

EXHIBIT C

EXHIBIT C-1

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

AFFIDAVIT OF BARRY ANTON IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT

State of Washington)
) ss:
County of Pierre)

1. I, Barry Anton, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was President-elect of the American Psychological Association (APA) when the Board of Directors hired Mr. David Hoffman and Sidley Austin LLP to conduct the Independent Review, and I was President during the majority of time the review was being conducted. The original purpose of the review was to carefully consider the allegations in James Risen's book, "Pay Any Price: Greed, Power and Endless War," which alleges that APA colluded with the Bush administration, the CIA and the U.S. military to support torture during the war on terror and to ascertain the truth and factual accuracy of those allegations. There was no pending litigation threatened or other legislative threats of action related to these allegations.
3. Plaintiffs have neither asked me to disclose any information I obtained which could be considered privileged or confidential. I was recused from much of the deliberations surrounding the Report of the Independent Review (hereinafter "Report") and all information contained in this affidavit is appropriately shared with the Court. I rotated off the Board of Directors at the end of 2016.

4. Upon reading the Report, I was surprised to find that the scope of the review had expanded beyond the Board's originally stated purpose and into such areas as questioning the appropriateness and thoroughness of APA ethics case adjudication and investigating the conduct of individuals involved in years of APA anti-torture policy development. No one, including the APA General Counsel, outside counsel for APA, Mr. Hoffman or the Special Committee appointed by the Board to oversee the review, informed me that the scope of the review had been broadened beyond the Board's November 2014 charge, even when I was interviewed as a witness during the review.

5. During the appointment of Board members to the Special Committee, assisted by APA's outside counsel, to my knowledge Board members were never asked to disclose any involvement in past events related to the subject of the independent review, such as participation in governance activities related to adoption of the Psychological Ethics in National Security (PENS) guidelines or post-PENS APA policy development. Neither I nor other Board members, to my knowledge, were informed that Dr. Nadine Kaslow, chosen to chair the Special Committee, had been involved in a March 2014 mediation to settle a patient's claims related to a sexual-boundary violation and had drafted a letter resigning as APA President to use in the event that this matter became public.

6. As soon as the Report was made public, I began to hear from people who believed there were inaccuracies in the Report. This included individuals who were named in the Report who brought to APA's attention relevant interrogation policies in place at the time of the PENS Task Force that contradicted the conclusions of the Report but were not included or analyzed in the Report. APA's outside counsel, Mr. David Ogden, acknowledged this contradiction and, upon his advice the Board, set aside \$200,000 to re-hire Mr. Hoffman to review the Report in light of these additional policies and prepare a supplemental report by June 8, 2016. As of the end of my term as President, December 31, 2016, no supplemental report had yet been produced.

7. While I was still in my term as President, the Board of Directors was informed that a group of individuals named in the Report (now the plaintiffs in this lawsuit) had retained counsel and began discussions with APA's legal counsel in an effort to resolve issues and correct the record without litigation. I was neither informed about nor consulted regarding the substance of these discussions and was never provided with any material to evaluate related to these discussions.

8. On August 18, 2016, I attended a meeting between former APA Presidents and a number of Board of Director members to discuss issues related to the Independent Review and the resulting Report. At the meeting, some members of the Board acknowledged that, among other things, the Report contained many inaccuracies and there were missteps by APA in follow-up actions once the Report was received. Attached hereto as Exhibit A is a true and correct copy of the notes of the meeting from a former APA President participant in this meeting. I have reviewed these notes and they are consistent with my recollection of the meeting.

9. With regard to the Report's findings in relation to me, there are several inaccuracies.


The Report inaccurately indicates that I acted to defeat the 2008 APA petition resolution to ban psychologists' involvement in interrogations by the inclusion of pro-con statements (pp. 429-449). In actuality, I supported the petition resolution and would have informed Mr. Hoffman of this had he asked me about my participation in this activity. In my July 2015 statement to the APA Counsel of Representatives included as part of APA's online posting of "Responses from those Mentioned in the Independent Report", I fully refuted Mr. Hoffman's characterization of my role. A true and correct copy of my statement can be found published by the APA online at <http://www.apa.org/independent-review/responses.aspx>. The Report was never corrected with regard to this inaccurate information, not even when a revised version was republished on September 4, 2015.

10. The Report indicates that I was on the selection committee for the PENS Task Force, serving as a non-voting Board liaison. In actuality, it is the President who selected the members of the task force, while the selection committee only recommended possible members. I was the most junior member of the selection committee and, as the Report states, I was involved substantially less than the others. In fact, with over 1000 nominees, I had little say in the selection of the task force members and was acquainted with very few of them.

11. At the time of my interview with Mr. Hoffman, I questioned the accuracy of Dr. Arrigo's notes as she was not supposed to take extemporaneous notes. There was an agreement made by PENS task force members, at the time of the PENS task force, to not take notes extemporaneously. As I was sitting right next to Dr. Arrigo during the entire PENS task force, I believe her notes were more likely constructed after the fact due to this prohibition. Mr. Hoffman simply shrugged off my statement in direct contrast to his findings and statements regarding the credibility of Dr. Arrigo and reliance on her claims.

12. Finally, I was shocked most recently to learn that the Report was now being characterized as an opinion. It was never purported or represented to me to be anything other than a clear and definitive factual investigation of the events in question. It was not intended to promote further debate but instead to settle a long-standing and private feud within the APA, which became public only through the false allegations in the Risen book. As has been stated publicly, Mr. Risen never even gave APA or those mentioned in the book an opportunity to deny the allegations he was making. What was a private internal APA matter became public solely through the repeated attacks of a few APA members and their work with Mr. Risen.

I declare under penalty of perjury that the foregoing is true and correct.


Barry Anton

Sworn and subscribed to before a notary public in the State of Washington, this
14 day of November 2018.



Jodi L Veitenhans
Notary Public

Exhibit A

Subject:[DIV42BD] Meeting with Former President and the Board of Directors

Date:Thu, 18 Aug 2016 23:25:49 +0000

From:Resnick, Robert <rresnick@RMC.EDU>

Reply-To:Division 42 (Independent Practice) Board of Directors

<DIV42BD@LISTS.APA.ORG>

To:DIV42BD@LISTS.APA.ORG

The following is accurate to the best of my knowledge and belief:

On Saturday, 13 August 2016, at 9AM at the request of some former APA Presidents, a meeting was convened with several former presidents and a subset of the Board of Directors (BOD) along with some staffers. To the best of my recollection, the former presidents included Pat DeLeon, James Bray, Norm Ables, Dorothy Cantor, Gerry Koocher, Ron Levant, Nadine Kaslow, myself, and perhaps, others. From the Board of Directors was Susan McDaniels, Barry Anton, Jennifer Kelly, Bonnie Markham, and perhaps, others. Several staffers were present but did not speak and, some appeared to be taking notes and, as far as I know, the meeting was not recorded.

Drs. DeLeon, Bray and Resnick and others voiced concern and were critical of the way the BOD handled the Hoffman Report and their "rush to judgement" that left some APA members, "executive" staff and former presidents hanging in the wind with no recourse while APA proffered apologies:

From the Former Presidents:

- Before releasing the report the Board permitted Riesner and Soldz (not an APA member at the time) private access to the Hoffman Report even though it was known that both had collaborated with Risen of the NYT in his attacks on APA and some of its members.
- Reisner and Soldz continued to make inappropriate demands concerning former presidents including expulsion, governance bans, redacting awards—none of which are permitted by APA by-laws. The BOD never made it clear that such demands were not permitted by association bylaws and rules.
- Asking those targeted in the report to cooperate and discouraged them from obtaining counsel in advance
- Promises of early access and opportunity to respond to the report of those members aligned was promised but never came to fruition.

- By remaining silent, the BOD gave tacit agreement to the conclusions not of the Hoffman Report.

From the Board of Directors:

- Several board members admitted that their actions were impulsive and not thought through and should have been more forthcoming about details.
- Then President Kaslow said she had written and re-written a resignation letter from APA several times (though it was never tendered).
- The board acknowledged that the report contains many inaccuracies.
- They seemed to acknowledge there was no evidence that APA officers colluded with the government.
- There was acknowledgement that while former presidents were repeatedly and erroneously accused supporting or suborning torture and seeking to weaken the ethics code, the BOD never attempted to correct those impressions and remained silent.
- Those who named in the report have had no meaningful opportunity to correct or respond to those allegations.

It was my clear impression that the BOD greatest concern was about fall out and possible litigation and that precipitated a duck-and-cover mentality. Further, it appears that the BOD has dug itself into a deep hole with frequent mea culpa. The last bullet point from the former presidents, I believe, contributed to 42's concerns about transparency.

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EXHIBIT C-2

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHIEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF LOUIE MORGAN BANKS IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of North Carolina)
) ss:
County of Moore)

1. I, Louie Morgan Banks, III, having been first duly cautioned and sworn, state the following based upon personal knowledge:

2. I was first contacted by email by Dr. Nadine Kaslow, the President of the American Psychological Association (hereinafter "APA") on December 12, 2014, and asked to assist Mr. David Hoffman of the law firm Sidley Austin LLP in his review of the allegations made by James Risen that "APA colluded with the Bush Administration after 9/11 to promote, support, or facilitate the use of enhanced interrogation techniques by the CIA and the Defense Department in the global war on terror." Attached to the email was a letter signed by Mr. Hoffman requesting my assistance in his review. On December 31, 2014, I emailed Mr. Hoffman and stated I would help in any way I could. I was interviewed by Mr. Hoffman and Yasir Latifi in my home in North Carolina on May 21, 2015. Following the interview, I exchanged several emails with Mr. Latifi and Mr. Hoffman, and I was interviewed by phone on June 19, 2015 by Mr. Latifi.

3. I retired from the Army in 2011 but during the time period recounted in the Report of the Independent Review to APA (hereinafter "Report"), my position was Director of Psychological Applications for the United States Army's Special Operations Command (hereinafter "USASOC"). In that position I provided ethical as well as technical oversight for USASOC Psychologists. I was an Army psychologist trained as a Survival Evasion Resistance and Escape (hereinafter "SERE") psychologist and as such provided consultative support and technical

oversight to USASOC psychologists directly involved in SERE training. I also provided support and technical assistance to non-USASOC SERE psychologists. Additionally, I functioned as a consultant to those psychologists assigned to Behavioral Science Consultation Teams (hereinafter "BSCTs").

4. My title and role have been misstated a number of times in the Report, giving rise to the incorrect inference that I was in a position to speak on behalf of or make policy for the Army or the Department of Defense (hereinafter "DoD"), which I was not authorized to do. For example, the Report (pp. 12, 215, 225-6, 235) inaccurately describes me as: "the chief of psychological operations for the U.S. Army Special Operations Command and the head of the Army SERE Training program at Ft. Bragg;" "psychology leader of the SERE school at Ft. Bragg;" "Army's Command Psychologist and Chief of the Psychological Applications Directorate in the Special Operations Command, and who helped run the Army's SERE school located in Ft. Bragg, NC;" and "the [U.S. Army Special Operations] Command psychologist with policy oversight for behavioral science consultation team support for all Special Operations Command in support of national security issues." My position was totally distinct from the position of Senior DoD SERE Psychologist at the Joint Personnel Recovery Agency, the agency responsible for all joint personnel recovery activities on behalf of the Secretary of Defense, including training at the SERE schools. Curiously, Mr. Hoffman made the exact same mistake in my title as a journalist on whom he relied made in her articles about my actions.

5. The Report (e.g., pp. 264-5) additionally misstates that, while a member of the Psychological Ethics in National Security (hereinafter "PENS") Task Force and during my work with APA post-PENS, I was an official representative of the DoD and had the authority to set DoD policy. Neither of these statements is accurate and both demonstrate an ignorance of the workings of the DoD. As a mid-level employee of the Department of Defense, I was never in a position to formulate DoD or military policy. Although I participated in the drafting and recommending of policies, I did not have decision-making authority to set DoD policy. I was expected to execute policies and directives issued by my superior, commanding officers. Also, I was not in a position to officially speak to the media or the general public on behalf of the DoD or U.S. government; those activities require official designation. To the extent that I would publicly refer to existing policy, it was only as a conduit for stating or explaining what is the policy. Even speaking publicly about my work duties required permission.

6. My specific work with the PENS Task Force to create guidelines for psychologists involved in interrogations was as a subject matter expert in the psychology of interrogations. At no point during my work with the APA task force was I given any additional authority to speak for the DoD or to make DoD policy. My attendance at the task force meeting was as an independent, individual psychologist. I was there on my own volition, not on behalf of the Army, was dressed in civilian clothes, and I was not compensated for my work on the task force. I explained all of this to Mr. Hoffman during my interview and communicated it to him in emails as well.

7. The Report (pp.37, 396) mischaracterizes me as deleting email communications, destroying records, and attempting to conceal the fact that I was collaborating with the Director of the APA Ethics Office, Dr. Stephen Behnke. In fact, during my work as a subject matter expert, there were times when I was indeed concerned that my communications could be inaccurately

perceived as speaking on behalf of the DoD or the U.S. Government. I therefore asked that a very few of the many emails we exchanged be treated confidentially and not be shared in order to prevent this misperception. As a government employee who had been given permission as an independent, individual psychologist to provide subject matter expertise to the APA and to utilize my government email account, at no point did I have the capability to delete my emails from the government server being used. Also, it is my understanding that during the investigation, a third-party vendor was hired to image Dr. Behke's hard drive and would have retrieved any deleted emails had they existed. I was never asked in my interviews with Mr. Hoffman about deleted emails or if I was attempting to conceal my work with Dr. Behnke or anyone else.

8. The Report mischaracterizes and distorts use of the terminology "safe, legal, ethical and effective" to describe the general approach used to determine appropriate interrogation techniques. It states (p.18):

The framework—interrogation practices must be 'safe, legal, ethical and effective' ('SLEE')—was touted by Banks as a safeguard that would somehow insure 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.

I spent considerable time and effort in my interview with Mr. Hoffman explaining that, while there was nothing that would absolutely *ensure* fully humane treatment, this framework was useful for thinking about an interrogation plan and working towards the goal of fully humane treatment. Only after a potential technique was determined to be safe, legal *and* ethical would it be further considered, and only then would the question of effectiveness of the technique be evaluated prior to determining whether to utilize the technique or not. This approach was in no way intended to enable subjective judgments that allowed for inhuman or abusive techniques, and it would not enable stress positions and sleep deprivation, which were not permitted. To do so would violate US Law, including the Geneva Conventions and the Convention Against Torture, a point I discussed in detail with Mr. Hoffman. The Report (pp.18, 66, 261, 263, 288, 300, 307) mischaracterizes my position when it repeatedly and inaccurately describes me as interpreting the framework to permit stress positions and sleep deprivation.

9. As part of my military responsibility in the aforementioned role in the aftermath of abuses at interrogation sites post-9/11, I was asked to assist in drafting recommended policies to prohibit abuses and to require the reporting of any abuses of which people were aware. Mr. Hoffman did not ask me about these activities, although I did describe to him my work preventing abuse and my support for DoD's adherence to the Geneva Conventions and Army Regulation 190-8, which specifically prohibits abuse. This information was omitted from the Report.

10. In addition, I worked with the Army's Inspector General to investigate and recommend how best to prevent abuses. In fact, I assisted in the writing of the Army Inspector General's report, issued in July 2004, on detainee operations in Iraq and Afghanistan. The report listed all of the provisions of the Geneva Conventions that applied to interrogations and detainee operations,

including, for example, “[n]o degrading treatment.” And, at the time of PENS, I was providing subject matter expertise to the Army on a revision to the Army Field Manual. I consulted with the staff of the Judge Advocate General’s (JAG) Office on numerous occasions to ensure the applicability of Article 3. Mr. Hoffman did not ask questions to elicit information about my work to prevent abuses.

11. The Report repeatedly confuses policies applicable to the DoD with those applicable to the Central Intelligence Agency. It also fails to recognize the way various DoD directives and instructions interlock with theater and local policies and that local policies may be more restrictive than those issued at the DoD level. (Report, pp. 124-152) In fact, the importance of local policies was intentionally and clearly reflected in Statement Four of the PENS Guidelines that I and the other task force members drafted. Although the Report (p. 273) cites language from Statement Four, it ignores the language that expressly creates an obligation to “follow the most recent applicable regulations and rules,” including the regional policies in Afghanistan, Iraq, and Cuba. Mr. Hoffman never addressed the issue of local policies with me during my interviews. A true and correct copy of PENS Statement Four is included in the Report’s binders and can be found at <http://www.apa.org/independent-review/binder-5.pdf>, PDF p. 731.

12. I assisted in the drafting of local policies as ordered by Commanders, policies which prohibited stress positions and sleep deprivation. Sleep deprivation was never an approved technique at any detention facility. Some stress positions (e.g., push ups) were allowed for a period of six weeks or so in late 2002 and early 2003, but then quickly, again prohibited by local policies. Sleep adjustment is distinct from sleep deprivation.

13. The Report (pp. 274-275) also misleads the reader to believe that the DoD members of the PENS Task Force did not want the Geneva Conventions to apply (Hoffman Report, pp. 274-275). I took the position at the meeting that the relevant Geneva Conventions definitely applied. In a March 1, 2015, email¹ to Mr. Hoffman, I specifically indicated my belief that the Geneva Conventions had always applied to interrogations, despite disagreements at higher levels of government. This information is omitted from the Report.

14. When Mr. Hoffman interviewed me on May 21, 2015, I asked him if he had yet been able to answer the question raised by James Risen’s allegations and posed by the APA Board—whether the APA colluded with the Bush Administration after 9/11 to promote, support, or facilitate the use of enhanced interrogation techniques by the CIA and the Defense Department in the global war on terror. Mr. Hoffman told me he determined that the answer to that question was, “no.” He then then added, “We are looking at other things,” but did not explain further.

15. Prior to my interviews, I had not been made aware that the scope of the investigation was becoming substantially larger than what had been described to me by Dr. Kaslow, or what Mr. Hoffman himself had stated in his earlier emails. Additionally, I was led to expect that the review process being under taken would be an objective review and that Mr. Hoffman was serving as an independent, neutral and objective third party in conducting the review. I was not given any type of Upjohn warnings and was not advised that the investigation could be adverse to my interests.

¹ A true and correct copy of the email correspondence is attached hereto as Exhibit 1.

16. During my interviews, I provided reference to knowledgeable people with whom Mr. Hoffman could further investigate key ethics issues and the activities of BSCTs. I strongly suggested that he speak with Lt. Gen. (Ret.) Eric Schoomaker, and Lt. Gen. (Ret.) Kevin Kiley, both former Army Surgeons General, who would be able to provide first-hand information about the ethical analysis undertaken to support the definition of the BSCTs' role in the interrogation process. Mr. Hoffman stated via an email to me, "I'm going to be reaching out to General Kiley to request a meeting with him. It would be very helpful to our investigation if we can talk with him." He also agreed that it was a good idea to talk with Lt. Gen. Schoomaker, yet Lt. Gen. Schoomaker was never contacted. Had he been, he would have provided information about interrogation policies actually in use at the time of the PENS Task Force meeting that contradicted Mr. Hoffman's characterizations of those policies.

17. Following my interviews, I was never notified by either Mr. Hoffman or the APA that the Report had been completed and was about to be published. Additionally, I was never given an opportunity to respond to the accuracy of the report and the accusations against me prior to the Report being published, nor was I ever informed that an errata sheet to the Report was being prepared after the Report was published. Along with Plaintiffs Dunivin, James and Newman, I objected to the contents of the Report in a post on APA's website on July 31, 2015. A true and correct copy of the comments can be found on APA's public website at <https://tinyurl.com/y3vwdn6z>. None of these objections were included in the errata or revised version of the Report that was published on September 4, 2015.

18. At the time the Report was published, I was long retired from the military, I did not hold public office or public employment, and was not engaged in any public service. Nor did I use my status as a retired military officer to put myself in the public eye or attempt to influence public policies. I became the subject of public attention only because of the actions of the critics and APA and what was written in the Report, not because I sought public exposure. In addition, I did not have access to the media to rebut the allegations made against me in the Report, and the objections that I and Plaintiffs Dunivin, James, and Newman posted on the APA public website received no media coverage in contrast to the overwhelming coverage received by the Report and its allegations.

19. The Report's mischaracterization of my position regarding safe, legal, ethical, and effective interrogation techniques, Mr. Hoffman's disinterest in the existing local policies in place at the time period in question, and his disinterest in my work to prevent abuses led me to believe that he had a preconceived outcome in mind for which he used the review process to support and confirm.

20. As a result of the mischaracterizations and false statements about me in the Report and the events that have followed its publications, my reputation was severely damaged and my source of income as an operational psychologist was significantly hurt. I worked tirelessly during my career to establish a training and practice model that operated completely within not only the law and the ethical standards for psychologists, but also in a manner that placed the safety of detainees above all else. This was all turned on its head by the Report.

I declare under penalty of perjury that the foregoing is true and correct.


Louie Morgan Banks

Sworn and subscribed to before a notary public in the State of North Carolina, this 14 day of November 2019.


Notary Public



EXHIBIT 1

From: Morgan Banks [<mailto:DocMB@aol.com>]
Sent: Sunday, March 01, 2015 5:50 PM
To: Hoffman, David H.
Subject: Documents & Questions relevant to the PENS Report Investigation

Mr. Hoffman,

I have taken the liberty of listing the specific requests for documents below, along with my initial responses. More detailed information may follow once I have the ability to search the paper documents in my office. I need to be clear that all of the documents that I am providing you are my own, and are not, unless otherwise verified, US Government policy. Much of what I worked on during this time may have become Government policy, and in the cases I am able, I will send you a link to download those documents from the US Government directly. Some of what I am sending you will be working documents.

Any documents related to the PENS Task Force, including documents relating to (a) the idea of creating such a task force, (b) the planning and preparation for the task force, (c) the selection of task force members, (d) the formation of the task force, (e) the meetings of the task force (including meeting notes and agendas), (f) the drafting and dissemination of the task force report (including any drafts or comments on drafts), and (g) subsequent discussions and follow up actions relating to the report.

Here are the documents I have been able to find on my personal computer. As a point of reference, until the establishment of the PENS TF, I did not have any relationship with APA. I was a colleague and friend of several Army Officers who were associated with APA, but from 1996 until 2009 I was not a member of APA. I left the APA in 1996 because I viewed their behavior as inappropriate for an Army Officer, and potentially unethical. (At that time they refused to allow the US Military to recruit at their convention or in their publications.)

The first five are documents that you may already have, and they include my comments and suggested changes, and should be self explanatory. I have attempted to simply copy them without changing the date from the last time I modified the document. The next document is one that I intended to send to the president of APA. I wished it to be reviewed by my Public Affairs Office and my boss, because my position had the potential effect of implying consent by the US Army Special Operations Command, and to the best of my knowledge, I do not believe that I was able to get it reviewed in a timely manner, and I decided not to send it. Because I am not completely sure if I sent it or not, I have included it here. The next document, concerning the implementation of the Petition Resolution, is attached along with my comments. Next is a memo that I sent, along with the previous document, to a large number of Army psychologists. I believe it is self-explanatory. The next document is self-explanatory, and it is one that I also sent to a large group of Army psychologists. As you can see, I signed it without my rank or position, for obvious reasons, and was written after I rejoined the APA. For some reason, this memo appears to be mislabeled, but I have attached it as I found it. Although so labeled, it was NOT a letter to Dr. Bray.

Any documents that pre-date 2009 relating to the role of psychologists in national security interrogations, including any documents (such as notes or emails) relating to any discussions or correspondence on this

topic with anyone affiliated with the APA (whether Board members, management, staff, or otherwise), or with military, CIA, or other government officials;

Again, since I had some responsibility for overseeing the training of psychologists to support interrogation and detention operations, and I was an active duty officer at the time, this would include many emails that I sent over a several year time period. Almost all of those emails were sent on official DoD email systems, and I no longer have access to those emails. Some of these emails have made it into at least one major Senate report, and I understand you have a copy of that report. In addition to my emails, this report discusses in detail facts and observations and interviews that were declassified and I can discuss.

