true and correct copy of an official APA record/report--Report of the PENS Task Force.—contained within Binder 5. (Hereinafter “<b>True and Correct PENS Report.</b>”)</p> <p>Published in the HR as admissions by party-opponent.</p>

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3	<p>This information establishes that in the months following 9/11, the President authorized the CIA to engage in "enhanced interrogation techniques." These techniques were not methods of asking questions of a detainee, but were rather ways of attempting to break the will of uncooperative detainees so that they would answer the interrogators' questions and provide intelligence information. These "techniques" included waterboarding, harsh physical actions such as "walling," forced "stress positions," and the intentional deprivation of necessities, such as sleep and a temperature-controlled environment. <b>The Secretary of Defense authorized the Defense Department to engage in a similar set of "enhanced interrogation techniques," although waterboarding was excluded.</b></p> <p><b>The Justice Department office in charge of authoritatively interpreting U.S. law, the Office of Legal Counsel, wrote memos to the CIA in 2002 defining "torture" in a very narrow way. Acts intentionally causing pain to individuals in U.S. custody abroad could only rise to the level of torture, they said, if the effect was equivalent to the pain of a "serious physical injury such as organ failure, impairment of bodily function or even death." Acts intentionally causing psychological harm to such captives would only count as torture if they caused "significant psychological harm" that lasted "for months or even years," such as the development of an actual mental disorder. The memos emphasized that understanding "the context" of the act was important, and that "it is difficult to take a specific act out of context and conclude that the act in isolation would constitute torture." The memos added that, regardless of what actions causing psychological harm were taken by interrogators, the actions could not be considered torture if the interrogator could show that he "did not intend to cause severe mental pain." Interrogators could show that they lacked this intent by "consulting with experts or reviewing evidence gained in past experience."</b></p> <p><b>In 2003, based in part on these Justice Department memos, Defense Department attorneys wrote a report concluding that a U.S. law barring torture by military personnel was inapplicable to interrogations of detainees, and that causing harm to an individual in U.S. custody abroad could be justified "in order to prevent further attacks" on the United States by terrorists. The report, which essentially repeated the conclusions of the DOJ memos regarding the narrow definition of torture, and became the basis for an authorization to the military command at Guantanamo Bay to use certain interrogation techniques not included in the Army Field Manual. The authorization repeated that the Geneva Conventions were not applicable to the detainees held at Guantanamo.</b></p> <p>[OMITS HERE THAT THESE MEMOS WERE WITHDRAWN AND OTHER CRUCIAL POLICY DEVELOPMENTS IN LATE 2003, 2004 AND EARLY 2005 SO READER USES THESE DEFAMATORY STATEMENTS TO CONCLUDE "EXISTING" DOD INTERROGATION GUIDELINES ON P. 9 ALLOWED FOR ABUSE AND TORTURE IN JUNE 2005.]</p> <p><b>By June 2005, much of this information had been made public, including the analysis of the Justice Department memos and the Defense Department report. In addition, numerous detailed allegations and accounts of abusive interrogation practices had been made public, including from the International Committee for the Red Cross, which monitored activity at Guantanamo Bay, and from media reports, which quoted military interrogation logs and government officials who described abusive interrogation practices at CIA "black sites."</b></p>	<p><b>**HR relies on Bush Administration policies (2002-2003) that had already been superseded by the time the PENS TF convened (2005). The Bush Administration memos providing a narrow definition of torture had been withdrawn by the time of PENS insofar as they applied to the DoD. (See Goldsmith, Chapter 5 <i>The Terror Presidency</i>)</b></p> <p><b>**HR (pp.152,153) quotes from Chapter 5 of Goldsmith's <i>The Terror Presidency</i> (Behnke referred Hoffman to this resource in 4/21/2015 communication) but intentionally omits portions that describe Philbin memo that sets forth the only 24 techniques approved for use (none of which were "harsh techniques") on July 14, 2004 (one year before PENS) and the February 2005 Levin memo that incorporated Philbin testimony and the legal guidance it provided about permissible techniques. (None of 24 techniques were the "harsh techniques" HR claims were permissible at time of PENS – sleep deprivation, stress positions, exploitation of phobias.)</b></p>	<p>Goldsmith, <i>The Terror Presidency</i> (cited in HR, p.153, fn 579). The court may take judicial notice of the chapter's description of the Philbin memo capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned</p> <p><a href="https://tinyurl.com/y58nhmhp">https://tinyurl.com/y58nhmhp</a> links to a true and correct copy of Goldstein's <i>The Terror Presidency</i>, Chapter 5.</p>

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4	<p>We are cognizant that our report and its findings cannot and will not resolve all the intense disputes on this issue; but it is not meant to. <b>We provided conclusions where the evidence allowed us to reach them, but otherwise we described the evidence thoroughly so as to present as many facts as we were able to discover. In this way, we attempted to stay true to our task to go where the evidence would lead us.</b> Sometimes it led us to answers, but sometimes it led us to more questions. As a result, our report and its findings will not be considered satisfying or sufficient to all who read it. But we are also confident that it represents conclusions about what happened, and why, that are based on and squarely supported by the extensive evidence we have reviewed.</p>	<p>The compilation of the Report's False Statements listed in this chart and the evidence supporting their falsity demonstrate numerous instances in which the Report and/or investigation did not "describe[] the evidence thoroughly," did not "present as many facts as (the investigators) were able to discover," and did not "go wherever the evidence would lead."</p>	<p>See corresponding rationale for each documented evidence of falsity.</p>
5	<p>... key APA officials, principally the APA Ethics Director joined and supported at times by other APA officials, colluded with important DoD officials to have APA issue loose, high-level ethical guidelines that did not constrain DoD in any greater fashion than existing DoD interrogation guidelines.</p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies &amp; Regulations.</b></p> <p><b>Policies Distributed at PENS TF</b></p> <p>Other policy documents referenced in HR and/or included in HR Binders indicate that DoD policies <i>were</i> restrictive (hereinafter "<b>Other Restrictive DoD Policies</b>"): </p> <p><b>**JTF-GTMO BSCT SOP 3/28/2005</b> (HR Binder 3 pp.978-990) specifically requires adherence to UCMJ and the Geneva Conventions, as well as reporting any suspicions of abuse of detainees. HR reviews only outdated GTMO BSCT SOPs 11/11/2002 &amp; 12/10/2004 (HR p.214 FN 923), but includes this 2005 SOP in HR Binder 3 as noted.</p> <p><b>Schlesinger Report 8/24/2004</b> (HR Binder 4 pp.23-148) makes clear that restrictive policies in place in Iraq beginning 5/13/2004 and in Afghanistan since 6/2004; also makes clear that since April 2003, interrogation techniques specifically authorized at GTMO did <u>not</u> include sleep deprivation, stress positions, or exploiting phobias. Schlesinger report referenced HR p.352 FN 1640, included in HR Binder 4 as noted, and never analyzed in HR.</p> <p><b>Martinez-Lopez Report 4/13/2005</b> (HR Binder 5 pp.185-394), reviewed and quoted in HR p.512 – findings contrary to HR narrative omitted: e.g., "theater-level guidance specifically requiring medical personnel to report detainee abuse was implemented just within the past year." (M-L Report p.1-5); that "personnel interviewed during this assessment were vigilant in reporting actual or suspected detainee abuse" (M-L Report p.1-5); "There is no indication that any medical personnel participated in abusive interrogation practices; in fact, there is clear evidence that BSCT personnel took appropriate action and reported any questionable activities when observed." (M-L Report p.18-16).</p> <p>Lt. Gen. Kiley 7/7/2005 press conference describing results of the Martinez-Lopez Report (<a href="https://www.c-span.org/video/?187520-1/detainee-medical-operations">https://www.c-span.org/video/?187520-1/detainee-medical-operations</a>) was discussed at length on PENS Listserv (pp.128-135, HR Binder 5 pp.580-587).</p> <p>HR p.500: "Lt. Gen. Schoemaker...also cited to the 2005 Martinez-Lopez report that concluded "[t]here is no indication that BSCT personnel participated in abusive interrogation methods."</p> <p><b>12/30/2004 and 2/4/2005 U.S. Department of Justice, Office of Legal Counsel (OLC) memoranda</b> superseded earlier OLC memos (that had expanded view of permissible interrogation techniques), made it clear that "[t]orture is abhorrent" (p.1), and that the United Nations Convention Against Torture applied to all interrogations. [HR reviews only outdated 2002-2003 OLC memoranda, acknowledges they were withdrawn in 2004, but does not analyze memoranda in place and applicable to DoD at the time of PENS TF.]</p> <p><a href="https://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc96.pdf">https://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc96.pdf</a> ;</p> <p><a href="https://www.justice.gov/sites/default/files/olc/legacy/2009/12/30/aclu-ii-020405.pdf">https://www.justice.gov/sites/default/files/olc/legacy/2009/12/30/aclu-ii-020405.pdf</a></p>	<p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports.</p> <p><a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of official DoD records/report contained within Binder 3 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-4.pdf">http://www.apa.org/independent-review/binder-4.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record/report contained within Binder 4 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record/report contained within Binder 5 of the HR.</p> <p><a href="https://www.c-span.org/video/?187520-1/detainee-medical-operations">https://www.c-span.org/video/?187520-1/detainee-medical-operations</a> links to the official website of C-SPAN and provides a true and correct copy of the interview. The court may take judicial notice of the interview capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="https://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc96.pdf">https://www.aclu.org/files/torturefoia/released/082409/olcremand/2004olc96.pdf</a> ;</p> <p><a href="https://www.justice.gov/sites/default/files/olc/legacy/2009/12/30/aclu-ii-020405.pdf">https://www.justice.gov/sites/default/files/olc/legacy/2009/12/30/aclu-ii-020405.pdf</a> provide true and correct copies of official DoD public records/reports.</p>

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6	<p><b>We also found that in the three years following the adoption of the 2005 PENS Task Force report as APA policy, APA officials engaged in a pattern of secret collaboration with DoD officials to defeat efforts by the APA Council of Representatives to introduce and pass resolutions that would have definitively prohibited psychologists from participating in interrogations at Guantanamo Bay and other U.S. detention centers abroad.</b></p>	<p>Issues debated publicly. APA Board funds <i>Mini-Convention on Ethics and Interrogation</i> to look at all sides of the issue; 44 speakers, 9 two-hour sessions at APA Annual Convention, 8/17-20/2007; planning committee comprised of representatives from 12 APA Divisions; sponsored by APA Board of Directors, Board of Scientific Affairs, Ethics Committee, and 12 Divisions. <a href="http://www.apa.org/news/press/statements/ethics-brochure.pdf">http://www.apa.org/news/press/statements/ethics-brochure.pdf</a></p> <p>8/19/2007 Town Hall Meeting during the <i>Mini-Convention on Ethics and Interrogation</i> which describes the many disparate communities that worked together for successful passage of the resolution. <a href="http://www.focusreframed.com/media/APATownHallFull.pdf">http://www.focusreframed.com/media/APATownHallFull.pdf</a></p> <p>HR pp.409-413 describes the considerable Board, Council and other governance group review of the 2007 resolution to prohibit psychologists from participating in interrogations at Guantanamo Bay and other U.S. detention centers abroad.</p> <p><b>**7/18/2015 letter from Woolf, Past-President for the Society for the Study of Peace, Conflict and Violence: Peace Psychology Division (APA Division 48, hereinafter "Peace Psychology Division") to Behnke (not in Hoffman's possession at time of report; on file with Plaintiffs' attorney):</b> "Perhaps the most distressing aspect of the Hoffman Report is the tenor of the Report. "I'm struck with how efforts to navigate complex policy waters became characterized as 'collusion' or 'manipulations.' I have drafted university policies as well as written book chapters, articles, etc. with others. It is a back and forth collaborative process to get it right. Our conversation and process is presented but then totally misrepresented."</p> <p>See 07/21/2015 post by Woolf, Past-President of Peace Psychology Division, to Arkansas Psychological Association Blog for APA post-PENS work (not in Hoffman's possession at time of report): "There were individuals working within APA and many Divisions (e.g., the Divisions for Social Justice) who worked tirelessly to strengthen APA's position against torture both inside and outside of national security settings. Some of these efforts were successful, some were largely successful, and some failed. However, regular progress was made over time." <a href="http://www.arpapsych.com/analysis-of-apa-hoffman-report-good-governance-by-linda-">http://www.arpapsych.com/analysis-of-apa-hoffman-report-good-governance-by-linda-</a></p>	<p><a href="https://www.apa.org/news/press/statements/ethics-brochure.pdf">https://www.apa.org/news/press/statements/ethics-brochure.pdf</a> links to the official website of the APA and provides a true and correct copy of regularly conducted activity of the APA.. <a href="https://tinyurl.com/yxcknght">https://tinyurl.com/yxcknght</a> links to a true and correct copy of the transcript of the Council debate</p> <p><a href="http://www.focusreframed.com/media/APATownHallFull.pdf">http://www.focusreframed.com/media/APATownHallFull.pdf</a> provides a true and correct copy of the published transcript of regularly conducted activity of the APA undertaken during the Town Hall Meeting.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="https://tinyurl.com/y2raxte3">https://tinyurl.com/y2raxte3</a> Links to a true and correct copy of the letter from Woolf concerning her impressions of the Report. That letter is admissible because it is not hearsay, but a verbal act. <i>See State v. Blevins</i>, 36 Ohio App. 3d 147, 149 (10th Dist. 1987) ("Some statements are merely verbal parts of acts and are, as the acts are themselves, admissible.") Even if it were hearsay, it is admissible under the present-sense exception: it is a statement made describing or explaining an event or condition, made while or immediately after the declarant perceived it. (Hereinafter "<b>Letter from Woolf concerning her present sense impressions of the Report.</b>")</p> <p><a href="http://www.arpapsych.com/analysis-of-apa-hoffman-report-good-governance-by-linda-">http://www.arpapsych.com/analysis-of-apa-hoffman-report-good-governance-by-linda-</a> links to the official website of the Arkansas Psychological Association and provides a true and correct copy of the Woolf article.</p>

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7	<p><b>We did not find evidence to support the conclusion that APA officials actually knew about the existence of an interrogation program using "enhanced interrogation techniques." But we did find evidence that during the time that APA officials were colluding with DoD officials to create and maintain loose APA ethics policies that did not significantly constrain DoD, APA officials had strong reasons to suspect that abusive interrogations had occurred. In addition, APA officials intentionally and strategically avoided taking steps to learn information to confirm those suspicions.</b></p>	<p><b>PENS Statement Four and Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>**Policies Distributed at PENS TF.</b></p> <p><b>**Other Restrictive DoD Policies.</b></p> <p>By time PENS TF met, 13 senior-level reviews or investigations into detainee abuse had been completed (some that had been reviewed in HR including the previously referenced Martinez-Lopez Report) – all publicly available or publicly reported on; others have been released since. See e.g., <a href="https://tinyurl.com/y6arqkcc">https://tinyurl.com/y6arqkcc</a>, pp.9-10 for timeline of reviews/investigations (hereinafter "<b>Senior Level Reports</b>").</p> <p><b>Schmidt-Furlow Report 4/1/2005</b> (HR Binder 3 pp.285-313 &amp; HR Binder 5 pp.3-31; Army Regulation 15-6 Investigation into FBI Allegations of Detainee Abuse at Guantanamo Bay, Cuba Detention Facility) analyzed over 24,000 interrogations conducted at GTMO over three-year period: "found only three interrogations in violation of interrogation techniques authorized by Army Field Manual 34-52 and DoD guidance ... [and] found no evidence of torture or inhumane treatment at JTF-GTMO." (p.1) HR reviews and quotes from this report, but omits findings contrary to his narrative.</p> <p><b>Church Report 3/7/2005</b> (Review of DoD Detention Operations and Detainee Interrogation Techniques) reviewed interrogation policies utilized in GTMO, Iraq and Afghanistan, and their possible role in detainee abuse: "found, without exception, that the DoD officials and senior military commanders responsible for the formulation of interrogation policy evidenced the intent to treat detainees humanely which is fundamentally inconsistent with the notion that such officials or commanders ever accepted that detainee abuse would be permissible" (p. 3) and upon "analysis of 70 substantiated detainee abuse cases found that no approved interrogation techniques caused these criminal abuses." (p.21) (Report referenced in HR p.313.)</p> <p><a href="http://hrlibrary.umn.edu/OathBetrayed/Church%20Report.pdf">http://hrlibrary.umn.edu/OathBetrayed/Church%20Report.pdf</a></p> <p>Note: above link is the executive summary only. Full &amp; very redacted text, somewhat more difficult to read &amp; with some pages out of order, may be found at:</p> <p><a href="https://www.aclu.org/sites/default/files/images/torture/asset_upload_file625_26068.pdf">https://www.aclu.org/sites/default/files/images/torture/asset_upload_file625_26068.pdf</a></p> <p><b>Materials Informing PENS TF</b></p> <p>Hoffman has complete set of background materials. HR p.244 FN 1058 states: "the full set of background materials are not included in this report's appendix. Instead, the table of contents [HR Binder 4 pp.456-495] and any materials cited above are fully attached. See HC00005567."</p> <p>Substantial evidence gathered by the Ethics Office in response to allegations that APA member psychologists in the military had participated in abusive interrogations (all of below hereinafter "<b>Materials Informing Other APA Officials</b>"): </p> <p>HR pp. 506-515: describes review by four-six Ethics Office staff of materials including: Interrogation log of al-Qahtani, Counter-resistance Strategy Meeting minutes, BSCT memo, SASC report, Schmidt-Furlow report, Martinez-Lopez report, letter from Army Surgeon General Schoomaker.</p> <p>Also ethics complaint review, files of which were in Hoffman's possession, included: Report of the Constitution Project's Task Force on Detainee Treatment (2013); task force report by the Institute on Medicine as a Profession and the Open Society Foundations, "Ethics Abandoned: Medical Professionalism and Detainee Abuse during the 'War on Terror,'" (2013); evidence presented on website "When Healers Harm" (2012); Documents from the Senate Armed Services Committee report on treatment of detainees in U.S. custody (2008).</p> <p>HR pp.494-520: Leso adjudication file reviewed and analyzed in detail with explicit references to searching the file. [E.g., "The sua sponte matter was officially closed on August 2, 2007. There was nothing in the adjudication file that suggests any additional work was done on this matter between August 26, 2006 and August 2, 2007." (p.496) "Bond provided Sidley with a copy of the complaint she allegedly sent to the Ethics Office on April 15, 2007, but Sidley did not find this complaint in the Ethics Office's adjudication files." (p.498)]</p>	<p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports. Official DoD public records/reports.</p> <p><a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record contained within Binder 3 of the HR.</p> <p><a href="https://www.aclu.org/sites/default/files/images/torture/asset_upload_file625_26068.pdf">https://www.aclu.org/sites/default/files/images/torture/asset_upload_file625_26068.pdf</a> provides a true and correct copy of an official DoD public record/report.</p> <p>Published in the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p> <p>Affidavit of Bow with personal knowledge of contents of Leso ethics file.</p> <p>Published in the HR as an admission by party-opponent.</p>

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8	<p><b>[I]n colluding with DoD officials, APA officials acted (i) to support the implementation by DoD of the interrogation techniques that DoD wanted to implement without substantial constraints from APA; and (ii) with knowledge that there likely had been abusive interrogation techniques used and that there remained a substantial risk, that without strict constraints, such abusive interrogation techniques would continue; and (iii) with substantial indifference to the actual facts regarding the potential for ongoing abusive interrogations techniques.</b></p>	<p><b>**PENS Statement Four and Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>**Policies Distributed at PENS TF.</b></p> <p><b>**Other Restrictive DoD Policies.</b></p> <p><b>Senior Level Reports.</b></p> <p><b>Materials Informing PENS TF.</b></p> <p><b>Materials Informing Other APA Officials.</b></p>	<p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Published in the HR as admissions by party-opponent.</p> <p>Published in the HR as admissions by party-opponent.</p>
9	<p><b>...we found little evidence of analyses or discussions about the best or right ethical position to take in light of the nature of the profession and the special skill that psychologists possess regarding how our minds and emotions work—a special skill that presumably allows psychologists to be especially good at both healing and harming.</b></p>	<p><b>**Arrigo archive audiotape transcript (Arrigo Binder 1 p.2; "... like the head of the ethics committee at APA Steve Behnke. Why [sic] he was in these various drafts, he was always drawing on the code and trying to show that the code implied all of our statements."</b></p> <p>(That transcript, which provides a much different narrative of the PENS meetings than the one Hoffman creates, was not included in his materials, although he relies on other material in Arrigo archives.)</p> <p>PENS listserv p.107 HR Binder 5 p.559: "That the Ethics Committee affirms that the 12 statements in the Report of the Task Force on Psychological Ethics and National Security are appropriate interpretations and applications of the American Psychological Association Ethical Principles of Psychologists and Code of Conduct (2002)."</p>	<p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and accurate copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p>

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10	<p><b>The principal APA official involved in these efforts was once again the APA Ethics Director, who effectively formed an undisclosed joint venture with a small number of DoD officials to ensure that APA's statements and actions fell squarely in line with DoD's goals and preferences (p.9)....</b></p> <p><b>...The details and level of this coordination varied over time, ranging from some coordination to a very close partnership, in which key APA officials were operating in a virtual joint venture with key Defense Department officials. (p.10)</b></p>	<p><b>**Hoffman admits at APA Council of Representatives meeting (August 2015) that the term "collusion" (see HR pp. 64-65 definition) was not an accurate description: "Because we were asked specifically to address if there was any factual support for the assertion that APA engaged in activity that would constitute 'collusion,' we used that term in the Report. We recognize, however, that the terms 'collaboration' or 'coordination' or "behind the scenes communication" would have been an accurate description of the communications at issue." <a href="https://tinyurl.com/yxy98r8">https://tinyurl.com/yxy98r8</a></b></p> <p>HR defines collusion as "a secret agreement, understanding, or cooperation for some <i>harmful, improper, dishonest, or illegal purpose</i>" (HR p.64, emphasis added). The work done through the PENS Task Force and collaboration between APA and military psychologists resulted in guidelines that were more restrictive of potential abusive interrogation practices than the prior DoD guidance and intended to help prevent abuses; the collaboration was not done for a <i>harmful, improper, dishonest, or illegal purpose</i>.</p> <p>Woolf email copied to Behnke (12/19/2006) re: open debate on Council, not secret collusion, to defeat the ban: "Let me add that this was my first council meeting. I had envisioned a dark room with folks figuratively smoking cigars making decisions were made couched in groupthink, conformity, etc. It is actually very different than I expected and very open to debate. In fact, debate and extensive review/discussion were key components to all items presented before Council. It is also very organized as individuals get in line behind microphones for their chance to speak. Everyone is recognized in order so that no individuals can be denied an opportunity to present their concerns. Nothing gets voted on until all have had their chance or chances to express their ideas and concerns. Note that Council is very large with, I would estimate, well over two hundred representatives (it pays to return ones apportionment ballot which determines each division's number of representatives). And visitors are welcome from other organizations as well as the general membership. While these visitors may not be recognized to take part in the debate, the meetings are open essentially to the general public."</p> <p>See 7/18/2015 letter from Woolf, Past-President for Peace Psychology Division (APA Div. 48) to Behnke: "I'm struck with how efforts to navigate complex policy waters became characterized as 'collusion' or 'manipulations.' I have drafted university policies as well as written book chapters, articles, etc. with others. It is a back and forth collaborative process to get it right. Our conversation and process is presented but then totally misrepresented."</p> <p><b>**As colonels/military psychologists/mid-level DoD employees, neither Banks nor Dunivin were DoD "officials" acting on behalf of the military.</b></p> <p><b>**Banks does not speak for DoD. 6/1/2015 email from Banks to Hoffman: "At no time were any of my comments, as someone who understands DoD and Operational Psychology fairly well, more than my personal opinions."</b></p> <p>Customary business practice for staff to facilitate a back-and-forth legislative process for Association policy development. APA staff do not make policy or initiate policy positions for the Association.</p> <p>(All above hereinafter "<b>No Collusion</b>")</p>	<p><a href="https://tinyurl.com/yxy98r8">https://tinyurl.com/yxy98r8</a> provides a true and correct copy of notes taken by a Council member at the meeting, including Hoffman's admission, and subsequently distributed on an official APA listserv. The statement is an admission by a party opponent and a record of regularly conducted business activity of APA, therefore not hearsay.</p> <p>Published in HR as an Admission by party-opponent.</p> <p><a href="https://tinyurl.com/y44pjz1q">https://tinyurl.com/y44pjz1q</a> provides true and correct copy of Woolf email copied to Behnke.</p> <p><a href="https://tinyurl.com/y2raxte3">https://tinyurl.com/y2raxte3</a> — <b>Letter from Wolf concerning her present sense impressions of the Report.</b></p> <p>Routine practice of the DoD. Affidavits of Harvey and Taylor with personal knowledge as to military protocol, and affidavits of Banks, Dunivin, and James..</p> <p><a href="https://tinyurl.com/y4xartno">https://tinyurl.com/y4xartno</a> – provides true and correct copy of Banks's email to Hoffman.</p> <p>Routine practice of the APA; Affidavit of Strassburger Fox with personal knowledge of APA governance and staff practices in policy development process. <a href="http://www.apa.org/about/governance/bylaws/rules-30.aspx">http://www.apa.org/about/governance/bylaws/rules-30.aspx</a> links to the official website of the APA and provides a true and correct listing of the rules governing APA policy-making.</p> <p>(All above hereinafter "<b>Evidence of No Collusion</b>").</p>

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11	<p><b>...we found that the handling of ethics complaints against prominent national security psychologists was handled in an improper fashion, in an attempt to protect these psychologists from censure.</b></p>	<p>HR p.59 and 522: admits handling of James ethics complaint was "technically permissible."</p> <p>HR pp.465-466: admits all cases reviewed consistent with new priorities for adjudication program established by Board of Directors beginning in 2000.</p> <p>Ethics Committee Chairs' 10/24/2016 letter (from nine former Chairs 2000-2013, not in Hoffman's possession at time of report) says Ethics Committee and staff followed ethics committee <i>Rules and Procedures</i>. Also states that HR does not identify any violations of rules and procedures (except for a letter that "may not have been placed in the appropriate file after a matter was closed" (p.1)). <a href="https://tinyurl.com/y6fdg2cl">https://tinyurl.com/y6fdg2cl</a></p> <p><b>**Board communication 2/20/2014 states seven-year process of reviewing Leso ethics complaint "exceeded the standard activity in a typical case":</b> <a href="http://www.apa.org/news/press/statements/leso-ethics-complaint.pdf">http://www.apa.org/news/press/statements/leso-ethics-complaint.pdf</a>.</p> <p><b>**Kaslow/ APA Board/ Ethics Committee "communiqué" regarding thorough review of Leso complaint and rationale for closing:</b> <a href="http://www.apa.org/ethics/leso-communique.aspx">http://www.apa.org/ethics/leso-communique.aspx</a>; <b>Also directs Behnke/staff to draft talking points and correspondence regarding interrogation policy/Leso matter.</b></p> <p><b>**Board receives briefing of the close of the Leso matter at Feb. 2014 meeting:</b> <a href="http://www.apa.org/about/governance/board/14-february-minutes.pdf">http://www.apa.org/about/governance/board/14-february-minutes.pdf</a>.</p> <p><b>**Kelly as Board Liaison to Ethics Committee received additional briefing of close of the Leso matter with the Ethics Committee at Nov. 2013 meeting.</b></p>	<p>Published in the HR as admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="https://tinyurl.com/y6fdg2cl">https://tinyurl.com/y6fdg2cl</a> provides a true and correct copy of a letter written by former APA Ethics chairs. Absence of any identified violations in the HR, a report intended to show violations, shows nonoccurrence.</p> <p><a href="http://www.apa.org/news/press/statements/leso-ethics-complaint.pdf">http://www.apa.org/news/press/statements/leso-ethics-complaint.pdf</a>; Links to official website of the APA provide true and correct copies of business records of regularly conducted activity of the APA.</p> <p><a href="http://www.apa.org/ethics/leso-communique.aspx">http://www.apa.org/ethics/leso-communique.aspx</a>; Links to official website of the APA provide true and correct copies of business records of regularly conducted activity of the APA. <a href="https://tinyurl.com/y59esnt9">https://tinyurl.com/y59esnt9</a> – emails from Kaslow to Behnke re: drafting; (e.g., June 29; July 6-7; July 31-Aug.1).</p> <p><a href="http://www.apa.org/about/governance/board/14-february-minutes.pdf">http://www.apa.org/about/governance/board/14-february-minutes.pdf</a>; Links to official website of the APA provide true and correct copies of business records of regularly conducted activity of the APA.</p>
12	<p>Premise to false statement below: The evidence establishes that the composition of the PENS Task Force, the key ethical statements in the task force report, and many related APA public statements and policy positions were the result of close and confidential collaboration with certain Defense Department officials before, during, and after the task force met. The details and level of this coordination varied over time, ranging from some coordination to a very close partnership, in which key APA officials were operating in a virtual joint venture with key Defense Department officials. Their joint objective was to, at a minimum, create APA ethics guidelines that went no farther than—and were in fact virtually identical to—the internal guidelines that were already in place at DoD or that the key DoD officials wanted to put in place.</p> <p><b>Thus, their joint objective was to create APA ethics guidelines that placed no significant additional constraints on DoD interrogation practices.</b></p>	<p><b>**PENS Statement Four and Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>**Policies Distributed at PENS TF.</b></p> <p><b>**Other Restrictive DoD Policies.</b></p>	<p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p>

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13	<p><b>For the APA officials who played the lead role in these actions, their principal motive was to curry favor with the Defense Department for two main reasons: because of the very substantial benefits that DoD had conferred and continued to confer on psychology as a profession, and because APA wanted a favorable result from the critical policy DoD was in the midst of developing that would determine whether and how deeply psychologists could remain involved in intelligence activities. APA's motive to curry favor with DoD was enhanced by personal relationships between APA staff and DoD personnel, an important conflict of interest that was intentionally ignored; as a result, —powerful executive leaders—who [sic] was married to one of the military's lead psychologists who supported interrogations at Guantanamo Bay— became involved in important ways in the development of both the task force itself and the ethical guidelines it issued.</b></p>	<p><b>**HR financial review finds no benefits.</b> HR p.523: "This analysis did not reveal any significant or unusual payments to APA from DoD..."</p> <p>No substantial increase in number of psychologists utilized in this role - 1,950 psychologists employed by DoD; number of operational psychologists has not significantly changed - 50 over the last decade. (Division 19 TF Report 11/9/2015 pp.34-35; not in Hoffman's possession at time of Hoffman report). <a href="https://www.militarypsych.org/uploads/8/5/4/5/85456500/TF19_response_to_the_hoffman_report_div19_excom_approved.pdf">https://www.militarypsych.org/uploads/8/5/4/5/85456500/TF19_response_to_the_hoffman_report_div19_excom_approved.pdf</a></p> <p><b>**PricewaterhouseCoopers</b> (HR Binder 2 pp. 1401-1404) indicating no inherent conflict of interest with Dunivin-Newman marital relationship (GC Gilfoyle email to CEO Anderson 11/10/2004). Marriage disclosed to Board and APA membership in <i>Monitor</i>; Newman non-voting observer to PENS Task Force per HR p.253. <a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a></p> <p>Arrigo PENS meeting notes (HR p.259 FN 1161) show Newman's participation in the meeting limited. HR (p.251) characterizes Fein as having "offered few comments during the PENS meetings." Fein spoke 27 times in two days (he wasn't present for one of the days of the Task Force), and Newman spoke 22 times over the course of three days.</p> <p>(HR p.264: "...this report can confirm that Arrigo's notes provide the most complete picture of what occurred during the meetings.")</p>	<p>Absence of any identified financial benefits in the HR, a report intended to find benefits, shows nonoccurrence. Also an admission by party-opponent.</p> <p><a href="https://www.militarypsych.org/uploads/8/5/4/5/85456500/TF19_response_to_the_hoffman_report_div19_excom_approved.pdf">https://www.militarypsych.org/uploads/8/5/4/5/85456500/TF19_response_to_the_hoffman_report_div19_excom_approved.pdf</a> provides a true and correct copy of a Division 19 published market report relied upon by military psychologists.</p> <p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of the Gilfoyle email contained in Binder 2 of the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p>
14	<p><b>The evidence supports the conclusion that APA officials colluded with DoD officials to, at the least, adopt and maintain APA ethics policies that were not more restrictive than the guidelines that key DoD officials wanted, and that were as closely aligned as possible with DoD policies, guidelines, practices, or preferences, as articulated to APA by these DoD officials.</b></p>	<p><b>**PENS Statement Four and Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>**Policies Distributed at PENS TF.</b></p> <p><b>**Other Restrictive DoD Policies.</b></p>	<p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p>
15	<p><b>Notably, APA officials made their decisions based on these motives, and in collaboration with DoD officials, without serious regard for the concerns raised that harsh and abusive techniques were occurring, and that they might occur in the future. APA chose its ethics policy based on its goals of helping DoD, managing its PR, and maximizing the growth of the profession. APA simply took the word of DoD officials with whom it was trying to curry favor that no such abuse was occurring, and that future DoD policies and training would ensure that no such abuse would occur. APA officials did so even in the face of clear and strong indications that such abuse had in fact occurred (and APA did not even inquire with CIA officials on the topic, despite public allegations that the CIA had engaged in abusive interrogation techniques). Based on strategic goals, APA intentionally decided not to make inquiries into or express concern regarding abuses that were occurring, thus effectively hiding its head in the sand.</b></p>	<p><b>PENS Statement Four and Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>**Policies Distributed at PENS TF.</b></p> <p><b>Other Restrictive DoD Policies.</b></p> <p><b>Senior Level Reports.</b></p> <p><b>**Materials Informing PENS TF.</b></p> <p><b>Materials Informing Other APA Officials.</b></p> <p>Arrigo archive audiotape transcript: "...we have written a very specific document." (Arrigo Binder 1 p.2; on file with Plaintiffs' attorney). [HR p.7: "...we received and reviewed documents from the PENS Archives established by Jean Maria Arrigo at the University of Colorado-Boulder." HR includes excerpts of archives (Binder 3 pp.805-830; Binder 5 pp.738-800) and references other portions (HR p.24 FN 9; HR p.259 FN 1161) but omits audiotape and/ or transcript of Arrigo interview.]</p>	<p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Published in the HR as admissions by party-opponent.</p> <p>Published in the HR as admissions by party-opponent.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and a correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p>
16	<p><b>APA remained deliberately ignorant even in light of obvious countervailing concerns that counseled in favor of crafting clear policies.... Being involved in the intentional harming of detainees in a manner that would never be justified in the U.S. criminal justice system could do lasting damage to the integrity and reputation of psychology, a profession that purports to "do no harm." And engaging in harsh interrogation techniques is inconsistent with our fundamental values as a nation and harms our national security and influence in the world. These countervailing concerns were simply not considered or were highly subordinated to APA's strategic goals.</b></p>	<p>Two decades of APA policy prohibiting torture and inhumane treatment by any of its members. See APA Council Resolutions dated 1985 and 1986 <a href="http://www.apa.org/news/press/statements/interrogations.aspx">http://www.apa.org/news/press/statements/interrogations.aspx</a>.</p> <p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>**Policies Distributed at PENS TF.</b></p> <p><b>**Other Restrictive DoD Policies.</b></p> <p><b>Senior Level Reports.</b></p> <p><b>**Materials Informing PENS TF.</b></p> <p><b>Materials Informing Other APA Officials.</b></p>	<p><a href="http://www.apa.org/news/press/statements/interrogations.aspx">http://www.apa.org/news/press/statements/interrogations.aspx</a> links to the official website of the APA and provides true and correct copies of records of regularly conducted business activity.</p> <p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Published in the HR as admissions by party-opponent.</p> <p>Published in the HR as admissions by party-opponent.</p>

