

review it, but when it was not forthcoming, it was leaked to and released by the *New York Times*.”<sup>33</sup> According to a tweet from James Risen’s son, Risen was working on his article during his family beach vacation over the July 4 weekend, by when he had online access to the Report. Plaintiffs have oral testimony from a third-party APA member that Reisner told him that Soldz was the person who leaked the Report to Risen.

253. *Hoffman*: The form of electronic access that, on information and belief, was given to Risen by Soldz did not allow the Report to be printed, transferred into a .pdf, or otherwise downloaded. Nevertheless, on July 10, a copy of the Report was published on the *Times*’ website as a .pdf. The metadata within that document point directly to Hoffman as the source.

The data show the following:

- On July 7, a Word file of the Report was put into the *Times*’ .pdf file, using a different program than the program used by the APA when it put the Report into the .pdf ultimately posted on its website. Between July 2 and July 7, according to several representations made by APA’s counsel, only Hoffman and APA’s outside attorney had access to a Word file that could be printed or saved into another document. APA’s outside counsel has also represented that the document, during this time, “was not e-mailed to anyone.”
- Metadata which remain in the *Times*’ .pdf version demonstrate that the underlying Word document was repeatedly revised on July 1 and 2 by David Hoffman and a Sidley project assistant and paralegal also based in their Chicago office.
- The metadata also indicate that the Word document was not printed or saved by anyone between July 2 and July 7, and no changes were made to it in that period.

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<sup>33</sup> <https://onlinelibrary.wiley.com/doi/full/10.1002/aps.1518>, fn 1

254. The leaks not only gave the *Times* an exclusive of which it was sure to make the most, as it did by giving Risen's article the lead position in its July 11 edition. Predictably, other media raced to catch up, with the focus on speed rather than careful reporting. The leaks also ensured that the APA would not have time to review the Report before being forced to release it, and that the Plaintiffs would be overwhelmed by the media firestorm without having an opportunity to respond to Hoffman's false accusations.

**B. Drs. Kaslow and McDaniel Knew that Two of the Report's Primary Conclusions Were False or Acted with Reckless Disregard of Whether They Were False**

255. As previously noted, Drs. Kaslow and McDaniel and four other members of the Board who voted to republish the false and defamatory allegations in the Hoffman Report held significant leadership positions in the APA throughout the period between 2005, the time of the PENS meetings, and 2014, when the Board reviewed the Leso ethics matter. Drs. Kaslow and McDaniel were on Council or the Board from 2006 through 2014. Dr. Kelly served on Council or the Board for the entire period of 2005 through 2014. Dr. Douce served on Council from 2006 through 2011 and on the Board in 2013 and 2014. Drs. Prescott and McGraw served on Council or the Board from 2008 and 2010, respectively, through 2014. (Drs. Douce, Kaslow, McDaniel, Kelly, Prescott, and McGraw collectively, the "Interested Directors.")

256. Their participation in underlying events gave the Interested Directors first-hand knowledge of many of the events the Report described. When they republished the Report, they knew that many of the underlying events in which they had participated were distorted, mischaracterized, or omitted in order to create a false and destructive narrative to attack the Plaintiffs. That knowledge establishes that, at a minimum, the Board acted with reckless disregard on each occasion when it republished the Report's defamatory contents.