During the time period in question, I was involved in a tremendous number of discussions within the DoD at all levels, up to the Surgeons General, having to do with the use of psychologists to support interrogations. At no time was APA involved in these (primarily classified) discussions. The only question that we addressed in these meetings that concerned APA had to do with whether or not our work was consistent with the APA Code of Ethics. Both Surgeons General that I worked with on this topic were emphatic that all ethical standards be followed. Lieutenant General Kiley even spoke to the leadership of APA on this, in a completely open forum. The ethics counselor (I cannot remember his exact title) who provides ethical consultation for the Army Surgeon General often attended such meetings, and directly observed the training that we established.

Many of the documents I have either included or recommended that you retrieve demonstrate the positive benefits of utilizing psychologists in the role of supporting national security interrogations. At this point, the evidence appears to be quite conclusive that there have been an extremely low rate of likely inappropriate (much less illegal) behavior by psychologists in these roles within the DoD, and a uniform finding among all the reports that have been conducted, that their presence has increased the safety and effectiveness of these interrogations.

If you do not already have the following documents, I recommend that you retrieve them.

The 2004 DAIG Detainee Operations Inspection Report:

<http://www1.umn.edu/humanrts/OathBetrayed/Mikolashek%20Report.pdf>

Although such documents have corporate authors, I had significant responsibility for pages 16-22, Finding 2.

The 2005 Martinez-Lopez Report.

<http://www.docstoc.com/docs/155119854/Final-Report--Assessment-of-Detainee-Medical-Operations-for-OEF-CTMO-AND-OIF-Office-of-the-Surgeon-General-of-the-Army-13-Apr-2005>

or

<http://www1.umn.edu/humanrts/OathBetrayed/Army%20Surgeon%20General%20Report.pdf>

Page 1-8 gives their recommendations concerning psychologists supporting interrogations.

The 2008 Church Report, Review of Department of Defense Detention Operations and Detainee Interrogation Techniques, can be retrieved here:

http://www.dod.mil/pubs/foi/operation_and_plans/Detainee/Church_Report_pp353-365.pdf

Page 355 and 359 covers Psychology Support of Interrogations.

I was able to retrieve the entire document (redacted) here:

https://en.wikipedia.org/wiki/Church_Report

Finally, in 2009, the Review of the Department Compliance with President's Executive Order, often referred to as the Walsh Report, can be found here:

http://www.defense.gov/pubs/pdfs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf

Pages 59-60 contains a Strong Recommendation on the use of psychologists in interrogations. These recommendations are the result of a detailed investigation of the treatment of detainees by the current administration, and resulted in the strongest possible recommendation that this work continue.

The final document that you must have for review, is OTSG/MEDCOM (Office of the Surgeon General/Army Medical Command) Policy 13-027, Behavioral Science Consultation Policy, dated 8 MAY 2013. This is the latest, although there have been three of these promulgated since 2006, with minor changes each time. Although this document is not classified, I am unable to find a publically available copy for your review. If you do not have a copy, you may need to file a FOIA request to get it. I will attempt to see if I can get one sent to you through formal channels without the need of a FOIA.

Any documents related to conferences or meetings sponsored, organized, or hosted by APA between 2001 and 2005 where one of the topics to be discussed was interrogations, educing information, or deception detection.

I believe that I had a small presentation at one of the large APA conventions (completely open to the attendees at the convention) that discussed some of the unclassified issues. I was one of several speakers. I cannot remember which year it was, but I will attempt to look it up in the convention books when I return to my office. I have looked, but cannot find a copy of the slides I used. I will continue to look, but they are likely not with me on my personal computer. Again, this presentation would have been open to any who attended the convention.

Any documents relating to the 2002 revisions to the APA Ethics Code (such as documents relating to the meetings, discussions, and draft revisions of the Ethics Code Task Force) that have any bearing on psychologists' participation in interrogations; and

Any documents relating to resolutions, petitions, or referendums considered or acted on by the APA Council of Representatives on this subject matter from 2005 to 2009.

The only documents I can find that are responsive to this are attached or linked above.

For what I hope are obvious reasons, I have not included any documents that relate to the CIA, or any non-DoD organizations, as any actions they may or may not have taken were not known to me at the time, nor even if I had known of them, would they have been relevant to DoD operations in this area. The most relevant document that I used when this

support was first instituted, was the Army Regulation 190-8, (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 the AR 190-8.

http://www.apd.army.mil/pdffiles/r190_8.pdf

Finally, I apologize for adding what may be documents not directly relevant to the questions you are asking. In my opinion, they document the fact that with very minor possible exceptions, the DoD psychologists supporting interrogation operations have performed admirably, both within US law, and within the Ethical Standards of the American Psychological Association, both before and after the revisions.

Morgan Banks

L. Morgan Banks, Ph.D.
Operational Psychology Support, LLC
(910) 528-6990

EXHIBIT C-3

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Todd E. Edelman
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	Initial Conference
	:	Feb. (TBD), 2018, 9:30 AM
Defendants	:	Courtroom 212
	:	

**AFFIDAVIT OF DONNA BEAVERS IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Ohio)
) ss:
County of Delaware)

1. I, Donna Beavers, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was employed at the American Psychological Association (APA) for approximately 32 years, from March, 1982 to September, 2014. I worked in the APA Office of General Counsel as the Staff Liaison to the Committee on Legal Issues (COLI) for 24 of these 32 years, beginning in 1990.
3. The Independent Review Report to the APA (hereinafter "Report") discusses the activities of COLI that occurred primarily during 2007 to 2009 and, in doing so, mischaracterizes both my work and the work of COLI during that time. To begin with, in discussing APA governance activities related to the 2007 moratorium resolution to the Council of Representatives, the Report identifies me inaccurately as the "COLI representative" (Report p. 420). My position was not as "representative" of COLI but, rather, I was the staff person in the Office of General Counsel providing staff support to the committee. This responsibility entailed supporting COLI in all areas of its work, such as assisting COLI to analyze psycho/legal issues that came before association governance groups; helping organize professional meetings and write educational materials on psycho/legal issues; consulting with COLI on the development of amicus briefs; and assisting in the development of COLI meeting agendas, minutes, status reports, and informational materials regarding COLI.

4. More egregious is the Report's mischaracterization that the APA Director of Ethics, Dr. Stephen Behnke, inappropriately influenced COLI's position on a proposal to amend the APA Ethics Code. The Report, on p. 455, states:

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, [footnote omitted] 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 revisions.

This statement displays a total disregard and lack of understanding of how COLI arrived at positions on issues placed before it.

5. COLI was comprised of individuals with substantial experience and knowledge of the relationship between law and psychology and who, in my experience, expressed their positions in a clear, strong, and independent fashion. The members of the committee consistently and deliberately applied their law and psychology expertise to issues for which the committee's recommendation was requested. Moreover, COLI is composed of members who have forensic experience. Many are lawyers in addition to being psychologists and are thus sensitive to risk management considerations. To conclude in the absence of any evidence that Dr. Behnke, a staff person with no staff responsibilities or connection to COLI, "swayed" the committee's position ignores the realities of the deliberative and independent nature by which COLI worked. I was not contacted or interviewed during the Independent Review. Had I been, I would have described the work of COLI as articulated above. The Report also does not include reference to any discussion with other Office of General Counsel staff (Jesse Raben, Ann Springer, and Nathalie Gilfoyle) as to how COLI functions. These are individuals who personally observed and were familiar with the committee's work. Moreover, the Report does not list as a witness any individual who was on COLI during the time period of COLI activities discussed in the Report.

6. Additionally, in describing Dr. Behnke's actions during the moratorium resolution process, the Report (p. 421) states, "When Behnke forwarded the letter to Gilfoyle, Farberman, Strassburger and Beavers, he did not disclose that he had drafted the letter under [Ethics Committee Chair] Deutsch's name." This statement incorrectly creates the inference that it was inappropriate for Dr. Behnke not to disclose to other APA staff that he had drafted the letter for his chair. In fact, the immediately preceding sentence makes clear that the committee chair had approved Behnke's letter. (Report, p. 421) It was customary practice for APA staff members to draft correspondence for governance members. There was nothing inappropriate or improper for staff members to distribute such correspondence, following governance review and approval, without indicating that staff have been involved in the drafting process. In this passage and

others, the Report leaves out this critical piece of information.

I declare under penalty of perjury that the foregoing is true and correct.


Donna Beavers

Sworn and subscribed to before a notary public in the State of Ohio, this 18th day of
December 2017.



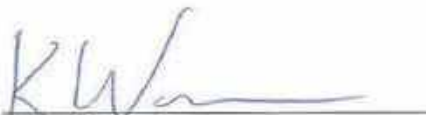

Notary Public

EXHIBIT C-4

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

AFFIDAVIT OF STEPHEN BEHNKE IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO DISMISS
UNDER D.C. ANTI-SLAPP ACT

State of California)
) ss:
County of San Diego)

1. I, Stephen Behnke, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was Director of the Office of Ethics at the American Psychological Association (APA) from November 2000 through July 7, 2015.
3. Based on communications from Mr. Hoffman at the outset of being interviewed, I was led to expect that the review process being undertaken would be an objective review and that Mr. Hoffman was serving as an independent, neutral and objective third party in conducting the Review, the sole purpose of which was to uncover facts.
4. I was not given any type of Upjohn warnings and was not advised that the investigation could be adverse to my interests. I was not informed that the scope of the review had been extended beyond the APA Board of Director's November 2014 resolution, despite me asking Mr. Hoffman and his Sidley colleague Danielle Carter explicitly about the scope of the investigation during the interview process.
5. The sole direction I received from the APA General Counsel, Nathalie Gilfoyle, regarding the investigation was to cooperate and be truthful. During the investigation the APA General Counsel led me to believe that she was assisting me in my presentation of evidence to the Sidley

team, and she suggested that APA would be claiming privilege over documents or statements I was providing to Hoffman and his team that Ms. Gilfoyle had reviewed

6. In February 2015, while the Hoffman investigation was taking place, I collaborated with Nadine Kaslow to offer a workshop at a university in California. During my interactions with Dr. Kaslow at this workshop, she stated that given her longstanding relationship with me, she would recuse herself from any Board personnel action regarding me following the release of the Report of the Independent Review (hereinafter "Report") were the Report to implicate me in wrongdoing. This statement surprised me because Dr. Kaslow had been significantly involved in many of the events under investigation and thus herself would likely be implicated in any purported wrongdoing.

7. All the more surprising was Dr. Kaslow's statement to me at this workshop that APA should issue an apology because, she explained, in her experience "apologies can make things better." I could not understand why Dr. Kaslow would mention APA issuing an apology, given that the investigation was not complete and there was no reason to suspect any wrongdoing. I was especially puzzled by Dr. Kaslow's statement regarding an apology because in our many conversations over the years, when Dr. Kaslow served on Council and as APA president and was thus significantly involved in the events under investigation, Dr. Kaslow had never shared with me even a suspicion of wrongdoing regarding the matters that were now being investigated. Nonetheless, during these conversations in California, Dr. Kaslow stated to me multiple times, "Hoffman is going to find something."

8. Over the course of the Independent Review, Dr. Kaslow and I were in touch on multiple occasions. Among other topics, we discussed the ongoing investigation. Dr. Kaslow stated that she was in "constant" contact with Mr. Hoffman and that some of these contacts were occurring in the late evening and early morning hours.

9. While the Review was taking place I met with the APA General Counsel in her office to discuss whether APA staff, including myself, should retain personal counsel for the investigation. Ms. Gilfoyle stated to me that it would "look bad" if APA staff were to retain personal counsel for the investigation. I understood this statement to mean that APA staff should not retain counsel during the investigation because the appearance it would give of potential wrongdoing would reflect negatively on APA. At no point in this meeting or at any other time did Ms. Gilfoyle raise or demonstrate any concern with me regarding the potential effect of the investigation on me or any APA staff member in regard to our individual careers.

10. Around June 2014, APA requested and obtained a legal review/analysis regarding a new Council of Representative business item, sponsored by individuals who had been highly critical of APA's position on interrogations, including Jean Maria Arrigo. (Report, p. 7) The legal analysis pointed out the flawed nature of the legal analysis done by the APA critics, including their incorrect historical timeline and stated that the legal opinions they were relying on had been withdrawn. The Report's failure to mention this legal memo was especially surprising to me given that Mr. Hoffman considered Jean Maria Arrigo a highly credible witness for his Report and this legal memo indicated a flawed and inaccurate understanding of key legal issues related to matters on which she was purported to have expertise. (Report, p. 264)

11. I was part of an extended discussion with the APA Office of General Counsel regarding whether to release this legal memo to APA critics. APA did release the memo. At that point Ms. Gilfoyle instructed staff that the opinion should not be considered confidential or privileged.

12. The Report ignores that fact that Dr. Arrigo, whom the Report describes as a prominent APA "critic," (Report, p. 7) was well informed that the PENS Report placed strict constraints on psychologists. Dr. Arrigo's handwritten notes from the PENS meeting (Report, Binder 5 pdf p. 740), clearly states that from its very first draft, the PENS Report incorporated local policies (Afghanistan, Iraq, and Cuba) that had recently been revised.

13. The Report (p. 115) mischaracterizes the 2002 APA Ethics Code when it describes the Code as deficient. The Report ignores the standard among national psychological associations on the relevant issue. This mischaracterization further contributes to the Report's inaccurate narrative that APA was attempting to curry favor with the military. The Report stated regarding the 2002 revision of the APA Ethics Code that it was:

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.

Contrary to this mischaracterization, I provided Mr. Hoffman an article I had written on the topic of national psychological association ethics codes that indicated APA's code was highly consistent with how numerous other psychological associations addressed conflicts between ethics and law in their ethics codes. Despite Mr. Hoffman's assurance to me during our discussion that the investigation would "go broad as well as deep," meaning it would examine how other psychological associations dealt with this issue, the Report omits any discussion of other national codes of ethics for psychologists, leaving the false impression that APA's code was unusual or out-of-step with customary practice among national psychological associations, which it was not.

14. I provided a letter to the Sidley interviewers that APA had sent to the Washington Post that criticized a high Bush administration official for appearing to support torture. I explained the history of the letter to Danielle Carter and informed her that the letter provided clear evidence that I and others at APA had no intent to collude with the Bush Administration to support abusive interrogation techniques. The Report makes no mention of this letter to the Washington Post despite that it is clearly contradictory to the Report's narrative. In fact, during my interview Ms. Carter was immediately dismissive of the letter's significance, stating that it would not "satisfy the critics," a response that surprised me, as I was unaware and had not been informed that satisfying APA critics was as a goal of the investigation.

15. The Report ignored the argument by a well-respected and prestigious scientific journal, *Nature*, in support of APA's position on interrogations. I provided Mr. Hoffman a copy of this editorial, which stated that APA had taken a "responsible" position on the issue of interrogations

and made no reference to public relations or support of the Department of Defense as underpinning or even related to APA's position, as the Report erroneously argued regarding APA's position. (p. 210)

16. Consistent with the Report's continual mischaracterization of me as inappropriately supporting only the military psychologist's interest, the Report (p. 289) inaccurately stated that I removed a statement from a draft of the PENS report in response to a concern by Morgan Banks. I explained that the sentence in question was removed from a draft of the PENS report because of an objection from researchers that comparing research to interrogation was inapposite and not appropriate for the PENS report. I stated to Mr. Hoffman that the removal of this sentence was not the result of objections from the DoD members of the PENS task force. I showed Mr. Hoffman drafting notes that supported my position.

17. The Report wrongly implies that I did not want to include prohibition on specific techniques of interrogation in the PENS report because I wished to *allow* certain abusive techniques such as sleep deprivation and stress positions. In fact, I had explained to Mr. Hoffman that APA's approach to writing ethics rules was *not* based on prohibiting detailed, specific behaviors, but rather was based on a more general level so the rules could be applied in the myriad situations that psychologists face. The Report actually quotes an ethics committee member, Neil Massoth, as making the very point I was making (Report, pg. 311, fn. 1378):

As Massoth wrote: "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.

This general (as opposed to specific) approach to writing ethics rules notwithstanding, I subsequently came to believe that incorporating a prohibition on specific techniques of interrogation into APA policy was appropriate for reasons that I explained to Mr. Hoffman. The Report nonetheless made a blanket, factual statement that my assertion regarding my evolving position was "incorrect." The fact that both Dr. Banks and I were comfortable that stress positions and sleep deprivation were included on a list of prohibited interrogation techniques in two Council new business items (2007 and 2008) directly refutes the Report's conclusion that we were colluding to *allow* these techniques.

18. The Report additionally mischaracterizes my position the "safe, legal, ethical, and effective" framework enabled the use stress positions when it incorrectly states (Report, p. 301):

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. (emphasis added)

I explained to Mr. Hoffman that a technique must meet *each* of these four requirements to be

permissible and indicated that I knew of no research whatsoever that stress positions were effective techniques of interrogation. I stated to Mr. Hoffman that I would rule stress positions out on this basis alone, as was entirely appropriate to do under the four-fold framework and was the most expedient manner of applying the analysis. The Report did not include this information.

19. The Report mischaracterizes my position on torture when it asserts that I recommended against making a blanket statement in an APA communication that torture is not effective because I was concerned that the DoD members of the PENS task force would not want APA to make such a statement. (Report, p. 315) I explained to Mr. Hoffman that APA is a *scientific* organization and as such cannot make categorical, empirical statements without supporting research—which is the reason I used the word “empirical” in the email the Report cites in making this erroneous point. I stated to Mr. Hoffman that my position on this point was buttressed by discussions with people in the APA Science directorate, not by concerns of the DoD members of the PENS task force. The Report omits these points.

20. The Report indicates that I did not pursue a case book in order to continue ensuring latitude for abusive interrogation techniques to occur. (Report, p. 341-342) I explained to Mr. Hoffman that the directive from Council was for the *Ethics Committee*—not ethics office staff—to write the case book. The Report confuses the role of governance and staff. In addition, in its discussion of the case book the Report ignored a fact that Mr. Hoffman and I had discussed, namely, that I *supported* a prohibition on specific techniques in 2007 and 2008 Council new business items, a fact that contradicts the Report’s argument about the case book.

21. The Report (p. 367) stated that “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.” During my discussions with Mr. Hoffman he acknowledged that *none* of my exchanges with Morgan Banks involved disclosing information that had been identified as confidential. The Report did not include this information and leaves the inaccurate impression that I was disclosing confidential information to Morgan Banks as part of a collusive enterprise.

22. The Report (p. 393) incorrectly stated that I intentionally hid my involvement in certain events in order to conceal my relationship with Morgan Banks and cites an example with Morgan Banks in a misleading fashion to ignore my true motivation and purpose. I stated to Hoffman on several occasions that the issue of psychologists and interrogations had become highly contentious and taken a deeply personal turn again me. The Report itself acknowledged the contentiousness of the issue (p. 72). I stated to Mr. Hoffman that on certain occasions I believed that mere knowledge of my presence and/or involvement would complicate an issue and thus at times I chose to not make my presence or involvement known.

23. The Report (p. 396) leaves the erroneous impression that I coordinated with Morgan Banks to intentionally conceal email exchanges between the two of us. I stated to Mr. Hoffman that I retained communications on my APA server so that he would discover any emails that would be relevant to his investigation because *they would be on the computer he had imaged*. In direct response to Hoffman’s objection that I could have deleted emails, I stated that he would find any emails he was looking for relevant to his investigation *because they would be on my computer*.

On my hard drive was a file that I intentionally retained labelled "Deleted," which contained my deleted emails. The Report did not include this information, nor did it state that Mr. Hoffman had hired a forensic IT group for the specific purpose of imaging the computers of APA staff, including me, and analyzing data from our computers for the investigation.

24. The Report (p. 405) paints a picture that I secretly collaborated with Morgan Banks by working only on behalf of military psychologists. I told Mr. Hoffman that I had also assisted Council members in drafting resolutions that took a very different position than the military psychologists wanted. The Report did not include this information.

25. The Report (p. 455) significantly mischaracterized a comment I made, namely, that I had been "a little bit bad," in a communication with Dr. Steven Reisner, an APA member. The Report erroneously stated that the comment demonstrated I "consciously played sophisticated games with language, and used [my] ability to parse words to [my] advantage in delaying the revision of Standard 1.02." In addition, the Report inaccurately stated that this comment was an acknowledgement of my "manipulation" of Dr. Reisner's language. Had Mr. Hoffman asked me about this comment, which he did not, I would have told him that I made this comment because I had allowed my personal feelings of frustration about a member to appear in an email exchange with that member.

26. The Report (pg. 37) leaves the false impression that I had provided inconsistent information regarding payments for Department of Defense ethics workshops. I provided Sidley interviewers comprehensive information regarding these payments, which demonstrated that all monies from the workshops went to APA and were handled in an appropriate, professional, and timely manner in response to an administrative error made by the Department of Defense.

27. In 2013 and 2014, Dr. Jennifer Kelly served as liaison from the APA Board of Directors to the Ethics Committee. At its November 2013 meeting, the Ethics Committee chair and the Ethics Office staff investigator briefed the Ethics Committee on the decision to close the John Leso ethics matter. Dr. Kelly was present at this meeting. She did not raise any objections to the closing of the Leso matter or the manner in which it had been handled. Following this Ethics Committee meeting, a decision was made with Dr. Kelly that the Board of Directors would be briefed on the Leso matter closing. Dr. Kelly took the lead in working with the Ethics Office staff to organize this briefing. The Leso file was made available for review during the Board briefing, and comments and questions were invited from Board members. No Sidley interviewer ever queried me regarding the role of Dr. Kelly in the Leso matter closing. The Report makes no mention of Dr. Kelly's role in the Leso matter closing.

28. Ms. Anne Springer from the APA Office of General Counsel provided written comments on the draft closing memorandum for the Leso matter. Ms. Springer did not point out any inconsistencies with the procedures of the Ethics review process, nor at any time did Ms. Springer communicate to me that the Leso matter was handled in an "improper fashion," as the Report incorrectly claims it was. (pg. 10)

29. Following publication of James Risen's book, *Pay Any Price*, in 2014, Norman Anderson, APA CEO, encouraged APA staff to include in an APA memo the fact that the FBI had been

provided information regarding APA and had found no wrongdoing. This information was contained on my hard drive and was thus available to Mr. Hoffman. The Report does not include this information regarding the FBI declining to investigate APA.

30. The Report (p. 302) falsely states that I left out a sentence in the PENS Report from the APA Ethics Code regarding the ethical principle "Do No Harm":

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.

I explained to Mr. Hoffman that the term "Nonmaleficence" means "Do No Harm," and that the PENS Report *did include* the term "nonmaleficence" for this very reason.

31. The Report (p. 286) leaves the erroneous impression that I was the primary author of the PENS Report, "after one day of task force deliberations, Behnke drafted a document that would largely become the final PENS report's twelve statements." I explained to Mr. Hoffman the process of writing the PENS Report, namely, that I acted as a scribe to record the positions of the Task Force, that even prior to the PENS meeting many positions had been set out by the Task Force in its listserv discussions, and that through an iterative process the Task Force reviewed and voted upon multiple drafts to ensure that the final report reflected its thinking. Despite this clear explanation, the Report nonetheless characterizes me as being a primary contributor to the PENS Report's substantive positions, which was untrue.

32. The Report (p. 67) leaves the erroneous impression that I intentionally avoided learning about detainee abuses in my work as Director of the Ethics Office:

In this situation in a criminal case, one would ask whether this intentional decision not to seek more information constituted "willful blindness" or "deliberate avoidance," such that a jury instruction known as the "ostrich instruction" would be appropriate.

I explained to Mr. Hoffman, and he had in his possession, evidence that the Ethics Office actively sought out information regarding detainee abuse, shared that information with members of the PENS Task Force, and collected such information in its review of ethics matters. This information included official reports and media accounts.