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17	...key APA officials were operating in close, confidential coordination with key Defense Department officials to set up a task force and produce an outcome that would please DoD, and to produce ethical guidelines that were the same as, or not more restrictive than, the DoD guidelines for interrogation activities.... guidance (which used high-level concepts and did not prohibit techniques such as stress positions and sleep deprivation)....	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations;</b> specifically incorporates existing prohibitions against stress positions and sleep deprivation.</p> <p><b>Policies Distributed at PENS TF.</b></p> <p><b>Other Restrictive DoD Policies.</b></p> <p>HR p.354: Banks did "not see any inconsistency" between PENS report and McCain Amendment which prohibited stress positions and sleep deprivation."</p>	<p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports. Official DoD public record/report. Published in HR as admission by party-opponent.</p>
18	... the key APA official who drafted the report (the APA Ethics Director) intentionally crafted ethics guidelines that were high-level and non-specific so as to not restrict the flexibility of DoD in this regard, and proposed key language that was either drafted by DoD officials or was carefully constructed not to conflict with DoD policies or policy goals.  **	<p><b>**PENS Statement Four and Incorporation of Restrictive Policies and Regulations.</b></p> <p>Customary business practice for APA staff to draft correspondence for governance members. Governance members are then free to use all, some, or none of staff-drafted documents/ communications.</p> <p>PENS listserv description of Behnke drafting process for review and approval by the Task Force members (See PENS listserv p. 88, HR Binder 5 p.540.)</p> <p>See also 6/26/2005 email from Behnke to task force chair and APA President-Elect: "I believe I have captured the thinking of the Task Force pretty well, so I am hopeful we will not have a great deal of revising to do..." (APA_0048590 cited in HR p.290 FN 1294, HR Binder 1 pp.1225-1226)</p>	<p><b>True and Correct PENS Report.</b></p> <p>Routine practice of the APA; Affidavits of Strassburger Fox and Strickland with personal knowledge of APA governance and staff practices in policy development process.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 1 of the HR.</p>
19	The leading ethical constraint in the report was that psychologists could not be involved in any way in torture or cruel, inhuman or degrading treatment. But it was well known to APA officials at the time of the report that the Bush Administration had defined "torture" in a very narrow fashion, and was using the word "humane" to describe its treatment of detainees despite the clear indications that abusive interrogation techniques had been approved and used. Thus, APA knew that the mere use of words like "torture," "inhuman," or "degrading" was not sufficient to provide guidance or draw any sort of meaningful line under the circumstances.	<p><b>**HR relies on Bush Administration policies (2002-2003) that had already been superseded by the time the PENS TF convened (2005). The Bush Administration memos providing a narrow definition of torture had been withdrawn by the time of PENS insofar as they applied to the DoD. (See Goldsmith, Chapter 5 <i>The Terror Presidency</i>.)</b></p> <p><b>**HR (pp.152,153) quotes from Chapter 5 of Goldsmith's <i>The Terror Presidency</i> (Behnke referred Hoffman to this resource in 4/21/2015 communication) but intentionally omits portions that describe Philbin memo that sets forth the only 24 techniques approved for use (none of which were "harsh techniques") on July 14, 2004 (one year before PENS) and the February 2005 Levin memo that incorporated Philbin testimony and the legal guidance it provided about permissible techniques. (None of 24 techniques were the "harsh techniques" HR claims were permissible at time of PENS – sleep deprivation, stress positions, exploitation of phobias.)</b></p>	<p>Goldsmith, <i>The Terror Presidency</i> (cited in HR, p.153, fn 579). The court may take judicial notice of the chapter's description of the Philbin memo capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.</p> <p><a href="https://tinyurl.com/y58nhmhp">https://tinyurl.com/y58nhmhp</a> links to a true and correct copy of Goldstein's <i>The Terror Presidency</i>, Chapter 5.</p>
20	During the task force's pre- meeting communications, during its three-day meetings, and in preparing the task force report, Behnke and Banks closely collaborated to emphasize points that followed then-existing DoD guidance (which used high-level concepts and did not prohibit techniques such as stress positions and sleep deprivation), to suppress contrary points, and to keep the task force's ethical statements at a very general level in order to avoid creating additional constraints on DoD. They were aided in that regard by the other DoD members of the task force (who, for the most part, also did not want ethical guidance that was more restrictive than existing DoD guidance), and by high-level APA officials who participated in the meeting.	<p>Rather than "the other DoD members...who...also did not want ethical guidance that was more restrictive," only Lefever believed this. (HR p.21) states: "Lefever, different from the other DoD members, believed the task force would accomplish little if it did not provide specific, defined guidance..."</p> <p><b>**PENS listserv discussion p. 136 (HR Binder 5 p.588) Behnke describes that codes of ethics are written at a high level of generality not specificity. (See also <i>APA Ethics Code Commentary and Case Illustrations</i> (HR p.86 FN139).</b></p> <p><b>**6/27/2005 email from Ethics Committee member Massoth to Behnke: "When discussion of the possible task force was mentioned during the last Council meeting (February 2005), there were some calling for a list of prohibited activities by psychologists. While I understand the emotion behind this, it would be a mistake. We do not need incorporated in our current Code or any code a list of prohibited activities (e.g., one must not give the Rorschach, conduct EMD, etc.). The prohibition regarding sexual intimacies with clients is the only prohibition that we need." (APA_0040635 HR Binder 1 p.1019)</b></p> <p>HR (pp.152,153) quotes from Chapter 5 of Goldsmith's <i>The Terror Presidency</i> (Behnke referred Hoffman to this resource in 4/21/2015 communication) but intentionally omits portions that describe Philbin memo that sets forth the only 24 techniques approved for use on July 14, 2004 (one year before PENS) and the February 2005 Levin memo that incorporated Philbin testimony and the legal guidance it provided about permissible techniques. None of these 24 techniques were the "harsh techniques" HR claims were permissible at time of PENS – sleep deprivation, stress positions, exploitation of phobias.</p>	<p>Published in the HR as an admission by party-opponent.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of the Massoth email within Binder 1 of the HR.</p> <p>Goldsmith, <i>The Terror Presidency</i> (cited in HR, p.153, fn 579). The court may take judicial notice of the chapter's Philbin memo description capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.</p> <p><a href="https://tinyurl.com/y58nhmhp">https://tinyurl.com/y58nhmhp</a> links to a true and correct copy of Goldstein's <i>The Terror Presidency</i>, Chapter 5.</p>
21	Other leading APA officials intimately involved in the coordinated effort to align APA actions with DoD preferences at the time of PENS were then-APA President Ron Levant, then-APA President-Elect Gerald Koocher, and then-APA Practice Directorate chief Russ Newman.	<p><b>**No Collusion</b></p>	<p><b>Evidence of No Collusion.</b></p>

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22	<b>The other DoD official who was significantly involved in the confidential coordination effort was Debra Dunivin, the lead psychologist supporting interrogation operations at Guantanamo Bay at the time who worked closely with Banks on the issue of psychologist involvement in interrogations. At times, they were coordinating their activities with the Army Surgeon General's Office.</b>	<p><b>**No "coordination" of activities by Dunivin and Banks with the Army Surgeon General during PENS process identified in HR. First contact occurred in August 2005, after the PENS TF met and the PENS Report had been approved. Timeline in HR itself reported: PENS Report adopted as APA policy on July 1, 2005 (HR pp.313-314); Banks and Dunvin met with the Army Surgeon General in August 2005 (HR p.328).</b></p> <p><b>**As colonels/ military psychologists/ mid-level DoD personnel, neither Banks nor Dunivin were DoD "officials" acting on behalf of the military.</b></p>	<p>Published in the HR as admission by party-opponent.</p> <p>Routine practice of the DoD. Affidavits of Harvey and Taylor with personal knowledge as to military protocol, and Affidavits of Banks, Dunivin and James.</p>
23	<p>For Banks, Dunivin, and others at DoD, the attention on the abusive treatment of detainees as a result of the media disclosures of Abu Ghraib, the torture memos, the DoD working group report, and other related events created uncertainty and worry about whether the involvement of psychologists in interrogations would be deemed unethical. Some in DoD, such as civilians Shumate and Kirk Kennedy at CIFA, were pushing APA to move forward with action that would show support for national security psychologists and help end the uncertainty by declaring that psychologists' participation in interrogations (with some then-undefined limits) was ethical. Others, like military officers Banks and Dunivin, reacted to APA's movement toward the creation of the task force with concern that <b>APA could head in a negative direction if the task force was not properly set up and controlled, and with awareness that this was an opportunity for DoD.</b></p>	<p><b>OTSG/MEDCOM Policy Memo 06-029</b> on Behavioral Science Consultation Policy, which Banks and Dunivin helped to draft (cited in HR pp.223-224 FN 968 and throughout HR pp. 323-421; included in HR Binder 2 pp.1045-1069, and an earlier Interim version of this policy guidance included in HR Binder 1 pp.1247-1268, APA_0049579): shows the safe-legal-ethical-effective framework had very specific objectives, e.g., "to assist the command in ensuring the humane treatment of detainees, prevention of abuse, and safety of US personnel" (policy p.5), "to reduce opportunity for behavioral drift and inappropriate behavior... report any actual, suspected or possible violations of applicable laws, regulations, and policies, to include allegations of abuse or inhumane treatment...and remain within professional ethical boundaries as established by their professional associations" (policy p.6). Demonstrates the significance Banks and Dunivin attach to ethics in performance of duties related to interrogation consultation – approximately one-third of the policy (8 of 24 pages) discusses ethics and the two enclosures are specifically related to ethics of interrogation support by psychologists and psychiatrists.</p> <p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a>; <a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a></p> <p><b>**JTF-GTMO BSCT SOP 3/28/2005</b> drafted by Dunivin and Banks specifically requires adherence to UCMJ and the Geneva Conventions, as well as reporting any suspicions of abuse of detainees (HR Binder 3 pp.978-990). [HR reviews only outdated GTMO BSCT SOPs 11/11/2002 &amp; 12/10/2004 (HR p.214 FN 923).] Dunivin 3/18/2005 email to Koocher (cited in HR p.240 FN 1039 and included in HR Binder 1 p.895, APA_0035139) describes Banks's participation in drafting 3/28/2005 GTMO BSCT SOP.</p> <p>PENS Listserv p.16 (HR Binder 5 p.468) Banks describes motivation for participation on task force: "I strongly concur with most of Dr. Gelles's comments, especially concerning the need for guidance to psychologists providing this type of support. In my opinion, there is a great paucity of training generally available to psychologists in this area. My main interest is in psychology support to DoD organizations, and in providing clear guidance to the Army psychologists that I train and to whom I provide oversight."</p> <p>Arrigo's archived audiotaped interview transcript 6/26/2005 describes materials distributed by Banks at PENS meeting he had written for his subordinates requiring adherence to ethics code; Arrigo states: "they were very, very firm about psychologists don't torture people...so that's what they want to be standard operating procedure." (Arrigo archives Binder 1 pp.8-9)</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a>; <a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> link to the official website of the APA and provide true and correct copies of official DoD public records/reports contained within Binders 2 and 1, respectively, of the HR</p> <p><a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of official DoD records/report contained within Binder 3 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p>
24	<p><b>Newman had an obvious conflict of interest, since his wife, Debra Dunivin, was highly interested in the outcome of this policy decision by APA and was one of the DoD psychologists who would be most affected, positively or negatively, by the ethical position about which APA was supposed to be deliberating. Newman owed a duty of loyalty to APA, which was in the midst of determining its ethical position on this critical issue. In doing so, APA needed to determine how to balance at least two important values: (i) the importance of psychologists assisting the government in getting accurate intelligence information about potential future attacks in order to protect the public; and (ii) the importance of psychologists not intentionally doing physical or psychological harm to individuals, perhaps especially in the situation in which the individual is in custody and is outside the protections of the criminal justice system. In determining its position, APA also needed to balance the views and positions of military and national security psychologists with the views and positions of those outside the military, and national security systems.</b></p>	<p><b>**PricewaterhouseCoopers opinion</b> (HR Binder 2 pp.1401-1404) indicating no inherent conflict of interest with Dunivin-Newman marital relationship (GC Gilfoyle email to CEO Anderson 11/10/2004). Marriage disclosed to Board and APA membership in <i>Monitor</i>; and Newman a non-voting observer to PENS Task Force per HR p.253.</p> <p>Arrigo PENS meeting notes (HR p. 259 FN 1161) show Newman's participation in the meeting limited. HR (p.251) characterizes Fein as having "offered few comments during the PENS meetings." Fein spoke 27 times in two days (he wasn't present for one of the days of the Task Force), and Newman spoke 22 times over the course of three days.</p> <p>HR p.264: "...this report can confirm that Arrigo's notes provide the most complete picture of what occurred during the meetings."</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of the Gilfoyle email contained in Binder 2 of the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p>

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25	<p><b>Because of Dunivin's obvious and strong interest and bias on these points, Newman had a classic conflict of interest. It was therefore incumbent upon him and APA to keep him out of the discussions and deliberations on this topic, and to disclose the conflict. In fact, the opposite occurred. No disclosure was made. Newman and Dunivin were included at many of the key points of the process, including the task force selection process and the task force deliberations; and both Newman and Dunivin inserted themselves and influenced the process and outcome in important ways. The various APA officials who were aware of the conflict and of all or some of Newman's and Dunivin's involvement—including principally Ethics Director Behnke, Deputy CEO Michael Honaker, APA President Ron Levant, and APA President-Elect Gerald Koocher, and also including to a lesser extent CEO Norman Anderson and General Counsel Nathalie Gilfoyle—took no steps to disclose or resolve the conflict.</b></p>	<p><b>**PricewaterhouseCoopers opinion</b> (HR Binder 2 pp.1401-1404) indicating no inherent conflict of interest with Dunivin-Newman marital relationship (GC Gilfoyle email to CEO Anderson 11/10/2004). Marriage disclosed to Board and APA membership in <i>Monitor</i>; and Newman a non-voting observer to PENS Task Force per HR p.253.</p> <p>Arrigo PENS meeting notes (HR p.259 FN 1161) show Newman's participation in the meeting limited. HR (p.251) characterizes Fein as having "offered few comments during the PENS meetings." Fein spoke 27 times in two days (he wasn't present for one of the days of the Task Force), and Newman spoke 22 times over the course of three days.</p> <p>HR p.264: "...this report can confirm that Arrigo's notes provide the most complete picture of what occurred during the meetings."</p> <p>Dunivin not member of PENS TF (HR p.239); was not present during TF meetings (HR pp.253-256); did not participate in TF deliberations; and did not communicate with members during their deliberations.</p> <p>Dunivin interview with Hoffman: Stated how difficult communications were while deployed, on anything other than secure lines, without prior elaborate arrangements being made. HR acknowledges elsewhere that such communication on deployment is significantly limited. HR p.396 FN 1862.</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of the Gilfoyle email contained in Binder 2 of the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p> <p>Affidavit of Dunivin with personal knowledge of interview with Hoffman. Contained in the HR as an admission by party-opponent.</p>
26	<p><b>The very substantial benefits APA obtained from DoD help explain APA's motive to please DoD...</b></p>	<p><b>**No benefits found in HR financial review.</b> HR p.523: "This analysis did not reveal any significant or unusual payments to APA from DoD..."</p> <p>No substantial increase in number of psychologists utilized in this role – 1,950 psychologists employed by DoD; number of operational psychologists has not significantly changed – 50 over the last decade. (Division 19 TF Report 11/9/2015 pp.34-35; not in Hoffman's possession at time of Hoffman report.)</p>	<p>Absence of any identified financial benefits in the HR, a report intended to find benefits, shows no occurrence.</p> <p><a href="https://www.militarypsych.org/uploads/8/5/4/5/85456500/tf19_response_to_the_hoffman_report_div19_excom_approved.pdf">https://www.militarypsych.org/uploads/8/5/4/5/85456500/tf19_response_to_the_hoffman_report_div19_excom_approved.pdf</a> provides a true and correct copy of a Division 19 published market report relied upon by military psychologists.</p>
27	<p><b>The only solution that met all these goals was an outcome that allowed them to take a public position that pleased DoD, that did not significantly restrict an important group of psychologists, and that avoided the difficult issue by keeping ethical guidelines at a high level.</b></p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p> <p>Arrigo archive audiotape transcript: "...we have written a very specific document." (Arrigo Binder 1 p.2; on file with Plaintiffs' attorney). [HR p.7: "...we received and reviewed documents from the PENS Archives established by Jean Maria Arrigo at the University of Colorado-Boulder." HR includes excerpts of archives (Binder 3 pp.805-830; Binder 5 pp.738-800) and references other portions (HR p.24 FN 9; HR p.259 FN 1161) but omits audiotape and/ or transcript of Arrigo interview.]</p>	<p><b>True and Correct PENS Report</b></p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p>

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28	<b>What is also clear from the evidence is that the decisions from the key APA officials about how to proceed regarding the PENS Task Force—its composition, the substance of the report, how to adopt it as policy, what public explanations to make, and whether and how to change the policy once there was pressure to do so—were not based in any meaningful way on ethics analysis.</b>	<p><b>**PENS listserv p.107 (HR Binder 5 p.559):</b> “The Ethics Committee reviewed in detail the PENS Task Force Report and unanimously passed the following motion: That the Ethics Committee affirms that the 12 statements in the Report of the Task Force on Psychological Ethics and National Security are appropriate interpretations and applications of the American Psychological Association Ethical Principles of Psychologists and Code of Conduct (2002).”</p> <p><b>**Arrigo archive audiotape (Arrigo archive Binder 1 p.2; on file with Plaintiffs’ attorney):</b> “...like the head of the ethics committee at APA Steve Behnke. Why [sic] he was in these various drafts, he was always drawing on the code and trying to show that the code implied all of our statements.”</p> <p><b>**HR p.272:</b> “The group engaged in an ethical debate about dual roles soon after Behnke’s comments.”</p> <p><b>**HR p.290:</b> “It appeared that [APA General Counsel] Gilfoyle flagged the language in the third draft as confusing... Behnke responded to Gilfoyle that this statement represented an ‘extremely complicated issue,’ that was ‘one of the most challenging ethical issues in this whole area.’”</p> <p><b>**6/30/2005 email from APA Board member Paige to entire Board regarding PENS Report:</b> “I very much appreciate the ethics focus versus a political focus.” (APA_0040503 HR Binder 1 p.1005)</p> <p><b>**6/27/2005 email from Ethics Committee member Massoth to Behnke:</b> “I love the integration of the aspirational principles and the ethical standards.” (APA_0040635 HR Binder 1 p.1019)</p> <p><b>**6/24/2005 email from Gilfoyle to Behnke providing list of 21 ethical standards relevant to draft of PENS Task Force report.</b> (APA_0040831 HR Binder 1 p.1076-1080)</p> <p><b>** (The preceding seven entries hereinafter “PENS Report Based on Ethics Analysis.”)</b></p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo’s present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p> <p>Published in the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Paige email contained within Binder 1 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Massoth email contained within Binder 1 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Gilfoyle email contained within Binder 1 of the HR.</p> <p>(The preceding seven entries hereinafter “Official APA Website, Present Sense Impression and Admission by Party-Opponent.”)</p>
29	<b>Whatever organizational or personality dynamic led to APA allowing him to play this remarkably expansive role, well beyond the expected duties of APA Ethics Director, the result was a highly permissive APA ethics policy based on strategy and PR, not ethics analysis.</b>	<p><b>**PENS Report Based on Ethics Analysis.</b></p> <p>Task Force charge from Board to address whether APA “(h)as... responded strongly enough to media accounts of activities that have occurred at Abu Ghraib and Guantanamo Bay.” See HR Binder 1 p.693: APA_0025740, BoD Meeting 2/16&amp;17/2005 Agenda Item No. 3.</p> <p>PENS listserv discussion pp.79-80 (HR Binder 5 pp.531-532): Moorehead-Slaughter writes: “Jean Maria poses the very important question of what public statements APA ought to make; these will be an important part of our discussions on what the final product should look like.”</p> <p><b>PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p>	<p><b>Official APA Website, Present Sense Impression and Admission by Party-Opponent.</b></p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Task Force charge contained within Binder 1 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><b>True and Correct PENS Report.</b></p>
30	A provision about how to handle conflicts between legal and ethical obligations (Ethics Code Standard 1.02) was expanded so that psychologists could follow court orders or military orders requiring them to engage in conduct otherwise prohibited by the Ethics Code, as long as they attempted to resolve the conflict first.	<p><b>**HR itself (p.107):</b> “...we did not see any evidence that the shift to reliance on 1.02 from 8.03 [i.e., the ‘expansion’ of Standard 1.02]... had a practical impact on the obligations imposed upon military psychologists. Although the language differs, neither iteration of either standard imposed a requirement on psychologists to follow either the Ethics Code or the conflicting directive. Rather, both standards had the same basic affirmative requirements: that psychologists raise the conflict and attempt to resolve it. Both also left the final decision of what to do, if the conflict was unresolvable, to the psychologist.”</p>	Published in the HR as an admission by party-opponent
31	Thus, when the time became ripe to consider what ethical constraints to put on an important group of psychologists, two factors that could conceivably have created internal pressure in APA for those ethical constraints to be strong—an Ethics Director focused principally on an analysis of ethics, torture, and psychological distress by those in captivity, and an ethics approach that had a robust focus on the integrity of the profession and the protection of the public – were not present.	<p>November 2005 <i>Monitor</i> column by Behnke: “As director of the Ethics Office, I see our mission as being to push ethics to the center of our association’s awareness. The goal is for our members and the profession to view ethics not as a set of external constraints that limit our possibilities and inhibit our creativity, but rather as part of the fabric of our professional lives, and ethical dilemmas not as a sign that something has gone wrong in our work but rather as reflecting the richness, complexity and importance of what psychologists do.” <a href="http://www.apa.org/monitor/nov05/ethics.aspx">http://www.apa.org/monitor/nov05/ethics.aspx</a></p> <p><b>**PENS Report Based on Ethics Analysis.</b></p>	<p><a href="http://www.apa.org/monitor/nov05/ethics.aspx">http://www.apa.org/monitor/nov05/ethics.aspx</a> links to the official website of the APA and provides a true and correct copy of Behnke’s <i>Monitor</i> column.</p> <p><b>Official APA Website, Present Sense Impression and Admission by Party-Opponent.</b></p>

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32	The framework—interrogation practices must be “safe, legal, ethical and effective” (“SLEE”)—was touted by Banks as a safeguard that would somehow ensure the humane treatment of detainees. In reality, however, it was a malleable, high-level formula that easily allowed for subjective judgments to be made, including by people such as Banks who interpreted the formula to permit stress positions and sleep deprivation in some circumstances.	<p><b>**OTSG/MEDCOM Policy Memo 06-029</b> on Behavioral Science Consultation Policy, which Banks and Dunivin helped to draft (cited in HR pp.223-224 FN 968 and throughout HR pp. 323-421; and included in HR Binder 2 pp.1045-1069), describes the very specific objectives of the safe-legal-ethical-effective framework, e.g., “to assist the command in ensuring the humane treatment of detainees, prevention of abuse, and safety of US personnel” (p.5), “to reduce opportunity for behavioral drift and inappropriate behavior. . . report any actual, suspected or possible violations of applicable laws, regulations, and policies, to include allegations of abuse or inhumane treatment. . .and remain within professional ethical boundaries as established by their professional associations” (p.6).</p> <p>Banks interview with Hoffman: Stated nothing we do would ensure humane treatment. Working toward that goal, yes. Safe, legal, ethical and effective was a framework helping us think about our actions, think through those four steps in that order. Help us ensure we are doing right thing.</p> <p>Behnke notes show Gelles (not Banks) is first to introduce framework into PENS TF discussions “Safe, Effective, legal, ethical” (APA_0232118 HR Binder 3 p.167; cited in HR p.264 FN 1881). PENS listserv discussion also shows that Gelles introduced framework, i.e., that consultants “(b)e focused on what is safe, what is effective and what may be moral and ethical.” (5/3/2005; HR Binder 5 pp.460-463).</p> <p>Arrigo archive audiotape transcript: “. . .we have written a very specific document.” (Arrigo archive Binder 1 p.2). [HR p.7: “. . . we received and reviewed documents from the PENS Archives established by Jean Maria Arrigo at the University of Colorado-Boulder.” HR includes excerpts of archives (Binder 3 pp.805-830; Binder 5 pp.738-800) and references other portions (HR p.24 FN 9; HR p.259 FN 1161) but omits audiotape and/ or transcript of Arrigo interview.]</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record/report contained within Binder 2 of the HR.</p> <p>Affidavit of Banks with personal knowledge of his interview statements.</p> <p><a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a>; <a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of official DoD records/report contained within Binders 3 and 5 of the HR.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p>
33	<b>Newman spoke forcefully about the importance of achieving APA's PR goals in a manner that was inconsistent with the efforts by some of the non-DoD psychologists to push for stricter, more specific ethical guidelines.</b>	<p><b>**Task Force charge from APA Board to address whether APA has “responded strongly enough to media accounts of activities that have occurred at Abu Ghraib and Guantanamo Bay.”</b> (APA_0058508, referenced HR p.214 FN 923 and included in HR Binder 1 p. 1405). Newman, in interview with Hoffman, indicated the need for language understandable to the public of APA's position on these issues related to national security activities.</p> <p>PENS listserv discussion pp.79-80 (HR Binder 5 pp.531-532): Moorehead-Slaughter writes: “Jean Maria poses the very important question of what public statements APA ought to make; these will be an important part of our discussions on what the final product should look like.”</p> <p>Arrigo PENS meeting notes (HR p.259 FN 1161) show Newman's participation in the meeting limited. HR (p.251) characterizes Fein as having “offered few comments during the PENS meetings.” Fein spoke 27 times in two days (he wasn't present for one of the days of the Task Force), and Newman spoke 22 times over the course of three days. HR p.264: “. . .this report can confirm that Arrigo's notes provide the most complete picture of what occurred during the meetings.”</p>	<p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Board charge to task force contained within Binder 1 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p>Published in the HR as admission by party-opponent.</p>
34	<b>The evidence shows that at the meeting, Banks was “persistent” about his agenda, in the words of a DoD task force member. His agenda was to get the APA's “good housekeeping” seal of approval for the involvement of psychologists in interrogations, and to otherwise keep the status quo and avoid limits or constraints beyond the ones the Army or DoD had in place (or would decide to put in place in the future).</b>	<p><b>**PENS Listserv p.16</b> (HR Binder 5 p. 468) in which Banks describes his motivation that is contrary to the agenda Hoffman stated: “I strongly concur with most of Dr. Gelles's comments, especially concerning the need for guidance to psychologists providing this type of support. In my opinion, there is a great paucity of training generally available to psychologists in this area. My main interest is in psychology support to DoD organizations, and in providing clear guidance to the Army psychologists that I train and to whom I provide oversight.”</p> <p>PENS Listserv p.16 (HR Binder 5 p.468) in which Banks states, “The challenge that I see [for PENS TF] is that of investigating what legal behavioral is ethical, and then deciding how to establish standards for that behavior.”</p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p>
35	<b>The first, an attempt to use the provisions of the Geneva Conventions or other common international law sources to define the high-level terms being discussed at the meeting, was joined strongly by Arrigo and Nina Thomas. This attempt was rejected by the other members of the task force, and was therefore rejected in the Behnke-drafted task force report.</b>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p> <p>PENS Listserv discussion in which Wessells (p.91; HR Binder 5 p.543) and Thomas (p.108; HR Binder 5 p.560) indicate that there was agreement among task force members to include both the Geneva Conventions and the Convention Against Torture in the PENS Report.</p>	<p><b>True and Correct PENS Report.</b></p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p>

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36	<p><b>As a result of this opposition the report rejected the use of or reference to international law, except to the extent it was incorporated into and consistent with U.S. law (as then defined, including through the DOJ memos).</b></p> <p><i>Premise to preceding false statement</i> - Some say that this conclusion shows the automatic impact that selecting a majority of DoD officials had on the task force's conclusion. But we think that it actually shows an even more intentional decision by the APA task force leaders and the DoD psychologists not to voluntarily commit psychology as a profession to a more robust set of ethical limitations. To do so would have shown leadership on the issue in a way that likely would have put APA at odds with DoD and the Administration. This may have caused a conflict that would have caused DoD to employ fewer psychologists or to write policy that subordinated the role of psychologists in interrogation and detention matters; and it may have prompted some DoD psychologists to leave APA membership (although Banks was already outside the APA).</p>	<p><b>**HR</b> itself indicates that these 2002 and 2003 Justice Department OLC memos (that had expanded view of permissible interrogation techniques) had been withdrawn a year prior to PENS TF meeting - HR p. 153: "Shortly after [the Washington Post publication on June 13 2004], Assistant Attorney General for the Office of Legal Counsel Jack Goldsmith, withdrew the 2002 and 2003 memoranda at issue." (2003 memo actually withdrawn Dec. 2003 according to <i>The Terror Presidency</i>.) [HR does not analyze the 12/30/2004 and 2/4/2005 memoranda in place and applicable to DoD at time of PENS TF.]</p> <p><b>PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p> <p>HR p. 275: "Banks stated that U.S. law already incorporated the Geneva Conventions, so it was unnecessary to specify abiding by the international law."</p> <p>6/1/2015 email from Banks to Hoffman: " Everyone in DoD with whom I have worked at the policy level fully supported our adherence to common article three, [of the Geneva Conventions] for example."</p>	<p>Published in the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="https://tinyurl.com/y4xartno">https://tinyurl.com/y4xartno</a> provides a true and correct copy of Banks's email to Hoffman.</p>
37	<p><b>Adding to this dynamic was the participation of Koocher (on the first day) and Newman (throughout the meeting) who both spoke up forcefully in opposition to some of the key points of the non-DoD task force members. Banks and the DoD task force members had allies in Koocher, Newman, and Behnke. These APA officials agreed with the strategy of deferring to DoD's preferences and shared the goal of ensuring that the result of the meeting was a document that APA could use for positive PR purposes, which "calm[ed] the issues," avoided "rekindling the fires," and "clarified" and "simplified" the message that press accounts had "messed up." In their view, APA needed a clear, straightforward, public statement—without delay—that would solve the PR problem by portraying APA as a professional association that was taking action to set ethical guidelines rather than sitting on the sidelines, while keeping DoD psychologists as involved and unconstrained as possible.</b></p>	<p><b>**PENS</b> report used to provide guidance to military psychologists. (See Board of Directors' February 2005 charge, that the Task Force: "[E]xamine whether our current Ethics Code adequately addresses [the ethical dimensions of psychologists' involvement in national security-related activities], whether the APA provides adequate ethical guidance to psychologists involved in these endeavors, and whether APA should develop policy to address the role of psychologists and psychology in investigations related to national security." (PENS Report p.1, HR Binder 5 p.727).</p> <p><b>**APA</b> 0058508 (HR Binder 1 p.1405, referenced HR p.214 FN 923): Task Force charge from Board to address whether APA has "responded strongly enough to media accounts of activities that have occurred at Abu Ghraib and Guantanamo Bay."</p> <p>PENS listserv discussion pp.79-80 (HR Binder 5 pp.531-532): Moorehead-Slaughter writes: "Jean Maria poses the very important question of what public statements APA ought to make; these will be an important part of our discussions on what the final product should look like."</p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the Board charge to task force contained within Binder 5 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of the Board charge to task force contained within Binder 1 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p>
38	<p><b>Newman...told us that when he spoke up at the task force meeting, he was doing so with the clear purpose of trying to strongly influence the outcome.</b></p>	<p><b>**Newman</b> interview with Hoffman: When Newman was asked whether Arrigo might be intimidated by his comments during the task force meeting, he told Hoffman that when he had a point to make he "always tried to speak with influence."</p> <p><b>**HR</b> p.270: "Newman agreed... that, as general practice in all of his interactions with people, he tried to "speak with influence."</p>	<p>Affidavit of Newman with personal knowledge of interview statements.</p> <p>Published in the HR as an admission by party-opponent.</p>

Statement # Jul 2 version of Report	False Statement from the Hoffman Report (HR)	Evidence in Hoffman's Possession Showing Statement to be False When Hoffman and Sidley made the Statement (page references herein to HR 7/2/15 version)	Admissibility
39	<p><u>Premise to false statement below:</u> Their theory is therefore that when psychologists are involved in an interrogation of a non-cooperative foreign detainee considered an "unlawful combatant" suspected of knowing important information, in an environment of intense pressure to produce actionable intelligence to protect the American public and in which the protections of the criminal justice system do not apply, psychologists should be playing two roles at the same time: (1) strict monitor of the interrogator, including promptly telling the interrogator (or telling his supervisor or commander) that he is going too far and needs to stop, and (2) partner of the interrogator in trying to engage in interrogation techniques that will be effective in getting the detainee to be cooperative and to tell the truth about what he knows.</p> <p><b>This strikes us as either naïve or intentionally disingenuous.</b></p>	<p><b>**APA Division 21 Council Representative Report of August 2006 Meeting (APA0004471 HR Binder 6 p.2):</b> "When asked what kind of advice military psychologists give to interrogators ... [Surgeon General of the Army Kiley] indicated that psychologists advise interrogators to establish rapport with detainees. ... Regarding the line between reasonable interrogation and abuse, he said that psychologists know right from wrong and can tell if some action or procedure is harming detainees." [Partially quoted in HR p.380.]</p> <p>3/14/2007 letter from Dr. Michael Gelles to Drs. Altman and Moorehead-Slaughter (APA_0064557 HR Binder 6 p.176): "My direct experience leads me to conclude that we should remain engaged in interrogations as a persistent voice for the right way to do things... [S]hould psychologists withdraw from participating in settings as professionals who bring value to a broad spectrum of activities and initiatives that, when conducted in a competent and ethical fashion, propagate humane treatment, facilitate the eliciting of accurate and reliable information, and promote peace by preventing acts of violence."</p> <p><b>**Martinez-Lopez Report 4/13/2005</b> (HR Binder 5 pp.185-394), reviewed and selectively quoted in HR p.512 – findings contrary to HR narrative omitted: "In the purest sense, the mission of the BSCT is to provide forensic psychological expertise and consultation in order to assist the command in conducting safe, legal, ethical, and effective interrogation and detainee operations. . . While serving in this role the objective is to: (1) Provide psychological expertise in order to maximize the effectiveness of the legal interrogation process. (2) Provide psychological expertise to assist the command in ensuring that the interrogation process is conducted in a safe, legal, and ethical manner. (3) Promote the overall effectiveness of detainee operations." (M-L Report p.18-15); "BSCT personnel served as protectors, much like a (sic) safety officers to ensure the health and welfare of the detainee under interrogation. In reviewing interrogation plans with the ability to halt interrogations at any time, BSCT personnel provide the oversight and checks and balances in the interrogation process." (M-L Report p.18-16). <a href="http://www1.umn.edu/humanrts/OathBetrayed/Army%20Surgeon%20General%20Report.pdf">http://www1.umn.edu/humanrts/OathBetrayed/Army%20Surgeon%20General%20Report.pdf</a></p> <p><b>Walsh Report 2/2009</b> referenced in HR p.448 FN 2133 found conditions of confinement at GTMO in compliance with Common Article Three of the Geneva Conventions and "Strongly recommended: Sustain[ing] BSC resource to ensure continued mission support to JDG Commander and, to a lesser extent, the JIG Director." and "Recommended Dedicat[ing] two Behavioral Science Consultants solely to provide psychological consultation to the CJDG, JIG and CJTF in order to support safe, legal ethical and effective detention and interrogation operations at JTF-Guantánamo." <a href="https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf">https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf</a></p> <p>See Division 19 TF report 11/9/2015 p.24: "The Hoffman Report suggests that 'safe' and 'effective' support to interrogations by psychologists is disingenuous because the two cannot coexist. For the Hoffman team, it is apparent that ethical interrogations are not effective, and effective interrogations are not ethical. The implication of this statement is that interrogations involving psychologists are either safe or effective, but not both. TF19 strongly rejects this erroneous conclusion, which is contrary to the experience of psychologists who have served in the BSCT role." (Not in Hoffman's possession at time of Hoffman report.)</p>	<p><a href="http://www.apa.org/independent-review/binder-6.pdf">http://www.apa.org/independent-review/binder-6.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 6 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-6.pdf">http://www.apa.org/independent-review/binder-6.pdf</a> links to the official website of the APA and provides a true and accurate representation of the PENS listserv communications contained within Binder 6 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record/report contained within Binder 5 of the HR.</p> <p><a href="https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf">https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf</a> links to a true and correct copy of an official DoD public record/report.</p> <p><a href="https://www.militarypsych.org/uploads/8/5/4/5/85456500/19_response_to_the_hoffman_report_div19_excom_approved.pdf">https://www.militarypsych.org/uploads/8/5/4/5/85456500/19_response_to_the_hoffman_report_div19_excom_approved.pdf</a> provides a true and correct copy of a Division 19 published market report relied upon by military psychologists.</p> <p>Affidavit of Bryson with personal knowledge of support for interrogation provided by BSCT vis a vis safety officer and effectiveness.</p>

