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Falsely Accused Former Employees of the American Psychological Association and Retired Military Psychologists Who Fought to Prevent Interrogation Abuses File Defamation Complaint Against David Hoffman and the APA

Suit asserts Hoffman's \$4.1 million report purposely disregarded and distorted evidence to launch false and defamatory allegations

DAYTON, OHIO – Three retired military officers and two former employees of the American Psychological Association (APA) today sued the APA and David Hoffman and his law firm, Sidley Austin LLP, for defamation. The plaintiffs are Cols. (Ret.) Morgan Banks, Debra Dunivin and Larry James and Drs. Stephen Behnke and Russ Newman. Their complaint was filed in the Court of Common Pleas in Montgomery County, Ohio, where Col. James lives.

The suit arises from an investigation the APA hired Hoffman to conduct in the wake of allegations about the APA in *Pay Any Price: Greed, Power and Endless War*, a book by James Risen, a *New York Times* reporter. The book claims that the APA colluded with the military and CIA during the Bush Administration to support torture.

Despite finding no evidence to support Risen's specific allegations, Hoffman embarked on a \$4.1-million fishing expedition targeting the plaintiffs. He then issued a report that became a prosecutorial brief, attacking the plaintiffs for allegedly colluding to block the APA from taking any effective steps to prevent military psychologists' involvement in abusive interrogations. Hoffman's allegations have been proven false by evidence that was in his possession. Despite that proof, neither Hoffman nor the APA have taken any significant steps to repair the damage he has done to the plaintiffs' livelihoods and reputations.

In a joint statement, the plaintiffs said, "We have reached out repeatedly and persistently to APA's counsel since October 2015 and to Sidley since June 2016 to try to correct the record and repair the damage caused by Hoffman's false accusations without further damaging the APA. Those efforts have failed, and we now have no avenue left except this lawsuit."

Three of the plaintiffs, Cols. (Ret.) Banks, Dunivin and James, are former military psychologists who worked for years, often at detention sites, to help prevent abusive interrogations. Instead of playing it safe in positions where no one could have falsely accused them of countenancing torture, they stepped up to help prevent abuses from occurring. For that, Hoffman and their professional organization, the APA, have – shamefully – set out to punish them. For supporting their efforts, Drs. Behnke and Newman have been accused of currying favor with the military and turning a blind eye to torture.

Hoffman's central claim, that plaintiffs worked to avoid constraining potentially abusive interrogations, turns truth on its head. It reflects similar claims pushed for years by a small group of psychologists who had tried unsuccessfully to persuade the APA to ban psychologists from

having any role in the interrogation process and to have military psychologists prosecuted. Hoffman collaborated closely with those persons, the complaint alleges, and took their narrative as the pre-determined conclusion for his investigation.

To support it, he cherry-picked evidence, ignored contradictory evidence, mischaracterized facts, and failed to follow obvious investigatory leads. Whenever facts might be open to more than one interpretation, he consistently chose the interpretation that portrayed the plaintiffs' motives in the worst possible light. And, despite acknowledging privately to the APA that he found no evidence of the criminal behavior others alleged, he used terms such as "collusion," "joint enterprise" and "deliberate avoidance" that are drawn directly from the language of criminal prosecutions.

As Hoffman acknowledged in a meeting with the APA's Council of Representatives, its governing body, he set out to "make [the] case" to support his conclusions.

"The complaint demonstrates that Hoffman's report was no more than a blatant attempt to scapegoat a few individuals so the APA could mollify its critics," said Dr. Bonny Forrest, attorney for Cols. (Ret.) Banks, Dunivin and James and Dr. Newman. "He was hired to write a neutral and objective report but instead assumed guilt and, like a prosecutor, set out to prove it."

The damage to the plaintiffs has been compounded by the APA Board's response. Some Board members had been directly involved in events Hoffman described and, therefore, knew that key facts on which Hoffman based his conclusions were false. Yet the Board rushed to publish the report – and to fire Dr. Behnke – without taking enough time to review it and without hearing from those it attacked.

Former FBI Director Louis J. Freeh, attorney for Dr. Behnke, said, "The APA Board abandoned any pretense of fairness by immediately firing Dr. Behnke, after 14 years of service to the APA, without giving him a chance to respond to Hoffman's gross mischaracterization of his actions and motives."

As Board members later acknowledged, the Board's response had been "impulsive and not thought through" and the report contained "inaccuracies." One of the APA's largest divisions has passed a vote of no confidence in the Board's actions, and another has said that the Board's treatment of those named in the report "without a due process finding of wrongdoing is itself an unprofessional, counterproductive, and potentially unethical action."

Soon after the report's publication, APA members – not only the plaintiffs – began to point out its falsehoods and distortions. In an open letter, nine former APA presidents described "an apparent failure to properly vet" the report. Many of those interviewed by Hoffman's team have said the report misrepresented what they said. Others have provided documents Hoffman ignored or used selectively. In a letter to Dr. Behnke, an APA member who had supported an independent review of Risen's allegations said, "I am stunned by the misinformation, mischaracterization, and biased presentation of this report."

Most damningly, Hoffman's primary allegation rests on false statements about military interrogation policies in 2005, the year in which an APA task force was formulating guidelines for psychologists involved in interrogations. Hoffman alleges that the "existing" military policies were too loose to constrain abuses, and that plaintiffs and others colluded to keep the APA guidelines equally loose. That claim is entirely false. By the relevant time, the military had responded to earlier abuses by adopting strict interrogation policies, some of which the plaintiffs helped to draft, and those policies were incorporated by reference into the APA guidelines.

Despite the broad acknowledgement of the report's failings, Hoffman and the APA Board have circled the wagons to protect it and themselves. Two members of the 2015 Board that published Hoffman's report – Dr. Susan McDaniel, its president, and Dr. Nadine Kaslow, the 2014 president – were key members of the Special Committee that oversaw Hoffman's work and agreed to the investigation's expansion, which resulted in Hoffman receiving many times the original budget for his fees. Although most of the Board members involved in the underlying events were named in the report and were therefore recused from participating in the APA's response, Hoffman did not name either Dr. Kaslow or Dr. McDaniel – despite their own significant involvement in those events. As a result, they were free to exercise virtually unrestrained influence over the APA's handling of the report.

In what amounts to a clear conflict of interest, in early 2016 the APA Board rehired Hoffman to review the military policies he omitted. That action flew in the face of contrary advice from the APA Council. As an open letter from former chairs of the APA Ethics Committee stated, the Board's actions created a potential conflict between the interests of the APA as an organization and the interests of Hoffman, Sidley and some Board members in protecting themselves. Hoffman's "supplemental" report was due on June 8, 2015, but has not yet emerged.

As the complaint describes, the report's false and defamatory accusations disrupted the plaintiffs' careers and lives. Two of the plaintiffs lost their jobs and all suffered lasting damage to stellar professional reputations built over long careers of service to the military and the psychology profession. They will now ask a jury to award compensatory and punitive damages for the reputational and economic harm for which Hoffman and the APA are liable.

Further information about the lawsuit may be found here: www.hoffmanreportapa.com under the "releases" page.

The lawsuit case number is: 2017 CV 00839