33. The Report leaves the erroneous impression that the chair of the PENS Task Force, Olivia Moorehead-Slaughter, was my "agent" during the PENS process. (Report, p. 249) I explained to Mr. Hoffman that the role and responsibility of an APA staff member was to support elected members of governance in a variety of ways that included drafting correspondence, organizing meetings, and recommending courses of action for committee and task force chairs. The Report ignores this point and mischaracterizes me as having authority that I did not have and that Mr. Hoffman was aware I did not have.

34. Shortly after the Hoffman Report was released, Dr. Linda Woolf, a past-president of APA's division of Peace Psychology and witness in the Hoffman investigation, described to me orally her strong objections to the Report and offered to put in writing examples of the letter's inaccuracies and distortions. Dr. Woolf sent me such a letter, dated July 18, 2015. (<https://tinyurl.com/y2raxte3>)

35. Immediately following the release of the Hoffman Report, my supervisor, Mike Honaker, and I had discussions regarding the Report's accuracy. I shared with Dr. Honaker my response to the Board of Directors regarding the Report. Dr. Honaker likewise shared with me his response to the Board of Directors. Attached as Exhibit 1 is a true and correct copy of Dr. Honaker's response.

36. I approached no less than four individuals who refused to provide an affidavit related to current litigation and arbitration in which I am a plaintiff or complainant, that involves APA, Mr. Hoffman, and Sidley Austin, LLP. These four individuals refused my request based on their expressed fear that they would suffer negative consequences if they did provide such an affidavit. Two of these individuals stated that they feared retaliation from APA. Two additional individuals stated that they feared retaliation from individuals identified in the Hoffman report either as "APA critics" or as affiliated with the Coalition for an Ethical Psychology and Psychologists for Social Responsibility.

37. The numerous inaccuracies, omissions, and distortions contained in the Report, coupled with Mr. Hoffman's statements to me that his sole objective was to find out what had happened, led me to conclude that Mr. Hoffman had a preordained narrative that he intended to write regardless of what I told him and that, in fact, his primary purpose in interviewing me on numerous occasions was to gather information that he could use to bolster his preordained narrative. This belief is further buttressed by Hoffman's refusal during the investigation to inform me that he had expanded the scope of his investigation at the urging of individuals who, in the Report, he referred to as "APA critics" (Report, pp. 7, 64), even after I had explicitly and repeatedly asked him and his Sidley colleague to describe the investigation's scope to me in order for me to prepare for my witness interviews.

I declare under penalty of perjury that the foregoing is true and correct.


Stephen Behnke

Sworn and subscribed to before a notary public in the State of California, this 14th day of November 2019.





Notary Public

EXHIBIT I

To: Board of Directors
Executive Management Group

From: L. Michael Honaker, Ph.D.
Deputy Chief Executive Officer

First, let me state that I was not given an opportunity, as I understand others were, to see in advance a notebook of materials that David Hoffman and Danielle Carter were going to discuss in my second interview. As a result, all my responses in that interview, (including some which were later cited in the report) were without the benefit of having time to recollect the events more than 10 years ago or to look at my records. Although they did allow me a half hour to review the materials at the meeting and offered to meet the next day (which my schedule did not allow), it became clear to me at the outset that I was not sufficiently prepared to respond in a well-informed manner.

Overall, I believe the report is a slanted mischaracterization of everything I know about my involvement. Furthermore I think Hoffman purposely left out pertinent information that may have contradicted his conclusions. To me, the investigation was flawed in many ways and did not allow for appropriate due process. I, for one, was never given an opportunity to respond to all the references regarding my involvement before they appeared in the report. I consider parts of the document inaccurate and potentially defamatory. Also, I know some of my emails have been mischaracterized and I don't know the degree to which Hoffman has mischaracterized others. I am seriously concerned there has been no opportunity to correct errors that are in the report and that it has been made public without any such corrections. Having said that, I learned of many of the alleged activities for the first time when I read the report and I find the allegations overall to be quite troubling.

Thank you for the opportunity to provide additional information about the four primary concerns surrounding my involvement that were raised in the report. First, considering the issue raised of possible lack of appropriate supervision of Dr. Behnke: my main reaction is that I can't manage what I don't know. The report's allegation of collusion is primarily based on Dr. Behnke's alleged repeated secret, confidential interactions with DOD officials. I was not involved in any such interactions and, as stated several times in the report, these interactions were allegedly done in confidence which by definition means they were kept secret from others. Since I hired Dr. Behnke I have had regular interactions with him, often 2 or 3 times a week, to receive updates. He never in these interactions mentioned anything about confidential/secretive conversations with DOD psychologists. When he has discussed issues with me, I believed that all the points he made about what should happen with the Ethics Code and related issues were his own, and I trusted what I thought was his objective opinion of the situation. He had mentioned at one point that he had spoken with "Morgan" a couple times to get his

perspective and content expertise, but he never said these conversations were secret and confidential or that they were specifically for crafting language for resolutions. I was extremely surprised and shocked to learn that the report alleges that his continued and repeated confidential interactions with Dr. Banks and other military psychologists throughout the process were for the purposes of gaining favor from the DOD. I was always told and believed that when he did consult with others that his purpose was to gain access to their content expertise. I did not have the advantage of reviewing years of emails as did Hoffman. From everything I know about Dr. Behnke I would find it hard to believe that these interactions, if they occurred as reported, were with collusive intent. I know of no way I could have known of the alleged interactions without his telling me or someone else reporting it to me. I received no reports from others about these interactions. Like any supervisor, I had to rely on what he told me or what others told me to judge his performance. I usually take responsibility for actions of my staff that have adverse outcomes when I know about and/or have been involved in formulating the action; it is difficult to do that for actions of which I have not had involvement or knowledge.

The report indicates that I did nothing to resolve the issue that Dr. Russ Newman had a conflict of interest in the PENS process and did not inform others (pp. 14, 215-219, 256-258). At the time I did not know that this conflict had not been revealed at the PENS meeting. The usual process for revealing a conflict of interest in APA meetings is that it is the individual's responsibility to disclose that conflict to others involved, to the chair, or in the case of Council to the APA Secretary (e.g., see Association Rules 30.7, 80.2). This is usually done at the beginning of a meeting on a particular topic or in writing by the participant. I was not invited to the PENS meeting and did not attend so I had not known what occurred at the meeting directly. I did not learn until later that Dr. Newman had been active in the meeting and that some participants in the meeting did not know of his marital relationship with Dr. Dunivin. By the time I had learned of his level of participation and that his conflict had not been addressed it was in the context of people on the task force having already learned of his relationship so no further action was warranted. If I had been in the meeting in the first place, I would have made sure the issue was addressed appropriately.

When Hoffman states that I thought it was still important to have Dr. Newman in the meeting I had explained that in the context of the fact that any statements that APA makes about the Ethics Code will potentially have an impact on all practitioners not just those involved in national security and since he was the Executive Director for Practice it made sense for him to be there. But I also assumed that his conflict had been made known by either him or others at the meeting who were aware of the conflict. Also, I had expected Dr. Newman was in the meeting as an observer (which is how he was identified in descriptions), not as one of the participants. Observers at APA meetings usually are only there to listen to discussions that may be relevant to their expertise/constituency but are not part of the discussions. I did not learn until much later that Dr. Newman was an active participant.

From an internal operations perspective, APA Policy and Procedures that guide employee conduct only require that *financial* conflict be revealed and dealt with appropriately (see attachment 1). If a financial conflict does exist, the policy states the individual "should at a minimum discuss the circumstances with the executive director with supervisory responsibility to determine whether a reportable situation exists." I was not Dr. Newman's supervisor. I never did any evaluations of his performance, and he did not perceive me as his supervisor.

Third is the issue of the workshops that Dr. Behnke conducted for DOD. Without the opportunity to review Hoffman's binder in advance I was not able to accurately recall some important and pertinent information regarding the workshops. I did not know that these workshops were occurring on a regular basis until October 3, 2013 and when I was informed, my supervisor and others were informed as well (see attachments 2, 3, and 4). I also was told that these workshops were educational programs for the military psychologists and there was no mention of behavioral science consultant teams (BSCTs). I did not know that the reporting language for these workshops had been allegedly carefully crafted in consultation with Dr. Dunivin to purposefully leave out that the fact that some of these were for BSCTs.

It is very important to realize that I had not recalled during the Hoffman interview that I also sent a summary of how much funding was coming to the Ethics office from DOD and the purpose (at least what I had been told) of the funding in a note that went to the entire Board of Directors and the Executive Management Group on 10/28/13 (Attachment 3). I received no comments or questions from anyone about the \$10,000 that was reported in the note.

(Parenthetically, I sent a version of attachment 2 to Hoffman on the day after my interview but he apparently chose not to include this information in his report.)

There are four additional points about the workshop presentations I want to make. First, these presentations are not done *only* for the military psychologists. They are done for *any* group that requests a presentation/workshop because the focus of the Ethics Office, based on the Board of Directors direction over the last 15 years, has been on education about ethics. These workshops are seen as an important part of that education. Secondly, when I said it was included in the annual report, I was referring to the fact that the total number, 30 – 40, was reported annually, not the specific DOD presentations. I did not know if those specific presentations for the military were included in the report by name. As I noted above, I did not learn of the regularity of the workshops until 10/3/13 when I made an inquiry to senior directors at APA about what funds, if any, we were receiving from DOD in response to an inquiry from an APA member (attachment 4). This note also went to senior staff including my supervisor. I want to point out in Attachment 4 that my first response to the query about the Ethics office receiving DOD support was "I am not aware of any DOD support" and wasn't until we received the response to my inquiry.

Also it is important to know that the funds received from DOD were used to reimburse expenses only and any remaining money from the DOD contributions was used to fund either ethics awards for students or to fund presentations for other groups. To my knowledge, these funds were not to Dr. Benhke directly.

And lastly, I must take serious issue with the mischaracterization that I was only concerned about the "paper trail" in my note to Dr. Behnke and others about their involvement in helping to craft a con statement of an issue regarding the 2008 petition resolution (pp. 439 – 440). The purpose and intent of the note was the exact opposite: to insure that staff was maintaining neutrality and open to assisting both sides of the issue. I only mentioned "paper trail" because that is how I learned of the involvement staff had in helping to draft the statement at the request of the APA president.

In summary, I did not know of any alleged secretive interactions between DOD officials and staff. I had assumed that Dr. Newman's conflict was dealt with in the manner these conflicts are normally addressed at meetings and since I was not in attendance I did not know that had not happened; in the future I will not make that assumption. When I learned about the DOD funding, I informed my supervisor and also the rest of Executive Management and the Board of Directors. My note to staff about the con issue was to remind them of neutrality not the opposite as Hoffman accuses.

Finally, I must say I am appalled and strenuously object to the Board's decision to allow Drs. Reisner and Soldz to present their views to the Board without allowing staff or others mentioned in the report to present their views. Reisner's and Soldz's public statements have clearly reflected a desire to get rid of staff and it appears that Board's actions were influenced by their presence in the meeting. They were definitely not disinterested parties which I understood to be the criterion for which persons were allowed to be present at the meeting. I made myself available both days of the Board meeting and would have welcomed the opportunity to address any concerns directly to the Board.

I have been a central part of APA for 25 plus years and during that time I have worked hard to make APA a great employer. I believe my contributions were a significant part of APA's recent award and recognition for the 2014 Washington Post Top Places to Work. I have made many significant contributions to how APA works (e.g., developed the consolidated meetings, shepherded the diversity and strategic plans) and I have helped create a work environment where staff are recognized and feel listened to and valued (e.g., creating many staff committees that encourage staff input to what APA does). Never have I had a complaint raised about my conduct, nor have I ever had any disciplinary action considered or taken against me. I have received praise in my evaluations for adherence to and advancement of APA values and my management of staff.

Up until now, I have valued my time with APA and have always believed that the association has handled things in the best possible way available to it at the time. I have

always been deeply committed to APA and have been sickened, saddened, and shocked, as others have, about the allegations in the report. I believe APA will eventually emerge from the current situation; I am just sorry I won't be here to help it move forward.

EXHIBIT C-5

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF JAMES BOW IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Michigan)
) ss:
County of Wayne)

1. I, James Bow, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was first contacted by email by Ms. Danielle Carter of the law firm Sidley Austin LLP on April 20, 2015. She asked me to provide information in an ongoing independent review being conducted on behalf of the American Psychological Association (APA) regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (PENS) Task Force. I was interviewed at my office by Ms. Carter and Ms. Ava Guo on May 11, 2015.
3. I was Chair of the APA Ethics Committee in 2013 when the Ethics Committee made its decision to close the ethics case of Major John Leso, a case specifically addressed in the Independent Review Report to the APA (hereinafter "Report"). The Report mischaracterizes actions taken by the Ethics Office staff with regard to the Leso investigation and omits important information that I provided to the interviewers during the independent review process.
4. The Report's discussion of the Ethics Office investigation leaves the impression that the staff took little investigatory action in the case. According to the Report (p. 60):

When the licensing board did not act against Leso, the Ethics Office took the additional step of conducting internet searches to obtain additional information and kept the matter open for a total of six years (still merely as a "preliminary

investigation”), with the explanation that they wanted to see if information related to Leso’s actions would become publicly available. 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.

5. This is just simply untrue, appears to be part of a preconceived narrative about improper handling of ethics cases, and omits information to the contrary that I provided during my interview. The investigative work done by the Ethics Office staff in this case was extensive. They actively monitored ongoing litigation, psychology licensing board actions, and congressional hearings for any information relevant to the Leso matter. In addition, the Ethics Office staff monitored FOIA requests related to the conduct of interrogations at Guantanamo Bay, as well as reports compiled by non-profit associations related to the treatment of detainees in US custody. Materials gathered and contained in the Leso file included: documents from the 2008 Senate Armed Services Committee Report on treatment of detainees in U.S. custody; the interrogation log of the al-Qahtani detainee case; the 2005 Schmidt-Furlow Report investigating FBI allegations of detainee abuse at the Guantanamo Bay detention facility; the 2005 Martinez-Lopez Report titled, “Assessment of Detainee Medical Operations for OEF, GTMO, and OIF;” the 2013 Report of the Constitution Project’s Task Force on Detainee Treatment; and a 2013 task force report by the Institute on Medicine as a Profession and the Open Society Foundations titled, “Ethics Abandoned: Medical Professionalism and Detainee Abuse during the ‘War on Terror.’” The time and effort Ethics Office staff provided in compiling evidence related to the Leso case exceeded the effort given to most other ethics matters with which I worked while a member of the Ethics Committee.

6. When I was interviewed, I provided the interviewers with the actual file containing all of this material, which they reviewed. Also included in the file was the March 2005 Behavioral Science Consultation Team Standard Operating Procedure (SOP) for Guantanamo. My understanding was that this was the controlling SOP providing guidance and restrictions regarding interrogations for military psychologists at Guantanamo at the time of the PENS Task Force, but it was omitted from the Report. This information in the ethics case file, which Sidley Austin was in possession of for the independent review, directly contradicts the Report’s finding that existing policies at the time of PENS were loose and “high-level” and did not prohibit abusive techniques (Report, p.12).

7. The time and effort undertaken in the Leso case, along with the lengthy list of evidence and materials gathered, were part of two February 2014 presentations I gave to the APA Board of Directors about the Ethics Committee’s decision to close the Leso case. Attached hereto as Exhibit A is a true and correct copy of my notes from those presentations. Among the Board members present at those briefings was Dr. Jennifer Kelly who had been the Board Liaison at the 2013 Ethics Committee meeting where the decision to close the Leso case was first discussed, and who did not raise any objection to the case closing at that time. Also in attendance at the Board briefings was then-APA President Nadine Kaslow who later authored a communiqué on behalf of the Board and the Ethics Committee to the Council of Representatives explaining the rationale for closing the case and indicating that “as complete and careful a review of the available

evidence was undertaken as possible." Attached hereto as Exhibit B is a true and correct copy of that communiqué which can also be found at <http://www.apa.org/ethics/leso-communique.aspx>. President Kaslow's communication about the completeness of the work in the Leso case was never mentioned in the Report. Further, both President Kaslow's communication and my briefings provided information to the Board that directly contradicted the Report's conclusion that the Leso ethics case was handled improperly.

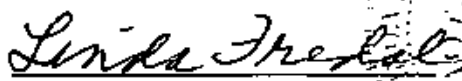
I declare under penalty of perjury that the foregoing is true and correct.



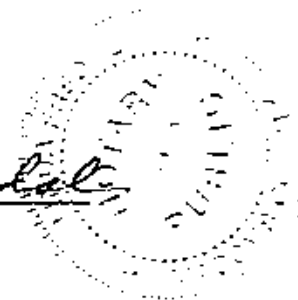
James Bow

Sworn and subscribed to before a notary public in the State of Michigan, this 15th day of
October 2019.

LINDA FREDAL
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF MACOMB
My Commission Expires Sept, 29, 2024
Acting in the County of Macomb



Notary Public





LINDA FREDAL
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF MACOMB
My Commission Expires Sept. 29, 2024
Acting in the County of Macomb

Exhibit A

Notes from Bow Presentation to APA Board on Leso Ethics Complaint

Two ethics complaints were filed against an APA psychologist, Dr. Leso, who is a member of APA. The first complaint was in 2006 by Dr. Alice Shaw, while the second was in 2008 by Dr. Trudy Bond.

Dr. Leso was an early career psychologist who was sent to Guantanamo Bay, Cuba, in the summer of 2002. He assumed that he would be providing mental health treatment (i.e. dealing with deployment related stress). However, upon his arrival, he was informed that he would be a member of the **Behavioral Science Consultant Team (BSCT)**. This team consisted of three members: a psychiatrist, psychologist, and mental health technician. He remained on this team through January of 2003, which was about six months. This is critical to note because Dr. Leso was accused of misconduct beyond January of 2003. It is also important to note that the **1992 APA Ethics Code** applied at that time.

Since this is a complainant case, the **APA Ethics Committee** bears the burden of proving the charges of unethical behavior by a **preponderance of the available evidence**. It is also important to:

1. **Balance the evidence of a violation versus evidence against a violation.**
2. **Furthermore, it is important to balance the general evidence of a violation versus evidence of his attempts to act ethically, as well as the findings of other bodies/individuals with access to primary source information.**

A lengthy, careful, and thorough review of this case occurred. Over 2,000 pages were reviewed, but the critical part was reviewing **primary source material**, such as the actual interrogation logs and reports. This matter was taken very seriously. I wanted to be fair, impartial, and objective. I knew whatever decision was made would create controversy. In the end, it was important to make the right decision regardless of the emotions and pressure.

Personally, I approached this like a forensic case. I tried to be objective and neutral, with a focus on analyzing the facts. I knew none of the individuals involved, had no association with any groups involved, no military experience, and had no personal agenda.

It is also important to note that the APA Rules and Procedures were closely followed in this case.

When I assumed the role as Chair of the Ethics Committee in 2013, the first package that arrived was the materials pertaining to this case. I was informed that additional material was expected to be released. A Freedom of Information Act (FOIA) complaint was filed in January of 2012 seeking 56 videotapes (53 videotapes applied to the timeframe of 8/02 to 11/02) of interrogations and 6 photographs. There was also Habeas Corpus litigation regarding the release of other documents. In addition, The Constitution Project Task Force report was due for release. Therefore, the completion of the review of the case was continuously delayed due to factors such as these. Even as late as October of 2013, additional information was released.

This case was complicated by the following factors:

- Much information was deemed classified and the government was unwilling to release it.
- Much information was redacted.
- Dr. Leso was unable to thoroughly respond to the inquiry due to his position within the military.
- APA was unable to subpoena witnesses or documents. We had to rely solely on information available in the public domain.
- Much information was speculative. For example, BSCT was often cited as solely referring to Dr. Leso, although other individuals were members of this team.
- The Task Force Report on Ethics Abandoned - Medical Professionalism and Detainee Abuse in the War on Terror stated in its Findings and Recommendation section: Task Force's findings are based on an incomplete record, as many key documents, including interrogation records, medical files, and internal instructions, have not been publicly released.
- In the Medical Ethics and the Interrogation of Guantanamo 063 by Steven Miles, he stated, "but the record is so heavily redacted that it is not possible to determine which, if any of this material described the interrogation of Prisoner 063."

It is also important to note that the alleged behavior must be directly attributed to the respondent and not speculative or based on the behavior of others. This is contrary to one of the complainant's argument that it was that way unless proven otherwise.

There is no question that things went terribly wrong in the context of interrogation. However, the question is whether Dr. Leso had a direct role in that process.

It is obvious that Dr. Leso was not given adequate training, support, or guidance for his BSCT role. In addition, the military lacked standard operating procedures for the BSCT role. At that time, Dr. Leso had limited resources. APA did not explicitly prohibit specific interrogation techniques until 2007. This is important because there were limited resources available to him to counter arguments coming from the administration.

Direct Evidence of Attempts by Him to Act Ethically

The record indicates that Dr. Leso argued against force and fear-based approaches, and argued for rapport building approaches.

Dr. Leso was required to draft a memo reflecting the Army's administration's philosophy on interrogation. He sought consultation on October 2, 2002, and the following was stated in the aforementioned memo:

"Experts in the field of interrogation indicate the most effective interrogation strategies are a rapport-building approach. Interrogation techniques that rely on physical or adverse consequences are likely to garner inaccurate information and create an increased level of resistance."

He also warned of the potential harm from abusive interrogation practices.

Counter Resistance Strategy Meeting Minutes

Dr. Leso said the following at this meeting:

Force is risky, and may be ineffective due to the detainees' frame of reference. They are used to seeing much more barbaric treatment.

In addition, BSCT members reported potential abuse according to the **Major General Lester Martínez-Lopez's Report**, such as:

- Interrogator pulling on detainee's thumb.
- Female interrogator took off her battle dress uniform jacket and rubbed her breast against detainee, sat on his lap, and whispered in his ear.

It is also important to note that BSCT members were consultants to the interrogations and not in control of the interrogations.

Moreover, military investigations found affirmative behavior by Dr. Leso to protect the safety of the detainees. It is also important to note that military investigations were highly critical of some military personnel involved in the interrogation process.

Minimal Evidence for Violation

Incidents possibly involving Dr. Leso:

1. BSCT commented that detainee was lying (December 2, 2002)
2. BSCT advised the interrogator that detainee was simply trying to gain control and sympathy by wanting to sleep in another room (December 11, 2002).
3. BSCT assessment indicated that interrogators may be viewed as family figure for the detainee (December 25, 2002).
4. BSCT observed that detainee does not like it when the interrogator points out his nonverbal responses. (December 29, 2002)
5. Psychologist witnessed the dog "Zeus" in the presence of an interrogation in November of 2002.
6. Dr. Leso was present when detainee arrived at the interrogation booth- detainee's hood was removed and was bolted to the floor (Nov 23rd). Supposedly this was a rapport building session.
7. Dr. Leso suggested putting a detainee in a swivel chair to prevent him from fixing his eyes on one spot (November 27th).

Dr. Leso's Denial of Wrongdoing

- He stated that he was only able to respond to the allegations in the manner permitted. He noted that information concerning interrogation of enemy combatants is classified and he

cannot under penalty of law confirm or explain matters concerning the interrogation of detainees. However, he does deny certain actions.

- He denied being the Chairman of the Behavioral Science Consultation Team.
 - He denied observing significant portions of the interrogations.
 - He reported never supervising such sessions.
 - Instead, he was a consultant. He had no authority or control over the interrogation team.
- Consultant Role vs. Director of Unit model**
- There is no evidence that he was **untruthful** during the investigation.

Multiple Investigations with Access to Primary Sources of Information Found No Wrongdoing

Major General Lester Martinez-Lopez's Report stated: "There is no indication that BSCT personnel participated in abusive interrogation practices. Furthermore, the Senate Armed Forces Committee, Army, and Vice Admiral Church reviewed BSCT's role as well. No wrongdoing was found. However, these groups were highly critical of other military personnel.