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40	<p>Premise to false statement below: Given (i) the public awareness of the Bush Administration's narrow understanding of key terms like 'torture' and 'inhumane' and its claim that the Geneva Conventions did not apply, (ii) the widespread media reports about abusive interrogation techniques, and (iii) the explicit discussions at the PENS meeting and the media about specific techniques like stress positions and sleep deprivation, it was obvious to everyone involved in the PENS Task Force that national security psychologists would be asked to advise on interrogation techniques that went well beyond rapport building. The PENS Task Force report could have said that psychologists may support interrogations only by recommending techniques that constitute rapport building.</p> <p><b>But as with the other limitations, this was not consistent with Banks's and DoD's preferences (and therefore Behnke's and APA's) that the role of psychologist not be limited beyond whatever constraints DoD itself had in place.</b></p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p>	<p><b>True and Correct PENS Report.</b></p>
41	<p><b>Similar, [sic] the PENS report refused to take a position on sleep deprivation despite being asked to do so.</b></p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b> (By incorporating local restrictive interrogation policies through Statement Four, the PENS Guidelines prohibited sleep deprivation.)</p>	<p><b>True and Correct PENS Report.</b></p>
42	<p>Premise to false statement below: Furthermore, we found it highly notable that the PENS report introduction omits the "do no harm" principle from its discussion of the key Ethics Code principles. The Ethics Code sets out aspirational principles "to guide and inspire psychologists toward the very highest ethical ideals of the profession." The very first sentence in the first principle says, "Psychologists strive to benefit those with whom they work and take care to do no harm." Remarkably, the PENS report avoids this sentence and quotes instead from the next sentence: "In their professional actions, psychologists seek to safeguard the welfare and rights of those with whom they interact professionally and other affected persons". Behnke told us he could not recall why he did not include the "do no harm" sentence but did not think its exclusion had much significance.</p> <p><b>Our conclusion is that because of the ambivalence within the DoD task force members about how to define "harm" as it relates to physical pain and distress, and the desire by Behnke and Banks not to take a hard-and-fast position that psychologists in interrogation situations can never "do harm" (despite the Ethics Code principle), Behnke intentionally left out the "do no harm" language.</b></p>	<p><b>**PENS Report frequently cites and discusses "Principle A, Beneficence and Nonmaleficence" of the APA Ethics Code (See PENS Report pp.3-7; HR Binder 5 pp.729-733). The principle of nonmaleficence is commonly defined as "do no harm in the bioethics arena." See, for example: <a href="https://medical-dictionary.thefreedictionary.com/nonmaleficence">https://medical-dictionary.thefreedictionary.com/nonmaleficence</a> Therefore, the PENS Report <i>does include</i> discussions of "do no harm".</b></p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS Report in Binder 5 of the HR; see <a href="https://medical-dictionary.thefreedictionary.com/nonmaleficence">https://medical-dictionary.thefreedictionary.com/nonmaleficence</a> provides a common definition of <i>nonmaleficence</i> of which the court may take judicial notice.</p>

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43	<p>Premise to false statement below: Addressing this issue specifically would have been feasible in a wide variety of ways, for instance by providing a non-exclusive list of prohibited specific techniques, or by describing prohibited conduct by using words such as 'abuse,' 'physically coercive,' or 'intentionally inflicting physical pain or mental suffering other than mental suffering incidental to lawful sanctions.'</p> <p><b>The decision not to do so reflects an intentional decision to keep the PENS report at a high level of generality at Banks' request.</b></p>	<p>3/10/2006 &amp; 4/ 6/2006 email correspondence between Linda Woolf and Len Rubenstein (Executive Director of Physicians for Human Rights from 1996 to 2007) provided by Behnke to Hoffman (6/12/2015 email) in which both reject the use of the word "coercion," opining that the term is undefined legally, vague behaviorally and doesn't work as a standard.</p> <p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p> <p>PENS listserv discussion p. 136 (HR Binder 5 p.588): Behnke describes that codes of ethics are written at a high level of generality not specificity. (See also <i>APA Ethics Code Commentary and Case Illustrations</i> (HR p.86 FN139).</p> <p>6/27/2005 email from Ethics Committee member Massoth to Behnke: "When discussion of the possible task force was mentioned during the last Council meeting (February 2005), there were some calling for a list of prohibited activities by psychologists. While I understand the emotion behind this, it would be a mistake. We do not need incorporated in our current Code or any code a list of prohibited activities (e.g., one must not give the Rorschach, conduct EMD, etc.). The prohibition regarding sexual intimacies with clients is the only prohibition that we need." (APA_0040635 HR Binder 1 p.1019)</p>	<p><a href="https://tinyurl.com/yya4u2t9">https://tinyurl.com/yya4u2t9</a> provides a true and correct copy of the Woolf-Rubenstein emails provided by Behnke to Hoffman and provides a true and correct representation of the Behnke email to Hoffman.</p> <p><b>True and Correct PENS Report.</b></p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct representation of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct representation of the Massoth email within Binder 1 of the HR.</p>
44	<p><b>Behnke and the APA's position on this issue therefore fits the pattern we saw in this investigation regarding PENS: positions were taken to please DoD based on confidential behind-the-scenes discussion and with an eye toward PR strategy.</b></p>	<p>Customary business practice for APA when dealing with matters of public importance to pay attention to public relations aspect of report.</p> <p><b>**Task Force charge from Board to address whether APA has "responded strongly enough to media accounts of activities that have occurred at Abu Ghraib and Guantanamo Bay."</b> (APA_0058508 included in HR Binder 1 p.1405 and referenced p.214 FN 923)</p> <p>PENS listserv discussion pp.79-80 (HR Binder 5 pp.531-532): Moorehead-Slaughter writes: "Jean Maria poses the very important question of what public statements APA ought to make; these will be an important part of our discussions on what the final product should look like."</p>	<p>Routine practice of the APA</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Board charge to task force contained within Binder 1 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p>
45	<p><b>The day of the Times story, Behnke drafted a response letter to the editor for Levant, which was published in the Times over Levant's name on July 7. In the letter, Levant claimed that the PENS report contained 'strict ethical guidelines' and then repeated some of the statements in the PENS report. From this point on, the media strategy was clear: emphasize that PENS said that psychologists could not engage in torture or cruel, inhuman or degrading treatment and claim PENS as a strong, pro-human-rights document. The principal purpose of PENS – to state that psychologists could in fact engage in interrogations consistent with the Ethics Code – was relegated to the sidelines, since any message seen as pro-DoD or permissive regarding the involvement of psychologists in interrogations was deemed bad media strategy in light of the intense and quick criticism of PENS. And of course, the principal motivation for Behnke and other APA officials in drafting PENS the way they did – pleasing DoD – remained fully concealed.</b></p>	<p><b>**Levant letter states that, "(U)sing a phobia to inflict severe psychological distress is clearly prohibited by the task force report."</b> <a href="http://www.nytimes.com/2005/07/07/opinion/codes-of-ethics-and-detentions-889318.html">http://www.nytimes.com/2005/07/07/opinion/codes-of-ethics-and-detentions-889318.html</a></p>	<p><a href="http://www.nytimes.com/2005/07/07/opinion/codes-of-ethics-and-detentions-889318.html">http://www.nytimes.com/2005/07/07/opinion/codes-of-ethics-and-detentions-889318.html</a> links to the official website of NYT and provides a true and correct copy of Levant letter. The court may take judicial notice of the article capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.</p>

Statement # Jul 2 version of Report	False Statement from the Hoffman Report (HR)	Evidence in Hoffman's Possession Showing Statement to be False When Hoffman and Sidley made the Statement (page references herein to HR 7/2/15 version)	Admissibility
46	<p>Premise for false statement below: <i>B. Conclusions Regarding Secret Joint Venture Between APA and DoD Officials In Years After PENS...</i> From the time of the PENS Task Force through at least the next three years, and through the end of the Bush Administration, Behnke led the extensive efforts by APA to defend the PENS report, to beat back criticisms on the issue through public statements and interviews, and to defeat efforts by the APA Council of Representatives to pass resolutions that would have definitively prohibited psychologists from participating in interrogations at Guantanamo Bay and other U.S. detention centers abroad.</p> <p><b>In these efforts, Behnke effectively formed an undisclosed joint venture with Banks – sometimes joined by Dunivin and some of the DoD officials who had served on the PENS Task Force – to ensure that APA's statements and actions fell squarely in line with DoD's goals and preferences.</b></p>	<p><b>**6/1/2015 email from Banks to Hoffman: "At no time were any of my comments, as someone who understands DoD and Operational Psychology fairly well, more than my personal opinions."</b></p> <p><b>**Banks, as a colonel/military psychologist/mid-level DoD employee, does not speak for DoD.</b></p> <p>(Customary business practice for APA staff to consult with subject matter experts, some of whom were necessarily employed by DoD given the issues under review.)</p> <p><b>No Collusion</b></p>	<p><a href="https://tinyurl.com/y4xartno">https://tinyurl.com/y4xartno</a> provides a true and correct copy of the Banks email to Hoffman;</p> <p>Routine practice of the DoD. Affidavits of Harvey and Taylor with personal knowledge as to military protocol, and Affidavits of Banks, Dunivin and James.</p> <p>Routine practice of the APA.</p> <p><b>Evidence of No Collusion</b></p>
47	<p>Premise for false statement below: In numerous confidential email exchanges and conversations, Behnke regularly collaborated and coordinated with Banks to determine what APA's position should be, what its public statements should say, and what strategy to pursue on this issue. Before responding to an APA Board member, before drafting a statement for the APA President, before giving a news interview, before advising the APA Ethics Committee, and before crafting strategy regarding potential Council resolutions, Behnke very regularly checked with Banks first to make sure Behnke and APA were in line with what DoD wanted, as articulated by Banks.</p> <p><b>On many of these occasions, Behnke was effectively seeking, and received, Banks's pre-clearance for an APA action or statement before Behnke proceeded.</b></p>	<p><b>**Customary business practice for APA staff to consult with subject matter experts and/or relevant members of a constituency affected by a public stance or position statement of the Association prior to taking that stance or making a statement.</b></p>	<p>Routine practice of the APA.</p>
48	<p><b>Behnke and Banks worked to keep their collaboration highly confidential. In an email to Banks during one of the many instances in which Behnke sought his review and pre-clearance of a draft APA statement, Behnke told Banks that "discretion about prior review is essential." They titled numerous emails "Eyes Only", and we found two emails in 2007 (shortly before their email traffic diminished, based on the emails in APA's system) in which they discussed ensuring that the emails themselves were securely deleted.</b></p>	<p><b>**Hoffman hires forensic team to image the hard drives of all APA staff <a href="http://ldiscovery.com/">http://ldiscovery.com/</a> including any previously deleted email. (See Raben email communication to staff 2/5/15).</b></p> <p>Behnke had placed all deleted emails into a deleted email archive that was retained on the APA server. In fact Hoffman quotes supposedly deleted emails. HR pp.394-395.</p> <p><b>**Banks's concern for maintaining the confidential nature of the communications was to assure that his written comments were not inaccurately perceived as him speaking officially on behalf of the DoD or the U.S. government, which he was not. Hoffman never raises issue of deleted emails with Banks in interviews.</b></p>	<p><a href="https://tinyurl.com/yylzbmue">https://tinyurl.com/yylzbmue</a> provides a true and correct copy of Raben email.</p> <p>Affidavit of Behnke with personal knowledge of his email management.</p> <p>Affidavit of Banks with personal knowledge of his email management and his interview with Hoffman.</p>
49	<p><b>The evidence (on file with Sidley) appears to show that the payments, ranging from \$1,250 to \$5,000 per class, were made to APA, not Behnke, except for two instances when Behnke said he received the payments directly and wrote APA a check for the payment amount less his expenses, although there is some contracy [sic] evidence as DoD had Behnke's bank account information, presumably for direct deposits.</b></p>	<p><b>**Repayment by Behnke to APA of two DoD payments (\$7497 and \$5000) mistakenly made to him personally rather than APA is clear from documentation (5/21/12 email from Behnke to Clipper and 7/13/2012 email from Davis to Clipper) and photocopies of Behnke's two repayment checks to APA) Hoffman stops short of reviewing these and HR does not list as witnesses any APA staff who know about Behnke contracts. Contracts included in HR Binder 3 pp.1245-1321.</b></p> <p>HR included access and review of all APA staff emails, including any deleted emails still on the server-- Hoffman hired a forensic team to image the hard drives of all APA staff <a href="http://ldiscovery.com/">http://ldiscovery.com/</a> including any previously deleted email. (Raben email communication to staff 2/5/15).</p>	<p><a href="https://tinyurl.com/y6pn7ggo">https://tinyurl.com/y6pn7ggo</a> provides true and correct copy of paper trail. <a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke contracts contained within Binder 3 of the HR.</p> <p><a href="https://tinyurl.com/yylzbmue">https://tinyurl.com/yylzbmue</a> provides a true and correct copy of Raben email.</p>

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50	<p><b>6. Obstruction on amending Ethics Code Standard 1.02 ....For the next four years, Behnke engaged in a wide variety of actions to intentionally delay and obstruct efforts to amend 1.02, despite increasingly clear calls to do so. Standard 1.02 was clearly a provision that was of importance to national security psychologists. Behnke coordinated his efforts at times with Banks and Dunivin by, for instance, having them help create "opposition" to the calls to revise 1.02.</b></p>	<p><b>**HR timeline (HR pp.450-461) shows series of actions taken by Behnke and the Ethics Committee between 2005-2009; Council (with authority to act or not) took no action until 2009 when it tells the Ethics Committee to recommend a change to the Ethics Code which the Committee did by the next Council meeting.</b></p> <p><b>**Information on APA website detailing actions taken.</b></p> <p><a href="http://www.apa.org/ethics/code/council-august-2009.aspx">http://www.apa.org/ethics/code/council-august-2009.aspx</a></p> <p><a href="http://www.apa.org/ethics/code/language-12-15-2009.pdf">http://www.apa.org/ethics/code/language-12-15-2009.pdf</a></p> <p><a href="http://www.apa.org/ethics/code/standard-102-background.aspx">http://www.apa.org/ethics/code/standard-102-background.aspx</a></p> <p>Board given complete history of thorough and lengthy review Ethics Committee at the request of Council in 2005 leading to the revision. process undertaken in 2009 via the Council item: (<a href="https://www.apa.org/ethics/code/august09-council-item.pdf">https://www.apa.org/ethics/code/august09-council-item.pdf</a>) most notably the Ethics Committee Report to Council 2009 attached as Exhibit 2, PDF pp. 11-22)</p> <p>HR admits that Ethics Committee responded to Council's 8/2005 directive: "Council passed four additional motions: (1) an instruction to the Ethics Committee to explore adding human rights language in to APA Ethics Code Standard 1.02 (which the Ethics Committee completed by late September 2005...)." (HR p.334)</p>	<p>Published in the HR as admission by party-opponent.</p> <p><a href="http://www.apa.org/ethics/code/council-august-2009.aspx">http://www.apa.org/ethics/code/council-august-2009.aspx</a></p> <p><a href="http://www.apa.org/ethics/code/language-12-15-2009.pdf">http://www.apa.org/ethics/code/language-12-15-2009.pdf</a></p> <p><a href="http://www.apa.org/ethics/code/standard-102-background.aspx">http://www.apa.org/ethics/code/standard-102-background.aspx</a></p> <p><a href="https://www.apa.org/ethics/code/august09-council-item.pdf">https://www.apa.org/ethics/code/august09-council-item.pdf</a> (see especially pp. 53-64, PDF pp. 11-22) link to the official website of the APA and provides true and correct copies of records describing actions taken by the Association.</p> <p>Published in the HR as an admission of party-opponent.</p>
51	<p><b>7. Behind-the-scenes attempts to manipulate Council of Representatives actions in collusion with, and to remain aligned with DoD...one of the most significant ways in which Behnke and APA secretly collaborated with DoD officials was in Behnke's extensive efforts to manipulate Council of Representatives actions from 2006 to 2009, in an effort to undermine attempts to keep psychologists from being involved in national security interrogations and to minimize the damage to DoD psychologists who might have been threatened from more aggressive potential Council actions....Behnke became APA's chief legislative strategist, taking a very active and sophisticated role in manipulating the resolution process and the proponents of these measures in order to achieve this goal.</b></p>	<p>Customary business practice for staff to facilitate a back-and-forth legislative process for Association policy development.</p> <p><b>**See 7/18/2015 letter from Woolf, Past-President for Peace Psychology Division (APA Div. 48) to Behnke : "I am struck with how efforts to navigate complex policy waters become characterized [in HR] as 'collusion' or 'manipulations.' I have drafted university policies as well as written book chapters, articles, etc. with others. It is a back and forth collaborative process to get it right....The report doesn't really understand the back-and-forth nature of all of our work as we endeavored to draft the best possible resolution." (Not in Hoffman's possession at time of report; on file with Plaintiffs' attorney.)</b></p>	<p>Routine practice of the APA.</p> <p><a href="https://tinyurl.com/y2raxe3">https://tinyurl.com/y2raxe3</a> Letter from Woolf concerning her present sense impressions of the Report.)</p>
52	<p><b>In essence, Behnke's insight was that when faced with the potential for an aggressive Council action that he viewed as negative for DoD, the best strategy was not to oppose it directly but to create an alternative that could be seen as a middle ground with enough credibility to attract support from a substantial percentage of the people who would have otherwise supported the aggressive action. And through the mechanisms set out above, he was confident he could manipulate the "middle ground" alternative to make it positive or tolerable for DoD.</b></p>	<p><b>**Customary business practice for staff to support policy-making work of governance bodies that make the decisions consistent with APA rules governing Association policy making. <a href="http://www.apa.org/about/governance/bylaws/rules-30.aspx">http://www.apa.org/about/governance/bylaws/rules-30.aspx</a></b></p>	<p>Routine practice of the APA; Affidavit of Strassburger Fox with personal knowledge of APA governance and staff practices in policy development process. <a href="http://www.apa.org/about/governance/bylaws/rules-30.aspx">http://www.apa.org/about/governance/bylaws/rules-30.aspx</a> links to the official website of the APA and provides a true and correct listing of the rules governing APA policy making.</p>
53	<p><b>Behnke engaged in his usual highly confidential communications with Banks (as well as Dunivin and James, and sometimes Gelles) in order to jointly determine what strategy or position was best for DoD, to seek pre-clearance of specific language, and to work on drafts of key documents together.</b></p>	<p>Customary business practice for staff to facilitate a back-and-forth legislative process for Association policy development. APA staff do not make policy or initiate policy positions for the Association.</p> <p><b>**See 7/18/2015 letter from Woolf, Past-President for Peace Psychology Division (APA Div. 48) to Behnke: "The [Hoffman] report doesn't really understand the back-and-forth nature of all of our work as we endeavored to draft the best possible resolution." (Not in Hoffman's possession at time of report; on file with Plaintiffs' attorney.)</b></p> <p>Banks does not speak for DoD. 6/1/2015 email from Banks to Hoffman: "At no time were any of my comments, as someone who understands DoD and Operational Psychology fairly well, more than my personal opinions."</p> <p>As mid-level DoD employees, Banks, Dunivin or James were not acting on behalf of the DoD to determine its positions or policies.</p>	<p>Routine practice of the APA; Affidavit of Strassburger Fox with personal knowledge of staff and governance member roles in policy development.</p> <p><a href="https://tinyurl.com/y2raxe3">https://tinyurl.com/y2raxe3</a> Letter from Woolf concerning her present sense impressions of the Report.</p> <p><a href="https://tinyurl.com/y4xartno">https://tinyurl.com/y4xartno</a> provides a true and correct copy of the Banks email to Hoffman.</p> <p>Routine practice of the DoD. Affidavits of Harvey and Taylor with personal knowledge as to military protocol, and Affidavits of Banks, Dunivin and James.</p>

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54	<b>We know that some of the most significant critics of APA—who have had access to the emails of the RAND employee and CIA contractor (Scott Gerwehr, now deceased), which revealed frequent emails with Hubbard, Mumford, and Brandon—have posited that there must have been significant CIA influence regarding the outcome of the PENS Task Force in light of the substantial APA-CIA interactions shown in these emails and the highly suspect content of the PENS report. Without the same access we had to APA emails and documents showing extensive APA–DoD collaboration in and after the time of the PENS Task Force, this is an understandable inference, once one reaches the conclusion that the PENS Task Force could only be explained by some sort of governmental influence. (p.48)</b>	<b>**HR found that the evidence did not support “substantial CIA interactions with APA in relation to the PENS Task Force” but does not draw from that finding any conclusions about the reliability or veracity of the critics’ conclusion to the contrary. Instead, HR softly characterizes those false allegations as “understandable” (HR p.48).</b>	Published in the HR as admission by party-opponent.
55	<b>APA critics have alleged that the revisions to Standard 1.02 were the product of collusion with the government and had the effect of providing psychologists with a defense to torture. Specifically, they allege that the revised language in Standard 1.02 was developed with the government to permit psychologists’ participation in interrogations and that it created a loophole that allowed psychologists to ignore their ethical obligations when these obligations conflicted with law, regulations, or other governing legal authority... Given what we now know about the role some psychologists played in designing the enhanced interrogation program, the government’s narrow definition of “torture” during the early years of the war on terror, and the way in which the military used psychologists as members of the behavioral science consultation teams at Guantanamo, the critics’ argument is understandable. (pp.55-56)</b>	<b>**4/21/2015 email from Behnke to Hoffman shows that the chronology of the revision alone renders the conclusion not credible: “Two United States Senate reports have examined Bush administration interrogation practices in detail, the Senate Armed Services Committee <i>Inquiry into the Treatment of Detainees in U.S. Custody</i>, 2008 (hereinafter the “2008 Senate Armed Services Report”) and the 2014 Senate Select Committee on Intelligence, <i>Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program</i>, (hereinafter “2014 Senate Select Committee Report”). Both reports make clear that the foundation for the enhanced interrogation/torture program was well in place prior to Council’s August 2002 vote to adopt the ECTF’s recommended revisions, and well prior to the effective date of the revised Ethics Code in June 2003.”</b>	<a href="https://tinyurl.com/yyv8hro9">https://tinyurl.com/yyv8hro9</a> provides true and correct copy of Behnke email to Hoffman.  <a href="https://www.apa.org/ethics/code/evolution-revision.pdf">https://www.apa.org/ethics/code/evolution-revision.pdf</a> links to the official website of the APA and provides a true and correct copy of the timeline of the Ethics Code revision.
56	<b>Although the way in which the Ethics Office handled the James matter was technically permissible under the Rules, it demonstrates just how little effort the Ethics Office expends in its “investigation” of ethics complaints, the way in which the Ethics Offices stretches to construe the Rules in a way that is favorable to the accused, and how much the Ethics Office falls back on the rationale that standards in the Ethics Code were too vague to put psychologists on proper notice that certain interrogation techniques were unethical—a rationale that was never shared with APA membership, or the general public.</b>	<b>**James interview with Hoffman: stated he had been reviewed 9 times by ethics committees, licensing boards or courts with no wrong-doing ever found; Hoffman omitted this from report.</b>  Ethics Office governed by the Ethics Committee Rules and Procedures and by priorities set by BOD and Ethics Office works consistently within those parameters. HR itself admits (p.58): “When adjudicating complaints, the Ethics Committee and the Ethics Office are guided by these Rules as well as the longstanding practices of the Ethics Office, some of which are not specifically outlined in the Rules. Based on the Ethics Office’s practice, the adjudication process is typically a highly limited, ‘paper-only’ review, which means that the ‘investigation’ consists merely of examining documents that are sent to the Ethics Office by the parties to an ethics complaint. Investigators take no affirmative steps to seek documents from other witnesses, and conduct no interviews, even though the Rules explicitly permit them to do both, and suggest to outside observers that the Ethics Office will take such normal investigative actions.”	Affidavit of James with personal knowledge of ethics reviews.  Routine practice of the APA; published in the HR as admission by party opponent.
57	<b>The Ethics Office did not take any affirmative steps to request information from witnesses who might have had relevant information (including individuals with whom APA had close ties, such as Banks, Dunivin, or James) or to seek documents through, for instance, a FOIA request.</b>	Customary business practice of ethics office was not to collect information from witnesses.  HR p.472 acknowledges: “ <u>Paper Only Review</u> The investigations conducted during the adjudications process consist of paper-only reviews of documents provided to the Ethics Office by the complainant and/or the respondent. The investigators do not proactively seek information from third-parties or any source other than the complainant or respondent, nor do they conduct interviews.”  <b>Materials Informing Other APA Officials</b>  <b>**See also Bow presentation notes to APA Board listing all the steps taken in review of Leso case, including monitoring relevant FOIA requests (on file with Plaintiffs’ attorney). Sidley attorneys reviewed actual case file with all materials contained.</b>  <b>**Board communication 2/20/2014 states seven-year process of reviewing Leso ethics complaint “exceeded the standard activity in a typical case”: <a href="http://www.apa.org/news/press/statements/leso-ethics-complaint.pdf">http://www.apa.org/news/press/statements/leso-ethics-complaint.pdf</a>.</b>	Routine practice of the APA.  Published in the HR as an admission by party-opponent.  Published in the HR as an admission by party-opponent.  Affidavit of Bow with personal knowledge of materials gathered.  <a href="http://www.apa.org/news/press/statements/leso-ethics-complaint.pdf">http://www.apa.org/news/press/statements/leso-ethics-complaint.pdf</a> : Links to official website of the APA provide true and correct copies of business records of regularly conducted activity of the APA.

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58	<p>Premise to false statement below: The Special Committee rejected a narrow view of our scope and told us to understand our charge broadly, so that the scope of our review included a review of the issues specifically identified in the Board's statement, the relevant issues in Risen's book, and critics' allegations regarding the changes to APA policies and the driving forces behind those changes. ...</p> <p><b>With regard to the PENS Task Force and subsequent policy statements and decisions by APA, there clearly was collusion between key APA officials who were acting on behalf of APA and key DoD officials.</b></p>	<p><b>**No Collusion.</b></p>	<p><b>Evidence of No Collusion.</b></p>
59	<p><b>We think the evidence clearly shows that the key APA officials acting on behalf of APA intentionally implemented a policy that would allow DoD officials to continue to engage in their existing practices based on the guidelines and procedures they had in place. At a minimum, this was the purpose of the collusion.</b></p>	<p><b>**No Collusion.</b></p> <p><b>PENS Statement Four Incorporation of Restrictive Policies &amp; Regulations.</b></p> <p><b>Materials Informing PENS TF.</b></p>	<p><b>Evidence of No Collusion.</b></p> <p><b>True and Correct PENS Report.</b></p> <p>Published in the HR as an admission by party-opponent.</p>
60	<p>Premise to the false statement below: As summarized above and detailed further in this report, there were clear and strong indications in front of APA officials that abusive interrogation techniques (such as stress positions, sleep deprivation, threats, and playing on phobias) had occurred. There had even been substantial public reporting and congressional inquiry on about [sic] the apparent (at the time) waterboarding of two "high-value" detainees.</p> <p>In short, by June 2005, it would have been clear to all well-informed observers that abusive interrogation techniques had almost certainly occurred and that there was a substantial risk they were still occurring.</p>	<p><b>**Policies Distributed at PENS TF.</b></p> <p><b>**Other Restrictive DoD Policies.</b></p> <p><b>Senior Level Reports.</b></p> <p>Recognized by Arrigo during PENS TF meeting (HR Binder 5, p.753): that psychologists "follow the most recent applicable regulations and rules" several of which had been distributed by Banks at the PENS meeting.</p> <p>Arrigo's archived audiotaped interview transcript 6/26/2005 describes materials distributed by Banks at PENS meeting he had written for his subordinates requiring adherence to ethics code; Arrigo states: "they were very, very firm about psychologists don't torture people...so that's what they want to be standard operating procedure." (Arrigo archives Binder 1 pp.8-9)</p> <p>PENS Listserv email messages 4/22/2005 – 6/26/2006 discussing lack of reported abuses when psychologists present (HR Binder 5, pp.453-671)</p> <p>3/1/2015 email from Banks to Hoffman: "The most relevant document that I used when this support was first instituted, was the <b>Army Regulation 190-8</b>, (copied verbatim in the regulatory guidance of all uniformed services) which translates the Geneva Conventions Relative to the Treatment of POWs and Civilian Internees into specific guidance. Although there has certainly been a tremendous amount of legal discussion on the status of currently held detainees, I have always assumed and taught that Common Article Three applies, and that the Uniformed Code of Military Justice (which contains punishments for assault and for battery) also applied during the period in question. It was always a foundation for all of my discussions on this topic, and for all the discussions to which I was a party, including those of the PENS TF. Here is a link to the AR 190-8." <a href="http://www.apd.army.mil/pdf/files/r190_8.pdf">http://www.apd.army.mil/pdf/files/r190_8.pdf</a></p> <p>HR p.249 FN 1094 quotes from Banks interview with Hoffman: "...by the time the PENS process had started, Banks believed that everyone at DoD agreed that <b>[Army Regulation] 190-8</b> applied. He had directed his teams to follow 190-8 from the beginning of his involvement with the War on Terror after September 11."</p>	<p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><a href="https://tinyurl.com/y6m3ay65">https://tinyurl.com/y6m3ay65</a> provides a true and correct copy of Banks email to Hoffman.</p> <p>Published in the HR as an admission by party-opponent.</p>

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61	<p>Thus, there were clear signs from the PENS Task Force meeting that DoD officials believed that some of the “enhanced” interrogation techniques specifically described in the media were not prohibited by the ethical guidelines in PENS. This in turn would have suggested at the time that DoD may well have considered these techniques proper in some circumstances and may well have been utilizing them. When combined with the private statements to Behnke and others APA [sic] by CIA and DoD officials, and the widespread and powerful public reporting about the apparent interrogation abuse, including numerous and corroborating quotes from government officials and the Red Cross, there were very strong reasons to be concerned that abusive interrogation techniques had occurred in the past and that there was a substantial risk that they were continuing.</p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>**Policies Distributed at PENS TF.</b></p> <p><b>Other Restrictive DoD Policies.</b></p> <p><b>Senior Level Reports.</b></p> <p><b>Materials Informing PENS TF.</b></p> <p><b>Walsh Report 2/2009</b> referenced in HR p.448 FN 2133 found conditions of confinement at GTMO in compliance with Common Article Three of the Geneva Conventions and “Strongly recommended: Sustain[ing] BSC resource to ensure continued mission support to JDG Commander and, to a lesser extent, the JIG Director.” and “Recommended Dedicat[ing] two Behavioral Science Consultants solely to provide psychological consultation to the CJDG, JIG and CJTF in order to support safe, legal ethical and effective detention and interrogation operations at JTF-Guantánamo.” <a href="https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf">https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf</a></p> <p>CIA and DoD had distinctly different policies and practices at the time. HR p.144 (Mitchell interview with Hoffman): “[T]he CIA was not as concerned with training and ethics because it did not face the same set of circumstances as DoD, which oversaw many young psychologists early in their careers... DoD was genuinely interested in adhering to the Ethics Code and was seeking clarity about its guidelines, whereas the CIA would not have changed its operational decisions based on the ethical statements of a professional association.”</p>	<p><b>True and correct PENS Report.</b></p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Published in the HR as admissions by party-opponent.</p> <p><a href="https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf">https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf</a> links to a true and correct copy of an official DoD public record/report.</p> <p>Published in the HR as admissions by party-opponent.</p>
62	<p>They therefore intentionally did [sic] make any effort to seek out more information that might corroborate or contradict the DoD assurances, strategically emphasizing that they were unlikely to get definitive details regarding potential interrogation abuses because the information would be classified.</p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p>	<p><b>True and Accurate PENS Report.</b></p>
63	<p><b>“Deliberate avoidance”</b>...The approach that Behnke and Koocher (principally) recommended and that APA took was to deliberately avoid probing or inquiring into the widespread indications that had surfaced about harsh interrogation techniques being conducted by the CIA and DoD, even though they knew that psychologists were involved in CIA and DoD interrogations.</p>	<p><b>**Materials Informing PENS TF.</b></p> <p><b>**Materials Informing Other APA Officials.</b></p> <p>PENS Listserv email messages 4/22/2005 – 6/26/2006 discussing lack of reported abuses when psychologists present (HR Binder 5, pp.453-671)</p> <p>HR p.241 itself acknowledges: “. . .the selection group specifically selected Michael Gelles because he was an outspoken opponent to the Bush administration procedures.”[along with FN 1046 which states: Gelles had been a whistle-blower on abuses occurring in Guantanamo Bay related to the Mohammed Al-Qahtani interrogation.] Koocher interview (Mar. 20, 2015).</p>	<p>Published in the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p>Published in the HR as an admission by party-opponent.</p>
64	<p>...if one compared the reports of harsh interrogation techniques to internationally-accepted definitions of torture, such as in the UN Convention Against Torture, rather than the bizarrely narrow definitions set out by the Justice Department in its memos, one would have been suspicious that some of the harsh interrogation techniques allegedly being conducted by the CIA and DoD constituted torture.</p>	<p><b>**HR itself indicates that these Justice Department OLC memos had been withdrawn a year prior to PENS TF meeting - HR p. 153: “Shortly after [the Washington Post publication on June 13 2004], Assistant Attorney General for the Office of Legal Counsel Jack Goldsmith, withdrew the 2002 and 2003 memoranda at issue.” (2003 memo actually withdrawn December 2003 according to <i>The Terror Presidency</i>.)</b></p> <p><b>**In practice, interrogation techniques were restricted to an approved list of non-abusive techniques contained in a computerized list which interrogators were required to select from when developing interrogation plans.</b></p>	<p>Published in the HR as an admission by party-opponent.</p> <p>Affidavit of Bryson describing the practice of using a computerized list that she had discussed in her interview with Hoffman.</p>
65	<p>And given their contacts in the CIA and DoD, they may well have been able to learn some significant information that would have helped them assess the likelihood that the problem had occurred or was still occurring, and the risk that it would occur in the future.</p>	<p>No contacts with CIA identified in the HR.</p> <p><b>**Materials Informing PENS TF.</b></p>	<p>Published in the HR as an admission by party-opponent.</p>