Letter from Department of the Army, Dr. Eric B. Schoomaker, M.D., Ph.D., Surgeon General stated the following (March 25, 2008):

"There is no indication that BSCT personnel participated in abusive interrogation methods. In fact, the report gives several instances where psychologists either stopped or reported inappropriate behavior."

He further stated, "A review of the available records indicates that Dr. Leso did not do anything wrong and does not deserve sanction for his performance on his official military duties. Two senior Army psychologists reviewed the records of interrogations in which Dr. Leso was involved and found no evidence that he behaved in an unethical manner or harmed anyone in any way. In fact, the information from those who served with him suggests that Dr. Leso worked diligently to protect the safety of the detainees."

To date, no court, governmental tribunal, or licensing board has taken action against Dr. Leso.

The New York Department of Education refused to hear the Leso case and the appeals in that matter have concluded.

In summary, I would like to highlight three points:

First, regarding the allegations against Dr. Leso, I did not find support in the record and he denied such actions.

Second, there are reports from the military that found no wrongdoing on Dr. Leso's part.

Third, Dr. Leso argued for a different approach to interrogation and highlighted the harm that could result.

I realize that this decision has gotten a lot of attention. However, with my experience as a forensic psychologist, I'm very comfortable with the decision.

Definition of BSC= BSCs are psychologists and psychiatrists assigned to provide consultative services to support authorized law enforcement or intelligence activities, including detention and related intelligence, interrogation, and detainee debriefing operations. It is not a clinical role.

The mission of a BSC is to provide psychological expertise and consultation in order to assist the command in conducting safe, legal, ethical, and effective detention operations, intelligence interrogations, and detainee debriefing operations. BSCs shall not conduct or direct interrogations.

Exhibit B

APA Board of Directors and Ethics Committee Communiqué to the APA Council of Representatives in the matter of John Leso, PhD

We appreciate your important discussion of the outcome of the ethics complaints concerning John Leso, PhD. The intent of this communiqué is to give council members more information about how the Ethics Committee adjudicates ethics matters and specifically what occurred in the John Leso matter.

Each ethics complaint filed with the APA Ethics Office is individually and thoroughly reviewed based on the available evidence. In keeping with the committee's rules and procedures, and based on its commitment to due process, the committee moves to open a specific case against a member only if certain conditions are met. Specifically, the Ethics Committee bears responsibility for proving any charges of unethical behavior. Further, the committee must base its actions on specific evidence of individual wrongful behavior that can be shown to be directly attributable to the accused. In the matter related to Leso, the committee did not proceed with formal charges against Leso because it was determined that the allegations could not be proven consistent with the committee's burden of proof.

The review process continued for an extended period of time (seven years) in order to include additional information as it was released into the public domain. In other words, as complete and careful a review of the available evidence was undertaken as possible. The review consisted of evidence (as opposed to supposition) and was conducted in a manner to ensure that the ethics process was kept insulated from political pressures.

In terms of any future complaints that may be made about possible involvement of APA members in torture or other forms of inhumane treatment, the outcome of the Leso case does not set any precedent for future determinations by the Ethics Committee. Any future cases will be reviewed individually, thoroughly and on their own merits.

We also want to take this opportunity to remind council members that APA's policies strictly prohibit any member involvement in torture or other forms of cruel, inhuman or degrading treatment or punishment in any and all circumstances. This policy has been in place since 1986.

Since then, the council has passed many additional policies to specifically define what constitutes torture and to safeguard detainee welfare. In July 2013, the Council of Representatives passed a unified, comprehensive policy to reiterate and clarify the association's anti-torture position and the role of psychologists in national security settings.

In closing we want to acknowledge that questions about unethical behavior and inhumane treatment of detainees by health professionals are of the utmost concern to all of us. The Ethics Committee also has a responsibility to live up to its due process rules and to balance the rights of the individual filing a complaint with the rights of the individual against whom the complaint was made. In balancing all of these demands, it was determined that closing the complaint against Leso without formal charges was the appropriate action.

A few council members have expressed an interest in ensuring that their constituents and other APA members have sufficient information about the decision pertaining to Leso. We agree. The information shared with you in this memo will be posted on APA.org, shared with members and/or the public who contact APA with comment or questions, and used to respond to media coverage as those opportunities arise.

APA Board of Directors APA Ethics Committee

Nadine J Kaslow, PhD, ABPP

Professor, Vice Chair, Chief Psychologist (Grady)

President, American Psychological Association

Editor, Journal of Family Psychology

Emory Dept of Psychiatry & Behavioral Sciences, Grady Hospital, 80 Jesse Hill Jr. Dr.

Atlanta, GA 30303

May be accessed at: <http://www.apa.org/ethics/leso-communicue.aspx>

EXHIBIT C-6

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Todd E. Edelman
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	Initial Conference
	:	Feb. 23, 2018, 9:30 AM
Defendants	:	Courtroom 212
	:	

**AFFIDAVIT OF SUSAN BRANDON IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

District of Columbia) ss:

1. I, Susan Brandon, having been first duly cautioned and sworn, state the following based upon personal knowledge:

2. From 2010 to 2017, I was Chief of Research of the High Value Detainee Interrogation Group created by President Obama in 2009. I was contacted by Mr. David Hoffman of the law firm Sidley Austin LLP and asked to provide information in an ongoing independent review being conducted on behalf of the American Psychological Association (APA) regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (PENS) Task Force. I was interviewed by Sidley Austin LLP on April 15 and May 26, 2015.

3. The Report is not an accurate characterization of my comments in the interview. In the section of the report entitled "'Safety Monitor' argument" (pp.26-29), Mr. Hoffman states (p.27):

Psychologists ranging from the APA's leading critics to Susan Brandon and Michael Gelles have expressed doubt that psychologists are uniquely or well situated for this role, especially outside of a SERE training context.

4. I did discuss the role psychologists could play in the interrogation process, but my comments were not concerning the specific role of the psychologist as "safety monitor" as the section heading of the Report would indicate. Rather, I discussed the role psychologists play in general

when consulting to interrogations. I said that I believed psychologists could be helpful in improving the effectiveness of interrogations, for example, by helping interrogators better understand their interactions with detainees and by helping interrogators better understand how to encourage detainees to share information. Also, I do not see any conflict for a psychologist helping an interrogation to be effective *and* helping an interrogation to be safe.

5. In this context, I told Mr. Hoffman that I did not believe *clinical* psychologists were uniquely suited to consult to effective interrogations. Rather, I believe psychologists are variously qualified to consult to interrogations depending upon their training and experience. I also indicated there was little available research at the time on effective interrogation methods and that not all psychologists would be familiar with that research and how it was developing. A psychologist's ability to enable interrogations to be more effective would vary with their knowledge of the relevant research.

I declare under penalty of perjury that the foregoing is true and correct.

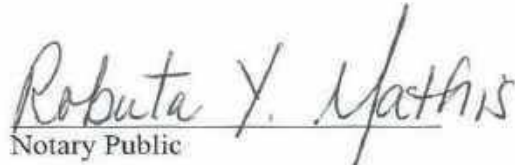


Susan Brandon

Sworn and subscribed to before a notary public in the District of Columbia, this

24 day of January 2018.





Notary Public

EXHIBIT C-7

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

AFFIDAVIT OF JENNIFER BRYSON IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT

District of Columbia) ss:

1. I, Jennifer Bryson, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was first contacted by email by Mr. David Hoffman of the law firm Sidley Austin LLP on December 15, 2014 and asked to provide information in a review into the American Psychological Association's (APA) "actions and decisions relating to the interrogations of detainees after 9/11." I was interviewed by Danielle Carter and a Sidley Austin colleague on December 17, 2014. Danielle Carter conducted the interview while the colleague typed notes. The interview lasted approximately 90 minutes.
3. I worked as a civilian intelligence officer for the Defense Intelligence Agency (DIA) from 2003-2008. When working for DIA, I served as an interrogator at Guantanamo Bay, Cuba, over 24 months in 2004-2006. In addition to my role as an interrogator, I also supervised interrogators. I have been honored twice by the Department of Defense (DoD) with the Civilian Meritorious Service Award for exceptional achievements in gathering intelligence and supervising interrogations.
4. In the December 15, 2014 e-mail Mr. Hoffman sent me requesting an interview, he stated, "We understand that you may be willing to speak with us to provide non-classified information about your insights and experiences that may be relevant to our review." However, instead of seeking to learn about my "insights and experiences," such as my first-hand experience with policies and conduct of interrogation at Guantanamo, the interviewers seemed far more interested in information about Dr. Stephen Behnke while at the same time avoiding questions about my experience with interrogations. During the interview I nonetheless attempted to

provide information that I believed was relevant to the stated purpose of the investigation and thus important for Sidley to have.

5. As an example, I provided information about DoD interrogation training, guidelines, and conduct, and I gave a clear statement that so-called "enhanced interrogation techniques" were not methods of interrogation permitted or used at Guantanamo at the time of the Psychological Ethics in National Security (PENS) Task Force work in 2005.

6. I also told the interviewer that, by the time of the 2005 PENS Task Force, interrogators created their plans for each individual interrogation using a computer module; interrogators had to choose from a list of permissible interrogation techniques displayed on a computer. The list included only techniques listed in the Army Field Manual. None of these were the so-called "enhanced interrogation techniques" that the Report of the Independent Review (hereinafter "Report") accuses the Plaintiffs of colluding to allow in 2005. Sleep deprivation and stress positions were not on this computerized list, and neither technique was permitted for military interrogators at Guantanamo Bay in 2005. Moreover, with the arrival of Brigadier General Jay Hood as Commander of Joint Task Force Guantanamo in 2004, he commanded us to adhere to the Geneva Conventions.

7. During the interview, I was struck by a definite sense that the Sidley interviewer was targeting Dr. Stephen Behnke in the service of a preconceived narrative that Dr. Behnke had behaved inappropriately. The interviewer also inquired into the nature of my personal relationship with Dr. Behnke, which was unrelated to the stated purpose for interviewing me and unrelated to my professional work. I explained that Dr. Behnke and I were social acquaintances; we had met at church, had not had contact for several years, and that our social contact remained occasional. Yet, Mr. Hoffman incorrectly described in the Report my relationship with Dr. Behnke as "a close friendship." (p. 413) When I learned that our professional work overlapped with issues of interrogation, I contacted Dr. Behnke. Not only was this information not included in the Report, but the Report incorrectly portrays Dr. Behnke's contact with me as part of the allegation he colluded with the DoD.

8. The Report states, "It is clear from Behnke's reference to his meeting with Bryson, an interrogator with the Defense Intelligence Agency in the Office of the Secretary of Defense, that he was consulting broadly in both military and civilian parts of DoD to receive guidance on APA policy." (p. 390)

9. First, the DIA is not "in the Office of the Secretary of Defense," nor was I an interrogator "in the Office of the Secretary of Defense." DIA is an agency of the federal government and part of the Department of Defense. I had no affiliation with the Office of the Secretary of Defense while I was an interrogator; this includes the times I discussed interrogation at Guantanamo with Dr. Behnke while I was an interrogator. Later, in 2007-2008, I was detailed to the Office of the Secretary of Defense and I was on staff there for two years, but my staff position was not related to interrogation, a fact which I stated to Sidley during my interview.

10. Second, as noted above, Dr. Behnke and I were social acquaintances and that is all. I told the Sidley interviewers this. The only context in which I had conversations with Dr. Behnke was as a

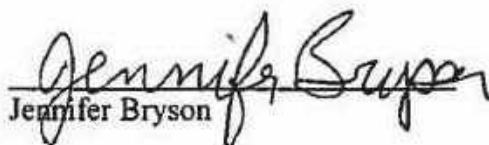
social acquaintance. I never had contact with Dr. Behnke in my official capacity as an employee of or on behalf of the Defense Intelligence Agency. Thus, the Sidley claim that in talking with me Dr. Behnke was "consulting...in civilian parts of DoD to receive guidance on APA policy" is a mischaracterization.

11. The Report claims, "(b)ased 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." (p. 11) I experienced the opposite. I told Ms. Carter that when Dr. Behnke found out that I was an interrogator at Guantanamo and asked me about this, his primary concern was whether abuses were going on. It was entirely clear to me that Dr. Behnke was absolutely opposed to torture and that this is the reason he wanted information about what was actually happening in DoD's Guantanamo interrogations. He was extremely concerned to make sure that APA was not inadvertently supporting detainee abuse. Dr. Behnke's opposition to torture is the reason I was willing to speak with him. I share with him this absolute opposition to torture. That Dr. Behnke would support torture is inherently improbable behavior for the person I experienced to be so opposed to torture. Had I sensed even an inkling that Dr. Behnke was ambiguous about torture and would have been willing to support policies that allowed detainee abuse, I would not have been willing to assist him by providing him information about the actual policies and practices of interrogation at Guantanamo, nor would I have participated in APA Convention programming on this issue, as I did and stated that I did during my interview. Although I was emphatic in my interview about Dr. Behnke's opposition to torture, the Report does not contain this information.

12. The Report (pp. 27, 295) characterizes as "either naïve or intentionally disingenuous" the position that psychologists could work with interrogators both to gain helpful information and at the same time to assist in protecting detainees from abuse. In fact, my first-hand experience at Guantanamo led me to believe that psychologists on Behavioral Science Consultation Teams were particularly well suited to precisely this role. I provided this information to the Sidley interviewers and made clear that I was speaking from my personal experience, but the Report does not make any mention of my remarks on this issue.

13. The interviewer asked whether they could follow up with me after the interview. I told them yes and provided my post-holiday plans for that purpose. I never received a follow up contact from the Sidley law firm.

I declare under penalty of perjury that the foregoing is true and correct.

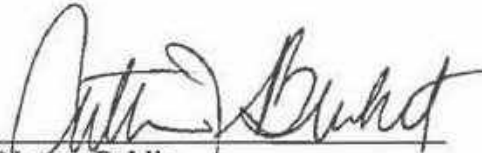

Jennifer Bryson

AFFIDAVIT OF JENNIFER BRYSON

Sworn and subscribed to before a notary public in the District of Columbia, this 20TH

day of June 2019.




Notary Public

ARTHUR J. BURKET
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires September 14, 2021

EXHIBIT C-8

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Todd E. Edelman
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	Initial Conference
	:	Dec. 1, 2017, 9:30 AM
Defendants	:	Courtroom 212
	:	

**AFFIDAVIT OF LISA CALLAHAN IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of New York)
) ss:
County of Albany)

1. I, Lisa Callahan, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I am a Senior Research Associate II, at Policy Research Associates, in Delmar New York. I am also an Emerita Professor, The Sage Colleges, in Troy, New York. I am currently the principal investigator for projects funded by the Russell Sage Foundation, the Pennsylvania Department of Human Services, and the National Institute of Justice. In addition, I am project director for "Best Practices for Psychiatrists Treating Justice-Involved Populations in Community Care," funded by the Substance Abuse and Mental Health Services Administration.
3. I was elected to serve as the public member of the American Psychological Association (hereinafter "APA") Ethics Committee for a three-year term, from 1999 to 2001. I served an additional year, 2002, when the individual subsequently elected as the Committee's public member resigned after attending one meeting. In my role as public member, I participated in the Ethics Committee adjudication of the Michael Gelles case. My specific role in the Gelles adjudication was as one of two Ethics Committee members assigned the role of "reader," which meant that I and another Committee member each prepared a summary and an independent recommendation to the Committee. In this role, I thoroughly and independently reviewed all case-related materials and came to an independent conclusion regarding the appropriate disposition of the case.

4. On June 4, 2015, I was contacted by Danielle Carter of the law firm Sidley Austin LLP to inquire as to whether I would participate in an independent review related to "the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements... including the APA ethics adjudications process." I was interviewed by Ms. Carter by telephone on June 9, 2015. During the course of the telephone interview, Ms. Carter sent me case-related materials that the Ethics Committee had been informed by APA General Counsel were confidential and not to be disclosed. (Disclosure of confidential case materials requires authorization pursuant to APA Ethics Committee's *Rules and Procedures* Part II, section 3.1.) In her email message to me, Ms. Carter stated, "Attached are the reader memos for the Gelles matter. We ask that you keep these confidential and delete this email after our call."

5. I read the Report of the Independent Review (hereinafter "Report") after it was made available to the general public in July, 2015. The Report names me as a witness and discusses me in relation to the Michael Gelles case that came before the APA Ethics Committee in 2002. I was surprised to see the case materials, including my reader's summary, contained in the Report's reference binders given their confidential nature. (See Report, Binder 4, PDF pp.1418-1425 <http://www.apa.org/independent-review/binder-4.pdf>) At no point was I ever informed that the public disclosure of these materials had been authorized.

6. The Report contains inaccurate statements characterizing the Ethics Office handling of disciplinary cases. It states that ethics disciplinary cases were handled in "an improper fashion," in order "to protect these [national security] psychologists from censure." (p. 10) Based on my personal experience with the Gelles case, these statements are false. The Gelles case was handled completely consistent with the APA Ethics Committee's *Rules and Procedures*. The statement that the disciplinary cases were handled in a improper fashion is also contradicted by the Report's own discussion of the Gelles case (pp. 475-486) and by the case-related materials in the Report's binders which show the handling was in keeping with the *Rules and Procedures*.

7. Further, the Report's statement, that the disciplinary cases were handled in an improper fashion in order to protect the psychologists from censure, gives the clear impression that Dr. Gelles had engaged in unethical behavior despite the Ethics Committee's decision to the contrary. In fact, this impression is contradicted by the Report itself which elsewhere acknowledges that the Ethics Committee was unanimous in deciding that Dr. Gelles had not violated the APA Ethics Code. (p. 485)

8. During my interview with Danielle Carter, I stated more than once and emphatically that the Gelles case had been handled consistent with other ethics cases that came before the Committee when I served as public member and in keeping with all Ethics Committee rules, procedures, and practices. My characterization of the case, which directly contradicts the Report's statement about improper handling of national security psychologists ethics cases, was not included in the Report.


9. During my interview with Ms. Carter, I was given the distinct impression that the Sidley independent review was intended to find evidence that the Ethics Office staff had exercised undue influence over the ethics adjudication process. I stated emphatically during the interview

that the Ethics Office staff, including the Office director, had not attempted to exercise any influence over me as a reader, or over any aspect of the adjudication process in which I participated, in order to reach a particular outcome. This information was not included in the Report.

10. The Report's disregard of the information I provided was all the more striking given its inclusion of information from a former Ethics Committee public member who offered a perception more in keeping with the Report's conclusion about the improper handling of ethics cases. The Report (p. 475) states, "Former public member, Evelyne Shuster, told Sidley that the Ethics Committee was quite lenient towards charged psychologists and often justified taking minimal or no disciplinary action by engaging in a risk versus benefits analysis." Clearly, my experience was not consistent with Ms. Shuster's, yet the Sidley interviewer did not query me about the differing experiences. It is also noteworthy that the Report does not mention that Ms. Shuster resigned after attending only a single Committee meeting, and that in my service on the Ethics Committee I attended 13 meetings.

11. Sometime after the Report's public release, I received a call from APA Board member Dr. Linda Campbell, whom I knew from the APA Ethics Committee. Dr. Campbell stated that she was calling to inquire whether I was similarly distressed as she was with the Report's false characterization of a number of the events described in it. I informed Dr. Campbell that I was quite distressed by the Report's false characterization of events about which I had personal knowledge, particularly the mischaracterization of the Ethics Committee's handling of the Gelles case as improper. The telephone conversation between Dr. Campbell and me focused almost exclusively on our mutual agreement and belief regarding the inaccuracy of the Report and our distress that false information was publicly released by APA.

I declare under penalty of perjury that the foregoing is true and correct.


Lisa Callahan

Sworn and subscribed to before a notary public in the State of New York, this 9 day
of November 2017.


Notary Public

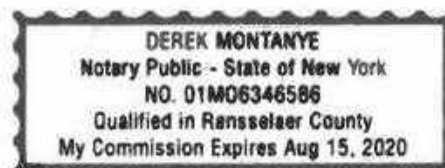


EXHIBIT C-9

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, *et. al.*,

Plaintiffs,

VS.

DAVID HOFFMAN, *et. al.*,

Defendants

Case 2017 CA 005989 B

Judge Hiram E. Puig-Lugo

**AFFIDAVIT OF ARMAND CERBONE IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Illinois

County of Cook

$$\left. \begin{array}{l}) \\) \\) \end{array} \right\} \text{SS:}$$

1. I, Armand Carbone, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I am currently a member of the American Psychological Association (APA) Council of Representatives, having been elected to that position in 2016 by Division 42, the Psychologists in Independent Practice. I served on the APA Board of Directors from 2008 to 2010, the APA Ethics Committee from 2012 to 2014 (Chair in 2014), and was appointed by the Board of Directors to be a member of the Commission on Ethics Processes from February 2016 to August 2017, a commission created in response to the Hoffman Report.
3. I was contacted by the law firm of Sidley Austin LLP in early 2015 and requested to be interviewed in connection with the Independent Review being conducting on behalf of the APA regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (PENS) Task Force work. I agreed, and Sidley attorney Danielle Carter interviewed me by phone on April 30, 2015, for approximately 40 minutes.
4. During my interview, Ms. Carter questioned me about, among other things, Dr. Stephen Behnke in a manner that evidenced a preconceived narrative that Dr. Behnke had behaved improperly and exercised undue influence on APA governance member decision-making. I informed Ms. Carter that based on my experience with Dr. Behnke on

the Ethics Committee for which he was the primary staff person, this description of his behavior was incorrect. I observed Dr. Behnke provide diligent and highly competent staff support to the Committee and I observed APA governance members with whom he worked adopt positions based on their independent judgment after considered, thoughtful and extensive debate and discussion. I informed Ms. Carter that if Dr. Behnke were to have attempted to exercise improper influence over governance members, governance members would have reacted to him in a strongly negative fashion, which was never the case. When I read the Hoffman Report I was surprised to see that my information and observations regarding Dr. Behnke and governance members were omitted and that the Report persisted with the narrative that Dr. Behnke had behaved improperly.

5. Ms. Carter inquired about the handling of the Leso ethics complaint. I informed Ms. Carter that the matter had been handled in accordance with Ethics Committee rules, procedures, and policies, and emphasized the importance of not deviating from standard procedures in handling ethics matters. This information contradicted the report's statement that ethics matters were handled "improperly" (HR p. 10), and this information was not included in the Report.

6. The Hoffman Report describes Dr. Behnke's ethics workshop activity at Ft. Huachuca in Arizona and leaves open the question of whether he had improperly accepted payments when it states:

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. . (HR p. 37)

Based on my personal knowledge of and experience working closely with Dr. Behnke for a number of years, it is inherently improbable that he would have accepted money for his own personal use while he was performing duties on behalf of his employer APA.

7. Based on my knowledge of and experience with Dr. Behnke, it is likewise improbable that he would have acted in any manner, either as an individual or as a part of a collusive joint enterprise, to support torture or detainee abuse.

8. My purpose of providing this affidavit is to attest to what I believe to be true and correct regarding certain of the events investigated by Mr. Hoffman and written about in the Report. I am submitting this affidavit to the Plaintiffs after the final meeting in which I will serve on the APA Council of Representatives. I have observed fellow Council members similarly provide affidavits and be foreclosed from participating in certain Council activities as a result.

I declare under penalty of perjury that the foregoing is true and correct.

Armand Cerbone
Armand Cerbone

Sworn and subscribed to before a notary public in the State of Illinois, this 28th
day of October 2019.

Michael Nejedly
Notary Public



EXHIBIT C-10

IN THE MONTGOMERY COUNTY, OHIO, COURT OF COMMON PLEAS
CIVIL DIVISION

LARRY C. JAMES, et. al.,

Plaintiffs,

vs.

DAVID HOFFMAN, et. al.,

Defendants

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:
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:
:
:

CASE NO: 2017 CV 00839

Judge Timothy N. O'Connell

AFFIDAVIT OF BRUCE E. CROW

State of Texas
County of Bexar

) ss:

1. I, Bruce E. Crow, having been first duly cautioned and sworn, state the following based upon personal knowledge:

2. I am a retired military officer who served as the Psychology Consultant to the Office of the Surgeon General (OTSG) of the U.S. Army from June 2004 to June 2012. As the OTSG Psychology Consultant my duties, among other things, included executing the Surgeon General's instruction to oversee development of U.S. Army Medical Command (MEDCOM) policy and training program for behavioral science consultants to interrogation and detention operations and deployment of Army psychologists into those positions.

3. I was first contacted by email by Yasir Latifi of the law firm Sidley Austin LLP on June 18, 2015 and asked to provide information in an ongoing independent review being conducted on behalf of the American Psychological Association (APA) regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (PENS) Task Force. I was interviewed by Mr. Latifi and Mr. David Hoffman by telephone in my work office in San Antonio, TX on June 22, 2015.

4. I assert that the Independent Review Report to APA is not an accurate characterization of the events in which I participated or of which I had responsibility while OTSG Consultant, nor is it an accurate characterization of the activities of individuals of whom I had oversight. I find that Mr. Hoffman speculates and draws conclusions through innuendo and then portrays those speculations as fact.

5. For example, Foot Notes 985 and 986 mischaracterize and conflate unrelated communications and contacts between me and APA staff to create the impression that the Army Surgeon General Office engaged in deceptive collusion with APA staff. Specifically, the report selectively extracts words and sentence fragments from emails to portray me as manipulating APA staff into crafting deceptive messaging to Congress, and the Report implies that routine meetings between DoD psychology leaders and APA staff aimed at improving psychological support to military and their families were actually secret and nefarious collaborations. Additionally, Foot Note 1349 incorrectly implies that the Army Surgeon General Office planned to circumvent APA ethics by involuntarily removing clinical privileges from psychologists assigned to Behavioral Science Consultation Teams (BSCT).

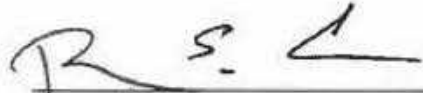
6. The Report repeatedly comments on “collusion” for the purpose of enabling harsh and abusive interrogations to occur. This grossly mischaracterizes the intent of those engaged in the collaborative process. Surgeon General Kiley was keenly interested in the fact that military personnel assigned to his Command were being deployed to work as consultants to interrogation and detention operations in the early years of the Global War on Terror. He convened a Summit on behavioral science consultation in August 2005 for a better understanding of the mission and ethical issues so that he might develop necessary guidance for his personnel. He instructed me to begin development of a policy and training curriculum for psychology personnel working in this area. In turn, I instructed members of my staff, including Colonel Debra Dunivin, to proceed with that task. The Surgeon General was very clear in his intent that this policy would provide specific guidance to psychologists and other MEDCOM personnel and would be consistent with their professional ethics codes. Several Army officers consulted with staff of the American Psychological Association; others consulted with the American Medical and Psychiatric Associations toward this end.

7. The Report lacks any real understanding that treating detainees humanely, with dignity and respect, was the standard for detention operations, certainly by the summer of 2005 when the PENS Task Force met. It repeatedly concludes that abuses must have been occurring during the very time period that Surgeon General Kiley was explicit that all medical personnel would treat detainees humanely, consistent with the Geneva Conventions. In fact, he directed a multidisciplinary functional assessment to assess medical operations of all detention facilities in Iraq, Afghanistan and Cuba. The report of that assessment was issued April 13, 2005 and approved by the Surgeon General on May 24, 2005. The report concluded, among other things, “(t)he overall level of outpatient and inpatient detainee medical care is extremely high” or “exceptional”, and “(t)here is no indication that any medical personnel participated in abusive interrogation practices.”

8. I was incredulous to learn recently that Mr. Hoffman and the APA are now claiming that the Report is “opinion” rather than fact-based. Mr. Hoffman communicated to me that his charge was to provide a fact-based review of allegations that the DoD colluded with the APA to support use of harsh interrogation techniques and to ascertain the truth about those allegations. Further, I understand that the APA has taken a series of actions based on the belief that this report was fact-based – terminating staff employment, posting the Report to their website, and sending it to Congressional offices. These actions and the mischaracterizations in the report have severely

impacted the lives of some very fine military officers and their colleagues, with whom I worked very closely during the time discussed in the Report.

FURTHER AFFIANT SAYETH NOT.



Bruce E. Crow

Sworn and subscribed to before a notary public in the State of Texas, this 27 day of
April 2017.



Notary Public

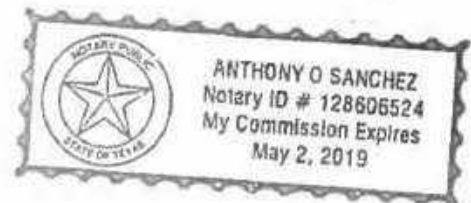


EXHIBIT C-11

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF ROBIN M. DEUTSCH IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

Commonwealth of Massachusetts)
) ss:
County of Middlesex)

1. I, Robin M. Deutsch, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I am the Founder of the Center of Excellence for Children, Families and the Law at the Williams James College in Newton, Massachusetts. Prior to this position, I was Senior Psychologist and Director of Forensic Services at the Children and the Law Program, Department of Child Psychiatry, Massachusetts General Hospital/Harvard Medical School. I have served in numerous governance positions at the American Psychological Association (hereinafter "APA"). These include the Ethics Committee (2005-2007; chair in 2007); the APA-American Bar Association (hereinafter ABA")Working Group on Psychological and Legal Interventions (co-chair, 2007-2009); the APA-ABA Working Group on Issues of Alleged Abuse, Neglect, and Endangerment (co-chair, 2007-2009); and the APA Committee on Professional Standards (2012-2015). In addition, I have served in governance roles for other professional organizations, including as president of the Association of Family and Conciliation Courts (2008-2009).
3. I was interviewed by Mr. David Hoffman of the law firm Sidley Austin LLP, in Boston on May 11, 2015, in connection with the ongoing independent review being conducted on behalf of the APA regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security Task Force.

4. I was a member of the APA Ethics Committee from 2005 until 2007 and served as Chair of the Committee in 2007. In that capacity, I became very familiar with the relevant APA policies and procedures for handling the adjudication of ethics cases, some cases of which are described in the Report of the Independent Review to APA (hereinafter "Report"). Based on my experience reviewing dozens of ethics matters as a member, vice chair and subsequently chair of the committee, the Report contains numerous mischaracterizations of the manner in which the Ethics Committee members and staff did their work.

5. The Report states on page 10 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." This is not an accurate statement with regard to the handling of the Larry James ethics case, which was handled during my tenure as Chair of the Ethics Committee. The James complaint was handled entirely in accord with the required procedures, and there was no "attempt to protect [James] from censure." The Report itself later states (p. 59) that the James complaint was handled in a "technically permissible" manner, although it fails to acknowledge that state licensing boards which had also reviewed complaints against James (something Mr. Hoffman specifically raised in my interview as documented in the interview notes) likewise found no cause for action.

6. Further, on page 521, the Report states:

Unlike the Leso complaint, which was kept open for approximately seven years, the James complaint was closed within a month of the Ethics Office having received the complaint—disposed of in truly lightning speed so that Deutsch could review it before her Chairmanship was finished.

The Report's characterization that the case was "disposed of in truly lightening speed so that Deutsch could review it," incorrectly implies that I had a motive or an agenda to dispense with the case in a manner that would not have occurred had it been reviewed by my successor as chair of the committee. Mr. Hoffman never questioned me in the interview about the timing of the James case as described in the Report.

7. The Report's failure to discuss how the ethics program handled any ethics complaint or case other than the four interrogation matters gives a highly skewed view of how the APA ethics adjudication program worked. By failing to provide the context of how ethics cases were handled generally, the Report leaves the impression that the complaint against James (and against other of the psychologists involved in national security matters) was handled differently from how cases were generally handled and, therefore, handled improperly.

8. Further, the Report's reference binders contain confidential information from the James ethics complaint in 2007, a proceeding that I oversaw as Chair of the Ethics Committee that year and for which I never authorized information disclosure as would be required by APA Ethics Committee's *Rules and Procedures* Part II, section 3.1. (See

Report, Binder 4, PDF pp.1149-1164 <http://www.apa.org/independent-review/binder-4.pdf>) This information details the careful handling the complaint received by the Ethics Office, contrary to the Report's conclusion 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." (p.10)

9. During my interview with Mr. Hoffman, questions he posed to me left me with the distinct impression that he had a preconceived narrative and had already concluded that the Director of the Ethics Office, Dr. Stephen Behnke, had engaged in inappropriate behavior. Mr. Hoffman's questioning implied that Dr. Behnke had attempted to exercise influence over the adjudication process in an effort to reach a particular outcome. While I do not recall a direct question as to whether I thought Dr. Behnke's behavior was proper, the information I provided in response to the series of questions posed would have communicated my experience that at no point did Dr. Behnke pressure me to reach any particular conclusion regarding the James ethics complaint, or any other ethics complaint.

10. Much attention in the Report is given to APA activities related to an effort to pass a moratorium prohibiting any participation of psychologists at certain detention centers, often referred to as the "Altman resolution". (See Report pp.396-428) A constant refrain in that section of the Report is the conclusion that Dr. Behnke opposed this resolution to pursue his own agenda and to "manipulat[e] the governance process to give every advantage to DoD representatives." (p. 420) The Report highlights facts that it claims to support this conclusion even when there are equally or even more plausible conclusions to be drawn from the relevant facts.

11. For example, the Report chronicles Dr. Behnke's work to achieve a compromise amendment to the Altman resolution. Many governance groups, including the Ethics Committee when I was Chair, did not support the Altman resolution. The Report mischaracterizes Dr. Behnke's efforts to achieve a compromise that would receive broad support among governance groups as Dr. Behnke's effort to stop a proposal "that would have caused problem's for Behnke's partners in DoD." (p. 411) In fact, in my experience working within the APA governance process, it would be precisely the role of APA staff to work to facilitate a possible compromise when a disagreement exists among groups as to what version of a policy proposal should move forward through the governance process.

12. Another mischaracterization of Dr. Behnke's appropriate staff work occurs when the Report implies he improperly failed to disclose drafting a letter for me. The Report states (p. 421):

DSJ [the Divisions of Social Justice] also sent their email, with the proposed amendments, to Robin Deutsch, as the Ethics Committee Chair. Upon receiving the email, Deutsch reached out to Behnke and Moorehead-Slaughter and asked if she should provide any comments... Later that day, Behnke responded that he had been in

contact with Deutsch, who agreed that the Ethics Committee would not have time to review the substitute amendments. Behnke noted that Deutsch would send a letter to DSJ explaining this point. On August 7, 2007, Behnke drafted the letter from Deutsch, and sent it to Deutsch and Moorehead-Slaughter for review. Deutsch approved of the letter later that day. When Behnke forwarded the letter to Gilfoyle, Farberman, Strassburger and Beavers, *he did not disclose [sic] that he had drafted the letter under Deutsch's name.* (emphasis added)

The statement regarding Dr. Behnke's failure to disclose that he had drafted the letter provides the clear implication that he had acted improperly. To the contrary, Dr. Behnke's handling of the draft letter was customary for staff work. APA staff responsibilities include drafting correspondence for governance. I had no expectation that Dr. Behnke (or any staff member that drafted a letter for me) would disclose who drafted the letter following my approval of the letter. By approval of the draft, I adopted the letter as my own. I do not recall whether or not Mr. Hoffman asked me about the drafting of this letter for my approval but if he did, I would have made it clear that there was nothing improper about the way Dr. Behnke handled the situation.

13. Finally, I am a signatory to three "open letters" from former APA Ethics Committee Chairs to the APA Board of Directors and the APA Commission on Ethics Processes detailing: inaccuracies in the Report regarding conclusions about the handling of ethics complaints related to national security activities; the Report's inappropriate disclosure of confidential information from ethics cases; allegations of flawed processes by which the independent review was undertaken; and concerns about perceived, potential or actual conflicts of interest connected with APA's re-hiring of Mr. Hoffman for a self-review of his Report. Attached hereto as Exhibits A, B, and C are true and correct copies of these letters. They are also available online at:

<http://www.hoffmanreportapa.com/resources/letter%20from%20former%20Ethics%20Committee%20chairs%202016-16-16.pdf>;

<http://www.hoffmanreportapa.com/resources/APA%20Second%20Letter%20Ethics%20Chairs.pdf>; and

<http://www.hoffmanreportapa.com/resources/October%202016%20Letter%20from%20Former%20Chairs%20of%20Ethics%20Committee.pdf> respectively.

I declare under penalty of perjury that the foregoing is true and correct.


Robin M. Deutsch

Sworn and subscribed to before a notary public in the Commonwealth of Massachusetts, this 7th day of October 2019.




Notary Public

Exhibit A

February 16, 2016

An Open Letter to the APA Board of Directors from Former Chairs of the APA Ethics Committee:

The report on the Independent Review conducted by Attorney Hoffman and his colleagues ("Hoffman Report") was released in July 2015. A group of former Chairs of the Ethics Committee had written the Board on July 1, 2015 before the Report was released requesting an opportunity to review the report prior to its public release. This request was intended to assure the accuracy of any characterizations of the operations and processes of the Ethics Committee itself or APA organizational processes regarding ethics issues more broadly, or in any other constructive fashion identified by the BOD of APA. We deeply respect the goals of our association and had hoped to offer constructive feedback. We never intended to advance any preconceived agenda or interfere with the independent review. Now that the Hoffman report has been made available for review, perhaps our feedback to APA would contribute to an informed and transparent process about how best to implement changes that reflect the best interests of our association and society. While the Board acknowledged receipt of the letter, we never received any substantive response and again request an opportunity to contribute.

This has been an extraordinarily difficult time for the Association. The APA has been deeply challenged at every level by the circumstances giving rise to retaining an independent investigator, the Report's release when it was prematurely "leaked" before persons named in the report had an opportunity to review and respond, and the still ongoing impact upon persons, the Association and our profession following its release. We collectively write as past Chairs of the Ethics Committee to support the Board's stated goal of a transparent search for the truth, identification of any core organizational problems giving rise to initiating the Report and responding to it, and opportunities for action to effectively address any identified problems.

This follow-up letter is even more relevant than the previous one when considering the cumulative effect of a number of allegations, reports and responses to the Report. This letter does not assume their accuracy but we

believe that taken together they warrant a transparent and thoughtful review of the Report itself and consideration of what such a review may mean for decisions by Association leadership as APA moves forward. These include:

- Substantive concerns raised about the processes and procedures relied upon by Attorney Hoffman and his colleagues during the course of the investigation;
- The process by which the Report was completed and prematurely “leaked,” including what steps the Association has taken to identify who improperly released the report;
- The process by which a decision was seemingly made following the premature release of the Report to set aside the previously articulated process by which persons named in the report would be individually contacted and provided an opportunity to submit comments or suggested revisions by an established deadline;
- Reports that a number of individuals interviewed during the course of the investigation—both psychologists and non-psychologists—have indicated that the information they provided was mischaracterized or that relevant information they provided was not included in the final Report;
- Reports that some individuals whose information and actions would have been relevant to the investigation were not interviewed (including some Chairs of the Ethics Committee whose terms were during the relevant time period);
- Concerns that the Report’s characterization of Ethics Committee actions involving military psychologists who had complaints filed against them reflected a significant misunderstanding or mischaracterization of Committee procedures in finding that the Committee or its members had acted improperly in those cases;
- Allegations that persons who had been influential in prompting the Association to retain an independent investigator were essentially given preferential access to Attorney Hoffman in a manner which could be viewed as introducing a risk of investigatory bias and later invited to meet with the Board prior to the Report’s release to discuss recommended courses of action;

- The implications of documents generated by individuals and groups subsequent to the release of the Report which, if substantially accurate, would sharply undercut the asserted factual basis for the conclusions of the Report and Mr. Hoffman's core "theory of the case" when he alleges active and improper "collusion" between some Association staff and members with some members of the military.

Other allegations or reports could be included but we believe that those cited above are sufficient grounds for asking the BOD to consider our feedback. Without assuming the accuracy of any one of them or predetermining their impact on decisions to be made going forward, some of them are of sufficient gravity that a good-faith and transparent effort should be made to examine the Report's methods and conclusions, and considering courses of action already taken or planned on the basis of the Report in light of what is learned in revisiting it.

Additionally, because there has been so much intense discussion of the issues related to the report findings we respectfully suggest that the Board provide a clear explanation about the following: the process by which decisions were made in appointing members to the special Ethics Commission; who was invited to review and comment upon nominees; and why the appointment process has been so prolonged. Given the significance of the questions and the potential impact upon APA and the field of psychology, it would be prudent to be as transparently thoughtful as possible.

We appreciate that these have been challenging months for the Board and the Association and that the months ahead likely hold more challenges related to the circumstances giving rise to the Report and to the Report itself. We anticipate and hope that the Board will offer a substantive response to this letter which demonstrates a willingness to consider a process by which the Report is revisited in a thoughtful, meaningful and transparent manner. We are prepared to communicate with the Board about what such a process might entail and particularly in reviewing the Ethics Office and the Ethics Committee

Respectfully submitted,

Robert T. Kinscherff, Ph.D., J.D., Chair 2000, 2001

Steven Sparta, Ph.D., ABPP, Chair 2002

Michael D. Roberts, Ph.D., Chair 2003

Katherine Di Francisca, Ph.D., Chair, 2005

Robin M. Deutsch, Ph.D., ABPP, Chair 2007

W. Brad Johnson, Ph.D. 2008

Jeffrey Barnett, Ph.D., Chair 2009

Nancy McGarrah, Ph.D., Chair 2010

Nadya A. Fouad, Ph.D., Chair, 2012

James N. Bow, Ph.D., ABPP, 2013

Exhibit B

Open Letter from Former Chairs of the APA Ethics Committee to the Board of Directors

Perceived, Potential or Actual Conflicts of Interest in Attorney Hoffman Self-Review

May 15, 2016

The Board of Directors again retained Attorney David Hoffman in April 2016. He is to review his previously released and once amended report (referred to as the *Independent Review*). On May 10, 2016 a communication was released to the Council listserve by APA President Susan McDaniel noting that Mr. Hoffman had been “engaged for the limited purpose of analyzing certain Department of Defense (“DoD”) policies recently brought to the Board’s attention in reports by the Association’s Division 19 and several psychologists discussed in the *Independent Review*.” Mr. Hoffman is to specifically “review the relevant policies and assess the extent to which they bear upon the issues, findings, and/or conclusions reflected in the *Independent Review*.” He reportedly “also intends to indicate in his report whether any modifications or clarifications to the *Independent Review* are appropriate in light of these policies.”

President McDaniel characterizes Mr. Hoffman’s current activities as a “supplemental review” that “is a continuation of Mr. Hoffman’s prior work, based on the existence of factual information that has recently been called to our attention.” Mr. Hoffman is described as “shar[ing] APA’s interest in ensuring that his *Independent Review* is fair and accurate.” President McDaniel relies upon these in concluding that new review of his prior work does not constitute a conflict of interest on his part or that of the Board.

A conflict of interest arises when an individual has real or reasonably perceived duties to more than one person or organization which may or does compromise their ability to address potential or actual adverse interests. This includes circumstances in which an individual’s own personal or professional concerns or interests may be or are inconsistent or even adverse to those of a client and/or an organization with whom that individual has a relationship (e.g., employee, an ownership stake, another client). Conflicts of interest may be stark and actions taken clearly self-serving or self-protecting at the cost of the interests of clients or organizations with whom the individual has a relationship. Conflicts of interest may also be more insidious by leading the individual to ignore or discount information in a less conscious process of confirmatory bias or less conscious adoption of self-serving or self-protection rationalizations for decisions or actions which have the result of being self-serving or self-protective at the expense of other parties.

The message from President McDaniel holds that Mr. Hoffman is not being asked to conduct “an investigation of [his] initial investigation” and is instead “a continuation of Mr. Hoffman’s prior work, based on the existence of factual information that has recently been called to our attention.” As a result, Dr. McDaniel asserts that Mr. Hoffman’s re-engagement, to evaluate his prior work, cannot constitute a conflict of interest.

This assertion is problematic in several respects. First, it assumes that a person cannot be in a conflict of interest when being asked to review their own previous work. This not a correct assumption. For example, an attorney being asked to review their own work in a case may be in a conflict of interest if that review may or does reveal evidence of possible legal malpractice. A

physician being asked to review their own work in a case may be in a conflict of interest if that review may or does reveal evidence of injurious medical error. An attorney or physician in these circumstances may intentionally choose to ignore or mischaracterize that evidence, or perhaps even more problematically, engage in well-described processes of confirmatory bias, minimization or rationalization that compromise their ability to identify or to appreciate their earlier missteps.

Second, President McDaniel reports that Mr. Hoffman's review of his own work is prompted, at least in part, "on the existence of factual information that has recently been called to our attention." This "factual information" may have been "recently" called to the attention of the Board but the challenge this information poses is that it was reportedly readily available at the time of the investigation through means as easy as a simple internet search. If so, possibilities are raised about Mr. Hoffman and his investigation that include: (a) the investigation did not attempt to access this readily available information; (b) the information was accessed and Mr. Hoffman failed to recognize the potential relevance of that information and so did not incorporate it into his investigation or even report that he had accessed it; or, (c) decisions were made to ignore the potential implications of this information for his analysis and conclusions and to not report that it had been accessed during the course of the investigation.

Each of these raises potential issues such as a failure of due diligence given the focus and context of the report (a, above), the possibility of significant confirmatory bias that led him to not identify or appreciate the relevance of the information or a need to report that he had reviewed it (b, above), or deliberate exclusion and failure to report accessing information which would have undermined the inferences and conclusions of his report (c, above).

We want to make it clear that we have no idea whether any of these processes were involved and are not alleging that any of them were involved. However, asking Mr. Hoffman to review his own work for potential evidence of any of these and to report this evidence to the Board clearly places him in at least a perceived conflict of interest and perhaps an actual one.

Third, the potential consequences for Mr. Hoffman and the Sidley Austin law firm with whom he is affiliated would be significant if he were to acknowledge witting or unwitting missteps which will now substantively alter the conclusions and recommendations of the *Independent Review*. Under the circumstances, there are factors which could reasonably be expected to contribute to confirmatory bias; unwitting self-protection (minimization, rationalization), or intentional (self-protective advocacy) efforts to affirm the quality, independence and conclusions of the *Independent Review*. Acknowledging serious missteps that would substantively challenge the investigation itself or the conclusions and recommendations it generated could have potentially grave professional and legal implications for both Mr. Hoffman and Sidley Austin. It cannot be simply be assumed that Mr. Hoffman and Sidley Austin now share any interest on the part of the APA that the *Independent Review* is "fair and accurate."

Again, we want to clearly state that we do not know whether any of the potentially problematic processes were involved in the original investigation or the *Independent Review*, and we are not alleging any intentional misconduct or unwitting missteps on the part of Mr. Hoffman, his

investigation team, or Sidley Austin. However, it is naïve to not recognize the potential or real conflicts of interest arising from retaining Mr. Hoffman to assess his *Independent Review* in light of “factual information” which was reportedly readily available during the original investigation. This is particularly the case since there are potentially significant professional, legal and other consequences for him and Sidley Austin should he now acknowledge that failure to identify, appreciate or incorporate this “factual information” will now substantively alter the conclusions and recommendations in the *Independent Review*.

Additionally, any acknowledgement on his part that the *Independent Review* is flawed in any substantive way would also have implications for APA. This report was relied upon to terminate the employment of APA staff, encourage the transitions of others, limit the involvement of psychologists in national security and/or military settings, direct revision of the Ethics Code, and take other steps which have had or could have substantial organizational, professional and legal consequences. The *Independent Review* has resulted in the personal and professional integrity of APA staff, members and others to be directly or indirectly called into question in ways that have had significant consequences for those individuals.

Under these circumstances, an observer could reasonably wonder whether the interests of the recent past-President the current President and the Board are aligned with the interests of Mr. Hoffman and Sidley Austin in determining that the “factual information” he is now asked to consider would have had minimal or no impact upon his investigation or the conclusions of the *Independent Report*.