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66	<p>A more accurate description is that the collusion was done to support the implementation by DoD of the interrogation techniques DoD wanted to implement, without substantial constraints from APA; with knowledge that there likely had been abusive interrogation techniques used and that there remained a substantial risk that without strict constraints, such abusive interrogation techniques would continue; and with substantial indifference to the actual facts regarding the potential for ongoing abusive interrogation techniques. The collusion relating to PENS and the post-PENS period—and the actions in protecting national security psychologists from disciplinary sanction [sic]—reflects a clear intent to take actions in order to please and curry favor with DoD.</p>	<p><b>**No Collusion.</b></p> <p><b>PENS Statement Four and Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>Policies Distributed at PENS TF.</b></p> <p><b>Other Restrictive DoD Policies.</b></p> <p><b>Senior Level Reports.</b></p>	<p><b>Evidence of No Collusion.</b></p> <p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports. Official DoD public records/reports. Official DoD public records/reports.</p>
67	<p>Further, the APA officials who led the PENS Task Force process pursued an ethics policy that intentionally sought to please DoD and not place specific ethical constraints on it beyond the general formulations DoD was comfortable with. The position was intentionally pursued to allow DoD to have discretion, subject to its own internal constraints, to determine what interrogation techniques to pursue under the individual circumstances.</p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p>	<p><b>True and Correct PENS Report.</b></p>
68	<p>These APA officials took this position while intentionally avoiding an effort to gather information about whether “enhanced” interrogation techniques were still occurring—although they would have had every reason to believe that stress positions and sleep deprivation (among others) were still being used at the time of PENS because of the reluctance of Banks and other DoD officials to declare them prohibited. We would not call this “supporting the implementation of enhanced interrogation techniques,” but we would say this was supporting the implementation by DoD of the interrogation techniques it wanted to implement, without substantial constraints from APA, and with knowledge that there likely had been abusive interrogation techniques used, and there remained a substantial risk that without strict constraints, such abusive interrogation techniques would continue.</p>	<p><b>**PENS Statement Four and Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>**Policies Distributed at PENS TF.</b></p> <p><b>Other Restrictive DoD Policies.</b></p> <p><b>Senior Level Reports.</b></p>	<p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports. Official DoD public records/reports Official DoD public records/reports</p>
69	<p>As described above, the substantial financial benefits in the form of employment, grants and contracts that DoD provided to psychologists around the country had a strong influence on APA's actions relating to the PENS Task Force (and therefore “relating to torture”), since preserving and improving APA's relationship with DoD (including the benefits to psychology that flowed from it) formed an important part of the motive behind APA's actions.</p>	<p><b>**No benefits found in HR financial review. HR p.523: “This analysis did not reveal any significant or unusual payments to APA from DoD...”</b></p> <p>No substantial increase in number of psychologists utilized in this role – 1,950 psychologists employed by DoD; number of operational psychologists has not significantly changed – 50 over the last decade. (Division 19 TF Report 11/9/2015 pp.34-35; not in Hoffman's possession at time of Hoffman report).</p>	<p>Absence of any identified financial benefits in the HR, a report intended to find benefits, shows nonoccurrence.</p> <p><a href="https://www.militarypsych.org/uploads/8/5/4/5/85456500/tf19_response_to_the_hoffman_report_div19_excom_approved.pdf">https://www.militarypsych.org/uploads/8/5/4/5/85456500/tf19_response_to_the_hoffman_report_div19_excom_approved.pdf</a> links to a true and correct copy of a Division 19 published market report relied upon by military psychologists.</p>
70	<p>By explicitly declaring it ethical for psychologists to be involved in interrogations of detainees in DoD or CIA custody, while not setting strict and explicit limits on a psychologist's involvement in the intentional infliction of psychological or physical pain in these situations, APA officials were intentionally setting up loose and porous constraints, not tight ones, on this particular use of a psychologist's skill.</p>	<p><b>**Not the charge of the PENS Task Force to determine who was and who was not behaving ethically and did not explicitly declare it ethical for psychologists to be involved in the interrogation of detainees; that was the role of the Ethics Committee. In accordance with its charge, the PENS Task Force determined that the APA ethics code could be applied to the work of psychologists doing interrogation support to evaluate whether an individual psychologist doing this work was doing so consistent with the ethics code (PENS Report, p.1, HR Binder 5 p.727)</b></p> <p><b>**Not “loose and porous constraints”: PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>Policies Distributed at PENS TF.</b></p> <p><b>Other Restrictive DoD Policies.</b></p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of Task Force charge contained within Binder 5 of the HR.</p> <p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports. Official DoD public records/reports.</p>

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71	<b>We have heard from psychologists who treat patients for a living that they feel physically sick when they think about the involvement of psychologists intentionally using harsh interrogation techniques. This is the perspective of psychologists who use their training and skill to peer into the damaged and fragile psyches of their patients, to understand and empathize with the intensity of psychological pain in an effort to heal it. The prospect of a member of their profession using that same training and skill to intentionally cause psychological or physical harm to a detainee sickens them. We find that perspective understandable.</b>	Interrogations consistent with Constitution; HR p.138: "In June 2003, the Department of Defense issued a statement ... asserting that all interrogations, 'wherever they may occur,' are consistent with the U.S. Constitution."  **HR p.144 (Mitchell interview with Hoffman): "[T]he CIA was not as concerned with training and ethics because it did not face the same set of circumstances as DoD, which oversaw many young psychologists early in their careers... DoD was genuinely interested in adhering to the Ethics Code and was seeking clarity about its guidelines, whereas the CIA would not have changed its operational decisions based on the ethical statements of a professional association."	Published in the HR as an admission by party-opponent.  Published in the HR as an admission by party-opponent.
72	<b>APA officials made such a decision in 2005. Their decision was to keep the limits on this behavior loose and high-level.</b>	<b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b>  <b>Policies Distributed at PENS TF.</b>  <b>Other Restrictive DoD Policies.</b>	<b>True and Correct PENS Report.</b>  Official DoD public records/reports.  Official DoD public records/reports.
73	<b>... our investigation determined that keeping the limits loose and high-level was intentional, and was done in order to align APA and curry favor with the Defense Department, to create a good PR response, and to keep the growth of psychology unrestrained in this area.</b>	<b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b>  No growth of psychology in this area - 1,950 psychologists employed by DoD; number of operational psychologists has not significantly changed - 50 over the last decade. (Division 19 TF 11/9/2015 Report pp.34-35; not in Hoffman's possession at time of Hoffman report.)	<b>True and Correct PENS Report.</b>  <a href="https://www.militarypsych.org/uploads/8/5/4/5/85456500/TF19_response_to_the_hoffman_report_div19_excom_approved.pdf">https://www.militarypsych.org/uploads/8/5/4/5/85456500/TF19_response_to_the_hoffman_report_div19_excom_approved.pdf</a> provides a true and correct copy of a Division 19 published market report relied upon by military psychologists.
74	<b>Despite these countervailing opinions, it is a striking oversight not to grapple with concerns about the Nuremberg defense when drafting a sentence ostensibly to resolve confusion and uncertainty about choosing between legal or organizational mandates and ethics. This is especially the case when one or both of these standards specifically dealt with and sought to incorporate military and law enforcement commands, the very kinds of mandates used as a defense in the Nuremberg Trials. While those involved with the revision claimed that the 1998 legal analysis applied to 8.03, at that point, 8.03 covered correctional and military psychologists.</b>	<b>**Compendium of ethics codes of national psychological associations that showed APA was more supportive of civil disobedience, by not requiring a psychologist to follow the law when an unresolvable conflict between ethics and law arises, than many other psychological associations in conflicts between ethics and law. <a href="http://psychology-resources.org/?s=Ethics+Codes">http://psychology-resources.org/?s=Ethics+Codes</a></b>  <b>**Article entitled <i>Ethics and Law from an International Perspective: The Relationship between National Psychological Associations Ethics Codes and Civil Law</i> shows that the way APA dealt with conflicts between ethics and law was entirely consistent with how other national associations dealt with this. <a href="http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199739165.001.0001/oxfordhb-9780199739165-e-20">http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199739165.001.0001/oxfordhb-9780199739165-e-20</a></b>  Included in materials above provided to Hoffman by Behnke on 4/21/2015.	<a href="http://psychology-resources.org/?s=Ethics+Codes">http://psychology-resources.org/?s=Ethics+Codes</a> links to the website "Psychology Resources Around the World" and provides a true and correct copy of psychology ethics codes from around the world. Affidavit of Behnke with personal knowledge of material provided to Hoffman.  <a href="http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199739165.001.0001/oxfordhb-9780199739165-e-20">http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199739165.001.0001/oxfordhb-9780199739165-e-20</a> links to the official website of the <i>Oxford Handbooks Online</i> and provides a true and correct copy of the article. The court may take judicial notice of the article capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.  Affadavit of Behnke with personal knowledge of material provided to Hoffman.
75	Premise to false statement below: However, it seems likely that Banks's condemnation of the techniques listed in the BSCT memo is less sweeping than it first appears. Banks explained that, in the SERE community, "physical pressure" is a term used in contrast to "psychological pressure." He added that, by using the term physical pressures, he was not approving of the use of psychological pressures. <sup>463</sup> However, his explanation seems odd, given that he identified the vast majority of the techniques identified in the BSCT memorandum as psychological pressures. <sup>464</sup> Banks went on to explain that it is more difficult to define when psychological pressures are impermissible because a psychologist would need to assess whether such a technique would be safe, legal, ethical, and effective. For example, Banks thought that the use of stress positions might or might not be permissible depending on whether it was safe under the circumstances. <sup>465</sup>  <b>Therefore, Banks's email, when read in context, recommends against the use of only those few techniques that qualify as "physical pressures," and could have been read as an implicit endorsement of the majority of the techniques listed in the BSCT memo.</b>	HR states physical and psychological pressures are part of SERE techniques (HR p.125) and that Banks has "strongly condemned" (HR p.363) the use of reverse-engineered SERE techniques as "unethical and ineffective." (HR p.362).  **2008 Senate Armed Services Committee Report, Banks stated: (p.53) "My strong recommendation is that you do not use physical pressures... [If GTMO does decide to use them] you are taking a substantial risk, with very limited potential benefit." (HR cites the SASC Report extensively (i.e., 28 times), first at HR p.124 FN 387.)	Published in the HR as an admission by party-opponent.  <a href="https://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf">https://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf</a> provides a true and correct representation of the SASC Report, an official DoD public record/report.

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76	On June 13 [2004], the Washington Post published copies of the memoranda. <b>Shortly after, Assistant Attorney General for the Office of Legal Counsel Jack Goldsmith, withdrew the 2002 and 2003 memoranda at issue.</b>	<b>**2003 memo actually withdrawn Dec. 2003 according to Goldsmith's, <i>The Terror Presidency</i>, Chapt. 5.</b>	Goldsmith, <i>The Terror Presidency</i> (cited in HR, p.153, fn 579). The court may take judicial notice of the chapter capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.  <a href="https://tinyurl.com/y58nhmhp">https://tinyurl.com/y58nhmhp</a> links to a true and correct copy of Goldstein's <i>The Terror Presidency</i> , Chapter 5.
77	<b>Even at this early stage in APA's consideration of ethical issues in the national security context, the APA's internal discussions suggest that a primary issue of importance to APA was messaging and publicity. Though it is likely that APA staff were motivated by the goal of providing substantive guidance to military psychologists as well, their initial internal communications turned on the opportunity to take the lead on an issue that was drawing public attention. Throughout the APA's consideration over the next several years of the ethical issues raised by psychologists working in national security, considerations of messaging and public image would continue to dominate the conversation.</b>	HR p.200 states: Behnke's #1 goal is to "identify the ethical issues that arise in the use of psychology or psychological techniques in national security-related investigations."  <b>**PENS Report Based on Ethics Analysis</b>	Published in the HR as an admission by party-opponent.  <b>Official APA Website, Present Sense Impression and Admission by Party-Opponent.</b>
78	<u>Premise to false statement below:</u> The APA's response to Kimmel's task force demonstrates that, by 2004, the APA was guided by political considerations to obstruct member initiatives that were critical of Bush administration policies in the war on terror. There might have been legitimate concerns about the scientific basis of the report, as Farberman described, or those concerns might have been pretextual; regardless of the validity of the scientific concerns, however, it is clear from internal communications that APA's motivation in discouraging the acceptance of this report was at least in part based on an effort to appease the Administration.  <b>In short, APA staff used internal governance processes to hold back membership initiatives that expressed criticism of the government's counterterrorism initiatives out of fear of angering the Bush Administration.</b>	<b>**APA BoD June 2005 meeting minute indicating rationale for rejecting Kimmel task force report to be "lack of citations" and "failure to address the specific comments provided by APA boards and committees," not politics as HR (p. 191) mischaracterizes: "APA's response to Kimmel's task force demonstrates that, by 2004, the APA was guided by political considerations to obstruct member initiatives that were critical of Bush administration policies in the war on terror." (Board of Directors June 10-12-2005 Approved Minutes HR Binder 3 PDF p.904)</b>  <b>**APA staff communications describe their actions in handling the report, sending the report to be "reviewed by the full governance structure ... [so that] we'll have a strong revised version that will serve APA well – i.e., will add psychology's expertise on an important issue without leading to accusations that we are playing politics or speaking beyond the science." (APA_0189330 HR Binder 2 pp.1431-1433)</b>  Washington Post 8/20/2007 article, <i>APA Rules on Interrogation Abuse</i> : APA's 2007 resolution is "(a) rebuke of Bush Administration's anti-terrorism policies." <a href="http://www.washingtonpost.com/wp-dyn/content/article/2007/08/19/AR2007081901513.html">http://www.washingtonpost.com/wp-dyn/content/article/2007/08/19/AR2007081901513.html</a> . Included in materials provided to Hoffman by Behnke on 4/21/2015.  HR p.241 itself acknowledges: "... the selection group specifically selected Michael Gelles because he was an outspoken opponent to the Bush administration procedures." [along with FN 1046 which states: Gelles had been a whistle-blower on abuses occurring in Guantanamo Bay related to the Mohammed Al-Qahtani interrogation.] Koocher interview (Mar. 20, 2015).	<a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of the Board Approved Minutes contained within Binder 3 of the HR.  <a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of the staff communications contained within Binder 2 of the HR.  <a href="http://www.washingtonpost.com/wp-dyn/content/article/2007/08/19/AR2007081901513.html">http://www.washingtonpost.com/wp-dyn/content/article/2007/08/19/AR2007081901513.html</a> links to the official website of the <i>Washington Post</i> and provides a true and correct copy of the article. The court may take judicial notice of the article capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.  Affidavit of Behnke with personal knowledge of material provided to Hoffman.  Published in the HR as an admission by party-opponent.

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79	<p>Although these press reports and member inquiries do not prove that APA staff knew that psychologists were facilitating interrogations using abusive techniques, the internal APA communications as of May 2004 are sufficient to demonstrate that senior APA staff should have been on notice that psychologists were working in environments where such abuses were rampant. At that time, senior staff in the Ethics Office and Science Directorate were aware from Hubbard's earlier inquiries that psychologists were being asked to participate in activities at Guantanamo in ways that raised potential ethical issues. In May, APA staff also learned that Larry James was being deployed to Iraq "to be Chief Psychologist at that prison," presumably Abu Ghraib.<sup>817</sup> Therefore, it seems likely that APA staff were aware that psychologists were working in settings where detainees were being subjected to abuse, and that they were being faced with the ethical dilemmas presented by those abuses.</p>	<p><b>**Policies Distributed at PENS TF.</b></p> <p><b>**Other Restrictive DoD Policies.</b></p> <p><b>Senior Level Reports.</b></p>	<p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p>
80	<p>This exchange demonstrates that APA staff was aware that the definitions used in the OLC memos rendered bare statements regarding prohibitions on torture toothless. The June 7 <i>Wall Street Journal</i> article about the report of the working group from March 2004 and the June 8 <i>Washington Post</i> article about the OLC memoranda indicated that the rules and standards regarding torture were no longer clear-cut, and that it was not feasible to rely on the legal framework to prevent activities that could amount to torture. Even had APA staff failed to understand that point, Murphy made the connection and raised the explicit concern to Behnke and other APA staff that relying on legal guidelines to prevent torture would be inadequate. Thus, it is not credible that APA would think a prohibition on "torture" was sufficient guidance during the work of the PENS Task Force the following year.</p>	<p><b>Policies Distributed at PENS TF.</b></p> <p><b>Other Restrictive DoD Policies.</b></p> <p><b>Senior Level Reports.</b></p> <p><b>**HR</b> itself notes elsewhere that these Justice Department OLC memos had been withdrawn a year prior to PENS TF meeting - HR p. 153: "Shortly after [the Washington Post publication on June 13 2004], Assistant Attorney General for the Office of Legal Counsel Jack Goldsmith, withdrew the 2002 and 2003 memoranda at issue." (2003 memo actually withdrawn December 2003 according to <i>The Terror Presidency</i>.)</p> <p><b>**HR</b> (pp.152,153) quotes from Chapter 5 of Goldsmith's <i>The Terror Presidency</i> (Behnke referred Hoffman to this resource in 4/21/2015 communication) but intentionally omits portions that describe Philbin memo that sets forth the only 24 techniques approved for use (none of which were "harsh techniques") on July 14, 2004 (one year before PENS) and the February 2005 Levin memo that incorporated Philbin testimony and the legal guidance it provided about permissible techniques. (None of 24 techniques were the "harsh techniques" HR claims were permissible at time of PENS – sleep deprivation, stress positions, exploitation of phobias.)</p>	<p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p> <p>Published in the HR as an admission by party-opponent.</p> <p>Goldsmith, <i>The Terror Presidency</i> (cited in HR, p.153, fn 579). The court may take judicial notice of the chapter's description of the Philbin memo capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned <a href="https://tinyurl.com/y58nhmhp">https://tinyurl.com/y58nhmhp</a> links to a true and correct copy of Goldstein's <i>The Terror Presidency</i>, Chapter 5.</p>
81	<p>However, even if APA was unaware of research programs run by the CIA and DoD or ethical concerns regarding such research raised internally within the CIA, these communications show that as of summer 2004, Behnke had been placed on notice that research on deception in the national security context raised complicated ethical issues. Despite these issues raised by researchers participating in APA-sponsored [sic] conferences, during the PENS meeting more than a year later, a group designated to consider ethical issues in precisely this context recommended pursuing research related to interrogations without addressing the obvious concerns.</p>	<p><b>**PENS Recommendation #7</b> in the PENS Report (p.10, HR Binder 5 p.736) explicitly addresses these concerns by incorporating standards of human subject research protection in addition to the APA Ethics Code.</p> <p><b>**Research</b> was not a focus of the PENS TF and TF was not focused on CIA. (See Board of Directors' February 2005 charge, that the Task Force: "[E]xamine whether our current Ethics Code adequately addresses [the ethical dimensions of psychologists' involvement in national security-related activities], whether the APA provides adequate ethical guidance to psychologists involved in these endeavors, and whether APA should develop policy to address the role of psychologists and psychology in investigations related to national security." (PENS Report p.1, HR Binder 5 p.727).</p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS Report with Recommendation #7 within Binder 5 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS Report with Board charge contained within Binder 5 of the HR.</p>
82	<p>Behnke also articulated this strategy of avoiding the difficult questions by playing up the lack of perfect knowledge regarding both facts and "context" in a similar exchange with Farberman in the same group email...</p>	<p><b>**HR</b> references the <i>APA Ethics Code Commentary and Case Illustrations</i> (HR p.86 FN139) and states, " Each of these guidebooks is helpful not only for its general insight into ethics and the APA Ethics Code, but also as a reference for how its authors, many of whom had a role in the 2002 Ethics Code revision, view ethics, the APA Ethics Code, and ethical guidance that should stem from it." but intentionally omits the <i>Commentary's</i> purposeful use of multiple case examples to show that contextual factors are essential in good ethical decision-making.</p>	<p>Published in the HR as an admission by party-opponent.</p>

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83	<p><b>Behnke's comment that "much thinking and development needs to take place" on the issues before ethical declarations could obviously be considered a fair substantive point. But APA ended up pursuing its course of action not based on additional "thinking and development" on ethics issues, but on strategic and PR considerations. If Behnke and APA had declined to issue ethical guidance or take an ethical position on the issue for (say) 12 months while they carefully studied issues of torture, interrogation practices, the role of health care practitioners in interrogations, and ethical issues relating to war and capture, and publicly explained that they were not issuing guidance because this study was taking place, that would be one thing. But APA did the opposite.</b></p>	<p><b>**Independent commentary Behnke provided to Hoffman (4/21/2015) describes the work of the PENS TF as addressing those very difficult questions: <i>Nature</i> editorial: "Responsible interrogations: Psychologists have a moral duty to help prevent torture". <a href="http://www.nature.com/nature/journal/v459/n7245/full/459300a.html">http://www.nature.com/nature/journal/v459/n7245/full/459300a.html</a></b></p>	<p><a href="http://www.nature.com/nature/journal/v459/n7245/full/459300a.html">http://www.nature.com/nature/journal/v459/n7245/full/459300a.html</a> links to the official website of the international journal, <i>Nature</i>, and provides a true and correct copy of the editorial.</p> <p>Affidavit of Behnke with personal knowledge of providing editorial to Hoffman.</p>
84	<p><b>As set out below, in order both to address perceived PR concerns (that APA's silence on these issues was costly from a perception standpoint because it showed an absence of leadership and relevance), and to please the Defense Department (which wanted both timely action from APA that would reflect positively on DoD, and ethical guidelines that gave DoD substantial flexibility and were as close as possible to existing or draft DoD policies on the topic), APA issued a task force report that evaded the difficult questions that APA knew inevitably needed to be answered if psychologists were to be authorized to engage in interrogation activities. Simultaneous with its PENS report, APA claimed that (1) the report was not evasive but was in fact a clear, strong, pro-human rights statement against torture; (2) the report was evidence of APA acting as a "leader" on this issue; (3) the report provided "clear guidance" on this issue; and (4) it was unfair to label the report as evasive because (a) the issue was complicated (so they needed more time), (b) they needed more facts (even though the contemporaneous emails show they expected to never obtain meaningful facts because of the activity's classified nature), and the report should be seen as merely an "initial step" with the promise of a more detailed "casebook" (which never occurred).</b></p>	<p><b>**Independent commentary Behnke provided to Hoffman (4/21/2015) describes the work of the PENS TF as addressing those very difficult questions: <i>Nature</i> editorial: "Responsible interrogations: Psychologists have a moral duty to help prevent torture". <a href="http://www.nature.com/nature/journal/v459/n7245/full/459300a.html">http://www.nature.com/nature/journal/v459/n7245/full/459300a.html</a></b></p> <p>APA Council member Mulick's comments included on the PENS listserv p.125 (HR Binder 5 p.577): "(t)he process anticipated by the recommendations, both in terms of research and ethical consultation, will give substance to psychologists' ability to contribute to national defense while upholding their commitment to ethics and human rights."</p> <p><i>MedGenMed</i> article by noted ethicist Mildred Solomon (Aug. 2005, 7(3), 14) praising the PENS Report for its handling of the issues: "The American Psychological Association (APA) has taken an impressive first step... Medical and nursing societies would do well to follow the principled actions of the APA and enter into their own deliberations." (Not in Hoffman's possession at time of report.) <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1681654/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1681654/</a></p>	<p><a href="http://www.nature.com/nature/journal/v459/n7245/full/459300a.html">http://www.nature.com/nature/journal/v459/n7245/full/459300a.html</a> links to the official website of the international journal, <i>Nature</i>, and provides a true and correct copy of the editorial.</p> <p>Affidavit of Behnke with personal knowledge of providing editorial to Hoffman.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv contained within Binder 5 of the HR.</p> <p><a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1681654/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1681654/</a> links to the official website of the National Center for Biotechnology Information and provides a true and correct copy of the <i>MedGenMed</i> article.</p>
85	<p><b>But as set out below, the evidence shows that what explains the PENS report is a desire to please DoD by following its requests about how to proceed, and the desire to create a positive-sounding policy statement in a short time frame in order to respond to the pressure of negative press reports.</b></p>	<p><b>**Positive comments on work of PENS TF by all three of the non-DoD participants, notably Arrigo description of PENS Task Force work after the meeting: PENS listserv p.91 (HR Binder 5 p.543): "Thanks to all, especially the military psychologists, for an enriching and heartening experience of democratic process. I am grateful for the opportunity to participate in this process."</b></p> <p><b>**HR includes excerpts of Arrigo archives (Binder 3 pp.805-830; Binder 5 pp.738-800) and references other portions (HR p.24 FN 9; HR p.259 FN 1161) but intentionally omits audiotape and/ or transcript of Arrigo interview that puts her experience with the PENS Task Force and especially the military members in very positive light (Arrigo Archive Binder 1, pp.8-9.)</b></p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv contained within Binder 5 of the HR.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p>
86	<p><b>The conflict of interest on this issue resulting from Russ Newman, the head of the Practice Directorate, being married to Debra Dunivin, the lead Army BSCT psychologist at Guantanamo Bay, was explicitly raised internally and then ignored. Newman became involved in the discussions about the task force nominees and connected with Morgan Banks (the chief Army psychologist with the Army Special Operations Command and psychology leader of the SERE school at Fort Bragg), bringing his suggestions to the staff group.</b></p>	<p><b>**PricewaterhouseCoopers opinion (HR Binder 2 pp.1401-1404) indicating no inherent conflict of interest with Dunivin-Newman marital relationship (GC Gilfoyle email to CEO Anderson 11/10/2004). Marriage disclosed to Board and APA membership in <i>Monitor</i>; and Newman a non-voting observer to PENS Task Force per HR p.253.</b></p> <p>Arrigo PENS meeting notes (HR p.259 FN 1161) show Newman's participation in the meeting limited. HR (p.251) characterizes Fein as having "offered few comments during the PENS meetings." Fein spoke 27 times in two days (he wasn't present for one of the days of the Task Force), and Newman spoke 22 times over the course of three days.</p> <p>HR p.264: "...this report can confirm that Arrigo's notes provide the most complete picture of what occurred during the meetings."</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of the Gilfoyle email contained in Binder 2 of the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p>

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87	<b>Koocher responded to the Council delegate in a one-line post, asking if she "will give suggestions for how APA might obtain the data needed to investigate?" (The statement is ironic in light of the fact that APA generally took no efforts to "obtain data" one might use to investigate these matters, as set out later in this report.)</b>	HR admits "extreme" impediments to information gathering of classified information (HR p.5, p.67).  <b>**Materials Informing Other APA Officials.</b>	Published in the HR as an admission by party-opponent.  Published in the HR as admissions by party-opponent.
88	<b>Dunivin's marriage with Newman had previously raised concerns at APA. In October 2004, a Council member flagged Dunivin's marriage as a potential conflict of interest in her running for a position on the Finance Committee. Dunivin ultimately withdrew her nomination for the committee. See APA_0138161.</b>	<b>**11/10/2004 email from APA General Counsel Gilfoyle to APA CEO Anderson:</b> "The Board decided that it should obtain expert advice on this issue. ....On advice of PWC, it was determined that the best way to assure that the first principle was satisfied and documented [sic] was to make full disclosure on the ballot. ....Dr Dunivin decided that she did not feel that she had enough time to explain how she has handled similar potential conflicts in the past and how she would do so in the future, if she were elected to be a member of the Finance Committee. Accordingly she decided that the best course was to withdraw from the slate of candidate." An initial draft of the proposed communication to Council states, "The Board has expressed its regret to Dr Dunivin that these issues were not identified and addressed earlier." (APA_0138161 HR Binder 2 pp.1401-1404)	<a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of the Gilfoyle communication contained within Binder 2 of the HR.
89	<b>The "directly convey" language most likely suggests that Banks may have wanted task force members who could confer with military psychologists in the field during the task force to ensure that the task force was not doing something that was inconsistent with their needs or preferences.</b>	<b>**Newman interview with Hoffman:</b> Stated that Banks hoped for participants with security clearance so that relevant and complete information could be collected by the Task Force without having to withhold important information because of its classified nature in the absence of those with the appropriate security clearance to receive it.  <b>**Behke interview with Hoffman (cited HR p.226 FN 979):</b> "Behnke speculated in an interview with Sidley that Banks brought up the clearance point to underscore the need to have people in the room who had first-hand experiences and could speak frankly about them. "	Affidavit of Newman with personal knowledge of interview with Hoffman.  Published in the HR as an admission by party-opponent.
90	<b>The difference between the version brought to the December 2004 Board meeting and the official version submitted at the February 2005 Board meeting was that "coercive techniques" was replaced with the innocuous term "various investigative techniques" in a manner that (as Gilfoyle's prior email foreshadowed) avoided the difficult question regarding what ethical position to take if "coercive techniques were found to be effective."<sup>983</sup> Newman told Sidley that he did not recall the conversations then about removing the word "coercive," but he commented that neither Banks nor his wife Dunivin would have liked it since it suggested from the outset that interrogations per se were problematic.<sup>984</sup></b>	<b>**Newman interview with Hoffman:</b> Stated that calling all interrogation techniques "coercive" would be inaccurate and prejudicial; some interrogations might be coercive, others not. An objective study of interrogation techniques would not color all techniques with the same brush.  <b>**3/10/2006 &amp; 4/ 6/2006 email correspondence between Linda Woolf and Len Rubenstein (Executive Director of Physicians for Human Rights from 1996 to 2007) provided by Behnke to Hoffman (6/12/2015 email) in which both reject the use of the word "coercion,"</b> opining that the term is undefined legally, vague behaviorally and doesn't work as a standard.	Affidavit of Newman with personal knowledge of interview with Hoffman.  <a href="https://tinyurl.com/yya4u2t9">https://tinyurl.com/yya4u2t9</a> provides a true and correct copy of the Woolf-Rubenstein emails provided by Behnke to Hoffman and provides a true and accurate representation of the Behnke email to Hoffman.
91	<b>Although the behind-the-scenes communications are not made explicit in this email exchange, and Behnke, Fein, and Kinscherff did not recall anything about this exchange from 10 years ago, it strongly suggests that Behnke, Kinscherff, and Fein had coordinated this exchange in some way to ensure that Shumate, Fein, and Gelles would be nominated with prominent recommenders, especially in light of the way the detailed and sophisticated behind-the-scenes manner we observed Behnke typically operating. Behnke also emailed Fein about two weeks later, noting that "[t]hese appointments are very political."<sup>1001</sup></b>	<b>**Customary business practice that political considerations play a role in appointments to APA governance groups.</b>	Routine practice of the APA. Affidavit of Strassburger Fox with personal knowledge of governance groups nomination and appointment processes.
92	This language is pulled directly from a subheading of a draft chapter that Banks and Dunivin were working on at the time, "Providing Psychological Support for Interrogations" ("PPSI"),	<b>**Dunivin interview with Hoffman:</b> Stated repeatedly she did not participate in drafting that particular document.  Dunivin 3/18/2005 email to Koocher (cited in HR p.240 FN 1039 and included in HR Binder 1 p.895, APA_0035139) attributes authorship to Banks: "the manual <i>he has developed</i> for psychologists working in this area or practice." (emphasis added)	Affidavit of Dunivin with personal knowledge of interview with Hoffman.  <a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Dunivin email to Koocher contained within Binder 1 of the HR.

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93	<b>APA staff considered the civilian/military split of task force members from the start of gathering task force nominees. Although the ultimate PENS Task Force was intentionally weighted in favor of the military and Defense Department (a critical factor in its outcome), the initial staff-recommended task force members were more equally divided.</b>	<p><b>**Customary business practice for a task force to be weighted in terms of subject matter experts.</b></p> <p><b>**Non-DoD task force member Arrigo:</b> "I think the constitution of the task force was very fine and also appropriate" (PENS listserv p.142; HR Binder 5 p.594).</p> <p>Arrigo also states: "I am very pleased with the Task Force participation of psychologists from the armed services." (PENS Task Force listserv, p.168; HR Binder 5 p.620)</p> <p><b>**Arrigo further states:</b> "Many critics of the PENS report have complained of the majority membership from the military, 6 of 10 members. I have defended this composition of the Task Force on the grounds that strong military participation is necessary for the Task Force to have any practical relevance to the national security system."(PENS Task Force listserv, p.191; HR Binder 5 p. 643 )</p>	<p>Routine practice of the APA.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv contained within Binder 5 of the HR.</p>
94	Some APA officials and staff involved in the selection process claim that the ultimate breakdown between military and non-military members ignores the diversity within the DoD members of the task force. But there is no documented discussion in the first part of 2005 about the diversity of the DoD members. On the contrary, Behnke's handwritten notes indicate he grouped all of the DoD members together in his categorization of potential task force members.	<p><b>**HR p.234-235:</b> Dunivin list of task force nominees, submitted to be included in the task force selection process, identified diverse affiliations, experiences, competencies and backgrounds. (APA_0035180 cited p.234 FN 1012, included in HR Binder 1 p.908)</p> <p>HR pp.263-264: "DoD members, however, did have differences of opinion on the best use of psychologists in these settings and whether psychologists could ever play a more direct role in interrogations."</p>	<p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Dunivin list contained within Binder 1 of the HR.</p> <p>Published in the HR as an admission by party-opponent.</p>
95	These importantly-timed and confidential consultations with Banks and Dunivin appear to have been unique—we did not find evidence of APA having similar consultations with other individuals or constituencies. And they were highly influential.	<p><b>**Customary business practice to consult with members of a constituency to determine appropriate subject matter experts for an APA governance group, and to assess individuals' strengths and weakness and maintain confidentiality about that assessment; Banks and Dunivin were members of that constituency.</b></p>	<p>Routine practice of the APA. Affidavit of Strassburger Fox with personal knowledge of governance groups nomination and appointment processes.</p>
96	<p><u>Premise to false statement below:</u> While some APA officials and staff involved in the selection process claim that the 6-4 majority did not matter because the eventual report was a "consensus document," the discussions in the first part of 2005 indicate an awareness and importance about members who could vote.</p> <p><b>The consensus argument made today appears to be a post-hoc response to the critique about the composition of the task force and, as seen below, was not an argument raised at the time when this criticism first arose. In short, it would have been clear to everyone involved in early 2005 that selecting six voting, DoD members would be a dominant voting bloc within the task force, and would send a very strong positive message to DoD about APA's support.</b></p>	<p><b>**Customary business practice for APA governance groups to work by consensus when possible; voting and efforts to reach consensus are not mutually exclusive, as HR itself admits earlier in the report (HR pp.87-88):</b> "... The ECTF rules for voting required that a successful vote carry two-thirds of the eligible votes cast. Yet most participants could not recall the official voting requirements because almost all of the Ethics Code revisions were achieved by consensus,156 which was the stated ideal way to resolve contested issues regarding the revision."</p> <p><b>**Behnke early July 2006 email correspondence with journalist,</b> "The PENS report was a consensus document—the Task Force worked BY CONSENSUS." (emphasis in original; APA_0061057 referenced in HR p.388 FN 1825, included in HR Binder 2 p.33)</p>	<p>Routine practice of the APA. Published in the HR as an admission by party-opponent."</p> <p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of the Behnke email to the journalist contained within Binder 2 of the HR.</p>
97	<b>Behnke's staunch handling of Moorehead-Slaughter's communications, coupled with Moorehead-Slaughter's lack of experience in national security issues, signal that Moorehead-Slaughter was used primarily as Behnke's agent during the PENS process.</b>	<p>Customary business practice for staff to draft correspondence for governance members. Discretion and decision-making regarding the correspondence rests entirely with the governance member.</p> <p><b>**Arrigo archive audiotape transcript:</b> "The chair was very much in charge, and kept us on a good timeline." (Arrigo archive Binder 1 p.11). [HR p.7: "... we received and reviewed documents from the PENS Archives established by Jean Maria Arrigo at the University of Colorado-Boulder." HR includes excerpts of archives (Binder 3 pp.805-830; Binder 5 pp.738-800) and references other portions (HR p.24 FN 9; HR p.259 FN 1161) but omits audiotape and/ or transcript of Arrigo interview.]</p>	<p>Routine practice of the APA. Affidavit of Strassburger Fox with personal knowledge of staff and governance group member interaction for communication purposes.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p> <p>Affidavits of Shumate and Fein describe staff role/activity at PENS TF meeting.</p>
98	<b>Gravitz made a point of speaking to Behnke about the case and warning him that action against Gelles could harm national security. Behnke said that this had no effect on him, but he later took over the investigation from the assigned investigator (who strongly believed that Gelles had committed an ethical violation) in an unusual fashion during her temporary absence, causing the investigator to say that Behnke was manipulating the situation and taking advantage of her absence. After Behnke's involvement, the APA Ethics Committee voted unanimously to find no violation against Gelles.</b>	<p>Under Ethics Committee <i>Rules and Procedures</i>, assigned investigators are the ethics director's designees as described in HR (p.468). When assigned investigator on the Gelles case went on administrative leave, the director assumed the role assigned to him per the Committee <i>Rules and Procedures</i> (see HR p.468 FN2236).</p> <p><b>**Witnesses interviewed for HR (Ethics Committee member Swenson and Investigator Carliner) state that Behnke did not attempt to influence Committee's decision-making process to not find violation. (See HR pp. 485 and 486: "Swenson said that she did not feel any pressure to close the Gelles case or to not find a violation....Carliner did not think that any of the Committee members were improperly influenced by either Behnke or Gravitz...")</b></p>	<p><a href="http://www.apa.org/ethics/code/committee.aspx#overview">http://www.apa.org/ethics/code/committee.aspx#overview</a> links to the official website of the APA and provides a true and correct copy of the Ethics Committee <i>Rules and Procedures</i> process for designating by the Director</p> <p>Published in the HR as an admission by party-opponent.</p>