This potential alignment of interests among APA senior governance, Mr. Hoffman, and Sidley Austin has already created a perception of conflict of interest among some APA members and may constitute a potential or actual conflict of interest between these elements of senior governance and the broad APA membership and APA’s internal constituencies. The interests of APA members and of APA as an organization may diverge—by perception and/or reality—from those of the recent past-President, Dr. McDaniel, and the Board. This potential divergence of interests would be magnified should there ever be (which still could occur) lawsuits against APA or filing of ethics and/or licensure complaints against individuals in APA governance arising from steps taken in reliance upon the *Independent Review*. Yet, APA Presidents and the APA Board of Directors have a prevailing duty to serve the best interests of the membership and the organization and not their own professional, organizational or personal interests.

It is always professionally and organizationally prudent to avoid perceived, potential or actual conflicts of interest whenever possible. Retaining Mr. Hoffman to review his own work raises difficult and potentially unresolvable potential or actual conflicts of interest.

As past Ethics Chairs, we have previously called for an independent assessment of the investigation conducted by Attorney Hoffman and the subsequent *Independent Review* report. We again call for timely initiation of this independent assessment as in the best interests of the Association. Under the current circumstances, simply the perceived potential or actual conflicts of interest arising from the Board retaining Mr. Hoffman to review his own investigation and

report are unlikely to yield an outcome viewed as credible among many APA members or constituencies, or by many external parties.

Respectfully,

Robert Kinscherff, Ph.D., J.D., Chair 2000, 2001

Steven Sparta, Ph.D., ABPP, Chair 2002

Michael D. Roberts, Ph.D., Chair 2003

Katherine Di Francisca, Ph.D., Chair 2005

Robin M. Deutsch, Ph.D., ABPP, Chair 2007

W. Brad Johnson, Ph.D., Chair 2008

Jeffrey Barnett, Ph.D., Chair 2009

Nancy McGarrah, Ph.D., Chair 2010

Nadya A. Fouad, Ph.D., Chair 2012

James N. Bow, Ph.D., ABPP, Chair 2013

Exhibit C

October 24, 2016

To the APA Commission on Ethics Processes:

We write as former chairs of the APA Ethics Committee in response to the Commission's "Call for Comments" as posted on the APA Website. (<http://www.apa.org/ethics/>) We support the Commission's review of the APA Ethics program as "one of the first steps in a series of recommendations" by the Board and Council in response to the Independent Report authored by attorney David Hoffman (hereafter abbreviated as the "IR"). We submit these comments based on our experiences with the Ethics program and, in some cases, our personal knowledge of events described in the IR with the hope that the Commission's activities will support an Ethics Office that continually improves its ability to meet the needs of the APA membership and the public.

The IR addresses the ethics adjudication program in two sections, the Executive Summary (pages 58-63) and the section "APA's handling of Disciplinary Cases against National Security Psychologists" (pages 464-522).

Criticism of the handling of ethics complaints related to national security activities

The IR was highly critical of how the Ethics Committee and Office handled four ethics matters over a period of 12 years. The IR characterized the handling of these four matters as "improper," (e.g., "we found that the handling of ethics complaints against prominent national security psychologists was handled in an improper fashion," page 10, and "Conclusions regarding improper application of APA Ethics Disciplinary System," page 58).

The ethics adjudication program is governed by the APA Bylaws, the Association Rules, the Ethics Committee *Rules and Procedures*, and Ethics Committee policies regarding confidentiality. Despite extensive discussion regarding the handling of ethics matters, the IR failed to cite a single instance in which the Ethics Committee or Office staff violated any specific provision of these governing documents (with the sole exception that a letter may not have been placed in the appropriate file after a matter was closed, page 492). In fact, an informed review of the IR reflects close attention to policies and procedures by the members of the Ethics Committee and the Ethics Office staff. These four disciplinary cases were not handled in an "improper" fashion. The IR's description of Ethics Office staff review of ethics complaints as "a backwards-process wherein the preliminary determination of an ethical violation is made before any specific ethical standards are even considered" (pages 471, 515) is a mischaracterization of how the Ethics Office staff operate. In our experience, Ethics Office staff are professionals with an intimate working knowledge of the Ethics Code and relevant procedures.

Additionally, the IR's failure to include important information reviewed by the Ethics Office in the four matters (e.g., pages 494-520) also hampers a reader's ability to make an informed judgement about how the Ethics Office operates and recognize that these four matters were handled in a manner consistent with how other ethics complaints were handled. The IR's failure to compare how these four matters were handled with how other cases were handled risks

leaving the inaccurate impression—especially for readers without detailed familiarity with Ethics policies and procedures—that these four cases received differential and improper treatment.

The Commission may take this opportunity to clarify whether the Ethics Committee *Rules and Procedures* are to be applied in a manner consistently across all ethics complaints or, as is implied by the IR, whether certain classes of complaints will be treated differently than others. Differential treatment risks cutting against the very notion of due process.

The disclosure of confidential information in the Independent Report

The extensive disclosure of information related to these four ethics matters in the IR may well have violated the Ethics Committee *Rules and Procedures* regarding the confidentiality of ethics complaints (<http://www.apa.org/ethics/ethics-committee-rules-and-procedures>; see especially Part II, sections 3.1 and 3.2). This disclosure has the potential to undermine confidence that APA will respect the confidentiality of ethics-related matters and thus undermine the work of the Ethics Committee and Office. Release of ethics case information in the IR raises legitimate concern about whether information coming to the APA Ethics Office will be kept confidential.

It is essential that the Commission directly address the contours of confidentiality for matters before the Ethics program so that complainants and respondents are fully informed regarding whether information related to an ethics matter will remain confidential or under what circumstances that confidentiality can or must be breached.

Conflicts of interest in the Ethics adjudication program

The Ethics Commission should address conflicts of interest in the adjudication program. Clear rules on recusal will protect APA staff and the adjudication process.

Current procedures require the Director of the Ethics Office and the Chair of the Ethics Committee to conduct an initial review of an ethics complaint, including on occasion review of complaints against members serving in governance roles. Many governance groups are peripheral to the ethics process and Ethics staff have little interaction with those groups. Other governance groups are central to the functioning of APA, and ethics staff have regular contact with group members. It is untenable that an Ethics Office staff member would review a complaint against a member of the Board of Directors. Senior staff have ongoing contact with the Board and often have longstanding relationships with them. Responsibility for personnel decisions rests with the CEO rather than the Board but there are myriad ways in which members of the Board can exercise influence over staff which at times can include staff recognition and even compensation. We strongly encourage the Commission to review the letter of resignation recently submitted by the public member of the Ethics Committee for additional thoughts on the subject of conflicts of interest in the adjudication process.

The role of adjudication in the Ethics Committee and Ethics Office

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 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.

Second, the 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.

The Commission could make a valuable contribution by describing what it views as the appropriate relationship between the APA Ethics program and licensing entities. This would be particularly helpful since the IR failed to report that multiple licensing boards had investigated complaints against one military psychologist named in the IR yet took no action against him. (pages 520-522)

Access to information by the Ethics Committee

The IR correctly indicated that there are times when the Ethics Committee and Office are not able to obtain information necessary to adjudicate an ethics complaint because of limitations on APA's ability to conduct an investigation. These limitations include the lack of subpoena power and in rare cases, the inability to obtain classified information. Ironically, the IR indicated that its own ability to investigate APA was hampered by these same limitations (e.g., “as non-government investigators, we do not have a security clearance,” page 5) yet criticized APA for making this point, “there was ... an accurate (albeit strategically convenient) claim that gathering full information would have been extremely difficult in light of the classified nature of the underlying activities.” (page 67). But it is incorrect to conclude that a lack of access to classified information is the only, or even primary, reason why ethics investigations cannot go forward. There are many reasons why the ethics program may not have access to information necessary to adjudicate an ethics complaint but no analysis of these reasons was offered in the IR.

The Commission can make a valuable contribution by addressing the challenges facing a private association in accessing information in investigating or adjudicating ethics complaints but risks missing the mark if the inquiry focuses upon the rare situation in which the challenge is due to classified information.

We offer our thanks to the Commission for reviewing our comments. We look forward to reading the Commission's recommendations for the Ethics program and commend the Commission for its work on this challenging task.

Sincerely,

Robert T. Kinscherff, Ph.D., J.D., Chair 2000, 2001

Steven Sparta, Ph.D., ABPP, Chair 2002

Michael D. Roberts, Ph.D., Chair 2003

Katherine Di Francisca, Ph.D., Chair, 2005

Robin M. Deutsch, Ph.D., ABPP, Chair 2007

W. Brad Johnson, Ph.D., Chair 2008

Nancy McGarrath, Ph.D., Chair 2010

Nadya A. Fouad, Ph.D., Chair, 2012

James N. Bow, Ph.D., ABPP, Chair, 2013

EXHIBIT C-12

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF DEBRA L. DUNIVIN IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Virginia)
) ss:
County of Stafford)

1. I, Debra L. Dunivin, having been first duly cautioned and sworn, state the following based upon personal knowledge:

2. I was first contacted by email by Mr. David Hoffman of the law firm Sidley Austin LLP on May 4, 2015, and asked to provide information in an ongoing independent review being conducted on behalf of the American Psychological Association (hereinafter "APA") regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the APA Presidential Task Force on Psychological Ethics in National Security (hereinafter "PENS"). I was interviewed by Mr. Hoffman on May 20 and 27, 2015, in the Sidley Washington, DC office and by telephone on June 23, 2015.

3. Based on communications from Mr. Hoffman in advance of being interviewed, I was led to expect that the review process being under taken would be an objective review and that Mr. Hoffman was serving as an independent, neutral and objective third party in conducting the review. I was not given any type of Upjohn warnings and was not advised that the investigation could be adverse to my interests, nor was I ever advised that the scope of the review had been extended beyond what Mr. Hoffman's initial communications had described.

4. I retired from the U.S. Army in 2014, having 20 years of military service during which, among other duties, I consulted with commanders at detention facilities in Iraq and Guantanamo Bay, Cuba as well as with commanders of the Army Medical Command. I also served in the Army Inspector General's inspection of detention facilities. As a mid-level employee of the

Department of Defense (hereinafter "DoD"), I was never in a position to formulate DoD or military policy. Although I participated in the drafting and recommending of policies, I did not have decision-making authority to set DoD policy. I was expected to execute policies and directives issued by my superior, commanding officers. Also, I was not in a position to officially speak to the media or the general public on behalf of the DoD or U.S. government; those activities require official designation. To the extent that I would publicly refer to existing policy, it was only as a conduit for stating or explaining what is the policy.

5. In the aftermath of the abuses at interrogation and detention facilities after 9/11, I was asked to help recommend policies that would prevent abuses and require reporting any abuses of which people were aware or even suspected. I volunteered to serve in the Joint Task Force-Guantanamo Bay, Cuba (hereinafter "JTF-GTMO") and worked hard to ensure the Commander's intent that detainees were treated with dignity and respect and not subjected to harsh interrogation methods. Among the policies I drafted and helped implement there was the March 28, 2005, Standard Operating Procedures (hereinafter "SOP") for the Joint Intelligence Group's Behavioral Science Consultation Team (hereinafter "BSCT"). (Complaint, Exhibit B) I drafted this SOP in consultation with Colonel Morgan Banks; when implemented, it established procedures for the daily operations of the BSCT. Among other requirements for BSCT personnel was adherence to the Geneva Conventions, the Uniform Code of Military Justice, professional ethics and local policies. Also required was reporting any interactions that were considered unsafe, unethical, illegal, or in violation of applicable policies and procedures.

6. Prior to my initial interview and via email communication, Mr. Hoffman indicated that this information was not relevant to his investigation, and I was not given an opportunity during the interviews to either provide or discuss this policy. This policy prohibited stress positions and sleep deprivation. Sleep deprivation was never an approved technique at any detention facility. Some stress positions (e.g., push ups) were allowed for a period of six or so weeks in late 2002 and early 2003, but then quickly, again prohibited by local policies. Sleep adjustment is not sleep deprivation.

7. In fact, prior to the interviews via emails¹ and during the interviews, I repeatedly asked that Mr. Hoffman provide written versions of the questions he wanted me to address so that I could submit my responses for review through appropriate military channels that would enable me to discuss relevant policies, including the 2005 SOP I had helped draft while at Guantanamo. Mr. Hoffman refused to provide those questions (with the exception of very specific logistical questions pertaining to the Army Medical Command's BSCT training program and my role in the Fall of 2005 as the Army Surgeon General's Consultant for BSCT Policy, Course and Ethics, but no questions concerning the BSCT's actions or policies). When declining to provide written questions ahead of the interviews, Mr. Hoffman specifically indicated that his interest related only to "communications with APA as opposed to internal DoD matters."

8. During the interviews, Mr. Hoffman never asked me about the March 28, 2005, SOP, although he did question me about an earlier, December 10, 2004, policy. (The 2004 policy was superseded by the 2005 SOP as is clearly stated on the first page of the 2005 document.) He

¹ A true and correct copy of the email correspondence is attached hereto as Exhibit 1.

indicated that he had retrieved the 2004 policy online and scheduled a telephone interview specifically to discuss it; he said his interest was the role of a psychological operations team, not the role of the BSCTs. Mr. Hoffman provided no information to lead me to believe the 2005 SOP was relevant to his inquiry.

9. Separate from questions about the role of a psychological operations team, Mr. Hoffman questioned me about the existence of harsh interrogation techniques that, according to past media sources, had been in effect around the time of the PENS Task Force. I told him that authorization for harsh interrogation techniques within the military had been withdrawn prior to the time of PENS, was short-lived, and no longer in effect in the time period leading up to the PENS Task Force meeting.

10. When I read the Report of the Independent Review (hereinafter "Report"), I was surprised to find that Mr. Hoffman had the 2005 policy in his possession – all three policies (2002, 2004, 2005) were included in the reference binders he published along with the Report. I was even more surprised to find that the Report focused on JTF-GTMO policies from 2002 and 2004, concluded that DoD policies were "loose and high level," permitted abuses to occur, and totally disregarded the restrictive 2005 policy in his reference binders. Further, the Report mischaracterized my actions as "colluding" with others to allow DoD policy to be loose, high level and to permit abuses in direct contradiction to what the 2005 policy required.

11. The Report repeatedly mischaracterized the multi-faceted mission and parameters of the work military psychologists performed as behavioral science consultants to interrogation and detention operations (e.g., pp. 13, 18, 27, 261, 262, 262-263, 300, 303, 329). In particular, the Report's conclusion that the role of the psychologist as both "safety monitor" and as an aid to effective interrogations was "naïve or intentionally disingenuous" (p. 27) lacks any real understanding of how the BSCT works. Although Mr. Hoffman asked me about the role of a psychological operations team—an area I told him was distinguished from behavioral science consultation—he did not ask me about the role of behavioral science consultants to interrogation and detention operations. Had he asked me, I would have told him that in my training and experience there is no inconsistency for the psychologist to function *both* to help ensure safety of detainees and facility personnel and to aid effective interrogations.

12. As reflected in his email exchanges with me, questions he asked during the interviews and statements made in the Report itself, it was apparent that Mr. Hoffman failed to grasp even a basic understanding of military protocols and procedures, and had no interest in learning about them. For example, in email exchanges, he conflated the requirement to have information pertaining to military duties officially reviewed and approved prior to release versus restrictions on discussing classified information. This confusion existed despite the fact that I had referred him to the DoD "Directive on Clearance of DoD Information for Public Release" the day after his request to meet. A true and correct copy of the Directive can be found at <https://tinyurl.com/y26h7sts>.

13. Further, the Report conflates policies applicable to the DoD with those applicable to the Central Intelligence Agency. (Report, pp.124-152) The Report also fails to recognize the way various DoD directives and instructions interlock with theater and local policies and, perhaps most important, that local policies may be more restrictive than overarching policies.

Specifically, Commanders at detention facilities could write local policies that were more restrictive than those issued at the DoD level.

14. Contrary to the Report's mischaracterization of my level of involvement with the PENS Task Force (e.g., pp. 14, 17, 243, 258), I was not a member of the task force, was not involved in its deliberations, and did no more than propose members for possible appointment to it by the APA President. In fact, I specifically explained to Mr. Hoffman during my interview that I was *never* in contact with the task force while it was doing its work. In addition to not being involved with the work of the PENS Task Force, communications were extremely difficult to maintain while deployed (during the time of PENS) on anything other than secure lines without prior elaborate arrangements being made, something I told Mr. Hoffman but which was omitted from the Report. However, the Report (p. 396) does refer to the possibility of communication difficulties between Col. Banks and Dr. Behnke during Banks' deployment.

15. In addition, the Report (p. 240) misstates that I collaborated with Col. Banks on the drafting of a book chapter entitled, "Providing Psychological Support for Interrogations." I had repeatedly told Mr. Hoffman during the interview that I was not working with Col. Banks on this chapter.

16. Following my interviews, I was never notified by either Mr. Hoffman or the APA that the Report had been completed and was about to be published. Additionally, I was never given an opportunity to respond to the accuracy of the Report and the accusations against me prior to the Report being published, nor was I ever informed that an errata sheet to the Report was being prepared after the Report was published. Along with Plaintiffs Banks, James, and Newman, I objected to the contents of the Report in a post on the APA's website on July 31, 2015. A true and correct copy of the comments can be found on APA's public website at <https://tinyurl.com/v3vwdu6z>. None of these objections were included in the errata or revised version of the Report that was published on September 4, 2015.

17. At the time the Report was published, I was retired from the military, I did not hold public office or public employment, and was not engaged in any public service. Nor did I use my status as a retired military officer to put myself in the public eye or attempt to influence public policies. I became the subject of public attention only because of the actions of the critics and APA and what was written in the Report, not because I sought public exposure. In addition, I did not have access to the media to rebut the allegations made against me in the Report, and the objections that I and Plaintiffs Banks, James, and Newman posted on the APA public website received no media coverage in contrast to the extensive coverage of the Report itself.

18. The Report's mischaracterizations of the work of military psychologists, the complete omission of any consideration of the applicable SOP which Mr. Hoffman had in his possession, and his refusal to allow me to get prior clearance to address questions important to the investigation lead me to believe that Mr. Hoffman had a predetermined outcome in mind for which he used the information gathering process to support and confirm.

19. As a result of the mischaracterizations and false statements about me in the Report and the events that have followed its publications, my reputation was severely damaged and my income

has been significantly diminished. A career's worth of achievements in psychology practice, education and training have all been irreparably harmed. Job applications for various government positions requiring my type and level of expertise have been rejected and my post-military career goal of consulting to psychology education and training programs has been blocked. The great irony of this tragedy is that I have been accused in the Report of doing exactly opposite of what I was vigorously committed to doing in the military—working to help prevent unsafe, abusive and inhumane treatment of individuals detained by U.S. forces.

I declare under penalty of perjury that the foregoing is true and correct.



Debra L. Dunivin

Sworn and subscribed to before a notary public in the State of Virginia, this 14 day of November 2019.

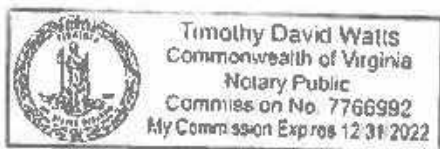

Notary Public

EXHIBIT 1

On Jun 23, 2015, at 1:46 PM, "Hoffman, David H." <david.hoffman@sidley.com> wrote:
Or (sorry) can we do it at 5:10 or 5:15 instead?

DAVID HOFFMAN

Partner

Sidley Austin LLP

One South Dearborn

Chicago, IL 60603

+1.312.853.2174

david.hoffman@sidley.com

www.sidley.com

Assistant: Carol Graf | cgraf@sidley.com | +1.312.853.7231

SIDLEY AUSTIN LLP

On Jun 23, 2015, at 1:44 PM, "Hoffman, David H." <david.hoffman@sidley.com> wrote:
Hi, so sorry – can we talk at 5pm eastern?

DAVID HOFFMAN

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SIDLEY AUSTIN LLP

From: DoctorDunivin [<mailto:DoctorDunivin@aol.com>]

Sent: Tuesday, June 23, 2015 3:43 PM

To: Hoffman, David H.

Cc: Carter, Danielle

Subject: Re: Follow up question

Hello again, Mr Hoffman.

I just wanted to confirm your intentions for arranging to talk today since it's approaching five o'clock here - hope I haven't missed message. I'm still willing to schedule something this afternoon, but if it's not today I thought I should let you know that I have commitments the rest of this week that cannot be changed and my next availability for this would be on Monday.

Please just let me know when you have a chance. Thanks.

Debra Dunivin, PhD, ABPP

Colonel (Retired), US Army

DoctorDunivin@aol.com 703-402-3045 (cell)

On Jun 23, 2015, at 11:01 AM, DoctorDunivin <DoctorDunivin@aol.com> wrote:

Mr Hoffman,

I remain committed to helping you in your effort to review information and draw factual, accurate conclusions regarding psychologists' work in the area of behavioral science consultation to detainee operations. And I must continue to work within the constraints we've discussed - both verbally and in writing, regarding what I can share per the DoD directive on clearance of information for public release. Going into further depth on a particular aspect of this policy memo - beyond what appears to have been previously cleared, raises issues of both operational sensitivities and official duties, and triggers the requirement for official review.

Please send specific questions and I will submit the responses for review through appropriate channels. I'm willing to schedule a time to talk today, but I'm just not sure that there would be anything I could say other than what's been written in the documents that have gone through the review process.

Thank you.

Debra Dunivin, PhD, ABPP
Colonel (Retired), US Army DoctorDunivin@aol.com 703-402-3045 (cell)

On Jun 22, 2015, at 12:12 PM, "Hoffman, David H." <david.hoffman@sidley.com> wrote:

Thank you, Debra. The document is available online, which is where we got it. (We've seen various versions online, all of which appear to have come from FOIA requests as you say.) I sent the document because we want to understand what was meant by paragraph 6(f), to make sure we have a proper understanding of the work of the Psychological Operations team as it relates to BSCT psychologists, of course without discussing any details that would require a discussion of any classified information. I don't think we need more than 10-15 minutes. Do you have time for a call today or tomorrow?

Thanks.

David

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SIDLEY AUSTIN LLP

From: DoctorDunivin [<mailto:DoctorDunivin@aol.com>]
Sent: Monday, June 22, 2015 10:48 AM
To: Hoffman, David H.
Cc: Carter, Danielle
Subject: Re: Follow up question

Good morning, Mr Hoffman.

The operational policy memorandum you wish to discuss appears to have been released through a FOIA request.

Would you please send the cover sheet indicating that the document was obtained through official channels? That

will facilitate my ability to discuss it.

Please also send the question(s) you now have so that I may ensure the responses are appropriately cleared for release.

Thank you.

Debra Dunivin, PhD, ABPP
Colonel (Retired), US Army
DoctorDunivin@aol.com 703-402-3045 (cell)

Hello Debra. We have one short follow up question for you in relation to the December 2004 BSCT SOP (attached). Do you have time for a short call, perhaps Monday some time?

Thank you.
David

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<BSCT SOP 2004.pdf>

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On May 21, 2015, at 7:35 AM, "Hoffman, David H." <david.hoffman@sidley.com> wrote:

1pm would be perfect. Thank you.

I have not seen the ducks but will look again!

David

From: DoctorDunivin
Sent: Thursday, May 21, 2015 09:13:00 AM
To: Hoffman, David H.
Subject: Re: APA independent review: Request for assistance

Good morning, Mr Hoffman.

Wednesday May 27th in the afternoon will work fine for me. Did you want to meet at 1:00pm as we did yesterday? If not, please let me know another time.

Hope you had a chance to take a peak at the mother bird outside your building - second flower bed on the right....

Travel safely.