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99	<b>Both Gravitz (who was there for days two and three of the meeting) and Newman spoke during the meeting in ways that supported the military/DoD psychologists. And, as discussed more below, Newman spoke forcefully about the importance of achieving APA's PR goals in a manner that was inconsistent with the efforts by some of the non-DoD psychologists to push for stricter, more specific ethical guidelines.</b>	<p><b>**Task Force charge from APA Board to address whether APA has "responded strongly enough to media accounts of activities that have occurred at Abu Ghraib and Guantanamo Bay." (APA_0058508, referenced HR p.214 FN 923 and included in HR Binder 1 p. 1405)</b></p> <p>PENS listserv discussion pp.79-80 (HR Binder 5 pp.531-532): Moorehead-Slaughter writes: "Jean Maria poses the very important question of what public statements APA ought to make; these will be an important part of our discussions on what the final product should look like."</p> <p><b>**Newman interview with Hoffman: Stated that whatever positions the PENS Task Force determined to put forward, the report needed to be written in a clear and understandable way for the public and some of his comments were intended to constantly remind the Task Force of this.</b></p>	<p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Board charge to task force contained within Binder 1 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p>Affidavit of Newman with personal knowledge of interview with Hoffman.</p>
100	<b>Newman had an obvious conflict of interest, since his wife was highly interested in the outcome of this policy decision by APA, and was one of the DoD psychologists who would be most affected, positively or negatively, by the ethical position about which APA was supposed to be deliberating.</b>	<p><b>**PricewaterhouseCoopers opinion (HR Binder 2 pp.1401-1404) indicating no inherent conflict of interest with Dunivin-Newman marital relationship (GC Gilfoyle email to CEO Anderson 11/10/2004). Marriage disclosed to Board and APA membership in <i>Monitor</i>; and Newman a non-voting observer to PENS Task Force per HR p.253.</b></p> <p>Arrigo PENS meeting notes (HR p.259 FN 1161) show Newman's participation in the meeting limited. HR (p.251) characterizes Fein as having "offered few comments during the PENS meetings." Fein spoke 27 times in two days (he wasn't present for one of the days of the Task Force), and Newman spoke 22 times over the course of three days.</p> <p>HR p.264: "...this report can confirm that Arrigo's notes provide the most complete picture of what occurred during the meetings."</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of the Gilfoyle email contained in Binder 2 of the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p>
101	<b>When asked about whether there was a conflict of interest in his observer appointment, Newman stated that there was not and that "everyone" at APA knew of his relationship with Dunivin.</b>	<p><b>**Newman interview with Hoffman: In response to question of whether there was conflict of interest, Newman replied that some interests were aligned and some were not, the relationship was generally known at APA, his role as an observer was limited and did not permit voting and that he had not participated in any of the listserv discussions before, during or following the PENS meeting.</b></p>	<p>Affidavit of Newman with personal knowledge of interview with Hoffman.</p>
102	<b>Because of Dunivin's obvious and strong interest and bias on these points, Newman had a classic conflict of interest, and it was incumbent upon him and APA to keep him out of the discussions and deliberations on this topic, and to disclose the conflict. Instead, the opposite occurred. No disclosure was made; Newman and Dunivin were included at many of the key points of the process, including the task force selection process and the task force deliberations; and both Newman and Dunivin inserted themselves and influenced the process and outcome in important ways. The various APA officials who were aware of the conflict and of all or some of Newman's and Dunivin's involvement—including principally Ethics Director Behnke, APA President Ron Levant, APA President-Elect Gerald Koocher, and also including to a lesser extent CEO Norman Anderson, Deputy CEO Michael Honaker, and General Counsel Nathalie Gilfoyle—took no steps to disclose or resolve the conflict.</b>	<p><b>**PricewaterhouseCoopers opinion (HR Binder 2 pp.1401-1404) indicating no inherent conflict of interest with Dunivin-Newman marital relationship (GC Gilfoyle email to CEO Anderson 11/10/2004). Marriage disclosed to Board and APA membership in <i>Monitor</i>; and Newman a non-voting observer to PENS Task Force per HR p.253.</b></p> <p>Arrigo PENS meeting notes (HR p.259 FN 1161) show Newman's participation in the meeting limited. HR (p.251) characterizes Fein as having "offered few comments during the PENS meetings." Fein spoke 27 times in two days (he wasn't present for one of the days of the Task Force), and Newman spoke 22 times over the course of three days.</p> <p>HR p.264: "...this report can confirm that Arrigo's notes provide the most complete picture of what occurred during the meetings."</p> <p>Dunivin not member of PENS TF (HR p.239); was not present during TF meetings (HR pp.253-256); did not participate in TF deliberations; and did not communicate with members during their deliberations.</p> <p>Dunivin interview with Hoffman: Described how difficult communications were while deployed, on anything other than secure lines, without prior elaborate arrangements being made. HR acknowledges elsewhere that such communication on deployment is significantly limited (HR p.396 FN 1862).</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of the Gilfoyle email contained in Binder 2 of the HR as an admission by party-opponent.</p> <p>Published in the HR as an admission by party-opponent.</p> <p>Published in HR as an admission by party-opponent.</p> <p>Affidavit of Dunivin with personal knowledge of interview with Hoffman. Contained in the HR as an admission by party-opponent.</p>
103	<b>Behnke also failed to add as observers Gregg Bloche and Jonathan Marks.</b>	<p>As staff, Behnke did not have the authority to add observers as is clear from the PENS listserv discussion; it is up to the Chair to add observers. (HR Binder 5 pp.519-528)</p> <p><b>**6/22/2005 email from Behnke to Moorehead-Slaughter in which Behnke "encourage[s] the task force to consider inviting Bloche and Marks to brief the task force on their work." (emphasis in original, APA_0048594 HR Binder 1 p.1228)</b></p> <p><b>**See also Task Force chair 6/22/2005 email to Behnke (APA_0040912 HR Binder 1 p.1081), acknowledging Behnke's request and asking Behnke to initiate contact with Bloche and Marks "[i]f there are no objections." and Behnke 6/26/2005 email to APA President Levant (APA_0048594 HR Binder 1 p.1227) stating that Task Force had objected to inviting Bloche and Marks as observers. See Arrigo meeting notes dated 6/24/2005 (HR Binder 3 p.807).</b></p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of emails contained within Binder 1 of the HR. Also <a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of the Arrigo meeting notes contained within Binder 3 of the HR.</p>

Statement # Jul 2 version of Report	False Statement from the Hoffman Report (HR)	Evidence in Hoffman's Possession Showing Statement to be False When Hoffman and Sidley made the Statement (page references herein to HR 7/2/15 version)	Admissibility
104	<p>As is discussed later, however, though touted by Banks as a safeguard that would somehow ensure the humane treatment of detainees, his framework was flexible and general enough to allow for subjective judgments to be made, including by people such as Banks who interpreted the formula to permit stress positions and sleep deprivation in some circumstances.</p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations;</b> specifically incorporates existing prohibitions against stress positions and sleep deprivation.</p> <p><b>**Schlesinger Report 8/24/2004</b> (HR Binder 4 pp.23-148) makes clear that restrictive policies in place in Iraq beginning 5/13/2004 and in Afghanistan since 6/2004; also makes clear that since April 2003, interrogation techniques specifically authorized at GTMO did <u>not</u> include sleep deprivation, stress positions, or exploiting phobias. Schlesinger report referenced HR p.352 FN 1640, included in HR Binder 4 as noted, and never analyzed in HR.</p> <p>HR p.354: Banks did "not see any inconsistency" between PENS report and McCain Amendment which prohibited stress positions and sleep deprivation."</p> <p>3/1/2015 email from Banks to Hoffman: "The most relevant document that I used when this support was first instituted, was the <b>Army Regulation 190-8</b>, (copied verbatim in the regulatory guidance of all uniformed services) which translates the Geneva Conventions Relative to the Treatment of POWs and Civilian Internees into specific guidance. Although there has certainly been a tremendous amount of legal discussion on the status of currently held detainees, I have always assumed and taught that Common Article Three applies, and that the Uniformed Code of Military Justice (which contains punishments for assault and for battery) also applied during the period in question. It was always a foundation for all of my discussions on this topic, and for all the discussions to which I was a party, including those of the PENS TF. Here is a link to the AR 190-8: <a href="http://www.apd.army.mil/pdffiles/r190_8.pdf">http://www.apd.army.mil/pdffiles/r190_8.pdf</a> "</p> <p>HR p.249 FN 1094 quotes from Banks interview with Hoffman: "...by the time the PENS process had started, Banks believed that everyone at DoD agreed that <b>[Army Regulation] 190-8</b> applied. He had directed his teams to follow 190-8 from the beginning of his involvement with the War on Terror after September 11.</p>	<p><b>True and Correct PENS Report.</b></p> <p><a href="http://www.apa.org/independent-review/binder-4.pdf">http://www.apa.org/independent-review/binder-4.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record/report contained within Binder 4 of the HR.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="https://tinyurl.com/y6m3ay65">https://tinyurl.com/y6m3ay65</a> provides a true and correct copy of Banks email to Hoffman.</p> <p>Published in the HR as an admission by party-opponent.</p>
105	<p>The behind-the-scenes communications show that Behnke was actively managing the direction of the discussions on the listserv, in part by drafting emails for the task force chair (Moorehead-Slaughter), who would then send them to the listserv verbatim, in which decisions were made or topics suggested. An analysis of her emails on the listserv shows that virtually all her postings were written by Behnke, which Moorehead-Slaughter and Behnke conceded to us.</p>	<p>Customary business practice for APA staff to facilitate group process during listserv discussions and to draft communications for governance members.</p> <p><b>**4/28/2005</b> email from Behnke to task force chair: "I wonder whether it might be good to get the ball rolling, so to speak, by inviting a more substantive discussion." (APA_0542728, cited in HR p.248 FN 1086, HR Binder 3 p.391)</p> <p><b>**5/10/2005</b> email from Behnke to task force chair: "Let's try to draw a few other people into the discussion." (APA_0047737, cited in HR p. 249 FN 1093, HR Binder 1 p.1206)</p> <p><b>**5/18/2005</b> email from Behnke to task force chair and APA President-Elect: "I'm hopeful that those who have not yet joined in will soon do so." (APA_0039316, cited in HR p.261 FN 1172, HR Binder 1 p.961)</p>	<p>Routine practice of the APA. Affidavits of Strassburger Fox and Strickland with personal knowledge of staff and governance group member interaction and email drafting for communication purposes.</p> <p><a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke email contained within Binder 3 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of emails contained within Binder 1 of the HR.</p>
106	<p>Banks and Behnke collaborated behind the scenes about the eventual content of the Task Force's report, with the result that the key high-level framework set out in the then-draft DoD policy (written by Banks and Dunivin and later converted almost verbatim to official DoD policy) regarding the participation of psychologists in interrogations was (i) proposed by Banks on the listserv as a good framework for the Task Force, and then (ii) recommended by Behnke (through Moorehead-Slaughter) as a good framework for the Task Force.</p>	<p><b>**PENS</b> listserv communications about the possible framework for the task force's work in which Gelles, not Banks or Behnke, first identified framework for consultants to "(b)e focused on what is safe, what is effective and what may be moral and ethical." (5/3/2005; HR Binder 5 pp.460-463). Banks's first comment on the framework was not until later (5/11//2005; HR Binder 5 pp.469-470).</p> <p>Behnke notes that show Gelles first to introduce framework into PENS TF discussions "Safe, Effective, legal, ethical" (APA_0232118 HR Binder 3 p.167; cited in HR p.264 FN 1881).</p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke notes contained within Binder 3 of the HR.</p>

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107	<p><b>The framework—the interrogation practices must be “safe, legal, ethical and effective”—was touted by Banks as a safeguard that would somehow ensure the humane treatment of detainees, when in reality it was (as discussed more later) a malleable, very high-level formula that easily allowed for subjective judgments to be made, including by people such as Banks who interpreted the formula to permit stress positions and sleep deprivation in some circumstances.</b></p>	<p><b>**OTSG/MEDCOM Policy Memo 06-029</b> on Behavioral Science Consultation Policy, which Banks and Dunivin helped to draft (cited in HR pp.223-224 FN 968 and throughout HR pp. 323-421; and included in HR Binder 2 pp.1045-1069), demonstrates the safe-legal-ethical-effective framework had very specific objectives, e.g., “to assist the command in ensuring the humane treatment of detainees, prevention of abuse, and safety of US personnel” (p.5), “to reduce opportunity for behavioral drift and inappropriate behavior... report any actual, suspected or possible violations of applicable laws, regulations, and policies, to include allegations of abuse or inhumane treatment...and remain within professional ethical boundaries as established by their professional associations” (p.6).</p> <p>3/1/2015 email from Banks to Hoffman: “The most relevant document that I used when this support was first instituted, was the <b>Army Regulation 190-8</b>, (copied verbatim in the regulatory guidance of all uniformed services) which translates the Geneva Conventions Relative to the Treatment of POWs and Civilian Internees into specific guidance. Although there has certainly been a tremendous amount of legal discussion on the status of currently held detainees, I have always assumed and taught that Common Article Three applies, and that the Uniformed Code of Military Justice (which contains punishments for assault and for battery) also applied during the period in question. It was always a foundation for all of my discussions on this topic, and for all the discussions to which I was a party, including those of the PENS TF. Here is a link to the AR 190-8: <a href="http://www.apd.army.mil/pdffiles/r190_8.pdf">http://www.apd.army.mil/pdffiles/r190_8.pdf</a>”</p> <p>HR p.249 FN 1094 quotes from Banks interview with Hoffman: “...by the time the PENS process had started, Banks believed that everyone at DoD agreed that <b>[Army Regulation] 190-8</b> applied. He had directed his teams to follow 190-8 from the beginning of his involvement with the War on Terror after September 11.</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides true and correct copies of official DoD public records/reports contained within Binders 2 of the HR.</p> <p><a href="https://tinyurl.com/y6m3ay65">https://tinyurl.com/y6m3ay65</a> provides a true and correct copy of Banks email to Hoffman.</p> <p>Published in the HR as an admission by party-opponent.</p>
108	<p><b>The meeting group was expanded in a careful way by adding two “observers” who were affiliated with the military and intelligence community. After several days of internal staff consultation and planning about how to add observers to the task force meeting, Behnke (through Moorehead-Slaughter) posted an email on the listserv inviting observer recommendations. In a coordinated fashion, APA Practice Directorate chief Russ Newman was added as an observer, despite Newman's conflict of interest because of his marriage to the Army's lead interrogation-support psychologist at Guantanamo. Michael Gelles subsequently recommended long-time CIA contractor/psychologist Melvin Gravitz, and he was quickly “confirmed” by Moorehead-Slaughter. As discussed later, both Gravitz and Newman spoke during the meeting in ways that supported the military/DoD psychologists. And Newman spoke forcefully about the importance of achieving APA's PR goals in a manner that was inconsistent with the efforts by some of the non-DoD psychologists to push for stricter, more specific ethical guidelines.</b></p>	<p><b>**Newman</b> interview with Hoffman: Stated that whatever positions the PENS Task Force determined to put forward—and that was for those with the subject matter expertise to determine, the report needed to be written in a clear and understandable way for the public and some of his comments were intended to constantly remind the Task Force of this.</p>	<p>Affidavit of Newman with personal knowledge of the interview with Hoffman.</p>
109	<p>DoD members, however, did have differences of opinion on the best use of psychologists in these settings and whether psychologists could ever play a more direct role in interrogations. Several members appear to show an openness to using the Geneva Conventions as a guiding principle in outlining what psychologists can do in interrogation settings, though not necessarily as an ethical requirement as seen during the PENS meetings.</p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations</b></p>	<p><b>True and Correct PENS Report</b></p>
110	<p><b>Banks came into the task force with a concrete idea of what the task force report should say and should not say, as he and Dunivin had already drafted what would become Army (and therefore DoD) policy regarding the details and limitations on using psychologists in interrogations, a confidential internal Army document that he distributed at the meeting.</b></p>	<p><b>**Dunivin</b> interview with Hoffman: Stated repeatedly she did not participate in drafting that particular document (identified by HR as “PPSI”).</p> <p>Dunivin 3/18/2005 email to Koocher (cited in HR p.240 FN 1039 and included in HR Binder 1 p.895, APA_0035139) attributes authorship to Banks: “the manual he has developed for psychologists working in this area or practice.” (Document was a draft and work-in-progress by Banks, not a confidential document.)</p>	<p>Affidavit of Dunivin with personal knowledge of interview with Hoffman.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Dunivin email contained within Binder 1 of the HR.</p>

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111	<b>The evidence shows that at the meeting, Banks was "persistent" about his agenda, in the words of a DoD task force member. His agenda was, according to the same DoD task force member, to get APA's "good housekeeping" seal of approval for the involvement of psychologists in interrogations and to otherwise keep the status quo and to avoid limits or constraints beyond the ones the Army or DoD had in place or would decide to put in place in the future.</b>	<b>**PENS listserv p.16 (HR Binder 5 p.468)</b> in which Banks describes his motivation that is contrary to the agenda Hoffman stated: "I strongly concur with most of Dr. Gelles's comments, especially concerning the need for guidance to psychologists providing this type of support. In my opinion, there is a great paucity of training generally available to psychologists in this area. My main interest is in psychology support to DoD organizations, and in providing clear guidance to the Army psychologists that I train and to whom I provide oversight."	<a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.
112	The evidence shows that that Army Surgeon General's Office was in fact in the midst of developing DoD policy on this issue and that Banks, Dunivin, and others were helping craft its policy. Banks's role on the task force, then, was not driven solely by him but educated by various command structures' needs on the issue.	<b>**Customary business practice</b> for subject matter experts to have breadth and depth of knowledge on issues relevant to the work of the task force. That Banks was "educated by various command structures' needs" was a component of the very subject matter expertise needed by the task force.	Routine practice of the APA.
113	<b>There were two very strong pushes by Wessells during the meeting that—if accepted—would have created a report with tighter, more specific ethical constraints on national security psychologists involved in interrogations, in ways that would have been inconsistent with the strong preferences of Banks and key parts of DoD. The first, an attempt to use the provisions of the Geneva Conventions or other common international law sources to define the high-level terms being discussed at the meeting, was joined strongly by Arrigo and Thomas. This was rejected by the other members of the task force, and therefore in the Behnke-drafted task force report. The second was a subsequent attempt to create specificity within the document in other ways, by discussing where to draw the line between permissible and impermissible interrogation techniques a psychologist could be involved in (either based on a discussion of some of the most significant techniques being discussed publicly, or a description related to "psychological distress").</b>	<b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b>  PENS Listserv discussion in which Wessells (p.91; HR Binder 5 p.543) and Thomas (p.108; HR Binder 5 p.560) indicate that there was agreement among task force members to include both the Geneva Conventions and the Convention Against Torture in the PENS Report.  TF specifically identified issues of significant disagreement on PENS Report p.9 (HR Binder 5 p.735) and the level of specificity was not one of them.	<b>True and Correct PENS Report.</b>  <a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.  <a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS Report within Binder 5 of the HR.
114	<b>Banks and the DoD task force members had allies in Koocher, Newman, and Behnke who not only agreed with the strategy of deferring to DoD's preferences, but who also strongly cared about (and, especially as to Newman and Behnke, articulated during the meeting) the goal of ensuring that the result at the end of the meeting was a document that APA could use for positive PR purposes, that "calm[ed] the issues," avoided "rekindling the fires," and "clarified" and "simplified" because the press accounts had "messed up the message." In their vie [sic], APA needed a clear, straightforward, public statement—without delay—that would solve the PR problem by portraying APA as a professional association that was taking to action to set ethical guidelines rather than sitting on the sidelines, while keeping DoD psychologists as involved and unconstrained as possible.</b>	<b>**Task Force charge from Board</b> to address whether APA has "responded strongly enough to media accounts of activities that have occurred at Abu Ghraib and Guantanamo Bay" (APA_0058508, referenced HR p.214 FN 923 and included in HR Binder 1 p. 1405)  PENS listserv discussion pp.79-80 (HR Binder 5 pp.531-532): Moorehead-Slaughter writes: "Jean Maria poses the very important question of what public statements APA ought to make; these will be an important part of our discussions on what the final product should look like."  Customary business practice for APA staff work to enable the Association and profession to make a contribution to important problems and issues occurring in the world. HR itself quotes Behnke in this regard: "[t]his is a wonderful example of psychology being able to make a contribution regarding a pressing, high-profile issue of national importance." (p.186)	<a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Board charge to task force contained within Binder 1 of the HR.  <a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.  Routine practice of the APA. Published in the HR as an admission by party-opponent.
115	<b>Based on what we have seen in our investigation, we agree with the three contributing non-DoD task force members that it is unfair for defenders of the APA task force report to use their end-of-report approval as evidence that the report simply reflects the consensus of a diverse task force rather than an intentional pro-DoD approach.</b>	<b>**Statements from all three non-DoD task force members</b> praising TF Report not simply their approval, e.g., "beyond impressive, beyond complete" (PENS listserv p.89, HR Binder 5 p.541); "excellent" (PENS listserv p.91, HR Binder 5, p.543); and "(t)he depth, scope and wisdom of this document are indeed impressive" (PENS listserv p.108, HR Binder 5 p.560).  Positive comments from non-DoD participants about the process of the taskforce, e.g., Arrigo's description of PENS Task Force work after the meeting: PENS listserv p.91 (HR Binder 5 p.543): "Thanks to all, especially the military psychologists, for an enriching and heartening experience of democratic process. I am grateful for the opportunity to participate in this process."  HR includes excerpts of Arrigo archives (Binder 3 pp.805-830; Binder 5 pp.738-800) and references other portions (HR p.24 FN 9; HR p.259 FN 1161) but intentionally omits audiotape and/or transcript of Arrigo interview that puts her experience with the PENS Task Force and especially the military members in very positive light (Arrigo Archive Binder 1, pp.8-9.)	<a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications within Binder 5 of the HR.  <a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.  <a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.  Affidavits of Fein and Shumate describing PENS TF meeting.

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116	<b>It appears that Moorehead-Slaughter's predominant role was that of facilitator (and Behnke's agent as previously discussed), though even that role was appropriated by others in the room like Newman.</b>	<p><b>**Arrigo PENS meeting notes (HR p.259 FN 1161) show Newman's participation in the meeting limited. HR (p.251) characterizes Fein as having "offered few comments during the PENS meetings." Fein spoke 27 times in two days (he wasn't present for one of the days of the Task Force), and Newman spoke 22 times over the course of three days.</b></p> <p>HR p.264: "...this report can confirm that Arrigo's notes provide the most complete picture of what occurred during the meetings."</p> <p><b>**Arrigo archive audiotape transcript: "The chair was very much in charge, and kept us on a good timeline." (Arrigo archive Binder 1 p.11).</b></p> <p>[HR p.7: "...we received and reviewed documents from the PENS Archives established by Jean Maria Arrigo at the University of Colorado-Boulder."</p> <p>HR includes excerpts of archives (Binder 3 pp.805-830; Binder 5 pp.738-800) and references other portions (HR p.24 FN 9; HR p.259 FN 1161) but omits audiotape and/ or transcript of Arrigo interview.]</p>	<p>Published in the HR as an admission by party-opponent.</p> <p>Affidavits of Fein and Shumate re: participation in meeting.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p>
117	<b>Newman led much of the task force discussions throughout the weekend. He often appeared to limit discussion on issues outside the perceived scope of the task force's mandate.</b>	<p><b>**Arrigo PENS meeting notes (HR p.259 FN 1161) show Newman's participation in the meeting limited. HR (p.251) characterizes Fein as having "offered few comments during the PENS meetings." Fein spoke 27 times in two days (he wasn't present for one of the days of the Task Force), and Newman spoke 22 times over the course of three days.</b></p> <p>HR p.264: "...this report can confirm that Arrigo's notes provide the most complete picture of what occurred during the meetings."</p> <p><b>**Arrigo archive audiotape transcript: "The chair was very much in charge, and kept us on a good timeline." (Arrigo archive Binder 1 p.11).</b></p> <p>[HR p.7: "...we received and reviewed documents from the PENS Archives established by Jean Maria Arrigo at the University of Colorado-Boulder." HR includes excerpts of archives (Binder 3 pp.805-830; Binder 5 pp.738-800) and references other portions (HR p.24 FN 9; HR p.259 FN 1161) but omits audiotape and/ or transcript of Arrigo interview.]</p>	<p>Published in the HR as an admission by party-opponent.</p> <p>Affidavits of Fein and Shumate re: participation in meeting.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> ; <a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> link to the official website of the APA and provide true and correct copies of the archive excerpts within binders 1 &amp; 5 of the HR.</p>
118	<b>Ultimately, the PENS report included language that did not ethically bind psychologists by human rights standards, but did state that psychologists should review the Geneva Convention Relative to the Treatment of Prisoners of War and the U.N. Convention Against Torture since they were "fundamental to the treatment of individuals."</b>	<b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b>	<b>True and Correct PENS Report.</b>
119	<b>Wessells told Sidley that he pressed his point several times to add binding language from the Geneva Conventions and the U.N. Convention Against Torture but that it was a "complete loser" with the DoD people in the room. He noted that the DoD members were "passionate" about upholding the existing military regulations at the time, which permitted what he called "torture-lite."</b>	<b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b>	<b>True and Correct PENS Report.</b>
120	<b>While several DoD PENS members expressed an openness to abide by the Geneva Conventions or the U.N. Convention Against Torture, none appeared comfortable mandating that psychologists in detainee interrogation settings follow them at all times.</b>	<b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b>	<b>True and Correct PENS Report.</b>

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121	<p>Some say that this observation about avoiding international law shows the automatic impact that selecting a majority of DoD officials had on the task force's conclusion. But we think that it actually shows an even more intentional decision by the APA task force leaders and the DoD psychologists not to voluntarily commit psychology as a profession to a more robust set of ethical limitations. To do so would have shown leadership on the issue in a way that likely would have put APA at odds with DoD and the Administration. This may have caused a conflict that would have resulted in DoD employing fewer psychologists or to writing policy that subordinated the role of psychologists in interrogation and detention matters; and it may have prompted some DoD psychologists to leave APA membership (although Banks was already outside of APA membership).</p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p>	<p><b>True and Correct PENS Report.</b></p>
122	<p>By going along with the "simply follow U.S. law" position of the DoD task force members, the APA task force leadership was making an explicit choice to follow what DoD wanted rather than making an independent decision about what were the appropriate ethical rules for psychologists in these situations (other than the decision that was best for DoD was best for APA).</p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p>	<p><b>True and Correct PENS Report.</b></p>
123	<p>So after one day of task force deliberations, Behnke drafted a document that would largely become the final PENS report's twelve statements...Behnke's draft also created a novel second limitation...</p>	<p>Customary business practice for staff to draft documents for task forces.</p> <p><b>**PENS listserv description of Behnke drafting process for review and approval by the Task Force members (See PENS listserv p. 88, HR Binder 5 p.540.)</b></p> <p>HR (p.2) admits Behnke drafts report "in consultation with the task force".</p> <p><b>**Behnke 6/26/2005 email to Moorehead-Slaughter: "... I have followed the same process with this draft as with the others, attempting as best I could to incorporate everyone's good thinking into a coherent document." (APA_002660, HR Binder 1 p.791).</b></p>	<p>Routine practice of the APA. Affidavits of Strassburger Fox, Strickland and Fein with personal knowledge of APA governance and staff practices drafting policies and/or communications.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke email contained within Binder 1 of the HR.</p> <p>Affidavits of Fein and Shumate re: meeting and drafting.</p>
124	<p>When asked why he removed the full paragraph instead of only the statement citing Standard 8.07 (or refine the "legitimate purpose test" another way), Behnke responded that he likely viewed the paragraph as one unit; once the research sentence was gone, then he thought to remove the full paragraph. Behnke also said the provision could be read broadly, where people could justify harmful acts in the name of preventing future acts of violence. Behnke was not sure why he did not refine the test—perhaps outlining a rule that always barred psychological distress, allowing it in limited circumstances, making it broader, or perhaps using guidelines in the Geneva Conventions<sup>1286</sup>—and instead removed it from the next draft entirely.</p>	<p>Customary business practice for staff to draft documents for task forces.</p> <p><b>**PENS listserv description of Behnke drafting process for review and approval by the Task Force members (See PENS listserv p. 88, HR Binder 5 p.540.)</b></p> <p>HR (p.2) admits Behnke drafts report "in consultation with the task force".</p> <p>Behnke 6/26/2005 email to Moorehead-Slaughter: "... I have followed the same process with this draft as with the others, attempting as best I could to incorporate everyone's good thinking into a coherent document." (APA_002660, HR Binder 1 p.791).</p>	<p>Routine practice of the APA.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke email contained within Binder 1 of the HR.</p>

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125	<p><b>The statement was ultimately replaced by an unrelated issue about reminding psychologists that the individual being interrogated "may not have engaged in untoward behavior" and may not have useful information.<sup>1288</sup> In analyzing a series of handwritten notes from members,<sup>1289</sup> Banks was the one who recommended this new statement.<sup>1290</sup> Arrigo told Sidley that she had originally raised a concern about interrogating detainees who were innocent and that Banks drafted the wording for Behnke's consideration.<sup>1291</sup> Given that Banks was against the draft statement's minimal restriction on causing psychological distress, and given his overarching goal to keep the PENS report in concert with military guidance, it is likely that Banks appropriated Arrigo's concerns both to curry favor with Arrigo and to block the use of any language in the report that assessed the validity of certain techniques.</b></p>	<p><b>**Behnke meeting notes</b> (HC00017705, HR Binder 4 pp.1171-1177) and Behnke interview with Hoffman: Stated Ethics Code Standard 8.07 makes no mention of interrogation, referring only to research, and would be inappropriate to use this language in reference to detainee interrogation techniques, therefore the language was removed.</p>	<p><a href="http://www.apa.org/independent-review/binder-4.pdf">http://www.apa.org/independent-review/binder-4.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke meeting notes contained within Binder 4 of the HR.</p> <p>Affidavit of Behnke with personal knowledge of interview with Hoffman.</p>
126	<p>Premise to false statement below: The final report contained an overview and introduction to the report, followed by "Twelve Statements Concerning Psychologists' Ethical Obligations in National Security-Related Work and Commentary on the Statements," conclusion and non-consensus issues sections, and 10 recommendations. The report said that psychologists could serve as consultants to national security interrogation consistently with the Ethics Code, and articulated two high-level limitations on that activity, without further significant definition: psychologists could not be involved in torture or cruel, inhuman or degrading treatment, and psychologists attempted to ensure that interrogation methods were safe, legal, ethical and effective.</p> <p><b>As the evidence shows, these high-level limitations were intentionally chosen by Behnke because they reflected what Banks wanted and, by extension, reflected what key parts of DoD wanted.</b></p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p> <p>3/1/2015 email from Banks to Hoffman: "The most relevant document that I used when this support was first instituted, was the <b>Army Regulation 190-8</b>, (copied verbatim in the regulatory guidance of all uniformed services) which translates the Geneva Conventions Relative to the Treatment of POWs and Civilian Internees into specific guidance. Although there has certainly been a tremendous amount of legal discussion on the status of currently held detainees, I have always assumed and taught that Common Article Three applies, and that the Uniformed Code of Military Justice (which contains punishments for assault and for battery) also applied during the period in question. It was always a foundation for all of my discussions on this topic, and for all the discussions to which I was a party, including those of the PENS TF. Here is a link to the AR 190-8: <a href="http://www.apd.army.mil/pdffiles/r190_8.pdf">http://www.apd.army.mil/pdffiles/r190_8.pdf</a>" (Link no longer active AR 190-8 can be accessed at <a href="https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r190_8.pdf">https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r190_8.pdf</a>)</p> <p>HR p.249 FN 1094 quotes from Banks interview with Hoffman: "...by the time the PENS process had started, Banks believed that everyone at DoD agreed that <b>[Army Regulation] 190-8</b> applied. He had directed his teams to follow 190-8 from the beginning of his involvement with the War on Terror after September 11.</p> <p>Arrigo's archived audiotaped interview transcript 6/26/2005 that describes materials distributed by Banks at PENS meeting which he had written for his subordinates requiring adherence to ethics code; Arrigo states: "they were very, very firm about psychologists don't torture people...so that's what they want to be standard operating procedure." (JMA Binder 1, pp.8-9)</p>	<p><b>True and Correct PENS Report.</b></p> <p><a href="https://tinyurl.com/y6m3ay65">https://tinyurl.com/y6m3ay65</a> provides a true and correct copy of Banks email to Hoffman.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p>
127	<p><b>Some critics who have correctly alleged that some APA/government collusion was behind the PENS Task Force result further allege that APA's motive must have been based on the Justice-Department-memo rationale, under which harsh interrogation techniques are not torture if a psychologist or other relevant expert says the technique to be applied will not cause severe physical or psychological suffering.</b></p>	<p><b>**No Collusion.</b></p> <p>HR itself notes elsewhere that these Justice Department OLC memos had been withdrawn a year prior to PENS TF meeting - HR p. 153: "Shortly after [the Washington Post publication on June 13 2004], Assistant Attorney General for the Office of Legal Counsel Jack Goldsmith, withdrew the 2002 and 2003 memoranda at issue." (2003 memo actually withdrawn December 2003 according to <i>The Terror Presidency</i>.)</p>	<p><b>Evidence of No Collusion.</b></p> <p>Published in the HR as an admission by party-opponent.</p>

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128	The PENS Task Force report could have said that psychologists may support interrogations only by recommending techniques that constitute rapport building. But as with the other limitation, this was not consistent with Banks's and DoD's preferences (and therefore Behnke's and APA's) that the role of psychologists not be limited beyond whatever constraints DoD itself had in place.	<b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b>	True and Correct PENS Report.
129	Instead, the PENS report banned participation in torture and CID but avoided defining these terms at a moment where precision and explanation were crucial for the psychologists working in these interrogation settings.	<b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b>	True and Correct PENS Report.
130	Behnke also claimed that prohibiting specific techniques at the time would have raised concerns that the group may unwittingly exclude a technique and, therefore, provided an explicit loophole for interrogators to exploit. It was not until March 2007, Behnke argued, when he attended an event at the Wright Institute with Professor Alfred McCoy, that he realized that there was a fairly consistent list of techniques that interrogators used consistently and he incorporated this thinking into what ultimately became the 2007 APA Resolution that banned the use of specific techniques. <sup>1331</sup> This assertion, too, is incorrect. Behnke and Banks engaged in a dialogue as early as October 2006 about adding specific techniques as part of a substitute motion in response to Neil Altman's moratorium resolution, discussed further in the next section of this report. What is more, Behnke's worry that a non-listed technique could be used had an easy resolution—to insert language that the list was not exhaustive and that the underlying principle was about not inflicting abuse or harm upon individuals.	<b>**Behnke interview with Hoffman along with materials Behnke provided: States that McCoy gave Behnke historical perspective that assured Behnke there was a reasonably defined and fairly consistent list of abusive interrogation techniques thereby allaying Behnke's concern that a list provided a loophole.</b>	Affidavit of Behnke with personal knowledge of interview with Hoffman.
131	In the end, the report was general enough that it gave the DoD the flexibility to make more specific calls on what was permissible despite troubling institutional pronouncements on what constituted torture and what protections detainees ought to receive.	<b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b>	True and Correct PENS Report.
132	Sidley separately posed to both Behnke and Banks whether interrogations involving certain kinds of stress positions would run afoul of the "safe, legal, ethical, and effective" analytical framework or the PENS report in general. Neither could provide a clear answer based on these two sources alone. <sup>1336</sup> Behnke struggled to respond to which types of stress positions, each with varying levels of pain to the detainee, would be considered "safe." His response shifted to the effectiveness point—technically an incorrect approach since a psychologist was supposed to have gone the four terms in order—where he noted that, even if a particular position was safe, it likely was not effective. When asked how he knew that, Behnke believed that studies about interrogations would dictate that rapport-building was the best way to interrogate a detainee. <sup>1337</sup> If this was true and others agreed, then the PENS report could have explicitly mentioned that rapport-building was the best way to handle detainee interrogations—it did not.	<b>**Behnke interview with Hoffman: Stated that a technique must meet four criteria: safe, legal, ethical and effective. Benke repeatedly emphasized in interviews that any single criteria, regardless of order, could exclude a technique.</b> <b>**Banks interview with Hoffman: Stated that the framework provides a way of thinking about an interrogation plan. If not safe, don't pursue further; if safe but not legal, do not pursue further; if safe and legal, but not ethical, do not pursue further; only once these three areas are satisfied do you address effective.</b>	Affidavit of Behnke with personal knowledge of interview with Hoffman.  Affidavit of Banks with personal knowledge of interview with Hoffman.
133	Behnke told us he could not recall why he did not include the "do no harm" sentence but did not think its exclusion had much significance. Our conclusion is that because of the ambivalence within the DoD task force members about how to define "harm" as it relates to physical pain and distress, and the desire by Behnke and Banks not to take a hard-and-fast position that psychologists in interrogation situations can never "do harm" (despite the Ethics Code principle), Behnke intentionally left out the "do no harm" language.	<b>**PENS Report frequently cites and discusses "Principle A, Beneficence and Nonmaleficence" of the APA Ethics Code (See PENS Report pp.3-7; HR Binder 5 pp.729-733). The principle of nonmaleficence is commonly defined as "do no harm in the bioethics arena." See, for example: <a href="https://medical-dictionary.thefreedictionary.com/nonmaleficence">https://medical-dictionary.thefreedictionary.com/nonmaleficence</a>. Therefore, the PENS Report does include discussions of "do no harm."</b>	<a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS Report in Binder 5 of the HR; <a href="https://medical-dictionary.thefreedictionary.com/nonmaleficence">https://medical-dictionary.thefreedictionary.com/nonmaleficence</a> provides a common definition of nonmaleficence of which the court may take judicial notice.

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134	<p><b>Critics have argued that Statement Three contains a loophole: while the rule states that psychologists in interrogation support roles cannot use an individual's medical record "to the detriment of the individual's safety and well-being," it does not explicitly bar access to medical records or explicitly bar other ways the records could be used, such as for creating an interrogation strategy.<sup>1342</sup> Banks, and to a lesser extent James, pushed to include this carve out language so that a psychologist would have the necessary insight to determine whether a legitimate interrogation technique (such as providing a cooperative detainee with a candy bar) might cause health problems (by seeing that the detainee was diabetic, for instance). Because of these requests [sic], the PENS report allowed this access.</b></p>	<p><b>**3/28/2005 policy prohibiting BSCTs from having access to detainee medical records – in place prior to when the PENS Task Force was convened. (HR Binder 3, pp.978-990)</b></p> <p><b>**HR p.350, quoting Dunivin 10/18/2005 to Levant about BSCTs: "BSC Do not have access to med. records" and "Firewall between medical unit" (from Levant notes of meeting with Dunivin included in HR Binder 5 pp.415-419).</b></p>	<p><a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of official DOD public record/report contained within Binder 3 of the HR.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of Levant's notes contained within Binder 5 of the HR.</p>
135	<p>Banks thought it might make sense to separate the BSCTs because of the "PR risk," but not because he thought the PENS report prevented this blurring of relationships to occur.<sup>1348</sup> <b>Behnke and the APA's position on this issue therefore fit the pattern we saw in this investigation regarding PENS—positions were taken to please DoD based on confidential behind-the-scenes discussion and an eye toward PR strategy.</b></p>	<p><b>**Email communications that, in addition to public relations, address substance and parameters of acceptable activity, e.g., email from Behnke to Banks: "Is there a way for the medical personnel to alert the interrogators about a condition that would render an interrogation unsafe; perhaps a system of 'red light,' 'yellow light—no sugar,' or 'green light,' that would convey the minimum amount of information necessary?" (APA_0061329, HR Binder 2 p.50).</b></p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of the Behnke email contained in Binder 2 of the HR.</p>
136	<p><b>Notably, one way to avoid having these multiple relationships would be if BSCTs were somehow stripped of their clinical privileges while deployed. In fact, this very possibility was discussed within the Army Surgeon General's office ahead of finalizing their BSCT MEDCOM policy in 2006.<sup>1349</sup> The PENS report, however, nipped that possibility in the bud, and retained much of what BSCTs were already doing without adding obstacles to their deployments. It is possible that Banks or Dunivin, the leaders in drafting the 2006 MEDCOM policy, were aware of these discussions and sought to forestall this issue with a positive outcome in PENS that did not permit this option.</b></p>	<p><b>**Martinez-Lopez Report 4/13/2005 (see HR Binder 5 pp.180-394), reviewed and quoted in HR p.512, finds that: "The BSCT personnel were not medically credentialed at GTMO and did not provide any medical services in the medical treatment facility" (M-L Report p.18-13).</b></p> <p><b>OTSG/MEDCOM Policy Memo 06-029</b> on Behavioral Science Consultation Policy: behavioral science consultants (BSCs) defined as "not assigned to clinical practice functions" (policy p.4).</p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record/report contained within Binder 5 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record/report contained within Binder 2 of the HR.</p>
137	<p><u>Statement Four: Barring violations of U.S. law</u></p> <p>This statement may raise another loophole with its language that psychologists "do not engage in behaviors that violate the laws of the United States." <b>At the time, narrower definitions of torture prevailed through pronouncements from the OLC. The head of the OLC at the time of PENS, Steven Bradbury, had written a series of memos in May 2005 to the CIA permitting the continued use of waterboarding and other harsh techniques.<sup>1351</sup> Thus, psychologists could arguably participate in waterboarding sessions since they did not violate the way the law was interpreted at the time.</b></p>	<p><b>**HR itself indicates that the Justice Department OLC memos which would have been applicable to the DoD as well as to the CIA had been withdrawn a year prior to PENS TF meeting - HR p. 153: "Shortly after [the Washington Post publication on June 13 2004], Assistant Attorney General for the Office of Legal Counsel Jack Goldsmith, withdrew the 2002 and 2003 memoranda at issue." (2003 memo actually withdrawn December 2003 according to <i>The Terror Presidency</i>.) The 2002 OLC memo was specific to the CIA; HR fails to make the distinction.</b></p> <p><b>**HR itself concludes waterboarding not permitted (HR p.305): "So while slapping or waterboarding may have been permitted under certain OLC pronouncements at the time, it would violate assault provisions in the U.S. Code, the Uniform Code of Military Justice, or Army Regulation 190-8<sup>1352</sup>. The report does not make this point immediately obvious, however."</b></p> <p><b>PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p>	<p>Published in the HR as an admission by party-opponent</p> <p>Published in HR as an admission by party-opponent.</p> <p><b>True and Correct PENS Report.</b></p>
138	<p><u>Premise to the false statement below:</u></p> <p>Both Behnke and Banks contended that the statement referred to all U.S. civil and criminal laws as well. So while slapping or waterboarding may have been permitted under certain OLC pronouncements at the time, it would violate assault provisions in the U.S. Code, the Uniform Code of Military Justice, or Army Regulation 190-8.</p> <p><b>The report does not make this point immediately obvious, however.</b></p>	<p><b>**Statement Four of the PENS Guidelines (PENS Report p.5, HR Binder 5 p.731) states: "Psychologists do not engage in behaviors that violate the laws of the United States."</b></p>	<p><b>True and Correct PENS Report.</b></p>
139	<p><b>The statement also makes reference to, at Wessells's behest, the Geneva Convention Relative to the Treatment of Prisoners of War and the U.N. Convention Against Torture. But as discussed earlier, these provisions are not made binding on psychologists in these detainee settings.</b></p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p>	<p><b>True and Correct PENS Report.</b></p>

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140	<b>For instance, Banks's view was that some stress positions were "safe" and therefore might be properly used as interrogation techniques. (He cited the "push up" stress position to us as an example.) Similar (sic), the PENS report refused to take a position on sleep deprivation despite being asked to do so.</b>	<b>**Schlesinger Report 8/24/2004</b> makes clear restrictive policies in place in Iraq beginning 5/13/2004 and in Afghanistan since 6/2004; also makes clear that since April 2003, interrogation techniques specifically authorized at GTMO did <u>not</u> include sleep deprivation, stress positions, or exploiting phobias. Schlesinger report referenced HR p.352 FN1640, included in Binder 4 pp.23-148 and never analyzed by Hoffman. Report incorporated into Statement 4 of PENS guidelines (PENS Report p.5, HR Binder 5 p.731).	<a href="http://www.apa.org/independent-review/binder-4.pdf">http://www.apa.org/independent-review/binder-4.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record/report contained within Binder 4 of the HR.
141	<b>Whatever organizational or personality dynamic led to APA allowing him to play this remarkably expansive role, well beyond the expected duties of APA Ethics Director, the result was a highly permissive APA ethics policy based on strategy and PR, not ethics analysis.</b>	<b>**PENS Report Based on Ethics Analysis.</b>	<b>Official APA Website, Present Sense Impression and Admission by Party-Opponent.</b>
142	<b>Behnke separately emailed Koocher and Anton about Halpern's recommendation and again showed that his primary goal was to stay completely aligned with DoD. After citing to Statement Ten of the report on effectiveness, Behnke concluded, "which means that if a technique or method is not effective, PSYCHOLOGISTS SHOULD NOT BE DOING IT."<sup>1411</sup> Behnke then stated he was "concerned about making an absolute empirical statements," especially since the task force "may not have felt entirely comfortable" making such a "clear, blanket, statement."<sup>1412</sup> In other words, because at least some of the DoD members were not ready to agree that torture was effective (e.g., Lefever told the group that his experience with SERE was that waterboarding was often effective at getting U.S. soldiers in the program to reveal accurate information that was supposed to be secret),<sup>1413</sup> Behnke wanted to block this Board member's suggestion.</b>	<b>**Behnke interview with Hoffman:</b> Stated no research to support the categorical assertion that torture is never effective; as a scientific organization APA cannot go beyond the data.	Affidavit of Behnke with personal knowledge of interview with Hoffman.
143	<b>This key question was not addressed in the PENS report, despite two of the most influential participants' understanding its importance. As noted earlier, the draft language that referenced "psychological distress" was removed, as was a serious discussion about what kinds of interrogation techniques may be unethical. This exchange adds further support to the idea that Banks, Behnke, and others wanted to avoid addressing thornier issues in the PENS report itself and instead defer to existing DoD policies and practices at the time.</b>	<b>**HR pp.288-</b> "Behnke told Sidley that he believed that the statement was removed at Breckler's behest.  Behnke recalled that Breckler wanted to remove the reference to research. Breckler said it was possible that he asked Behnke to remove the language, but was unsure. In analyzing the draft report language anew with us, however, he stated that the 8.07 language was inconsistent with the draft statement's first sentence about psychological distress, since Standard 8.07 specifically dealt with deception in research only and not with various types of psychological consultations." [FN 1285 states: "Breckler interview (June 18, 2015). Brandon's notes from the second day of the PENS meetings also appear to corroborate Breckler's thoughts on the use of Standard 8.07. At the top of the fourth page of her notes, she wrote "Disingenuous paragraph '7th'—distress in [research] [does not equal] stress in interrogation." Brandon Notes (undated) (on file with Sidley). The note may suggest that the Standard 8.07 standard—which bars psychologists from deceiving research participants about research that could "cause physical pain or severe emotional distress"—is not the same as stress caused during an interrogation. Brandon later added to Sidley that the note was "an assertion that we have no research on interrogation methods that use abusive methods since research can't use such on subjects." Email from Brandon to Sidley (June 21, 2015)."	Published in the HR as an admission by party-opponent.

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144	<p>Premise to false statement below: The Lewis article exchanges illuminate several points. First, one day after the PENS report was released, the public's call for specificity was apparent. Second, the PENS Report, contrary to the Letter to the Editor statement, was not a document that provided "strict ethical guidelines."<sup>1446</sup> The statement contradicted the belief among task force members that the report was an "initial step," especially the non-DoD members, who only signed off on the report believing more steps were needed. It is inaccurate to call an "initial step" in a process a product that provided "strict ethical guidelines" to psychologists in these settings.</p> <p><b>Though Banks believed that using phobias would rise to the level of "cruel, inhuman, and degrading treatment," the report does not make clear that this is the case. In private conversations before and after the Lewis article, Banks and Behnke recognized the ambiguity in the level of psychological distress permitted. A statement about "strict ethical guidelines," then, was misleading. Banks also noted the need for clear guidance, but it appears he did not wish that guidance to come from the PENS report.</b></p>	<p><b>**PENS Listserv p.16 (HR Binder 5 p.468) in which Banks describes his wish for clear guidance from the APA: "I strongly concur with most of Dr. Gelles' comments, especially concerning the need for guidance to psychologists providing this type of support. In my opinion, there is a great paucity of training generally available to psychologists in this area. My main interest is in psychology support to DoD organizations, and in providing clear guidance to the Army psychologists that I train and to whom I provide oversight."</b></p> <p>Also from PENS Listserv p.16 (HR Binder 5 p.468) in which he states, "The challenge that I [Banks] see [for PENS TF] is that of investigating what legal behavioral is ethical, and then deciding howtoestablish standards for that behavior."</p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications in Binder 5 of the HR.</p>
145	<p><b>The principal purpose of PENS—to state that psychologists could in fact engage in interrogations consistent with the Ethics Code—was relegated to the sidelines, since any message seen as pro-DoD or permissive regarding the involvement of psychologists in interrogations was deemed bad media strategy in light of the intense and quick criticism of PENS. And of course, the principal motivation for Behnke and other APA officials in drafting PENS the way they did—pleasing DoD—remained fully concealed. These were misleading public statements and this was a disingenuous media strategy. A document that was intentionally very limited, non-specific, and evasive on the key issue in order to, principally, please DoD, was now described principally as a strong anti-torture and pro-human-rights document.</b></p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>Policies Distributed at PENS TF.</b></p> <p><b>Other Restrictive DoD Policies.</b></p>	<p><b>True and Correct PENS Report.</b></p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p>
146	<p><b>APA also quelled members' concerns with the PENS report by definitively stating that certain techniques were banned in the report, though this was not the case.</b></p>	<p><b>**PENS Statement Four Incorporation of Restrictive Policies and Regulations.</b></p> <p><b>Policies Distributed at PENS TF.</b></p> <p><b>Other Restrictive DoD Policies.</b></p>	<p><b>True and Correct PENS Report</b></p> <p>Official DoD public records/reports.</p> <p>Official DoD public records/reports.</p>
147	<p><b>The non-DoD PENS members raised additional concerns about the report in the days after its release. Behnke tried, through himself and Moorehead-Slaughter, to alleviate these concerns in an effort to salvage the report and task force as a whole.</b></p>	<p><b>**PENS Report adopted as APA policy on 7/1/2005 (HR pp.313-314) prior to the non-DoD members listserv discussion of concerns (beginning 7/7/2005; HR Binder 5 p.579): no need or ability to "salvage" report.</b></p>	<p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications in Binder 5 of the HR.</p>
148	<p><b>Whether Newman's "interests" were his alone, or in concert with his wife, is of course unclear. But Newman would have a clear interest in arguing for the presence of BSCTs and the unique contributions they make since Dunivin was a BSCT psychologist. In addition, the substance of Newman's comments underscore the inherent conflict, as discuss [sic] previously, of the role of a BSCT psychologist on one hand serving as a "safety officer," but on the other hand playing a key role in the "effectiveness" of an interrogation. Here and during the PENS meetings, Newman did not hone in on this conflict since he wanted to maximize the role that BSCT psychologists could play—both because of his wife and because of his general outlook at growing the profession of psychology.</b></p>	<p><b>**Newman interview with Hoffman: Stated he did not believe that a conflict actually exists between the psychologist's role as safety officer and helping interrogators maintain a non-abusive, humane, rapport-based relationship with detainees to maximize the effectiveness of the interrogation procedures as is supported by the research on interrogations.</b></p> <p>See Division 19 TF report 11/9/2015 p.24: "The Hoffman Report suggests that 'safe' and 'effective' support to interrogations by psychologists is disingenuous because the two cannot coexist. For the Hoffman team, it is apparent that ethical interrogations are not effective, and effective interrogations are not ethical. The implication of this statement is that interrogations involving psychologists are either safe or effective, but not both. TF19 strongly rejects this erroneous conclusion, which is contrary to the experience of psychologists who have served in the BSCT role." (Not in Hoffman's possession at time of Hoffman report.)</p>	<p>Affidavit of Newman with personal knowledge of interview with Hoffman.</p> <p><a href="https://www.militarypsych.org/uploads/8/5/4/5/85456500/tf19_response_to_the_hoffman_report_div19_excom_approved.pdf">https://www.militarypsych.org/uploads/8/5/4/5/85456500/tf19_response_to_the_hoffman_report_div19_excom_approved.pdf</a> provides a true and correct copy of a Division 19 published market report relied upon by military psychologists.</p> <p>Affidavit of Bryson with personal knowledge of support for interrogation provided by BSCT vis a vis safety officer and effectiveness.</p>
149	<p><b>Also on August 12, Behnke sent a response to the mid-July letter from the PHR regarding their concerns with the PENS report, but only after coordinating and pre-clearing the response with Banks.</b></p>	<p><b>**Customary business practice for APA staff to consult with subject matter experts concerning the impact of the application of the PENS report guidance recommended for military psychologists in the field.</b></p>	<p>Routine practice of the APA.</p>

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150	<p>Premise to false statements below: The document then cited to the casebook project as an [sic] another reason to delay any finding from the Ethics Committee. And it further stated that there were "several provisions in the Ethics Code to sanction psychologists" who engaged in abusive actions, without ever citing any standards in the PENS Report (perhaps the document thought of Standard 3.04, but as discussed before, there is flexibility in how this standard is interpreted). These assurances of deeper analysis in to amending Standard 1.02, however, were hollow.</p> <p><b>There is little evidence that Behnke or the Ethics Committee ever took concrete steps to fully address these concerns over the standard until the entire Ethics Code was revised by 2010.</b></p> <p><b>In fact, Behnke engaged in various delay tactics for years after to obstruct efforts to amend Standard 1.02, discussed in a later section of this report.</b></p>	<p><b>**Both Board and Ethics Committee focused on 1.02 prior to 2010.</b> <a href="https://www.apa.org/news/press/statements/open-letter-membership.pdf">https://www.apa.org/news/press/statements/open-letter-membership.pdf</a>; <a href="https://www.apa.org/news/press/statements/ethics-statement-torture.pdf">https://www.apa.org/news/press/statements/ethics-statement-torture.pdf</a></p> <p>HR timeline (HR pp.450-461) shows series of actions taken by Behnke and the Ethics Committee between 2005-2009; Council (with authority to act or not) took no action until 2009 when it directs the Ethics Committee to recommend a change to the Ethics Code, which the Committee did by the next Council meeting.</p> <p>Ethics Committee followed the Council's 2005 directive to first review the problem and make a recommendation and second the Council's 2008 directive to propose revised language to the Ethics Code. <a href="https://www.apa.org/ethics/code/august09-council-item.pdf">https://www.apa.org/ethics/code/august09-council-item.pdf</a> (see especially pp. 53-64, PDF pp.11-22)</p> <p><b>**Board given complete history of thorough and lengthy review Ethics Committee at the request of Council in 2005 leading to the revision process undertaken in 2009 via the Council item: (<a href="https://www.apa.org/ethics/code/august09-council-item.pdf">https://www.apa.org/ethics/code/august09-council-item.pdf</a> ) most notably the Ethics Committee Report to Council 2009 attached as Exhibit 2, pp. 53-64, PDF pp. 11-22)</b></p> <p>HR admits that Ethics Committee responded to Council's 8/2005 directive: "Council passed four additional motions: (1) an instruction to the Ethics Committee to explore adding human rights language in to APA Ethics Code Standard 1.02 (which the Ethics Committee completed by late September 2005...)" (HR p.334)</p>	<p><a href="https://www.apa.org/news/press/statements/open-letter-membership.pdf">https://www.apa.org/news/press/statements/open-letter-membership.pdf</a>; <a href="https://www.apa.org/news/press/statements/ethics-statement-torture.pdf">https://www.apa.org/news/press/statements/ethics-statement-torture.pdf</a></p> <p>Links to the official website of the APA and provides true and correct copies of official records of APA actions related to Standard 1.02.</p> <p>Published in the HR as admission by party-opponent.</p> <p><a href="http://www.apa.org/ethics/code/council-august-2009.aspx">http://www.apa.org/ethics/code/council-august-2009.aspx</a> <a href="http://www.apa.org/ethics/code/language-12-15-2009.pdf">http://www.apa.org/ethics/code/language-12-15-2009.pdf</a> <a href="http://www.apa.org/ethics/code/standard-102-background.aspx">http://www.apa.org/ethics/code/standard-102-background.aspx</a> <a href="https://www.apa.org/ethics/code/august09-council-item.pdf">https://www.apa.org/ethics/code/august09-council-item.pdf</a> (see especially pp. 53-64, PDF pp. 11-22)</p> <p>Links to the official website of the APA and provides true and correct copies of official records of APA actions related to the ethics code.</p> <p>Published in HR as an admission by party-opponent.</p>
151	<p><b>Behnke's discretion comment is revealing. It implies that he asked Banks to keep secret Behnke's practice of pre-clearing issues and statements with Banks (a practice that continued in the years ahead, as discussed in later sections of this report). The message shows an understanding that these kinds of missives to Banks were atypical compared to messages with others—that he was using Banks in a unique way different from other task force members. The joint venture relationship between Banks, a key DoD official, and Behnke is presented plainly here (and amplified more in subsequent years, as discussed below).</b></p>	<p>Customary business practice for APA staff to consult with subject matter experts concerning the impact of the application of the PENS report guidance recommended for military psychologists in the field and to assure accuracy of documents being drafted for governance member use.</p> <p><b>**As a colonel/military psychologist/mid-level DoD employee, Banks was not a DoD "official" acting on behalf of the military.</b></p> <p>APA staff do not make policy or initiate policy positions for the Association.</p>	<p>Routine practice of the APA.</p> <p>Routine practice of the DoD. Affidavits of Harvey and Taylor with personal knowledge as to military protocol, and Affidavits of Banks, Dunivin and James.</p> <p>Affidavit of Strassburger Fox with personal knowledge of APA governance and staff practices in policy development process.</p>

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152	<p><b>Ultimately, Behnke did virtually nothing to pursue a casebook for years, effectively abandoning an essential element of his (disingenuous) claim that APA's development of ethical guidance on the issue would be a multi-step process. Behnke made the argument to us during his interviews that a casebook was on hold because they lost the subject-matter experts from the PENS Task Force and because the Council began passing resolutions in 2006 that provided more specific guidance for psychologists.<sup>1587</sup> We do not think this is true, since as set out below, Behnke was the lead APA strategist in attempting to manipulate and water down Council resolutions to minimize the effect on DoD. The real reason there was no casebook is that there was never a real desire to create one, because it would necessarily create the same problems that specificity within the PENS report would have had (as APA staff had identified as early as December 2004)—drawing a line that allowed psychologists substantial latitude in supporting interrogations, as DoD desired, created substantial PR problems. The only solution to this dilemma was to keep the guidance non-specific.</b></p>	<p><b>**HR p.342 FN 1588 cites <i>Comments and Feedback Requested on the Responses of the APA Ethics Committee to Questions, Comments, and Vignettes Regarding APA Policy on the Role of Psychologists in national Security-Related Activities</i> June 2011 (hereinafter "<i>Call for Vignettes</i>"): "As explained in the [Ethics] Committee's December 2007 call, the Committee deemed it advisable to wait until Council completed its multiyear process of developing and refining policies related to the role of psychologists in national security-related activities before issuing its responses." (p.1, emphasis added) <a href="https://www.apa.org/ethics/programs/national-security-comments.pdf">https://www.apa.org/ethics/programs/national-security-comments.pdf</a></b></p> <p><i>Call for Vignettes</i> incorporates 2008 Policy Resolution that lists 20 specifically prohibited techniques which are quoted in HR pp.427-428: "...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."</p> <p><b>**Behnke interview with Hoffman: Stated that Council's ongoing work from August 2005 to February 2010 on the issue of national security (see HR pp.334, 373, 380, 426-428, 448, 460-461) risked making work on a casebook moot until Council finished writing resolutions. Believed that casebook should await completion of Council's work.</b></p> <p>HR p.398 quoting 9/10/2006 email from Behnke to a <i>Washington Monthly</i> journalist: "As I say, in the casebook/commentary the Ethics Committee will make clear that all such techniques are prohibited, and there is no voice in APA to argue in favor of such techniques..."</p>	<p><a href="https://www.apa.org/ethics/programs/national-security-comments.pdf">https://www.apa.org/ethics/programs/national-security-comments.pdf</a> links to the official website of the APA and provides a true and correct record of actions taken by the Ethics Committee.</p> <p>Published in the HR as an admission by party-opponent.</p> <p>Affidavit of Behnke with personal knowledge of interview with Hoffman.</p> <p>Published in the HR as an admission by party-opponent.</p>
153	<p><b>Thus, six years after PENS, the great promise of a casebook as the proper means of providing specificity and resolving the unavoidably (said Behnke) limited nature of the PENS report had shrunk to the form of a 30-page document, intentionally created to avoid any "problems," which was snuck into a corner of the APA website with the fervent hope that it would be entirely ignored.</b></p>	<p><b>**HR p.86 FN 139 references and relies on several commentary guidebooks to the Ethics Code with the same vignettes-driven format for ethical guidance as that used in the <i>Call for Vignettes</i>.</b></p>	<p>Published in the HR as an admission by party-opponent.</p>
154	<p><u>Premise to false statement below:</u> Sidley could not fully confirm these suspicions with our limited power to examine agencies like the CIA. While we observed several aspects that supported Arrigo's theory—the role of Newman, the closed nature of the meetings, and comments from military members about international law or specific techniques—we also observed factors that did not. For one, we have not unearthed any evidence to support the view that other APA staff in the room were present to control the DoD members. The most vocal APA participants—Newman, Koocher, and Behnke—supported the DoD members' position and did not appear to "control" any of them;</p> <p><b>as the evidence shows, Behnke was essentially following Banks's lead regarding critical portions of the PENS report, not vice versa. Second, Banks appeared to play a leading role in ensuring the PENS report was not specific and did not contradict military policies. His role contravenes the idea that he or other DoD members did not have an influential role during the meetings.</b></p>	<p><b>**3/1/2015 email from Banks to Hoffman: "The most relevant document that I used when this support was first instituted, was the <b>Army Regulation 190-8</b>, (copied verbatim in the regulatory guidance of all uniformed services) which translates the Geneva Conventions Relative to the Treatment of POWs and Civilian Internees into specific guidance. Although there has certainly been a tremendous amount of legal discussion on the status of currently held detainees, I have always assumed and taught that Common Article Three applies, and that the Uniformed Code of Military Justice (which contains punishments for assault and for battery) also applied during the period in question. It was always a foundation for all of my discussions on this topic, and for all the discussions to which I was a party, including those of the PENS TF. Here is a link to the AR 190-8." <a href="http://www.apd.army.mil/pdffiles/r190_8.pdf">http://www.apd.army.mil/pdffiles/r190_8.pdf</a></b></p> <p>HR p.249 FN 1094 quotes from Banks interview with Hoffman: "...by the time the PENS process had started, Banks believed that everyone at DoD agreed that <b>[Army Regulation] 190-8</b> applied. He had directed his teams to follow 190-8 from the beginning of his involvement with the War on Terror after September 11."</p> <p>Arrigo's archived audiotaped interview transcript 6/26/2005 describes materials distributed by Banks at PENS meeting he had written for his subordinates requiring adherence to ethics code; Arrigo states: "they were very, very firm about psychologists don't torture people...so that's what they want to be standard operating procedure." (Arrigo archives Binder 1 pp.8-9)</p>	<p><a href="https://tinyurl.com/y6m3ay65">https://tinyurl.com/y6m3ay65</a> provides a true and correct copy of Banks email to Hoffman.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="https://tinyurl.com/y5wat4t8">https://tinyurl.com/y5wat4t8</a> provides a true and correct copy of Arrigo's present sense impression describing the PENS Task Force meeting made immediately after the meeting.</p>

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155	<p><b>This was a very large victory for those who were focused on growing opportunities for employment and influence for psychologists, especially compared to psychiatrists. By winning the primary position with DoD regarding which mental health professionals would provide support for DoD interrogations, APA cemented its position with DoD in a manner that is likely to produce substantial employment and other financially-beneficial opportunities for psychology.</b></p>	<p><b>**HR never cites any evidence in support of this statement; Role for psychologists in interrogation support was already in existence prior to PENS. The PENS Report was used in the Medical Command policy (OTSG/MEDCOM Policy Memo 06-029) only for greater specificity in the utilization of psychologists (pp.15-21); the policy also included psychiatrists (pp.12-24). HR cites this policy HR pp.223-224 FN 968 and throughout HR pp. 323-421, and includes it in HR Binder 2 pp.1045-1069.</b></p> <p><b>**HR financial review finds no benefits. HR p.523: "This analysis did not reveal any significant or unusual payments to APA from DoD..."</b></p> <p>No substantial increase in number of psychologists utilized in this role -1,950 psychologists employed by DoD; number of operational psychologists has not significantly changed - 50 over the last decade. (Division 19 TF 11/9/2015 Report pp.34-35; not in Hoffman's possession at time of Hoffman report.)</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record/report contained within Binder 2 of the HR.</p> <p>Absence of any identified financial benefits in the HR, a report intended to find benefits, shows nonoccurrence.</p> <p><a href="https://www.militarypsych.org/uploads/8/5/4/5/85456500/19_response_to_the_hoffman_report_div19_excom_approved.pdf">https://www.militarypsych.org/uploads/8/5/4/5/85456500/19_response_to_the_hoffman_report_div19_excom_approved.pdf</a> provides a true and correct copy of a Division 19 published market report relied upon by military psychologists.</p>
156	<p><b>APA has always touted its support of the McCain Amendment in 2005 as an example of its independence from DoD efforts to reinforce its stance against torture and cruel, inhuman, or degrading treatment. But APA's support came only after it effectively received pre-clearance of such support from DoD official, Morgan Banks.</b></p>	<p>Customary business practice for APA staff to consult with subject matter experts and/or relevant members of a constituency affected by a public stance of the Association <i>prior</i> to taking that stance.</p> <p><b>**HR (p.353) admits that Behnke's expressed interest in supporting the McCain Amendment (10/19/2005) precedes his 10/21/2005) email communication to Banks about the amendment: " The Physicians for Human Rights ("PHR") approached APA for its support of the McCain Amendment on October 19, 2005...Behnke saw this as an opportunity to give APA a strong talking point with its critics on the interrogations issue, likely without causing any damage to DoD: "If APA endorsed, I think that could be enormously helpful in addressing concerns of some of the individuals/groups who have been intensely interested in the PENS report."</b></p> <p>See also 2/9/2005 email from Behnke to Kelly regarding meeting with SASC staff offering APA as a resource "in the ethical aspects of interrogations (such as at Abu Ghraib and Guantanamo Bay)". (APA_0129061, HR Binder 2 p.1352)</p>	<p>Routine practice of the APA.</p> <p>Published in the HR as an admission by party-opponent.</p> <p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke's email within Binder 2 of the HR.</p>
157	<p><u>Premise to false statement below:</u> Meanwhile, Behnke was closely collaborating with Banks and Dunivin on virtually every aspect of Behnke's work relating to the interrogation issue, especially with regard to official statements by Behnke or APA to the media, APA members, or prominent critics. As part of the growing partnership, Banks and Dunivin brought Behnke into the newly-created DoD training program for BSCT psychologists at Fort Huachuca, Arizona as a paid instructor... DoD paid Behnke for these trainings, although Behnke said that the payments went to APA (less reimbursement to Behnke for travel expenses), and were used by the Ethics Office for educational purposes.</p> <p><b>...And in fact, it appears that APA's Board was never made aware of his participation, his status as a DoD contractor, or these payments from DoD to APA.</b></p>	<p><b>**10/4/13 Honaker email to a member (Treptow), copied to Anderson and forwarded by Honaker to the Board, listing all DoD funded APA activities including two ethics training courses to military psychologists. (Email provided to Hoffman by Honaker following Honaker interview and prior to HR completion.)</b></p>	<p><a href="https://tinyurl.com/y3p6qbnn">https://tinyurl.com/y3p6qbnn</a> provides a true and correct copy of Honakers' email.</p>
158	<p><u>Premise to false statement below:</u> This single exchange reveals clearly that Behnke viewed Banks as a partner in their joint enterprise of coordinating APA and DoD policy and messaging on interrogations. Behnke both shared a presumably private communication from a high-ranking APA governance member with DoD personnel, and relied on Banks, as an advisor in DoD, to assist him in crafting a mutually acceptable response.</p> <p><b>...it is clear from the "Eyes Only" subject line that Behnke purposely concealed his consultation with Banks from Brehm and other APA governance members, keeping secret the strategy of close coordination he intended to pursue.</b></p>	<p>Customary business practice for staff consulting a subject matter expert to answer questions posed by the president in order to respond with accurate information and to restrict the distribution of the president's question.</p> <p><b>**Behnke interview with Hoffman: Both agreed nothing in the email was confidential but did not want the president's question distributed any further.</b></p>	<p>Routine practice of the APA.</p> <p>Affidavit of Behmke with personal knowledge of the interview with Hoffman.</p>

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159	<p>Premise to false statement below: In May of 2006, the American Psychiatric Association ("ApA") released a position statement on psychiatrists' participation in the interrogation of detainees, concluding that "[n]o psychiatrist should participate directly in the interrogation of persons held in custody by military or civilian investigative or law enforcement authorities."<sup>1701</sup></p> <p>In yet another instance in which Behnke showed that his primary goal in developing APA messaging was to support DoD's policy goals, Behnke and Kelly sent a description of the statement to Banks and asked if there was "anything on your end you can share in the way of a reaction or what it might mean for conducting business." Banks responded that he thought the ApA's position was "poorly informed on several issues" and "inaccurate in [its] depiction of several facts." Behnke encouraged the group to review the statement itself and then speak again.<sup>1702</sup> It is clear that Behnke was aware that the positions taken by professional associations, including APA, had a direct impact on DoD policy decisions, and that he was motivated to ensure that APA did nothing to interfere with DoD's preferred mode of "conducting business."</p>	<p>**Customary business practice for APA staff to consult with subject matter experts to assure the accuracy of APA's public statements concerning APA policy, including staff's responsibility to be aware of other professional association positions and how they might impact policy or position statements promulgated by APA.</p>	<p>Routine practice of the APA.</p>
160	<p><b>It is clear from Behnke's broad outreach to his contacts in DoD that he was concerned about the public backlash to Winkenwerder's comments regarding DoD's preference for using psychologists, and that he wanted to ensure that his partners in DoD had sufficient opportunity to guide his response on behalf of APA in a way that coordinated with DoD's policy preferences.</b></p>	<p>**Customary business practice for APA staff to consult with subject matter experts to assure the accuracy of APA's public statements concerning APA policy.</p>	<p>Routine practice of the APA.</p>
161	<p>Premise to false statement below: On the next day, June 12, James agreed to speak to Council and Behnke responded that "in my opinion this is EXACTLY what we need. I am going to work with Rhea Farberman, Olivia [Moorehead-Slaughter], Norman [Anderson] and Gerry [Koocher] to develop a strategy for Council. Things are getting pretty hot around here. I'll keep you posted at each step along the way."<sup>1715</sup> Behnke's discussions with James, Dunivin, and Banks demonstrate that, once again, in the face of growing criticism, Behnke reached out to trusted contacts in DoD for their confidential advice, and worked in a partnership with them to craft APA's media and policy strategy in a manner consistent with their guidance.</p> <p><b>Behnke continually shared APA's confidential internal discussions and strategy with his DoD contacts, and relied on them to help him direct future APA strategy discussions.</b></p>	<p>**Email communications HR cites (p.366) concerning James speaking at Council meeting neither marked "confidential" nor from an executive session of the Board. (APA_0060321, HR Binder 1 pp.1476-1478)</p>	<p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides true and correct copy of emails contained within Binder 1 of the HR.</p> <p>Affidavit of Behnke re: sharing confidential information.</p>
162	<p><b>Brehm agreed that James would be an "excellent speaker" and urged the group to invite him to present at Council.<sup>1718</sup> This interaction is but one example of Behnke's successful manipulation of internal APA strategy in a way that conformed to the mutual goals he developed with his partners in DoD.</b></p>	<p>**Customary business practice for APA staff to make recommendations to Association officials, but officials have decision-making authority whether to accept recommendations</p>	<p>Routine practice of the APA.</p>