Debra Dunivin, PhD, ABPP
Psychologist Emeritus
Colonel (Retired), US Army
DoctorDunivin@aol.com
703-402-3045 (cell)

On May 20, 2015, at 10:30 AM, "Hoffman, David H." <david.hoffman@sidley.com> wrote:

Hi Dr. Dunivin. I'm on a short break from another interview that will go until yours. I believe virtually all our questions will be about communications with APA so I figured we could just discuss those in person. Thanks again and see you soon.

From: DoctorDunivin
Sent: Wednesday, May 20, 2015 09:08:46 AM
To: Hoffman, David H.
Cc: Latifi, Yasir; Carter, Danielle
Subject: Re: APA independent review: Request for assistance

Mr Hoffman,

Just following up on the expectation that you would send a list of questions early this week. I haven't seen anything from your office about that and I'd like to start the review process as soon as possible. Did I miss a message from your office?

Regardless, will see you later today.

Debra Dunivin, PhD, ABPP
Psychologist Emeritus
Colonel (Retired), US Army
DoctorDunivin@aol.com
703-402-3045 (cell)

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On May 14, 2015, at 6:20 PM, "Hoffman, David H." <david.hoffman@sidley.com> wrote:

Super, thanks.

From: DoctorDunivin
Sent: Thursday, May 14, 2015 08:13:46 PM
To: Hoffman, David H.
Cc: Latifi, Yasir; Carter, Danielle
Subject: Re: APA independent review: Request for assistance

I'll plan on 1-5 then. Looking forward to meeting with you, too.

Debra Dunivin, PhD, ABPP
Colonel (Retired), US Army
DoctorDunivin@aol.com
703-402-3045

On May 14, 2015, at 8:42 PM, Hoffman, David H. <david.hoffman@sidley.com> wrote:

I'm not sure but, to play it safe, if you can give us the whole afternoon, we would appreciate it. So, until 5pm at the latest.

Thanks, and looking forward to meeting you.

From: DoctorDunivin
Sent: Thursday, May 14, 2015 03:57:19 PM
To: Hoffman, David H.
Cc: Latifi, Yasir; Carter, Danielle
Subject: Re: APA independent review: Request for assistance

Yes, absolutely.

Wednesday, May 20th at 1:00 pm it is. For planning purposes, about how long do you anticipate the meeting will be?

Thanks

Debra Dunivin, PhD, ABPP
Clinical Psychologist Emeritus
Colonel (Retired), US Army
DoctorDunivin@aol.com
703-402-3045 (cell)

On May 14, 2015, at 4:18 PM, "Hoffman, David H." <david.hoffman@sidley.com> wrote:
Thank you, Dr. Dunivin. Can we plan on meeting you at our office at 1pm on Wednesday, May 20?

David

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SIDLEY AUSTIN LLP

From: DoctorDunivin [mailto:DoctorDunivin@aol.com]
Sent: Thursday, May 14, 2015 3:10 PM
To: Hoffman, David H.
Cc: Latifi, Yasir; Carter, Danielle
Subject: Re: APA independent review: Request for assistance
Hello again, Mr Hoffman.

I would be quite willing to meet with you next week, as you suggest, to discuss any matters related to APA communications and set aside any issues that require DoD review until release can be obtained. Please do send any questions related to my official duties, as soon as you can, even if it is early next week, and I will submit for review. I agree that it's unlikely that could be turned around in a day or two and would be pleased to schedule a second meeting for follow-up on those matters if needed.

I'd be happy to come to your office for the interview. At this point I cannot make a meeting at nine on Wednesday but could be available anytime in the afternoon. I still have Thursday availability but understand you are now scheduled for that day. Please let me know if sometime in the afternoon on the 20th would work for you and about how much time you require. If that isn't convenient for you, I'll find some dates later in the month as Ms Carter suggested in her message.

Thank you.

Debra Dunivin, PhD, ABPP
Colonel (Retired), US Army
DoctorDunivin@aol.com
703-402-3045

On May 14, 2015, at 1:47 AM, Hoffman, David H. <david.hoffman@sidley.com> wrote:

Dr. Dunivin,

Thank you for your emails, and I apologize about the delay in responding. As to meeting next Wednesday or Thursday, I can meet next Wednesday. I now need to be with another witness most of Thursday. Would 9 am on Wednesday work? We'd be happy to meet wherever you'd like. Our office is in DC at 1501 K St. Let us know if that would be a convenient location for you. Otherwise, please let us know what works best for you.

The classification and review issue you raise is perfectly understood and of course appropriate. Frankly, I think most of our questions will not raise such issues, since many of our questions relate to communications with APA as opposed to internal DoD matters. We can certainly send you some questions or topics in advance that might implicate the classification point, though that may not occur until early next week in light of the number of interviews we are conducting and the tight time frame we are operating under. My strong preference is to go ahead with our meeting next week, even though I recognize that you may not have had time to receive answers on the classification issues by then. If we meet and some of our questions need to be put aside pending DoD review, that is fine. I'd rather get through most or part of our interview next week and then, as necessary, finish it at a later date. As I said, I think we may find that most of our questions will not require review and approval, but we are happy to see how it goes. Again, given our time constraints, we need to move forward in as expedient a manner as we can. I appreciate your understanding regarding that constraint.

Please let me know what you think. And once again, a sincere thank you for your assistance and cooperation. We and the APA appreciate it.

Best regards,

David

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On May 13, 2015, at 10:49 PM, "Hoffman, David H." <david.hoffman@sidley.com> wrote:

So, clearly Danielle and I are both working very late tonight and have not coordinated well regarding which one was going to follow up with you. I'm glad to see that our emails are consistent with each other, although only one addresses the classification point.

Please accept my apologies about sending you two emails.

Thanks again.

David

From: Carter, Danielle
Sent: Thursday, May 14, 2015 12:46:35 AM
To: doctordunivin@aol.com
Cc: Hoffman, David H.; Latifi, Yasir
Subject: RE: APA independent review: Request for assistance

Dear Dr. Dunivin,

I am a partner at Sidley Austin and am working with David Hoffman on the independent review. I understand that you will be in DC next week and may be available to meet with us. We would like to meet with you the morning of Wednesday, May 20th, if you are available. We could meet at our offices at 1501 K Street NW. We are close to the Farragut North and McPherson Square metro stops. Please let us know if you are available to meet with us Wednesday morning. If that doesn't work, please let us know what days and times would work for you.

Thanks and best regards,
Danielle Carter

DANIELLE CARTER

Partner

Sidley Austin LLP +1.202.736.8925 djcarter@sidley.com

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From: DoctorDunivin **Sent:** Friday, May 08, 2015 12:55:27 PM **To:** Hoffman, David H. **Cc:** Latifi, Yasir **Subject:** Re: APA independent review: Request for assistance

Hello again, Mr Hoffman.

I have a request. As I mentioned in the previous message, I am constrained in what I can share given classification issues and operational sensitivities. Since your area of inquiry relates to information I acquired during performance of official duties as a military officer, I want to ensure that the responses I make are appropriately reviewed and cleared for public release. The Department of Defense Directive on Clearance of DoD Information for Public Release (DoDD 5230.09) makes it clear that the security review process applies to retired military personnel and therefore to me.

Would you please send me a list of any questions you wish to ask related to the duties I performed while working for the military? I'll do my best to have the review process completed as soon as possible before we meet, at which time we could discuss any other areas, not related to my duties, that you might wish to address. I hope this won't prove to be too cumbersome for you. I sincerely wish to provide information that I believe will be very helpful to you.

Best regards,

Debra Dunivin, PhD, ABPP
Psychologist Emeritus
Colonel (Retired), US Army DoctorDunivin@aol.com 703-402-3045 (cell)

On May 7, 2015, at 2:20 PM, DoctorDunivin <DoctorDunivin@aol.com> wrote:

Hello, Mr Hoffman.

Thanks for your message. I would be pleased to assist in your efforts to review information and come to factual and accurate conclusions regarding psychologists' involvement in detainee interrogations and the relevant professional ethics. Looking at the documents you have requested, I don't have any materials of that nature to send you. I retired from the military in October 2014, and since then have not had access to various military email accounts that I did while serving on active duty; neither did I keep hard copies of materials related to official duties.

You do understand, of course, that I am constrained by classification issues and operational sensitivities regarding what can be shared about my experiences. Please let me know how you would like to proceed.

With respect to scheduling a meeting, I can be available to meet with you in Washington, DC the week of May 18th. Perhaps we can find a mutually convenient time on Wednesday or Thursday? Also, I have co-authored two publications that might be useful for you to review prior to a meeting.

Dunivin, D. & Earles, J. (2014). Behavioral science consultation to interrogation and debriefing operations: Policy, ethics and training. In E.C. Ritchie (Ed.), *Forensic and Ethical Issues in Military Behavioral Health*. Fort Sam Houston, TX: Borden Institute. This is posted their website -

<http://www.cs.amedd.army.mil/FileDownloadpublic.aspx?docid=e965e061-4c97-49ed-b65a-c82754a42d36>.

Dunivin, D., Banks, L.M., Staal, M., & Stephenson, J. (2011). Behavioral science consultation to interrogation and debriefing operations: Ethical Considerations. In T.J. Williams & C. Kennedy (Eds.), *Ethical Practice in*

Operational Psychology. Washington, DC: American Psychological Association Press.

I suspect your attention has already been drawn to one other publication, but I'll mention it in case it has escaped your notice. I find it to be a most complete and accurate description of the ethics revision process during the last decade:

Behnke, S.H. & Moorehead-Slaughter, O. (2012). Ethics, human rights, and interrogations: The position of the American Psychological Association. In J.H. Laurence & M.D. Matthews (Eds.), *The Oxford Handbook of Military Psychology*. New York, NY: Oxford University Press.

Sincerely,

Debra Dunivin, PhD, ABPP
Psychologist Emeritus
Colonel (Retired), US Army DoctorDunivin@aol.com 703-402-3045 (cell)

On May 4, 2015, at 5:23 AM, "Hoffman, David H." <david.hoffman@sidley.com> wrote:

Dear Dr. Dunivin:

I am writing to respectfully request your cooperation and assistance in the independent review we are conducting on behalf of the APA regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the PENS Task Force. We would very much appreciate your willingness to assist us in our review.

I am attaching the APA Board's resolution and public statements, which describes our independent review in greater detail. As set out in those statements, we are conducting the review in a completely independent fashion with the sole objective of ascertaining the truth about the allegations through an independent review of all available evidence, wherever that evidence leads, without regard to whether the evidence or conclusions may be deemed favorable or unfavorable to APA.

I'd like to schedule a meeting with you to discuss your experience, observations, and insights on these issues. If meeting in DC is convenient for you, I will be in Washington the week of May 18th and would appreciate the opportunity to meet with you then if that is convenient for you.

I'd also like to request that you provide us with any documents or records in your possession – including any notes, emails, or other communications – that may be relevant to the issues of the independent review. Any document or record that would be useful in attempting to understand the APA's actions, decisions, and communications on this subject, especially between 2001 and 2008, is something that we would consider helpful and relevant to our review.

Please consider whether you have both hard copies and electronic documents that would be relevant to us. These documents may include any notes, memos, correspondence of any sort (whether emails, letters, etc.), calendar entries, or drafts of reports or revisions, among other things. If you are planning to search your emails or other electronic records for relevant documents and are not sure how to proceed, we would be happy to discuss this with you and to provide any assistance or share our thoughts about how best to locate such documents.

Some of the specific categories of documents that are relevant to our review are:

1. Any documents prior to 2009 relating to communications with individuals affiliated with the APA (whether Board members, management, staff, or otherwise) regarding the role of psychologists in national security interrogations;

2. Any documents related to conferences or meetings sponsored, organized, or hosted by APA between 2001 and 2005 where one of the topics to be discussed was interrogations, educing information, or deception detection;
3. Any documents relating to the 2002 revisions to the APA Ethics Code (such as documents relating to the meetings, discussions, and draft revisions of the Ethics Code Task Force) that have any bearing on psychologists' participation in interrogations;
4. Any documents related to the PENS Task Force, including documents relating to (a) the idea of creating such a task force, (b) the planning and preparation for the task force, (c) the selection of task force members, (d) the formation of the task force, (e) the meetings of the task force (including meeting notes and agendas), (f) the drafting and dissemination of the task force report (including any drafts or comments on drafts), and (g) subsequent discussions and follow up actions relating to the report; and
5. Any documents relating to resolutions, petitions, or referendums considered or acted on by the APA Council of Representatives on this subject matter from 2005 to 2009.

As I mentioned above, if we can make this process easier for you by being of any assistance, please do not hesitate to let me know. You may send us documents either by mail at the address listed below, or by email either to me or our independent review team's email address, which is apareview@sidley.com.

The APA has asked us to conduct a complete and thorough review of these issues, and your cooperation and assistance would be very helpful in ensuring that we are able to gather all relevant information and come to factual and accurate conclusions.

Thank you very much in advance for your time, and for your assistance and cooperation in this matter. I look forward to hearing from you.

Best regards,
David Hoffman

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david.hoffman@sidley.com
www.sidley.com
Assistant: Carol Graf | cgraf@sidley.com | +1.312.853.7231
SIDLEY AUSTIN LLP

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<APA Board resolution and public statement.pdf>

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On May 4, 2015, at 2:10 AM, "Hoffman, David H." <david.hoffman@sidley.com> wrote:

Thank you very much, Russ. I appreciate your sending the articles and Dr. Dunivin's contact information. And thanks again for being so generous with your time.

Best regards,
David

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Assistant: Carol Graf | cgraf@sidley.com | +1.312.853.7231
SIDLEY AUSTIN LLP

-----Original Message-----

From: Russ Newman [mailto:rnewman@alliant.edu]
Sent: Thursday, April 30, 2015 9:14 AM
To: Hoffman, David H.
Cc: DoctorDunivin
Subject: Prescription Privileges for Psychologists Articles

David,
Attached are the article I mentioned. I am also copying my wife on this so you will have an email connection. Russ

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EXHIBIT C-13

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

AFFIDAVIT OF ROBERT FEIN IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT

State of Massachusetts)
) ss:
County of Middlesex)

1. I, Robert Fein, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was first contacted by David Hoffman of the law firm Sidley Austin LLP in early 2015 in order to schedule an interview as a part of the ongoing Independent Review being conducted on behalf of the American Psychological Association (hereinafter "APA") regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA policies including the Psychological Ethics in National Security (hereinafter "PENS") Task Force. I served as a member of that task force in 2005. Mr. Hoffman, along with a female associate, interviewed me at the Sidley Boston office on May 11, 2015, for approximately four hours.
3. I am a national security and forensic psychologist with a specialty in threat assessment and the prevention of targeted violence. During the time of the PENS Task Force, I was a member of the Intelligence Science Board (hereinafter "ISB"), from 2003 to 2010, and Chair of the ISB Study on Educating Information. The ISB was chartered in August 2002 and advised the Office of the Director of National Intelligence and senior Intelligence Community leaders on emerging scientific and technical issues of special importance to the Intelligence Community.
4. Upon reading the Hoffman (hereinafter "Report"), I was struck by the Report's apparent preconceived narrative to mischaracterize me as working for the DoD and to leave the false impression that because I worked for the DoD I simply deferred to the

positions taken by the DoD members of the PENS Task Force. I am described in the Report as a DoD contractor or someone working with Dr. Scott Shumate at CIFA (the DoD Counterintelligence Field Activity) no fewer than seven times, and am described in that manner virtually every time I am mentioned. (See HR pp. 18, 21, 47, 199, 232, 237, 265) While it is true that I was a consultant to CIFA in the early 2000s, my primary professional work at the time of the PENS Task Force was as a member of the ISB and Chair of the ISB Study on Educating Information, a systematic analysis of science relating to non-coercive interrogation. When the PENS Task Force met in late June 2005, my work as Chair of the ISB study was consuming the substantial majority of my time and attention, as the Phase 1 Study Report was to be published in 2006. Although Mr. Hoffman was well aware of my position and work with the ISB, he relegates it to a footnote on p. 251 of the Report. A good example of the mischaracterized light in which the Report places me is when it states:

Shumate made it clear that he was uncomfortable with public disclosure of specific examples that might provide further guidance; that he thought "coercive" was too broad a word to be used in this context; and that he wanted to manage the task force's public message by using words that softened the reality of the pressure DoD psychologists faced to help produce actionable intelligence. Fein, a DoD contractor within Shumate's unit, did not say as much but was not going to object to the positions of actual DoD officials. (HR p. 21)

In fact, the reason that I did not "say much" during the meeting was that I was being careful not to be perceived as taking positions on issues that were in the process of being examined by our ISB study on educating information. I do not recall Mr. Hoffman asking me about the level of my participation in the meeting, but if he had I would have explained it this way, not that I was deferring to the positions of DoD members on the task force, which was simply not true.

5. Despite that fact that Mr. Hoffman cited Educating Information multiple times in his Report, and specifically cites my introduction to it (p. 76), he ignores that my work is in direct conflict with his narrative that I supported or would have supported a position allowing for detainee abuse. No fewer than two of the chapters I commissioned, one by Professor Bob Coulam (pp.7-16) and another by Professor Randy Borum, (pp.17-43) address the lack of effectiveness of the use of coercion in interrogations, which is one of the central lessons to take away from the Phase 1 Study Report. (A true and correct copy of *Educating Information Integration: Science and Art, Foundations for the Future* is published online by the University of Minnesota Human Rights Library at: <http://hrlibrary.umn.edu/OathBetrayed/Intelligence%20Science%20Board%202006.pdf>.)

6. Other statements of "fact" offered by the Report which either relate to me or of which I had personal knowledge as a member of the PENS Task Force are just plain false. When describing the APA Ethics and National Security Forum that took place in July 2004, the Report indicates, "Robert Fein commented that he had attended an FBI

conference at which they “concluded that the [E]thics [C]ode was indeed a poor fit.” (HR p. 201) I did not attend the FBI conference referred to and never said that the APA Ethics Code was a “poor fit” with the work of psychologists in national security, a conclusion that is wholly inconsistent with the entire thrust of the PENS Task Force guidelines. Related, statements in the Report that the work of the PENS Task Force was not based on an ethics analysis (e.g. HR pp.15-16, 307) are not true. During the PENS task force meeting there were detailed and specific discussions of the APA Ethics Code and the Ethics Code’s application to the work of national security psychologists.

7. The statement in the Report that APA, including the staff and the PENS Task Force, remained “deliberately ignorant” of detainee abuse is false. PENS Task Force members were provided by APA staff with considerable materials describing detainee abuses. I specifically posted two *New York Times* articles detailing abuses to the PENS listserv, all of which is documented in the PENS listserv records Mr. Hoffman was provided and that he cites over eighty times in the Report. (A true and correct copy of the PENS listserv records can be found in the Hoffman Report binders published by the APA online at <http://www.apa.org/independent-review/binder-5.pdf>, PDF pp. 453-672.) In fact, the Report (HR p. 262) itself points to one of those articles that I provided to the task force members.

8. The Report falsely concludes that I had engaged in a “coordinated...exchange” “to ensure that Shumate, Fein, and Gelles would be nominated with prominent recommenders” to the PENS Task Force. (HR p.232) This conclusion is based on some unrelated listserv posts and email communications and speculative “behind-the-scenes communications [that] are not made explicit.” Additionally, the conclusion seems based on a premise that I had “worked closely” with a psychologist from the U.S. Secret Service’s National Threat Assessment Center who posted on a listserv that Scott Shumate would be a good nominee, as well as the fact that I had worked with Shumate at CIFA. In fact, I had never worked closely with the psychologist from the Secret Service, a reality I do not recall Mr. Hoffman ever inquiring about.

9. Much of the Report’s characterization of the workings of the PENS Task Force is based on information provided by Dr. Jean Maria Arrigo, a member of the task force who in my experience lacks credibility. For example, the Report describes, on page 251, an outreach I made to Dr. Arrigo in January 2005 about contributing to my Educating Information project that she perceived to be an attempt to “screen” her for the PENS Task Force. At that time I was unaware of any yet-to-be formed PENS Task Force. Dr. Arrigo’s perception is without basis in fact.

10. The Report also indicates that Dr. Arrigo (as well as other “non-DoD” task force members):

...came to regret going along with the report at the end of the meeting. They insist that their failure to issue a final and overall dissent should not be taken as approval...(and) cited a feeling of intense group pressure from the much larger group of DoD task force members and APA leaders (all men, they point out) to go along at the end, in order to enable

APA to make a clear and positive public statement that APA was “against torture.” (HR p. 25)

I was surprised to read this, particularly from Dr. Arrigo whose PENS listserv postings days after the meeting indicated, among other things, that she believed, “The depth, scope and wisdom of this [PENS] document are indeed impressive.” She also wrote, “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.” (A true and correct copy of the PENS listserv communications can be found in the Hoffman Report binders published by the APA online at <http://www.apa.org/independent-review/binder-5.pdf>, pp. 108, 91, PDF pp. 560, 543.)

11. The Report describes APA staff actions during the course of the PENS Task Force meeting in ways that are not accurate and appear to be part of a preconceived narrative that staff, notably Drs. Newman and Behnke, behaved improperly. On page 268, the Report states, “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.” It is a mischaracterization—based at least in part on Dr. Arrigo’s notes according to the Report (HR p. 268 fn. 1188)—to say that Dr. Newman “appropriated” Dr. Moorehead-Slaughter’s role as chair or facilitator. Dr. Newman did make some points during the course of the meeting as I recall, but in no way did he take over or control the process of the meeting.

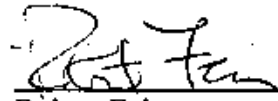
12. Additionally, the Report (p. 286) mischaracterizes Dr. Behnke’s role when it states, “So after one day of task force deliberations, Behnke drafted a document that would largely become the final PENS report’s twelve statements,” giving the false impression that Dr. Behnke was authoring the PENS Task Force report. In fact, Dr. Behnke, in his staff liaison role, appropriately drafted language based on the task force’s discussions and direction followed by review and approval by the task force members as the process is described in the PENS listserv communications (p. 88), a true and correct copy of which can be found published by the APA online in the Hoffman Report binders at <http://www.apa.org/independent-review/binder-5.pdf>, PDF p. 540). A review of the PENS Task Force process as described by Mr. Hoffman himself indicates that the task force reviewed and approved multiple draft versions of their report. (See, e.g., HR p. 312, Task Force approving “a revised fifth draft version of the report.”)

13. The Report did not include information I offered contradicting its conclusion that Dr. Behnke, “joined and supported...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.” (HR p. 9) As documented in Mr. Hoffman’s notes of my interview, I told him that people like Behnke, Col. Dunivin, and others were trying to improve training for human intelligence collectors to be more informed and useful advisors and monitors of military interrogators. This information was omitted from the Report.

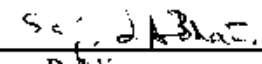
14. The Report also did not include information I offered about the value of the

Behavioral Science Consultation Teams (hereinafter "BSCTs"). As documented in Mr. Hoffman's notes of my interview, I told him that I saw BSCTs as fundamentally working to improve the treatment of detainees. I also told him that BSCTs were in a monitoring role, and there were times when psychologists in that role stopped bad behavior by their presence and actions in the face of pressure on interrogators to behave badly toward detainees. This information was omitted from the Report.

I declare under penalty of perjury that the foregoing is true and correct.


Robert Fein

Sworn and subscribed to before a notary public in the State of Massachusetts, this
8th day of October 2019.