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163	<p><u>Premise to false statement below:</u> When AMA released its position statement on June 12, 2006, Behnke immediately turned to Banks as his consultant in developing APA's response, contacting him several times the following day for his thoughts and comments on the statements Behnke was making on behalf of APA. On June 13, Behnke asked Banks for his reaction to an analysis he had prepared of the similarities between the APA and AMA positions,<sup>1719</sup> an approach which Banks had himself suggested only days earlier. On the same day, Banks approved Behnke's statement to a reporter emphasizing that "the American Medical Association has used precisely the same ethical analysis to determine the manner in which physicians may participate in interrogations," which Behnke described as "our basic position, that we'll elaborate." Banks agreed that "[t]he basic talking point is that we and the AMA are in virtually complete agreement."<sup>1720</sup> Also on June 13, Behnke forwarded to Banks his response to a member's criticisms, which reiterated the precise match between the APA and AMA positions, again asking for Banks's thoughts on how he had framed the response. Banks commiserated with Behnke regarding the frustration of responding to continued attacks, and offered suggested language for Behnke to use in future responses that emphasized the close alignment between the APA and AMA positions.<sup>1721</sup></p> <p><b>These messages demonstrate that Behnke and Banks saw themselves as part of a unified team developing APA's public relations strategy in a way that supported DoD's continued use of psychologists in interrogation roles. Behnke continued to share APA's media strategies, presumably intended to be confidential, with his advisors in the DoD, and to implement the suggestions of those advisors in his statements on behalf of APA.</b></p>	<p>Customary business practice that staff rely on subject matter experts during their work and are attentive to how the Association's work will be reported out to the public.</p> <p><b>**Task Force charge from Board to address whether APA has "responded strongly enough to media accounts of activities that have occurred at Abu Ghraib and Guantanamo Bay." (See APA_0058508, referenced in HR p.214 FN 923 and included in HR Binder 1 p. 1405.)</b></p> <p><b>**7/18/2015 letter to Behnke from Woolf: "I am struck with how efforts to navigate complex policy waters become characterized (in HR) as 'collusion' or 'manipulations.' I have drafted university policies as well as written book chapters, articles, etc. with others. It is a back and forth collaborative process to get it right... The report doesn't really understand the back-and-forth nature of all of our work as we endeavored to draft the best possible resolution." (Not in Hoffman's possession at time of report; on file with Plaintiffs' attorney.)</b></p> <p>PENS listserv discussion pp.79-80 (HR Binder 5 pp.531-532): Moorehead-Slaughter writes: "Jean Maria poses the very important question of what public statements APA ought to make; these will be an important part of our discussions on what the finalproduct should look like."</p>	<p>Routine practice of the APA.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Board charge to task force contained within Binder 1 of the HR.</p> <p><a href="https://tinyurl.com/y2raxte3">https://tinyurl.com/y2raxte3</a> <b>Letter from Woolf concerning her present sense impressions of the Report</b></p> <p><a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications contained within Binder 5 of the HR.</p>
164	<p><b>The points developed by Behnke and Farberman demonstrate that they were highly attuned to the defenses Banks and other military psychologists had been offering for years. Whether APA turned to DoD for assistance or, more rarely, DoD turned to APA, the evidence clearly shows that APA and DoD worked as partners to ensure that they presented a unified public message.</b></p>	<p><b>**Customary business practice for APA staff to work with individual or groups of constituent psychologists when its help and expertise is requested, <i>not working for or on behalf of the organization</i> (e.g., DoD) for which the constituent psychologists work.</b></p>	<p>Routine practice of the APA.</p>

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165	<p><u>Premise to false statement below:</u> It is clear that during this period, Behnke saw himself, and APA, as teammates with Banks, Dunivin, and DoD. He continually turned to his partners in DoD to closely coordinate strategy and policy in direct opposition to peace and social justice critics, ...</p> <p><b>...and he shaped APA's message in a way that suited the military's needs.</b></p>	<p><b>**7/11/2006</b> email to Behnke from President of Peace Psychology Division (APA Division 48): "...I really appreciate all your work on this issue. You are clearly going above and beyond..."</p> <p><b>**1/17/2007</b> email to Behnke from Woolf (now Past President of Peace Psychology Division): "If you meet with Neil, you may want to not only communicate the number of hours we spent networking/ working but how each of these contacts often resulted in very useful changes to the resolution. It was a very interactive and dynamic process."</p> <p><b>**1/28/2007</b> email to Behnke from Woolf: "...you are dancing as fast as you can to help folks but uninformed critics are wanting to lock you up..."</p> <p>HR included access and review of all APA staff emails, including any deleted emails still on the server-- Hoffman hired a forensic team to image the hard drives of all APA staff <a href="http://discovery.com/">http://discovery.com/</a> including any previously deleted email. (Raben email communication to staff 2/5/15).</p> <p>7/18/2015 letter to Behnke from Woolf: "I am struck with how efforts to navigate complex policy waters become characterized (in HR) as 'collusion' or 'manipulations.' I have drafted university policies as well as written book chapters, articles, etc. with others. It is a back and forth collaborative process to get it right... The report doesn't really understand the back-and-forth nature of all of our work as we endeavored to draft the best possible resolution." (Not in Hoffman's possession at time of report; on file with Plaintiffs' attorney.)</p>	<p><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of the email to Behnke.</p> <p><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of the email to Behnke.</p> <p><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of the email to Behnke.</p> <p><a href="https://tinyurl.com/yylzbmue">https://tinyurl.com/yylzbmue</a> provides a true and correct copy of Raben email.</p> <p><a href="https://tinyurl.com/y2raxte3">https://tinyurl.com/y2raxte3</a> <b>Letter from Woolf concerning her present sense impressions of the Report</b></p>
166	<p><u>Premise to false statement below:</u> <i>C. Manipulation of the August 2006 Council Meeting: June 2006 - August 2006.</i> ... Having reached out to Banks and Dunivin for guidance, Behnke emailed Van Hoorn and Okorodudu on June 22, stating that the "climate may have changed," and suggesting that their original plan for expedited treatment of their resolution now made sense, such that the resolution would go before the Council in August.<sup>1739</sup> Behnke claimed in a later email to them that the "changing climate" referred to "the attention that the Council was giving to this issue and the Board's desire to ensure that Council has the opportunity to discuss this issue when it meets at Convention."<sup>1740</sup> But the emails leading up to this exchange show that, in fact...</p> <p><b>Behnke had become concerned that more aggressive action by Council—including a potential prohibition on psychologists being involved in interrogations at Guantanamo—was become increasingly likely, and that it was strategically important to provide a more moderate alternative that would keep DoD officials happy (by not requiring any change) while appearing sufficiently "pro human rights" so that peace psychologists would also be satisfied. As an additional step in pursuing this strategy, Behnke sought to co-opt the Division 48 proponents by adding representatives from the military psychology division, Division 19, to the team.</b></p>	<p><b>**Customary business practice</b> for staff to work to find middle ground for agreement between multiple constituencies with competing perspectives.</p>	<p>Routine practice of the APA.</p>

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167	<b>Wanting to maximize the appearance that this was purely a Division 48 resolution, and not one managed and watered down by him, Behnke suggested a response that acknowledged contact with APA staff, but falsely implied that the contact was merely procedural: "The Movers would like to move the Resolution forward as expeditiously as possible, and have asked staff to indicate what mechanisms are available to get the Resolution before Council at the earliest date."</b>	<p>Customary business practice for staff to work to enable the movers of a Council motion to enlist the broadest range of support to maximize the likelihood of adoption.</p> <p><b>**See 7/18/2015 letter from Woolf, Past-President for Peace Psychology Division (APA Division 48): to Behnke: "Within APA, I have volunteered on a number of Education Directorate projects related to diversity and international issues. Staff members always served as a resource and provided feedback. Regardless, the final product has always been attributed to the Task Force members and not staff. Hence I was angered to read: 'Wanting to maximize the appearance that this was purely a Division 48 resolution, and not one managed and watered down by him, Behnke suggested a response that acknowledged contact with APA staff, but falsely implied that the contact was merely procedural.' The evidence for this claim? It was your email where you wrote: 'The Movers would like to move the Resolution forward as expeditiously as possible, and have asked staff to indicate what mechanisms are available to get the Resolution before Council at the earliest date.' I remain clueless as to how they achieved their conclusion based on your simple email, even more confusing as it is taken out of context." (Not in Hoffman's possession at time of report; on file with Plaintiffs' attorney.)</b></p>	<p>Routine practice of the APA.</p> <p><a href="https://tinyurl.com/y2raxte3">https://tinyurl.com/y2raxte3</a> <b>Letter from Woolf concerning her present sense impressions of the Report.</b></p>
168	<b>Behnke privately shared with Koocher his strategic thinking behind the intentional effort to falsely make the resolution appear to be a Division 48-only effort, and the danger that without this moderate alternative, much worse resolutions may have thrived.</b>	<p><b>**Prior communication from Behnke to Benjamin, Moorehead-Slaughter and Halderman (HR p.372) encouraging collaboration with other Divisions: "Behnke said that they should strongly encourage Van Hoorn and Okorodudu to "reach out and work with Division 19 to fashion wording for the final Resolution." Behnke said that he and the Ethics Office would be "happy to facilitate this process."</b></p> <p><b>**8/12/2007 email from Van Hoorn to Behnke (HR p.422): "On August 12, 2007, July Van Hoorn reached out to Behnke to inform him that the various groups, including Division 19 had been working together to develop amendments that they can all support, and that they were in agreement as to almost all of the amendments. She asked Behnke if he would like to be the point person to facilitate a meeting between the different groups so that they could reach a consensus before the COR meeting."</b></p> <p><b>See 7/18/2015 letter from Woolf, Past-President for the Peace Psychology Division (APA Division 48) to Behnke: "The Report states, 'On March 19, Behnke emailed Woolf, Van Hoorn, and Okorodudu and began efforts to form a partnership with them for the purpose of influencing the language of their resolution.' Actually, it was your job to contact us! I can only surmise that Hoffman and Associates know nothing about the legislative process within APA." (Not in Hoffman's possession at time of report; on file with Plaintiffs' attorney.)</b></p>	<p>Publication in the HR as an admission by party-opponent.</p> <p>Publication in the HR as an admission by party-opponent.</p> <p><a href="https://tinyurl.com/y2raxte3">https://tinyurl.com/y2raxte3</a> <b>Letter from Woolf concerning her present sense impressions of the Report</b></p>
169	<b>Behnke also plotted to arrange a controlled, well-staged speech from a DoD official who would send a message to the Council about the humane treatment of detainees.</b>	<b>**Customary practice for staff to seek out and recommend resources to the governance leadership of the Association, such as Surgeon General of the Army Kiley.</b>	Routine practice of the APA.
170	<p>In a shift in DoD policy more than a year after the release of the PENS report, it appears that the military began to exclude BSCTs from discussions of detainee medical records, thus prompting Kennedy's request for a consultation."</p>	<p><b>**3/28/2005 policy prohibiting BSCTs from having access to detainee medical records – in place prior to when the PENS Task Force was convened. (HR Binder 3, pp.978-990)</b></p> <p>HR p.350, quoting Dunivin 10/18/2005 to Levant about BSCTs: "BSC Do not have access to med. records" and "Firewall between medical unit". (from Levant notes of meeting with Dunivin included in HR Binder 5 pp.415-419.)</p> <p>Kennedy's 10/25/2007 email request to Behnke for an ethics consultation was prompted by a question about the interpretation of the PENS report as it could apply to local procedures at Guantanamo. (APA_0061329, HR Binder 2 p.52)</p>	<p><a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of official DOD public record/report contained within Binder 3 of the HR.</p> <p>Published in the HR as an admission by party-opponent. <a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of Levant's notes contained within Binder 5 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of email from Kennedy to Behnke within Binder 2 of the HR.</p>
171	<p><u>Premise to false statement below:</u> Behnke's concern that he could not fully address Hoofman's concerns during his scheduled visit to Guantanamo is yet another demonstration of the shallow nature of the trip and its true public relations purpose....</p> <p><b>Behnke's message to Hoofman was entirely disingenuous: because it was not at all clear that the trip was "designed" to focus on health care; rather, such a focus was consistent with the post-hoc public relations strategy devised by Banks only days earlier.</b></p>	<b>**HR cites as justification for concluding Behnke's message is "disingenuous" the very email exchange (HR p.384 FN 1796) with Hoofman 11/1-8/2006 in which Behnke specifies the reasons a consultation would not be appropriate (traveling with others not conducive to confidential ethics consultation and time insufficient for adequate consultation). (APA_0062933, HR Binder 2 pp.120-124)</b>	<a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of email exchange between Behnke and Hoofman within Binder 2 of the HR.

Statement # Jul 2 version of Report	False Statement from the Hoffman Report (HR)	Evidence in Hoffman's Possession Showing Statement to be False When Hoffman and Sidley made the Statement (page references herein to HR 7/2/15 version)	Admissibility
172	<p>Premise to false statement below: Behnke's interactions with Banks and Dunivin in the weeks before his visit to Guantanamo clearly demonstrate a direct line from DoD's advice to APA's actions; Behnke consistently turned to his advisors in the DOD for direction and then implemented the strategies and actions advised by them. (p.385)</p> <p><b>Thus, Behnke continually coordinated with his DoD contacts to ensure that APA's messaging was sufficiently nuanced to align with DoD's preferred policy positions in a way that would not limit DoD's ability to use psychologists in ways that were the most helpful or efficient.</b> (p.386)</p>	<p>**Behnke and DoD psychologists not in agreement about the application of PENS guidelines, e.g., see disagreement about BSCT access to detainee medical information (HR pp.303-304)</p>	<p>Published in the HR as an admission by party-opponent.</p>
173	<p>Premise to false statement below: In early January 2007, Behnke and Banks worked to schedule a visit to Guantanamo for the coming March to consult with Hoofman on the ethical issues she had raised the previous October.<sup>1811</sup> However, by the end of the month, Behnke informed Banks that there had been attempts to "get the Board to say that no one in APA leadership will travel to Guantanamo," and that even though his supervisor (Mike Honaker) gave him permission to go to GTMO, it was possible that the trip may not happen.<sup>1812</sup></p> <p><b>Behnke's revelation of confidential information regarding internal Board discussions is yet another demonstration that he had come to see himself and APA as aligned with Banks and DoD in a joint enterprise.</b></p>	<p>**Email communication indicates that Behnke's information comes from outside of the Board and is <i>about</i> the Board, not confidential Board discussion <i>from</i> the Board (APA_0063265, HR Binder 2 p.133).</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of email exchange between Behnke and Hoofman within Binder 2 of the HR.</p> <p>Affidavit of Behnke re: sharing confidential information.</p>
174	<p><b>As further evidence that Behnke had become more closely aligned with DoD than with the APA Board, Behnke began managing a communication strategy with Banks in an effort to manipulate the Board into approving his visit to Guantanamo. Behnke reached out to Hoofman to see if she could draft an invitation letter directed to him that stated specifically: (1) current DoD policy explicitly references the PENS report and the request was for a consultation on the application of the PENS report and other relevant APA positions; (2) the purpose of the consultation was to discuss how psychologists could remain within the proper, ethical bounds of their work; and (3) on-site consultation was requested out of necessity.</b></p>	<p>**Customary business practice for APA staff to help members make appropriate requests (in this instance for an ethics consultation) to the organization and/or its Board.</p>	<p>Routine practice of the APA.</p>
175	<p>Premise to false statement below: The next day, Banks wrote to Behnke that he hoped the process had not been "too destructive," to which Behnke responded: "Morgan, you know the enormous respect I have for you and your work. Nothing could diminish that, nor my commitment to continue to support all of your efforts, and the efforts of the great men and women who protect our country and our freedoms."<sup>1821</sup></p> <p><b>This show of support is yet another example of the strong personal friendship between Behnke and Banks that served as a foundation for their joint efforts to shape APA and DoD policy in a mutually reinforcing manner.</b></p>	<p>**Behnke's descriptions of his being motivated by the centrality of ethics in complex areas of psychological practice. See HR p.200 for email drafted by Behnke in preparation for 7/20/2004 meeting related to interrogations (APA_0058094, HR Binder 1 pp.1401-1402).</p> <p>**See also 6/7/2005 email from Behnke to Moorehouse-Slaughter and Koocher, copied to a number of APA staff, in preparation for a meeting – again emphasizing the centrality of ethics (APA_0027134, HR Binder 1 p.729).</p>	<p>Published in the HR as an admission by party-opponent.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke's outline of remarks contained within Binder 1 of the HR.</p> <p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke's email contained within Binder 1 of the HR.</p>
176	<p><b>The discussions demonstrate that Behnke was highly attuned to the way that APA's public message could affect military activities, and that he was motivated to ensure that APA did not hinder the military's mission in any way.</b></p>	<p>**HR admits Behnke's #1 goal, HR p.200: to "identify the ethical issues that arise in the use of psychology or psychological techniques in national security-related investigations."</p>	<p>Published in the HR as an admission by party-opponent.</p>

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177	<b>Behnke's discussion with Levine and comments to Levant, Koocher, and Banks demonstrate that he was becoming more defensive and paranoid regarding media criticisms of APA and military psychologists. From this point forward, he increasingly turned to his partners and friends in DoD to craft a unified response to critics and to ensure that the APA and military media strategies aligned in message and theme.</b>	<b>**Behnke's efforts to respond to Levine's criticisms. 7/9/2006 email to Koocher and Levant with copies to Farberman and Gilfoyle (portions quoted on HR p.389): that he had "been forceful but tried to stay professional and focused, with the ultimate goal of conveying that we have clear and thoughtful responses to all the criticisms being made of our position and our process." (APA_0061056, HR Binder 2 p.28).</b>	<a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke's email within Binder 2 of the HR.
178	<b>As Banks's flippancy comment regarding safety demonstrates, DoD's "framing" rested on using public safety and the fear of future attacks as a public relations tool. His comments also demonstrate that he spoke not only on behalf of himself, but also as an authoritative voice on how to construe DoD policy. Indeed, it seems likely that Behnke viewed Banks as a critical touchstone in DoD, given Banks's connections to highly-ranked individuals in the medical and operational commands.</b>	<b>**Banks consistently believed safety was a key issue for the use of psychologists in interrogation support. See PENS listserv p.42 (HR Binder 5, p.494): "I am very confident that my psychologists provide a very effective safety mechanism during these operations."</b>  Banks does not speak for DoD. 6/1/2015 email from Banks to Hoffman: "At no time were any of my comments, as someone who understands DoD and Operational Psychology fairly well, more than my personal opinions."	<a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications within Binder 5 of the HR.  <a href="https://tinyurl.com/y4xartno">https://tinyurl.com/y4xartno</a> provides a true and correct copy of the Banks email to Hoffman.
179	<b>Banks's response shows the close collaboration and joint purpose between APA and DoD on the vital issue of psychologists' involvement in interrogations.</b>	<b>**PENS Listserv p.16 (HR Binder 5 p.468) in which Banks describes his motivation that is contrary to the agenda Hoffman stated: "I strongly concur with most of Dr. Gelles' comments, especially concerning the need for guidance to psychologists providing this type of support. In my opinion, there is a great paucity of training generally available to psychologists in this area. My main interest is in psychology support to DoD organizations, and in providing clear guidance to the Army psychologists that I train and to whom I provide oversight."</b>  Banks does not speak for DoD. 6/1/2015 email from Banks to Hoffman: "At no time were any of my comments, as someone who understands DoD and Operational Psychology fairly well, more than my personal opinions."  <b>**6/1/2015 email from Banks to Hoffman: "Concerning the specific role of psychologists, and in order to prevent them from being pressured to act in an inappropriate way, I needed to accomplish the following:</b>  a. Establish clear legal and ethical guidelines for psychologists in this role.  b. Develop a training program for psychologists and enforce those established standards.  c. Establish the role within DoD such that they could influence the process and mission of detention and interrogation activities.  The PENS report provided the ethical guidance that we needed. It was not remotely sufficient, but having the help of APA as we were establishing training standards really was critical to helping us make sure we were establishing standards that would last, and be open to public scrutiny. We made sure that the AMEDD policy was open to the public, and we encouraged critical feedback on it. We certainly would have developed ethical guidance if APA had not stood up and helped, but I cannot fathom how that would have been a good idea or beneficial to anyone. As we worked to develop the policy and the training program, we relied on as many subject matter experts as possible. This included (and continues to include) cultural experts, legal advisors with extensive intelligence and military experience, psychologists who had performed the mission, experts in detention and in interrogation, and experts in professional ethics. This was true at every level in which I participated. The Army Surgeons General with whom I worked were adamant that we adhere to the highest ethical standards. (That would be the first thing and the last thing out of LTG Schoemaker's mouth every time I briefed him.) As you would expect, the Surgeons General have senior medical ethics counselors, and they were always involved in helping us make sure we were on solid ground at each step. Our link with APA helped make sure that we were able to add the unique viewpoint of psychology ethics to that of medical and legal ethics."	<a href="http://www.apa.org/independent-review/binder-5.pdf">http://www.apa.org/independent-review/binder-5.pdf</a> links to the official website of the APA and provides a true and correct copy of the PENS listserv communications within Binder 5 of the HR.  <a href="https://tinyurl.com/y4xartno">https://tinyurl.com/y4xartno</a> in the 2nd entry, provides a true and correct copy of Banks's email to Hoffman.  <a href="https://tinyurl.com/y4xartno">https://tinyurl.com/y4xartno</a> provides a true and correct copy of Banks's email to Hoffman.

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180	<p><b>It is clear that Behnke and Banks were, by this point, acting as a true partnership: not only did Behnke lean on Banks for guidance, but Banks also requested advice and assistance from Behnke in drafting statements and talking points for DoD. Moreover, it is clear that the partnership was not just between the two men, but rather their respective entities as well. Banks's message revealed a direct line between him and the commander of Guantanamo, and asked that Behnke assist him in drafting a statement in defense of DoD that was specifically requested by the DoD commander.</b></p>	<p><b>**Customary business practice for military staff officers to seek the best information available to address senior leader's concern by going to a subject matter expert, in this case an expert in ethics for psychologists.</b></p>	<p>Routine practice of the military.</p>
181	<p><b>Premise to false statement below:</b> Upon receiving Behnke's proposed response, Banks responded that the draft was "[f]antastic" and asked "[a]s we figure out what the admiral wants, can I give you credit, or is this 'deep background' [sic]?" Behnke replied that it was "probably best to keep me on deep background, at least for the moment. . . . Let's see what the admiral wants, and then we can refine if need be."<sup>1846</sup> Banks commented that he "plan[s] on using [the draft], and [doesn't] like to plagiarize," and Behnke responded: "Well Morgan, it may be my words, but it's all yours conceptually."<sup>1847</sup> The coordination between Behnke and Banks to keep Behnke's role concealed echoes their maneuvering to keep hidden Banks's guiding hand in statements Behnke made on behalf of APA. Behnke and Banks acted as teammates in their efforts to shape APA and DoD messaging, but in many ways they were "silent" partners: Behnke and Banks ensured that the joint effort was concealed from their respective entities, and that it appeared to APA and DoD leaders that each was acting independently on behalf of his own organization.</p> <p><b>This exchange is yet another indication that an important part of the collaboration was concealing the shared effort from anybody not directly involved in the partnership.</b></p>	<p><b>**Behnke interview with Hoffman: Described intensely controversial nature of the whole process including emotional personal attacks he had received. (See HR p.72 describing "the incredible intensity of the anger, personal attacks, and highly aggressive statements that have emanated from both sides of the debate...") Behnke working to keep focus on substantive issues, not on his role that had become a distraction.</b></p>	<p>Affidavit of Behnke with personal knowledge of interview with Hoffman.</p>
182	<p><b>Behnke's request to Dunivin is another example of his pattern of bringing in his teammates in DoD to give guidance regarding APA's public statements. Notably, Behnke did not have a habit of engaging in broad outreach: Sidley has found no evidence that Behnke would regularly contact individuals aligned with peace psychology for their input regarding APA's position statements, and there is no evidence that he reached out to a human rights lawyer in this case. Rather, Behnke consistently consulted with only his partners at DoD for feedback and advice on the statements APA would make.</b></p>	<p><b>**Behnke correspondence with Rubenstein, Woolf, Wagner, and others from the Peace Psychology community showing his broad outreach, all provided in 6/12/2015 email to Hoffman.</b></p> <p><b>**7/11/2006 email to Behnke from President Woolf of the Peace Psychology Division (APA Division 48): "...I really appreciate all your work on this issue. You are clearly going above and beyond..."</b></p> <p><b>**1/17/2007 email to Behnke from Woolf (now Past President): "If you meet with Neil, you may want to not only communicate the number of hours we spent networking/ working but how each of these contacts often resulted in very useful changes to the resolution. It was a very interactive and dynamic process."</b></p> <p><b>1/28/2007 email to Behnke from Woolf: "...you are dancing as fast as you can to help folks but uninformed critics are wanting to lock you up..."</b></p> <p><b>HR included access and review of all APA staff emails, including any deleted emails still on the server-- Hoffman hired a forensic team to image the hard drives of all APA staff <a href="http://discovery.com/">http://discovery.com/</a> including any previously deleted email. (Raben email communication to staff 2/5/15).</b></p>	<p><b><a href="https://tinyurl.com/yytms9r">https://tinyurl.com/yytms9r</a> provides a true and correct copy of Behnke's email (with attachments) to Hoffman."</b></p> <p><b><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of now Past President of Peace Psychology's email.</b></p> <p><b><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of now Past President of Peace Psychology's email.</b></p> <p><b><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of the email to Behnke.</b></p> <p><b><a href="https://tinyurl.com/yylzbmue">https://tinyurl.com/yylzbmue</a> provides a true and correct copy of Raben's email.</b></p>
183	<p><b>At this point, Behnke and Banks began to become more guarded in their conversations, instructing one another to destroy records of their communications.</b></p>	<p><b>Hoffman hired a forensic team to image the hard drives of all APA staff <a href="http://discovery.com/">http://discovery.com/</a> including any previously deleted email. (Raben email communication to staff 2/5/15).</b></p> <p><b>**Behnke placed any deleted emails except one into a deleted email archive retained on the APA server. HR draws inference that they had destroyed emails and makes no mention that forensic imagining would find even deleted emails. (HR p.394-395.)</b></p>	<p><b><a href="https://tinyurl.com/yylzbmue">https://tinyurl.com/yylzbmue</a> provides a true and correct copy of Raben's email.</b></p> <p><b>Affidavits of Banks, Behnke, and Newman re: no emails deleted."</b></p>

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184	<b>Banks and Behnke's agreement beginning in June to not only speak in confidence, but also to destroy the records of their conversations might explain why records of communications between the two drop off sharply during the summer of 2007. It is impossible to know whether their discussions tapered off naturally as Behnke needed less guidance or whether the two continued to discuss their joint media and policy strategies. However, the abrupt end to conversations between Behnke and Banks in Sidley's records at precisely the same time that Banks began instructing Behnke to delete their messages strongly suggests that their discussions continued, but that records were destroyed in an attempt to conceal the collaboration.</b>	Hoffman hired a forensic team to image the hard drives of all APA staff <a href="http://discovery.com/">http://discovery.com/</a> including any previously deleted email. (Raben email communication to staff 2/5/15).  **Behnke placed any deleted emails except one into a deleted email archive retained on the APA server. HR draws inference that they had destroyed emails and makes no mention that forensic imagining would find even deleted emails. (HR p.394-395.)	<a href="https://tinyurl.com/yylzbumue">https://tinyurl.com/yylzbumue</a> provides a true and correct copy of Raben's email.  Affidavit of Behnke re: "deleted" emails.
185	The concept of listing and restricting specific interrogation techniques is something Behnke had staunchly resisted a year earlier during PENS. In a sharp turnaround, it appears Behnke became comfortable proposing and supporting a resolution prohibiting particular techniques only after the Army adopted a Field Manual restricting certain harsh techniques and Banks pre-cleared his proposed strategy.	**Prior Army Field Manual 34-52 (issued 1992) also had included a list of prohibited specific techniques (cited, e.g., HR p.79 & p.80 FN96); in fact this prior Field Manual prohibited the very techniques the HR says were allowed.	<a href="https://www.loc.gov/rr/frd/Military_Law/pdf/intel_interrogation_sept-1992.pdf">https://www.loc.gov/rr/frd/Military_Law/pdf/intel_interrogation_sept-1992.pdf</a> links to the official website of the Library of Congress and provides a true and correct copy of an official DoD public record/report.
186	Banks and Behnke worked together to ensure that the Ethics Committee did not take any positions that undermined the policies adopted by the military.	**Customary business practice for staff supporting policy-making work of governance bodies that make decisions according to APA rules that govern Association policy-making and vest decision-making authority in the governance entity. <a href="http://www.apa.org/about/governance/bylaws/index.aspx">http://www.apa.org/about/governance/bylaws/index.aspx</a>	Routine practice of the APA.
187	However, it is clear that Behnke ghostwrote a letter in direct opposition to the Altman resolution to pursue his own agenda.	**Email correspondence between Behnke and Altman (part of correspondence on APA server reviewed for HR) in which Behnke offers recommendation's to strengthen Altman's resolution.	Affidavit of Behnke with personal knowledge of correspondence with Altman.
188	<u>Premise to false statement below:</u> On August 13, Behnke emailed Banks the newest draft of the motion, with the message: "If you could look these over that would be great--it's the Board's motion, plus amendments." <sup>2011</sup> Later that day, Behnke sent Banks an email titled "How does this sound" with the following text: "...at detention facilities operated by the United States government where there are extra-judicial proceedings and where no due process of law is afforded..." Banks responded by asking Behnke the best number to reach him, stating "I just finished it, and have some thoughts." <sup>2012</sup> Sidley was not able to find any additional email communications on this point.  <b>However, it is clear that Behnke once again turned to Banks, his trusted partner in DoD, for pre-approval of APA policy.</b>	**Customary business practice for staff to consult with subject matter experts.	Routine practice of the APA.
189	It seems clear then that, regardless of whether it was publicly announced, James and Behnke, and some portion of Division 38 leadership coordinated prior to Convention to ensure that James would be able to speak as an official representative of Division 38.	**James interview with Hoffman: Described appointment as replacement for resigned Division 38 Council Representative Sharon Manne following February 2007 Council meeting due to his overall expertise in health psychology and before the August 2007 meeting agenda developed.	Affidavit of James with personal knowledge of interview with Hoffman.
190	<u>Premise to false statement below:</u> On January 9, 2008, Behnke consulted with Dunivin and Banks regarding APA's response to a resolution before the California Senate Business and Professions Committee. The Committee was considering significant action that would have deemed psychologists working in BSCT roles as in violation of their professional ethical responsibilities.  <b>Perceiving this proposed action as a disastrous threat to the position that he had worked with DoD to defend for so many years, Behnke immediately turned to his partners in DoD to help craft a response he could use in lobbying on APA's behalf.</b>	**Customary business practice for APA staff to provide advocacy support to state psychological associations and promote positions consistent with APA policy. California Psychological Association requested APA's assistance.	Routine practice of the APA.

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191	<p>Premise to two false statements below: On the same day, a SERE psychologist working with Banks sent three sets of documents to Behnke, including the DoD Directive and Instruction that Banks had referenced, and a number of other policies relating to BSCTs and interrogations.<sup>2029</sup> The psychologist wished Behnke luck, and playfully referred to him as “our Knight in Shining Armor :-).”<sup>2030</sup> Behnke thanked him for the materials and added “thanks as well for your kind words. I’m privileged to play a supporting role to the work you and your colleagues do, for which I have the greatest admiration. If the few words I’m allowed to say are at all helpful, I’ll be very pleased.”<sup>2031</sup></p> <p><b>This small exchange is yet another example of how Behnke embraced the partnership he had formed with DoD, and that he saw it as an integral part of his role to support that partnership and facilitate DoD’s mission.</b></p>	<p><b>**1/17/2007</b> email communication to Behnke from Woolf, Past President for the Peace Psychology Division (APA Division 48): “If you meet with Neil, you may want to not only communicate the number of hours we spent networking/ working but how each of these contacts often resulted in very useful changes to the resolution. It was a very interactive and dynamic process.”</p> <p><b>**1/28/2007</b> email communication to Behnke from Woolf: “ . . . you are dancing as fast as you can to help folks but uninformed critics are wanting to lock you up . . .”</p> <p><b>**7/11/2006</b> email to Behnke from President Woolf of the Peace Psychology Division (APA Division 48)</p>	<p><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of now Past President of Peace Psychology’s email.</p> <p><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of the email to Behnke.</p> <p><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> Provides a true and correct copy of President of Peace Psychology’s email.</p>
192	<p><b>...even when he ostensibly acted or spoke on behalf of APA, his true mission was to play a “supporting role” to the military. Over the several years following the release of the PENS report, Behnke continually turned to his trusted partners and friends in DoD for guidance, ensuring that APA’s message reinforced DoD policy preferences and that APA action never hindered DoD’s ability to accomplish its goals.</b></p>	<p><b>**1/17/2007</b> email to Behnke from Woolf, Past President for the Peace Psychology Division (APA Division 48): If you meet with Neil, you may want to not only communicate the number of hours we spent networking/ working but how each of these contacts often resulted in very useful changes to the resolution. It was a very interactive and dynamic process.”</p> <p><b>**1/28/2007</b> email to Behnke from Woolf: “. . .you are dancing as fast as you can to help folks but uninformed critics are wanting to lock you up . . .”</p> <p><b>**7/11/2006</b> email to Behnke from President Woolf of the Peace Psychology Division (APA Division 48)</p> <p>Following involvement in Board-funded Mini-Convention-- “Ethics and Interrogations, Confronting the Challenge.” <a href="http://www.apa.org/news/press/statements/ethics-brochure.pdf">http://www.apa.org/news/press/statements/ethics-brochure.pdf</a> received Board’s substitute Reaffirmation 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.’”(Report, p. 426 fn 2019, PDF p.446) The resolution ultimately approved (including specific prohibited interrogation techniques) was a co-creation of the Divisions of Social Justice with consultation from the Ethics Committee plus two amendments made on the floor of Council. <a href="http://www.apa.org/about/policy/torture.aspx">http://www.apa.org/about/policy/torture.aspx</a></p>	<p><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of now Past President of Peace Psychology’s email.</p> <p><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of the email to Behnke.</p> <p><a href="https://tinyurl.com/y4qf4x22">https://tinyurl.com/y4qf4x22</a> provides a true and correct copy of President of Peace Psychology’s email.</p> <p><a href="http://www.apa.org/news/press/statements/ethics-brochure.pdf">http://www.apa.org/news/press/statements/ethics-brochure.pdf</a> links to the official website of the APA and provides a true and correct copy of the Mini-Convention brochure.</p> <p><a href="http://www.apa.org/about/policy/torture.aspx">http://www.apa.org/about/policy/torture.aspx</a> links to the official website of the APA and provides a true and correct copy of the approved Reaffirmation Resolution.</p> <p><a href="https://tinyurl.com/yxcknqht">https://tinyurl.com/yxcknqht</a> provides a true and correct copy of the APA business record/ transcript of the August 2007 Council debate leading to vote on the Resolution.</p>
193	<p><b>As the petition moved forward and gained traction, Behnke worked with APA governance and staff to throw up every procedural roadblock possible and to assist the petitioners’ opponents, all while carefully concealing all traces of his involvement. Behnke led an orchestrated effort on behalf of APA to do everything in his power to defeat the petition resolution...</b></p>	<p>Customary business practice. Behnke and APA governance and staff followed Association Rule 30-3.1 (Petitioned Mail Votes by Members) to ensure that the petition resolution was handled properly.</p> <p><b>**Behnke’s communications (HR p. 433), w/ cc to CEO Anderson, indicate that he understood the decision belonged exclusively to the APA president: “ Behnke recommended that the staff explain the situation to Anton and let him make the decision because ‘[h]owever this unfolds, there will be people who are not happy and I think it’s important that this be a board decision. Also, I think that once the person is chosen we need to step back and let him/her write the statement in whatever manner he/she chooses.’”</b></p> <p>Board knew that Bylaws charged the Board with the “time and manner” of the vote and the petition if voted favorably would not be enforceable on APA members.</p> <p>February 2009 Council meeting—Council adopts member petition resolution as APA policy and receives advisory group report.</p>	<p>Routine practice of the APA. <a href="http://www.apa.org/about/governance/bylaws/rules-30.aspx">http://www.apa.org/about/governance/bylaws/rules-30.aspx</a> links to the official website of the APA and provides a true and correct copy of the procedures for petitioned mail votes.</p> <p>Published in the HR as an admission by party-opponent. <a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> pp. 1022-1023 (APA_ 0099988). links to the official website of the APA and provides a true and correct copy of Behnke’s email within Binder 2 of the HR.</p> <p><a href="https://www.apa.org/news/press/statements/qa-work-settings.aspx">https://www.apa.org/news/press/statements/qa-work-settings.aspx</a> links to the official website of the APA and provides a true and correct copy of “Q &amp; A” detailing how the petition vote was handled and what it did and did not mean when passed.</p> <p><a href="https://www.apa.org/monitor/2009/04/vision-apa.aspx">https://www.apa.org/monitor/2009/04/vision-apa.aspx</a> links to the official website of the APA and provides a true and correct representation of business records of the APA.</p>

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194	<p><b>Because Behnke could not manipulate the language of the petition resolution itself, he took every opportunity available to shape the messaging about the resolution. For example, as members began to express their opinions regarding the petition on the APA listservs, Behnke worked with governance and staff to craft the message in opposition. In early May, Behnke drafted a message for Melba Vasquez to post to a Division listserv that justified his objection to the petition because APA had already "taken a clear and emphatic stance *against* abusive interrogations," and in fact, public reports had provided examples of psychologists behaving "**precisely* as one would hope and want, intervening to stop an abusive interrogation" (emphasis in the original).</b></p>	<p><b>**As was customary business practice, Behnke continued to draft communications for Ethics Committee Chair (Vasquez).</b></p>	<p>Routine practice of the APA.</p>
195	<p><u>Premise to false statement below:</u> Though APA staff outlined a procedure by which the petitioners could present their resolution for a membership vote, they worked to ensure, even at this early stage, that a favorable vote on the petition would not affect the work of military psychologists in practice. Staff members labored to clarify that the petition was not an attempt to amend the Ethics Code; instead, it was "simply an effort to have APA adopt an official policy statement on the location where psychologists work. In particular, it was noted that the proposed new policy does not mention the word 'ethics' and does not suggest that there are any consequences of not following the policy."<sup>2038</sup></p> <p><b>Thus, even before any APA governance bodies or the APA membership considered the petition on its merits, APA staff had already subverted the clear intent of the petitioners and rendered the resolution toothless.</b></p>	<p><b>**APA Association Rule 20-4.1 establishes the only method for amending or revising the APA ethics code (and it does not include petition resolution process).</b></p> <p><b>**Board (Kaslow and Kelly) aware of Bylaws proscription for ethics review and revision.</b></p>	<p><a href="http://www.apa.org/about/governance/bylaws/rules-20.aspx">http://www.apa.org/about/governance/bylaws/rules-20.aspx</a> links to the official website of the APA and provides a true and correct listing of the rules governing ethics.</p> <p><a href="http://www.apa.org/news/press/statements/ethical-psychologist.pdf">http://www.apa.org/news/press/statements/ethical-psychologist.pdf</a> links to the official website of the APA and provides a true and correct copy of letter from the Board to Psychologists for an Ethical APA.</p>

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196	<p>Premise to false statements below: In the first few days after the Board directed the inclusion of pro and con statements in the circulation of the petition, APA staff rushed into action to both identify an author and shape the substance of the statement. Despite Anton's assurances that he would select the author of the con statement, it was Behnke who, on June 18, reached out to Joel Dvoskin to invite him to write the statement.<sup>2046</sup> Although Sidley could not find any record of staff discussions regarding who to select, it appears likely that Dvoskin was chosen because he was viewed as an "incrementalist," based on an address he gave as President of Division 41.<sup>2047</sup> By June 20, Dvoskin had already prepared a draft con statement. After speaking with Dvoskin, Behnke became concerned that he would not present a forceful enough opposition to the petition. In an email to Honaker, Strassburger, Gilfoyle, Farberman, Garrison, and Anderson, Behnke raised a concern regarding the tone of Dvoskin's statement. (p.432)</p> <p><b>Although Behnke's explanation for sidelining Dvoskin's draft statement was based entirely on procedure, it was clear that his real concern was with the "conciliatory" tone and substance of the statement Dvoskin had prepared. Clearly, Dvoskin's endorsement of the "intent behind the petition" would have been unacceptable to Behnke's partners in DoD, who wanted to continue to use psychologists as BSCTs at Guantanamo and elsewhere. Therefore, Behnke conveniently fell back on the Board's instruction that Anton select the con statement writer.</b></p> <p><b>Had Behnke truly been concerned with the procedural niceties, he would not have asked Dvoskin to work on the statement prior to Board approval in the first place. Internal communications clearly indicate that Behnke regretted the selection he had made because Dvoskin would not provide a vigorous defense of the position. (p.433)</b></p>	<p>Customary business practice for APA governance members to consult with staff on appointments.</p> <p><b>**Behnke's communications (HR p. 433) indicate that he understood the decision belonged exclusively to the APA president: " Behnke recommended that the staff explain the situation to Anton and let him make the decision because "[h] owever this unfolds, there will be people who are not happy and I think it's important that this be a board decision. Also, I think that once the person is chosen we need to step back and let him/her write the statement in whatever manner he/she chooses."</b></p> <p><b>**HR p.432-433 references Behnke communications sympathetic to a more conciliatory tone in the con statement: " The draft is *very* conciliatory in tone, endorses what Joel believes is the intent behind the petition, while making clear that the current version of the petition has significant problems that speak forcefully against its adoption. I would characterize Joel's draft as having a 'revise and resubmit' tone. <i>I myself think that there may be significant benefit to this approach,</i> but it is also important to recognize that some of our members may want to take a much harder line." (emphasis added) ( APA_0099988, HR Binder 2 pp. 1022-1023).</b></p>	<p>Routine practice of the APA.</p> <p>Published in the HR as an admission by party-opponent. <a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> pp. 1022-1023 (APA_0099988). links to the official website of the APA and provides a true and correct copy of Behnke's email within Binder 2 of the HR.</p> <p>Publication in the HR as an admission by party-opponent. <a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke's email within Binder 2 of the HR.</p>
197	<p><b>Behnke had staked out with his partners in DoD, and that he turned to procedural considerations to provide cover for a second attempt at choosing an author who would strike the right tone in strongly opposing the petition.</b></p>	<p><b>**HR p.432-433 references Behnke communications sympathetic to a more conciliatory tone in the con statement: " The draft is *very* conciliatory in tone, endorses what</b></p> <p>Joel believes is the intent behind the petition, while making clear that the current version of the petition has significant problems that speak forcefully against its adoption. I would characterize Joel's draft as having a 'revise and resubmit' tone. <i>I myself think that there may be significant benefit to this approach,</i> but it is also important to recognize that some of our members may want to take a much harder line." (emphasis added) ( APA_0099988, HR Binder 2 pp. 1022-1023).</p>	<p>Publication in the HR as an admission by party-opponent. <a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke's email within Binder 2 of the HR.</p>
198	<p><b>As the Council member intuited, APA staff's handling of the pro and con statements was disingenuous all the way through.</b></p>	<p><b>**HR p.434: "...Behnke responded that, 'given the *extensive* debate and discussion this issue has received over the past three years, it would seem virtually untenable not to have pro/ con statements regarding a new proposal.'"</b></p> <p>The only procedural mechanism available for providing the membership with the necessary information along with the ballot for their vote is the use of accompanying pro and con statements. (See Association Rule 30-3.1 Petitioned Mail Votes by Members).</p>	<p>Published in the HR as an admission by party-opponent.</p> <p><a href="http://www.apa.org/about/governance/bylaws/rules-30.aspx">http://www.apa.org/about/governance/bylaws/rules-30.aspx</a> links to the official website of the APA and provides a true and correct copy of the procedures for petitioned mail votes.</p>
199	<p><b>Behnke's elaborate responses to the con authors' questions belie his earlier promise that the author could "write the statement in whatever manner he/she chooses." Instead, it is apparent that Behnke labored to craft the language himself, to the extent possible, all while studiously assuring that he had gone through the motions of preserving neutrality, in the event that criticisms might later arise.</b></p>	<p><b>**Customary business practice for APA staff to draft documents for governance members. Governance members are free to use all, some, or none of staff-drafted documents/ communications.</b></p>	<p>Routine practice of the APA.</p> <p>Affidavit of Strassburger Fox re: routine practice of staff drafting documents and communications.</p>
200	<p><b>Although Sidley uncovered no evidence demonstrating what precisely Banks and Behnke discussed at this meeting, it is likely, based on the timing, that Behnke sought pre-approval of the message he intended to convey in the con statement, in the same way that he had for various APA statements and resolutions over the preceding two years.</b></p>	<p><b>**Customary business practice for APA staff to consult with psychologist subject matter experts.</b></p>	<p>Routine practice of the APA.</p>

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201	<b>Because staff were highly attuned to criticisms that the PENS Task Force had not been balanced, Behnke led APA staff in scheming to ensure that the appropriate mix of people were nominated to the advisory group.</b>	**Customary business practice for APA staff to help ensure "the appropriate mix of people" are nominated to advisory group; Garrison's 10/16/2008 email to Anderson describing the specific nomination process. (APA_103034, HR Binder 2 p.1200)	Routine practice of the APA. <a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of Garrison's email within Binder 2 of the HR.
202	<b>Clearly, Behnke's strategy of carefully selecting members of the advisory group who supported his agenda paid off, as they thwarted efforts to expand the scope of the petition resolution in a way that threatened the flexibility of the military.</b>	**Other APA staff (not Behnke) staffed the Presidential Advisory Group on the Implementation of the Petition Resolution and handled the work of the Advisory Group according to relevant Association Rules. (See Advisory Group Report citing Garrison and Andoh as staff liaisons <a href="http://www.apa.org/ethics/advisory-group-final.pdf">http://www.apa.org/ethics/advisory-group-final.pdf</a> .)  See also 10/22/2008 email from Behnke to Garrison and APA executive staff including the CEO: "I think at least half the people on the group must be considered "pro" the resolution... I would encourage Alan to invite all three sponsors." (APA_0073858, cited in HR p.442 FN 2102, contained in HR Binder 2 p.367)	<a href="http://www.apa.org/ethics/advisory-group-final.pdf">http://www.apa.org/ethics/advisory-group-final.pdf</a> links to the official website of the APA and provides a true and correct copy of an official APA record/report.  <a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke's email within Binder 2 of the HR.
203	Premise to false statement below: When Banks's letter began to circulate within APA, Behnke and Garrison worked to place the note in context and explain the reaction of military psychologists to the advisory group's report. Garrison wrote to senior APA staff that she had been aware before seeing Banks's note of "a movement afoot to stir up concern about the report among military personnel." <sup>2122</sup> Indeed, during the month of February, military psychologists were expressing a great deal of confusion regarding whether the entire advisory group report would be adopted as policy, and worrying that their scope of practice would be restricted if Council were to accept the report. <sup>2123</sup> Observing that the close relationships with DoD and military psychologists that he had cultivated so carefully over the past several years was threatened ...  <b>Behnke began manipulating procedure and wordsmithing language to prevent the advisory group's report from hindering DoD's mission.</b>	**Other APA staff (not Behnke) staffed the Presidential Advisory Group on the Implementation of the Petition Resolution and handled the work of the Advisory Group according to relevant Association Rules. (See Advisory Group Report citing Garrison and Andoh as staff liaisons <a href="http://www.apa.org/ethics/advisory-group-final.pdf">http://www.apa.org/ethics/advisory-group-final.pdf</a> .)	<a href="http://www.apa.org/ethics/advisory-group-final.pdf">http://www.apa.org/ethics/advisory-group-final.pdf</a> links to the official website of the APA and provides a true and correct copy of an official APA record/report.
204	<b>Just as they had done with respect to APA resolutions and public statements over the previous three years, Behnke and Banks coordinated in secret to craft a nuanced message that would defend the ability of DoD to use psychologists to the greatest extent possible while also remaining palatable to an increasingly hostile APA membership. Though evidence of the joint venture between APA and DoD diminished in the latter half of 2007 and 2008, it is clear that Behnke and Banks remained committed to finessing messaging in a way that promoted APA's ability to protect military psychologists and their roles in facilitating interrogations.</b>	**APA policy contained in the PENS Report (2005) and continued through the Policy Related to Psychologists' Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (2013) supporting the use of psychologists in interrogation support consistent with the APA Ethics Code.	<a href="https://www.apa.org/about/policy/2013-national-security.pdf">https://www.apa.org/about/policy/2013-national-security.pdf</a> links to the official website of the APA and provides a true and correct copy of an official APA record/report.
205	<b>Behnke and other APA staff began working behind the scenes on two parallel efforts to ensure that the advisory group report would not threaten the work of military psychologists.</b>	**Association Rule 30-6.2 - reports are never adopted as policy statements, only background material for future reference and use. Only actions Council is permitted to take in response to the submission of a report is to "receive", "refer" or "reject" it.	Routine of the APA. <a href="http://www.apa.org/about/governance/bylaws/rules-30.aspx">http://www.apa.org/about/governance/bylaws/rules-30.aspx</a> links to the official website of the APA and provides a true and correct copy of the rule governing reports to Council.

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206	<p>Premise to false statement below: James referenced a <i>New York Times</i> article that had recently been published and reported that the review of Guantanamo that President Obama requested had been completed and had concluded that Guantanamo "more than complies with United Nations Standards/guidelines." During his interview with Sidley, Behnke claimed that the term "unlawful" had not been of practical significance because at the time that Council acted, Obama had not yet declared Guantanamo to be lawful. Behnke interview (June 8, 2015). Factually, Behnke was incorrect: As James noted in his email, the <i>New York Times</i> reported two days before Council met that Guantanamo was in compliance with the Geneva Conventions. See William Glaberson, <i>Guantanamo Meets Geneva Rules, Pentagon Study Finds</i>, <i>New York Times</i> (Feb. 20, 2009), available at <a href="http://www.nytimes.com/2009/02/21/us/21gitmo.html?_r=0">http://www.nytimes.com/2009/02/21/us/21gitmo.html?_r=0</a>.</p> <p>Regardless, Behnke's explanation is disingenuous because, based on his email to Garrison only days before the Council meeting, he clearly understood that military psychologists would interpret the term "unlawful" as placing Guantanamo outside the scope of the report.</p>	<p>**2/18/2009 email from Behnke to Garrison (APA_0104785, HR Binder 2 p.1242): "What James appears not to understand is that *as soon as* many psychologists see the word "unlawful," they will either: 1. dismiss the resolution out of hand as not applying to their setting; or 2) go to their JAG, who will tell them that the setting complies with Geneva and the UN Convention Against Torture, so they'll consider it irrelevant to their work."</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke's email within Binder 2 of the HR.</p>
207	<p><b>Even at this late date [2/2009], as the political climate changed and the DoD's use of psychologists in interrogation roles became less critical, Behnke's "big picture" still focused on the bottom line needs of his partners in DoD.</b></p>	<p><b>**Walsh Report 2/2009</b> referenced in HR p.448 FN 2133 found conditions of confinement at GTMO in compliance with Common Article Three of the Geneva Conventions and "Strongly recommended: Sustain[ing] BSC resource to ensure continued mission support to JDG Commander and, to a lesser extent, the JIG Director." and "Recommended Dedicat[ing] two Behavioral Science Consultants solely to provide psychological consultation to the CJDG, JIG and CJTF in order to support safe, legal ethical and effective detention and interrogation operations at JTF-Guantánamo." <a href="https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf">https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf</a></p>	<p><a href="https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf">https://dod.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf</a> links to a true and correct copy of an official DoD public record/report.</p>
208	<p><b>Although demands for a revision to Standard 1.02 began immediately after the PENS Task Force issued its report, APA's clear strategy, devised by Behnke, was to delay taking any action to revise the Ethics Code for as long as possible. APA, through Behnke, consistently issued statements that made it appear as though he was giving serious consideration and deep thought to the proposed revisions, but it was not until late 2008, three years later, that the association began to seriously engage with APA members and Council representatives about adding the relevant modifying language.</b></p>	<p>HR pp.452-453: admits Behnke engagement with APA members regarding revision language prior to 2008 and as early as 2006.</p> <p>**Although Council requested the Ethics Committee consider a revision to standard 1.02, Council did not direct the Committee to take action until 2009, four years later; HR p. 460: "Finally, during the August 2009 Council meeting, four years after Council's original request that the Ethics Committee consider revisions to Standard 1.02, Council explicitly directed the Ethics Committee to take action and imposed a time limit for it to do so."</p> <p>HR p.453: "Thus, it seems likely that Council did not immediately pursue the Ethics Code revision because it had turned its attention to related resolutions and motions designed to prohibit psychologists from participating in interrogations."</p> <p>**Information on APA website detailing actions taken.  <a href="http://www.apa.org/ethics/code/council-august-2009.aspx">http://www.apa.org/ethics/code/council-august-2009.aspx</a>  <a href="http://www.apa.org/ethics/code/language-12-15-2009.pdf">http://www.apa.org/ethics/code/language-12-15-2009.pdf</a>  <a href="http://www.apa.org/ethics/code/standard-102-background.aspx">http://www.apa.org/ethics/code/standard-102-background.aspx</a></p> <p>Board given complete history of thorough and lengthy review Ethics Committee at the request of Council in 2005 leading to the revision. process undertaken in 2009 via the Council item: (<a href="https://www.apa.org/ethics/code/august09-council-item.pdf">https://www.apa.org/ethics/code/august09-council-item.pdf</a>) most notably the Ethics Committee Report to Council 2009 attached as Exhibit 2, pp. 53-64, PDF pp. 11-22)</p>	<p>Publication in the HR as an admission by party-opponent.</p> <p>Publication in the HR as an admission by party-opponent.</p> <p>Publication in the HR as an admission by party-opponent.</p> <p><a href="http://www.apa.org/ethics/code/council-august-2009.aspx">http://www.apa.org/ethics/code/council-august-2009.aspx</a>  <a href="http://www.apa.org/ethics/code/language-12-15-2009.pdf">http://www.apa.org/ethics/code/language-12-15-2009.pdf</a>  <a href="http://www.apa.org/ethics/code/standard-102-background.aspx">http://www.apa.org/ethics/code/standard-102-background.aspx</a>  <a href="https://www.apa.org/ethics/code/august09-council-item.pdf">https://www.apa.org/ethics/code/august09-council-item.pdf</a> (see especially pp. 53-64, PDF pp. 11-22) link to the official website of the APA and provides true and correct copies of records describing actions taken by the Association.</p>

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209	<p><b>Although Sidley has found no documentary evidence proving that Behnke influenced COLI's position, it seems likely that he swayed COLI to take the stance that it did. Behnke engaged in a pattern of using COLI, among other governance committees, to obstruct member-initiated actions that he opposed,<sup>2159</sup> recognizing that COLI as a body was generally risk-averse and staffed by individuals who complied with the APA agenda. Given COLI's generally protective attitude and the strong similarities between COLI's objections to the proposed revisions and those raised by the Ethics Committee in its initial response in September 2005, it seems extremely likely that Behnke influenced both Committees in their stances against the proposed Standard 1.02 revision.</b></p>	<p><b>**During 1996-2002 Ethics Code revision process, COLI took the same position that it later took on revising Standard 1.02 - Psychologists should always be allowed to follow the law (quoting from Draft 6 Comments, cited in HR p.115 FN 338; portions contained in HR Binder 1 pp.149-190).</b></p>	<p><a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of the Confidential Working Draft9 Ethics Code Revision contained within Binder 1 of the HR.</p> <p>Affidavit of Beavers with personal knowledge of COLI's work activity.</p>
210	<p><u>Premise to false statement below:</u> In January 2007, Behnke responded to criticism from Steven Reisner regarding the slow pace of the revision, which Reisner understood had been directed by Council more than a year and a half earlier, by clarifying that Council had not directed the Ethics Committee to revise the Ethics Code, but rather to make a recommendation regarding whether such a revision should occur.<sup>2160</sup> Behnke's dialogue with Reisner on this point continued over the next several months, and in July 2007, Reisner reiterated his point that Council directed the Ethics Committee to change the language in Standard 1.02. Behnke again responded that he did not "see either complexity or ambiguity in the item Council passed. Council directed the Ethics Committee to review language in the Ethics Code and to make a recommendation, following the process set forth in the Association rules. Consulting with the president of the DSJ, meeting with boards and committees at the Consolidated meetings, and reviewing how other health and mental health association codes of ethics address this issue are all part of that process."<sup>2161</sup> Behnke also clarified that Standard 1.02 was not changed in the 2002 revision because of any issue relating to interrogation, checking with APA staff to ensure that the revisions to the Standard 1.02 language had occurred prior to the 2000 election. Reisner continued to express frustration with Behnke's answers, complaining that Behnke's responses refused to engage with the substance of his critiques.</p> <p><b>... In a rare admission, Behnke referenced his exchange with Reisner in an email to Farberman and commented that "I may have been a little bit bad here."<sup>2162</sup> Although we cannot say with certainty which part of Behnke's response to Reisner was "bad," Behnke was likely referring to his manipulation of Reisner's use of the word "violation" as a means of avoiding the underlying substantive criticism that APA had failed to appropriately define the ethical violation. Behnke's admission to being "a little bit bad" demonstrates that he consciously played sophisticated games with language, and used his ability to parse words to his advantage in delaying the revision of Standard 1.02.</b></p>	<p><b>**Behnke indicates that his statement that he "may have been a little bit bad" concerned his feeling that he had allowed his personal frustration to emerge in an exchange with a governance member. (Comment never raised for explanation in interview with Behnke.)</b></p>	<p>Affidavit of Behnke with personal knowledge of interview with Hoffman.</p>
211	<p><b>It is clear that Behnke was aware that he was not engaging with Reisner's substantive points and was instead engaging in word games to put off further action.</b></p>	<p><b>**Behnke's emails in response to Reisner's 7/5/2007 email show Behnke provided correct information, and had conducted research to ensure the accuracy of his information, in response to Reisner's incorrect assertions about Council's 2005 action. (APA_0066784 cited in HR p.455 FN2162, included in HR Binder 2 245-248)</b></p> <p>HR p.455: admits that Behnke was "checking with APA staff to ensure" the accuracy of this information.</p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke's emails within Binder 2 of the HR.</p> <p>Publication in the HR as an admission by party-opponent.</p>
212	<p><b>Behnke's strategy to continuously suppress suggestions for revision was successful in delaying action on this issue for several years.</b></p>	<p><b>**Behnke's active solicitation for revisions. HR p.457: "Behnke asked Vasquez whether she could ask Pope 'whether he has specific language in mind and, if so, whether he could send it' to Behnke;" Pope provided no revisions.</b></p>	<p>Publication in the HR as an admission by party-opponent.</p>

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213	<p><b>In early 2009, the Ethics Committee issued a call for comments from APA members and the public regarding suggested revisions to Standard 1.02. As the comment period progressed, Behnke once again turned to his trusted advisors in DoD, Dunivin and Banks, this time to ask them to influence APA policy openly by "encourag[ing] folks to comment," presumably talking about their colleagues and peers in DoD.</b></p>	<p><b>**3/12/2009 email from Behnke to Dunivin and Banks, in its entirety: "Please encourage folks to comment. Thank you." (HR Binder 2 p.1281).</b></p> <p><b>**Ethics Committee public Call for Comments: "In April of 2006, the Ethics Committee began a process of collaborating with consecutive chairs of the Divisions for Social Justice [representing 10 of the APA divisions] on this issue, and of eliciting feedback from APA governance groups." <a href="http://www.apa.org/ethics/code/call-comments.aspx">http://www.apa.org/ethics/code/call-comments.aspx</a></b></p>	<p><a href="http://www.apa.org/independent-review/binder-2.pdf">http://www.apa.org/independent-review/binder-2.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke's email within Binder 2 of the HR.</p> <p><a href="http://www.apa.org/ethics/code/call-comments.aspx">http://www.apa.org/ethics/code/call-comments.aspx</a> links to the official website of the APA and provides a true and correct copy of the Call for Comments.</p>
214	<p><b>Thus, it seems likely that Behnke had the impression that retaining the 2002 version of Standard 1.02, with its language permitting adherence to the law in the event of a conflict with ethical principles, was important to psychologists working in national security, and that he opposed any revision to the Standard for so many years out of a desire to protect these psychologists.</b></p>	<p><b>**Behnke's multiple reasons to oppose the revision: negative consequences for the state psychological associations (HR p.452); a complicated change to undertake (HR p.45); and a change best accomplished in a full revision of the Ethics Code (HR p.458). Ethics Committee concern that such a change would be more complex than expected and may lead to unanticipated consequences (APA_0049825, HR Binder 1. P.1283).</b></p> <p><b>**April 2004 <i>Monitor</i> column by Behnke reviewed and discussed in interview with Carter: "... language from the 'Introduction and Applicability' section [of the APA Ethics Code], 'in keeping with basic principles of human rights,' places limits on the extent to which psychologists may follow the law in the face of a competing ethical obligation. As an example, a psychologist acting in a professional capacity could not invoke the law to justify an abuse of human rights." <a href="http://www.apa.org/monitor/apr04/ethics.aspx">http://www.apa.org/monitor/apr04/ethics.aspx</a></b></p>	<p>Publication in the HR as an admission by party-opponent and <a href="http://www.apa.org/independent-review/binder-1.pdf">http://www.apa.org/independent-review/binder-1.pdf</a> links to the official website of the APA and provides a true and correct copy of Ethics Committee's response to Council's request that the Committee review and make a recommendation concerning a proposed change to the Ethics Code. the contained within Binder 1 of the HR.</p> <p><a href="http://www.apa.org/monitor/apr04/ethics.aspx">http://www.apa.org/monitor/apr04/ethics.aspx</a> links to the official website of the APA and provides a true and correct copy of Behnke's <i>Monitor</i> column.</p>
215	<p><b>Thus, Behnke made education and consultation the primary focus of the Ethics Office; adjudication was relegated to a "tertiary focus."</b></p>	<p><b>**HR p.16: "APA leaders had decided in the 1990s (before Behnke's arrival at APA in 2000) that APA's ethics policies and practices had been too aggressive against psychologists, and that a more protective and less antagonistic ethics program was appropriate. They wanted a greater focus on ethics education and consultation, and much less emphasis on strict rules and robust enforcement of disciplinary complaints."</b></p> <p><b>**HR p.465: "(T)he Board decided that the Ethics Office should focus on education instead of adjudications. The Board made several key decisions to effect this change. <i>First</i>, the Board hired Behnke as Director of the Ethics Office in 2000. "</b></p> <p><b>Ethics Committee Chairs' 10/24/2016 letter (from nine former Chairs 2000-2013, not in Hoffman's possession at time of report) writes: "The IR stated (page 465), '[The Ethics Office Director] made education and consultation the primary focus of the Ethics Office; adjudication was relegated to a 'tertiary focus.' The Board of Directors, not staff, sets priorities for APA offices. During our respective tenures as Chair of</b></p> <p><b>the Ethics Committee, the Director of the Ethics Office followed and applied the priorities established by the Board of Directors in a manner that was consistent with the policies, rules, and procedures governing the adjudication program. If the Commission believes those priorities should be re-aligned, the correct body to do so is the Board of Directors and not the Director of the Ethics Office." <a href="http://www.hoffmanreportapa.com/resources/October%202016%20Letter%20from%20Former%20Chairs%20of%20Ethics%20Committee.pdf">http://www.hoffmanreportapa.com/resources/October%202016%20Letter%20from%20Former%20Chairs%20of%20Ethics%20Committee.pdf</a></b></p> <p><b>Newman interview with Hoffman: Discussed APA's ethics office transition toward education prior to Behnke hire.</b></p>	<p>Publication in the HR as an admission by party-opponent.</p> <p>Publication in the HR as an admission by party-opponent.</p> <p><a href="http://www.hoffmanreportapa.com/resources/October%202016%20Letter%20from%20Former%20Chairs%20of%20Ethics%20Committee.pdf">http://www.hoffmanreportapa.com/resources/October%202016%20Letter%20from%20Former%20Chairs%20of%20Ethics%20Committee.pdf</a> provides a true and correct copy of a letter written by former APA Ethics chairs.</p> <p>Affidavit of Newman with personal knowledge of interview with Hoffman.</p>
216	<p>Nevertheless, there are some who believe that the Ethics Office does play a role in protecting the public by taking disciplinary action against psychologists who engage in unethical behavior. Former Board member Carter told Sidley that her understanding was that the Ethics Office was very much involved in "protecting the public."<sup>282</sup></p> <p><b>Behnke did not share this view. During his interview, he told Sidley that the role of the Ethics Office is not protection of the public and that protection of the public is a function for state licensing boards.</b></p>	<p><b>**Behnke interview with Hoffman: Stated complementary roles for Ethics Office and state licensing boards to accomplish protection of the public; did not state that the Ethics Office was not involved with public protection. Multiple programs undertaken annually with Association of State and Provincial Licensing Boards listed in APA Ethics Committee annual reports referenced HR p.464 FN 2208.</b></p> <p><b>Ethics Committee Chairs' 10/24/2016 letter (from nine former Chairs 2000-2013, not in Hoffman's possession at time of report) states: "[T]he Hoffman report stated (page 475), 'During his interview, [the Ethics Office Director] told Sidley that the role of the Ethics Office is not protection of the public and that protection of the public is a function for state licensing boards.' During our respective tenures, the Ethics Office, led by the Office Director, actively sought to collaborate with the Association of State and Provincial Licensing Boards (ASPPB) and individual state, territorial, and provincial licensing boards. He envisioned complementary roles for the Ethics Committee and licensing boards in enhancing the competent and ethical practice of psychology." <a href="http://www.hoffmanreportapa.com/resources/October%202016%20Letter%20from%20Former%20Chairs%20of%20Ethics%20Committee.pdf">http://www.hoffmanreportapa.com/resources/October%202016%20Letter%20from%20Former%20Chairs%20of%20Ethics%20Committee.pdf</a></b></p> <p><b>Newman interview with Hoffman: Discussed APA's ethics office transition toward education prior to Behnke hire; question from Hoffman—Who will do public protection if not APA? Newman stated "state licensing boards."</b></p>	<p>Affidavit of Behnke with personal knowledge of interview with Hoffman.</p> <p><a href="http://www.hoffmanreportapa.com/resources/October%202016%20Letter%20from%20Former%20Chairs%20of%20Ethics%20Committee.pdf">http://www.hoffmanreportapa.com/resources/October%202016%20Letter%20from%20Former%20Chairs%20of%20Ethics%20Committee.pdf</a> provides a true and correct copy of a letter written by former APA Ethics chairs.</p> <p>Affidavit of Newman with personal knowledge of interview with Hoffman.</p>

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217	<p><b>The evidence shows that Behnke was reluctant to proceed with charges against Gelles and that he actively looked for ways to avoid sending the case to the full Ethics Committee. It is unclear what motivated Behnke, but the evidence suggests that he may have been influenced by a prominent APA member.</b></p>	<p><b>**HR pp.480-481: Office of General Counsel believed "some of the charges were not legally supportable, others were relatively weak, and that whether to proceed with the charges was a policy question for the Ethics Office."</b></p> <p>8/6/2002 email from Behnke to Carliner indicates that "none [of the charges] appear to have the required preponderance of evidence in its favor." (APA_0594978, HR Binder 3 p.396). Also stated in Behnke interview with Hoffman.</p> <p>8/15/2002 email from Behnke to Carliner: "The only 'decision' that has yet been made in the case, if it can be called a decision at all, is for the case to go forward to the Committee as planned." (APA_0594830 cited in HR p.483 FN 2328, included in HR Binder 3 p.393)</p> <p><b>**Witnesses interviewed for HR (Ethics Committee member Swenson and Investigator Carliner) state that Behnke did not attempt to influence Committee's decision-making process to not find violation. (See HR pp. 485 and 486: "Swenson said that she did not feel any pressure to close the Gelles case or to not find a violation.....Carliner did not think that any of the Committee members were improperly influenced by either Behnke or Gravitz...")</b></p>	<p>Publication in the HR as an admission by party-opponent.</p> <p>Affidavit of Behnke with personal knowledge of interview with Hoffman.</p> <p><a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of an official DoD public record contained within Binder 3 of the HR.</p> <p>Publication in HR as an admission by party-opponent.</p>
218	<p><b>The complaint alleged that James was the "commander of the Guantanamo Behavioral Science Consultation Teams (BSCTs) from January 2003 to mid-May 2003, during a time when the International Committee of the Red Cross (ICRC) reported the most serious abuses at Guantanamo." Bond stated that under James's "command and supervision," psychologists from the military's SERE program were "instructed to apply their expertise in abusive interrogation techniques conducted by the DoD in Guantanamo." In the complaint, Bond also stated that she was "aware that Colonel James has denied the use of SERE techniques but the facts speak to his knowledge and military command of [BSCTs] who utilized SERE techniques."</b></p>	<p><b>**James provided to Hoffman in interview that he that had been exonerated by all ethics committees, state licensing boards and state courts who had heard and adjudicated actions related to the complaints brought against him by Trudy Bond.</b></p>	<p>Affidavit of James with personal knowledge of interview with Hoffman.</p>
219	<p>Sidley conducted an analysis of APA's finances to assess whether any payments to APA from relevant parts of the government may have influenced APA's actions relating to the PENS Task Force, revisions to APA's Ethics Code, or its positions on national security interrogations. This analysis began broadly by reviewing summary financial information, before conducting an in-depth analysis of areas of possible interest. As part of this analysis, Sidley collected financial records from APA and interviewed APA Finance Office personnel.</p>	<p><b>**Repayment by Behnke to APA of two DoD payments (\$7497 and \$5000) mistakenly made to him personally rather than APA is clear from paper trail (5/21/12 email from Behnke to Clipper; 6/11/12 and 8/29/12 emails from Davis to Clipper) and APA records (invoices to APA for the training; photocopies of Behnke's two repayment checks to APA; receipts included in emails from Davis to Clipper). Hoffman stops short of reviewing these and HR does not list as witnesses any APA staff who know about Behnke contracts. Contracts included in HR Binder 3 pp.1245-1321.</b></p> <p>(HR included access and review of all APA staff emails, including any deleted emails still on the server-- Hoffman hired a forensic team to image the hard drives of all APA staff <a href="http://discovery.com/">http://discovery.com/</a> including any previously deleted email. (Raben email communication to staff 2/5/15).</p>	<p><a href="https://tinyurl.com/y6pn7ggo">https://tinyurl.com/y6pn7ggo</a> provides a true and correct copy of paper trail. <a href="http://www.apa.org/independent-review/binder-3.pdf">http://www.apa.org/independent-review/binder-3.pdf</a> links to the official website of the APA and provides a true and correct copy of Behnke contracts contained within Binder 3 of the HR.</p> <p><a href="https://tinyurl.com/yylzbmue">https://tinyurl.com/yylzbmue</a> provides a true and correct copy of Raben email.</p>