Notary Public

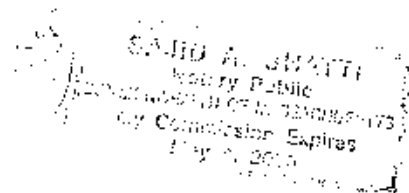


EXHIBIT C-14

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	Initial Conference
	:	Feb. 23, 2018, 9:30 AM
Defendants	:	Courtroom 212
	:	

AFFIDAVIT OF MICHAEL G. GELLES IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT

State of Maryland)
County of Montgomery) ss:

1. I, Michael G. Gelles, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was first contacted by the American Psychological Association (APA) President Nadine Kaslow in December 2014 by email sent to members of the Presidential Task Force (Task Force) for Psychological Ethics on National Security (PENS) requesting cooperation with an independent review of allegations that the APA colluded with the Bush Administration's post-9/11 interrogation program. I was subsequently contacted by email on February 26, 2015, by Mr. David Hoffman of the law firm Sidley Austin LLP, who was conducting the review on behalf of the APA, to introduce himself and to request an interview. He re-contacted me by email on April 8, 2015, requesting I schedule an interview, and I was interviewed on April 15 and May 27 at the Sidley Austin offices in Washington, DC. A Sidley Austin associate typed while I was speaking. The two interviews together lasted approximately five hours.
3. My interviews with Mr. Hoffman consisted primarily of questions related to my involvement with the PENS Task Force. At the end of the first interview I stated to Mr. Hoffman that I had been involved in an ethics disciplinary case (the "King case") adjudicated by the APA Ethics Committee. I asked if he was aware of this case as I did not want even the appearance of

withholding information. He indicated that he was aware of the King case and, in what I perceived to be a dismissive tone, stated that we would not be talking about the King case.

4. That this case was not a focus of my interview was consistent with my understanding of the scope of the review as previously described by both President Kaslow and Mr. Hoffman, which was to uncover facts related to the post-9/11 involvement of psychologists in the Global War on Terror. The King case involved events that occurred in 1999, prior to the Bush Administration, and was in regard to a United States citizen, not a post-9/11 detainee. Neither President Kaslow nor Mr. Hoffman ever informed me that the scope of the investigation had been expanded beyond what was described in their original communications to me.

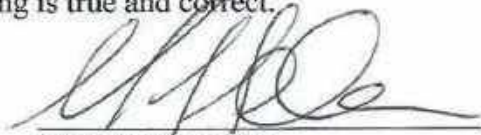
5. Immediately following a cursory review of the Executive Summary of the Report of the Independent Review (hereinafter "Report") when it was first published, I emailed Dr. Kaslow indicating that I had a couple of questions I wanted to ask her. Given difficulty scheduling a phone call due to our respective schedules, I ultimately determined that I would not pursue a substantive discussion with her regarding the Report as my career path had moved away from psychology and my views on issues addressed by the Report had been represented over the past decade and half in numerous articles books and videos. Also following my cursory review of the Report's Executive Summary, I emailed Mr. Hoffman to communicate that I thought he had conducted his work, particularly his interviews with me, in a competent and professional manner.

6. At the time I emailed Dr. Kaslow and Mr. Hoffman, I had not yet read the entire 542-page Report, but had only skimmed a small portion of it due to my work-related obligations. Subsequently, a colleague contacted me and strongly urged me to read the entire Report, specifically where the Report mentioned me, which I then did.

7. Upon a careful reading of the Report, I was shocked to see a detailed and lengthy discussion of the King case (Report pp. 475-486) given my understanding of the scope of the review and that Mr. Hoffman had indicated when interviewing me that we would not be discussing that case. The detailed treatment of the case in the Report, despite the fact that I had not been asked any questions about the case, was all the more shocking given the Report's allegations that the APA's ethics disciplinary cases had been handled "in an improper fashion" in order "to protect these psychologists from censure." (Report, p. 10) Given the inclusion of the King case in the Report, these allegations leave the clear yet false impression that my case was wrongly decided. I had no opportunity when interviewed to indicate, among other things, that I had cooperated fully with the Ethics Office regarding the King case. The Ethics Committee was unanimous in determining that I had not violated the Ethics Code.

8. Neither the APA nor Sidley Austin ever informed me that, following the July publication of the Report, an "errata" sheet was being prepared or that a revised Report was being published with corrections. If I had known such a process was being undertaken, I would have immediately reviewed the entire Report for statements related to me, and I would have objected to inclusion of the King case and to the implication that the case was handled improperly to protect me from censure.

I declare under penalty of perjury that the foregoing is true and correct.


Michael G. Gelles

Sworn and subscribed to before a notary public in the State of ~~Virginia~~, this 17th day
of ~~February~~ 2018.
MARYLAND
APRIL


Notary Public



EXHIBIT C-15

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

STEPHEN BEHNKE, <i>et al.</i> ,	:	Case 2017 CA 005989 B
	:	
Plaintiffs,	:	Judge Puig-Lugo
	:	
vs.	:	
	:	Courtroom 317
DAVID H. HOFFMAN, <i>et al.</i> ,	:	
	:	
Defendants,	:	

AFFIDAVIT OF ARMAN GUNGOR

State of California)
) ss:
County of Los Angeles)

1. I, Arman Gungor, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I am a Certified Computer Examiner (CCE) and the Director of Forensics at Meridian Discovery, LLC, a company that specializes in digital forensics. I have an electrical engineering background and software development experience. Since 2004, I have assisted numerous law firms, corporations, government entities and individuals in computer forensics and eDiscovery. I have served as a court-appointed computer forensics expert and as a neutral third-party eDiscovery consultant. I have also authored various software tools that are used during forensic analysis as well as electronic document productions. Attached hereto as Exhibit A is my curriculum vitae.
3. Metadata is information that describes the attributes of a document as opposed to describing the contents of a document. As it pertains to electronic documents in Portable Document Format (PDF), metadata can contain information about the document such as, without limitation, its creator, title, creation and modification dates and the name of the tool that created it.
4. Extensible Markup Language (XML) is a meta markup language developed by the World Wide Web Consortium (W3C) and defined by the W3C's XML 1.1 Specification and other related specifications. It facilitates the creation of new markup languages by defining their structure and tags. XML implementations are commonly used for exchanging data between applications.
5. Extensible Metadata Platform (XMP) is a document labeling technology originally created by Adobe Systems, Inc. XMP allows metadata to be embedded into electronic documents, and enables software and systems to capture, share and utilize document metadata as well as maintain document context and relationships throughout the document lifecycle.

6. Metadata may be stored in a PDF document in a metadata stream associated with the document or a component of the document, or in a document information dictionary associated with the document. A PDF metadata stream contains metadata represented in XML, and the format of the XML representing the metadata is defined as part of the XMP framework.

7. I reviewed and analyzed the metadata for the following three (3) PDF documents:

report.pdf¹ A true and correct copy of this file is available on *The New York Times* website at the following address at the time of this writing:

<https://www.nytimes.com/interactive/2015/07/09/us/document-report.html>

The PDF file is hosted on DocumentCloud² at the following address and displayed on *The New York Times* website inside an embedded control.

<https://assets.documentcloud.org/documents/2160985/report.pdf>

APA-FINAL-Report-7.2.15.pdf³ A true and correct copy of this file was available on the *American Psychological Association* website at the following address in July 2017:

<https://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>

As of October 2019, the above hyperlink points to the address “<https://www.apa.org/independent-review/revised-report.pdf>”.

revised-report.pdf⁴ A true and correct copy of this file is available on the *American Psychological Association* website at the following address at the time of this writing:

<https://www.apa.org/independent-review/revised-report.pdf>

8. Exhibit B is a true and correct copy of the metadata streams—represented in XML—extracted from the three documents I reviewed.

The Report posted on the Times website (report.pdf)

9. Metadata found in “report.pdf” shows multiple modifications to the document and/or its components on July 1, 2015 and July 2, 2015 in a UTC-05:00 time zone—consistent with Central Daylight Time (CDT).

10. I found references to “Acrobat PDFMaker 10.1 for Word” as the “Creator Tool” in the metadata found in this document. This is consistent with metadata that would be found in a PDF file that was created by converting a Microsoft Word document to PDF format.

11. Document metadata shows that another modification to the document was made on July 7, 2015 using “Adobe Acrobat Pro 10.1.13” in a UTC-04:00 time zone—consistent with Eastern Daylight Time (EDT).

¹ SHA1 Hash: f933e312d2d6266088d383f964762472bd24b7fb

² <https://www.documentcloud.org>

³ SHA1 Hash: ceb7c5bb8ddad6f5774dfaa8a90b5ddc09b25257

⁴ SHA1 Hash: c03772372abbb3a27d076f1d7b14938eacdf79ae

12. Metadata streams found in the document contain the author values "D. Hoffman", "jplatt01", and "Maassen, Emily" reflecting activity in the document before the document took its final form as "report.pdf" which I examined.

The APA Final Report 7.2.15 posted on the APA website (APA-FINAL-Report-7.2.15.pdf)

13. Metadata found in this document indicates that it was created using "Aspose.Pdf for .NET 8.6.0"⁵, which is an Application Programming Interface (API) that enables software developers to, among other things, create, read and modify PDF documents without using Adobe Acrobat. This is different than the tool that was used to create "report.pdf".

14. The scanner artifacts found on the first page of this document, along with lack of extractable text on the first page, are consistent with attributes of a scanned page. It is very likely that the cover letter on the first page of this document was scanned and combined with the main report which starts on the second page of this document.

The Revised Report posted on the APA website (revised-report.pdf)

15. Metadata found in "revised-report.pdf" shows multiple modifications to the document and/or its components on September 4, 2015 in a UTC-05:00 time zone—consistent with CDT—and that a component of the document was created by using a device identified as "Xerox WorkCentre 7775". I found references to "emaassen" and "cgraf" in the metadata found in this document.

16. Document metadata shows that additional modifications to the document were made on September 11, 2015 using "Adobe Acrobat Pro 10.1.14" in a UTC-04:00 time zone—consistent with EDT.

17. The scanner artifacts found on the second page of this document, along with lack of extractable text on this page, are consistent with attributes of a scanned page.

The "deleted" emails

18. I was asked to locate thirteen emails within the forensic image of the Behnke hard drive. I was able to locate the thirteen emails without having to perform data recovery and found that none of the emails was deleted. Printouts of these thirteen emails that I was asked to locate, as well as the printout of the unredacted, found copy of one the emails and its attachment are attached hereto as Exhibit C.

FURTHER AFFIANT SAYETH NOT.


Arman Gungor

⁵ <https://www.aspose.com/products/pdf/net>

Sworn and subscribed to before a notary public in the State of California, this 11th day of November
2019.

**See Attached
California
Certificate**

**See Attached
California
Certificate**

Notary Public

California Jurat Certificate

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

S.S.

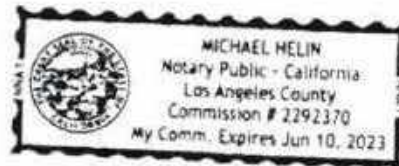
Subscribed and sworn to (or affirmed) before me on this 11th day of Nov,
Month

20 19, by Arman Gungor and
Name of Signer (1)

n/a, proved to me on the basis of
Name of Signer (2)

satisfactory evidence to be the person(s) who appeared before me.

[Signature]
Signature of Notary Public



For other required information (Notary Name, Commission No., etc.)

Seal

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this jurat to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The certificate is attached to a document titled/for the purpose of

Affidavit

containing 4 pages, and dated Nov 11, 2019

Additional Information

Method of Affiant Identification

Proved to me on the basis of satisfactory evidence:
☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:

Page # _____ Entry # _____

Notary contact: _____

Other:

☐ Affiant(s) Thumbprint(s) ☐ Describe: _____

Exhibit A

CURRICULUM VITAE

ARMAN GUNGOR

Director of Forensics

Meridian Discovery, LLC
840 Apollo Street, Suite 100
El Segundo, CA 90245

Office: (213) 908-2188
agungor@meridiandiscovery.com

CERTIFICATIONS

CCE – Certified Computer Examiner
September 2011, Certification No: 1411

CCSA – LexisNexis Concordance Certified Software Administrator
May 2007

CCFA – LexisNexis Concordance Certified FYI Administrator
May 2007

PROFESSIONAL EXPERIENCE

Meridian Discovery, LLC [October 2009 – Present]

Director of Forensics [August 2019 – Present]

- Assist clients in identification and preservation of electronic evidence.
- Perform digital forensic examinations.
- Prepare expert reports and testify as an expert witness when required.
- Design custom software solutions for clients.
- Develop some of the software tools used by Meridian Discovery.
- Perform data recovery on damaged digital storage devices.

Litigation Support Director [October 2009 – August 2019]

- Assisted clients in identification and preservation of electronic evidence.
- Performed digital forensic examinations.
- Prepared expert reports and testified as an expert witness when required.
- Provided eDiscovery processing and electronic production services.
- Designed custom software solutions for clients.
- Examined electronic document productions received by clients to determine whether they complied with the agreed upon production specifications.

- Advised clients regarding the preparation of electronic document productions in compliance with their discovery agreements.
- Developed some of the software tools used by Meridian Discovery.
- Performed data recovery on damaged digital storage devices.

Metaspike, Inc. [May 2017 – Present]

Founder/CEO

- Design and develop Forensic Email Collector software that forensically collects email evidence from hosted and on-premises email servers such as Exchange, Office 365, Gmail, G Suite, Yahoo, and other IMAP-compatible servers.
- Manage company's cloud computing infrastructure.

Edmond Scientific Company [December 2008 – October 2009]

Litigation Support Director

- Oversaw eDiscovery processing and production efforts in all branches of the company.
- Evaluated and hired employees and trained existing team to improve electronic production.
- Restructured company's legal data hosting/review system.
- Provided guidance during the transition of Edmond Scientific from a single to multi-hub electronically stored information processing infrastructure.
- Worked closely with the software development team to improve in-house eDiscovery processing, online review and project management software.

Pro-Legal Services, Inc. [February 2008 – December 2008]

Director, Litigation Support Services

- Re-designed Pro-Legal's IT infrastructure.
- Configured and installed computers, servers, network switches, firewalls, VoIP devices, enterprise NAS storage and environmental monitoring devices.
- Established new eDiscovery processing and production workflow.
- Improved Pro-Legal's eDiscovery system to support Unicode eDiscovery processing.
- Created new training program and provided internal employee training.

ACCESS Litigation Support Services, LLC [July 2004 – January 2008]

e-Discovery Director

- Assisted in designing ACCESS' eDiscovery processing workflow.
- Prepared standard operating procedures and established quality control standards to improve efficiency and quality.
- Participated in the design, development and implantation of ACCESS' in-house eDiscovery processing and legal review software.
- Developed software tools to enhance eDiscovery workflow.
- Helped clients identify and preserve electronic evidence.

- Performed Concordance Programming Language (CPL) programming both for clients and for internal company use.
- Managed ACCESS' hosted online review system.
- Hired eDiscovery employees and provided internal training.

PROFESSIONAL AFFILIATIONS

The International Society of Forensic Computer Examiners (ISFCE)
High Technology Crime Investigation Association (HTCIA)

EDUCATION

Bachelor of Science in Electrical Engineering
Ege University, 2003

PRESENTATIONS

"Forensic Investigation of Emails Altered on the Server"
SANS DFIR Summit (Austin, TX 2019)—July 26, 2019

"Leveraging Server Metadata in Forensic Email Investigations"
Techno Security & Digital Forensics Conference (San Diego 2019)—March 11, 2019

"Overcoming Email Preservation Challenges in eDiscovery with Forensic Email Collector"
Illinois Paralegal Association—Lunch & Learn Webinar, June 2018

"E-Discovery Productions and Inadvertent Disclosure of Protected Information"
Gilchrist & Rutter PC, April 2014

EXPERT TESTIMONY

Joseph Hourany, M.D. v. Rahul Paliwal [April 2019, Deposition]
Superior Court of The State of California, County of Los Angeles
Case No. KC068076

Douglas Fierro v. Jorey Bernstein [January 2019, Trial]
Superior Court of California, County of Los Angeles
Case No. BC606593

FatPipe Networks, Ltd. v. XRoads Networks, Inc. [December 2013, Pretrial Hearing]
United States District Court for the District Of Utah, Central Division
Case No. 2:09-cv-186-DN

Merle Bivens v. Robin Carmack & Gonia, LLP [August 2012, Deposition]
Superior Court of California, County of Orange – Central Justice Center
Case No. 30-2010-00431484

COURT APPOINTMENTS/NEUTRAL ASSIGNMENTS

i3 Verticals, LLC vs. Tootikian [March 2017]

Superior Court Of California, County Of Orange
30-2016-00870402-CU-BT-CJC

Neutral third-party eDiscovery consultant.

Shigeru Suzuki v. JVCKENWOOD USA Corporation [June 2016]

Los Angeles Superior Court, Central District
Case No. BC594471

Served as neutral third-party computer forensics expert.

FatPipe Networks, Ltd. v. XRoads Networks, Inc. [December 2013]

United States District Court for the District Of Utah, Central Division
Case No. 2:09-cv-186-DN

Served as court-appointed computer forensics expert (Federal Rules of Evidence Rule 706).

Eugene Ataman v. TUG Technologies Corporation [October 2010]

United States District Court Central District of California – Western Division
Case No. 2:09-cv-03900-JHN-CWx

Served as court-appointed neutral third-party eDiscovery Consultant for purposes of examination, retrieval and production of Electronically Stored Information.

OTHER NOTABLE CASES

Joseph Hourany, M.D. v. Rahul Paliwal [September 2018 – Present]

Superior Court of The State of California, County of Los Angeles
Case No. KC068076

Digital forensic examiner for the Plaintiff.

Paradice and Li v. Mahamedi, Mahamedi IP Law LLP [December 2017 – September 2018]

California State Court, County of Santa Clara
Case No. 16-cv-295331 (related cases: 17-cv-309658; 16-cv- 2805)

Digital forensic examiner for the Defendant and cross complainant during the arbitration proceedings.

Cory Spencer, et al. v. Lunada Bay Boys, et al. [March 2017 – Present]

United States District Court, Central District of California, Western Division
Case No.: 2:16-cv-02129-SJO (RAOx)

Digital forensic examiner for two of the Defendants.

Larry C. James, et al. v. David Hoffman, et al. [July 2017 – Present]

Court of Common Pleas, Civil Division, Montgomery County, Ohio

Case No. 2017 CV 00839

Digital forensic examiner for the Plaintiff.

Glazier Group, Inc. et al. v. Nova Casualty, et al. [July 2016 – Present]

Supreme Court of The State of New York, County of New York

Index No. 159101/2014

Digital forensic examiner for the Plaintiff.

Arris Group, Inc. v. Leader Electronics, Inc. [March 2015]

United States District Court for the Northern District of Illinois, Eastern Division

Case No. 14 cv 00345

Digital forensics and eDiscovery expert for the Defendant.

MoroccanOil, Inc. v. Moshe Greenwald [October 2014 – December 2015]

Los Angeles Superior Court, Northwest District

Case No. LC097953

Digital forensic examiner for the Plaintiff regarding fraudulent e-mail messages.

Exhibit B

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<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
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  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="ï"?">
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<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
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  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-02T03:32:31-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-02T03:31:57-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-02T03:32:31-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:89f19e92-ab86-4141-a9c5-3d1bc699f490</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:c57d34dd-f74a-4a0c-9b65-0b310e2bd65c</xmpMM:InstanceID>
      <xmpMM:subject>
        <rdf:Seq>
          <rdf:li>5</rdf:li>
        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default">
            </rdf:li>
          </rdf:Alt>
        </dc:title>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>D. Hoffman</rdf:li>
        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702082207</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
      <pdfx:DocumentType>pcgBlank</pdfx:DocumentType>
      <pdfx:DOCID>ACTIVE 208618041v.1</pdfx:DOCID>
      <pdfx:_AdHocReviewCycleID>1755769514</pdfx:_AdHocReviewCycleID>
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      <pdfx:_EmailSubject> </pdfx:_EmailSubject>
      <pdfx:_AuthorEmail>emaassen@sidley.com</pdfx:_AuthorEmail>
      <pdfx:_AuthorEmailDisplayName>Maassen, Emily</pdfx:_AuthorEmailDisplayName>
      <pdfx:_PreviousAdHocReviewCycleID>-2059491239</pdfx:_PreviousAdHocReviewCycleID>
      <pdfx:_ReviewingToolsShownOnce/>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="r"?>

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<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmp:tk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-01T23:19:49-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-01T23:19:49-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-01T23:19:49-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:e4e3da75-16e6-4381-a9db-bd56fe3bf765</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:e74b2c09-b955-4dad-92e8-eb78ae3dc9af</xmpMM:InstanceID>
      <xmpMM:subject>
        <rdf:Seq>
          <rdf:li>6</rdf:li>
        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>jplatt01</rdf:li>
        </rdf:Seq>
      </dc:creator>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default"/>
        </rdf:Alt>
      </dc:title>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Adobe PDF Library 10.0</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702041929</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
      <pdfx:DocumentType>pcgBlank</pdfx:DocumentType>
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    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="ï"?">
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<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
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  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-02T03:31:33-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-02T03:31:05-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-02T03:31:33-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:89f19e92-ab86-4141-a9c5-3d1bc699f490</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:e4286b6a-5c68-4333-9fbc-e0ab44c3afbc</xmpMM:InstanceID>
      <xmpMM:subject>
        <rdf:Seq>
          <rdf:li>5</rdf:li>
        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default">
            </rdf:li>
          </rdf:Alt>
        </dc:title>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>D. Hoffman</rdf:li>
        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702082207</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
      <pdfx:DocumentType>pcgBlank</pdfx:DocumentType>
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      <pdfx:_EmailSubject> </pdfx:_EmailSubject>
      <pdfx:_AuthorEmail>emaassen@sidley.com</pdfx:_AuthorEmail>
      <pdfx:_AuthorEmailDisplayName>Maassen, Emily</pdfx:_AuthorEmailDisplayName>
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      <pdfx:_ReviewingToolsShownOnce/>
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  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="r"?>

```

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<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmp:tk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default"/>
        </rdf:Alt>
      </dc:title>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>jplatt01</rdf:li>
        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:CreateDate>2015-07-02T04:02:31-05:00</xmp:CreateDate>
      <xmp:CreatorTool>PScript5.dll Version 5.2.2</xmp:CreatorTool>
      <xmp:ModifyDate>2015-07-02T04:03:14-05:00</xmp:ModifyDate>
      <xmp:MetadataDate>2015-07-02T04:03:14-05:00</xmp:MetadataDate>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:3e38db9f-5bdb-4ddf-ade3-f16b267d8a05</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:0181a66f-c490-4318-8bd1-6068011c3987</xmpMM:InstanceID>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="ï"?">
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<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmpptk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-02T03:30:33-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-02T03:29:58-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-02T03:30:33-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:89f19e92-ab86-4141-a9c5-3d1bc699f490</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:7b1add1d-4bb5-4682-8578-8b47975bb453</xmpMM:InstanceID>
      <xmpMM:subject>
        <rdf:Seq>
          <rdf:li>5</rdf:li>
        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default">
            </rdf:li>
          </rdf:Alt>
        </dc:title>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>D. Hoffman</rdf:li>
        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702082207</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
      <pdfx:DocumentType>pcgBlank</pdfx:DocumentType>
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      <pdfx:_EmailSubject> </pdfx:_EmailSubject>
      <pdfx:_AuthorEmail>emaassen@sidley.com</pdfx:_AuthorEmail>
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      <pdfx:_ReviewingToolsShownOnce/>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="r"?>

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```
<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmp:tk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:CreatorTool>PScript5.dll Version 5.2.2</xmp:CreatorTool>
      <xmp:ModifyDate>2015-07-02T04:00:06-05:00</xmp:ModifyDate>
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    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default"/>
        </rdf:Alt>
      </dc:title>
      <dc:creator>
        <rdf:Seq>
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        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:47207f3a-4f8e-4cf8-9c69-6b982a21e8b0</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:fdb51624-7b9e-4470-80eb-18f7a3a09fe8</xmpMM:InstanceID>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="ï"?">
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```

<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmpptk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-02T03:29:34-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-02T03:29:16-05:00</xmp:CreateDate>
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      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:89f19e92-ab86-4141-a9c5-3d1bc699f490</xmpMM:DocumentID>
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      <xmpMM:subject>
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        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default">
            </rdf:li>
          </rdf:Alt>
        </dc:title>
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          <rdf:li>D. Hoffman</rdf:li>
        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
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    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702082207</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
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      <pdfx:_AdHocReviewCycleID>1755769514</pdfx:_AdHocReviewCycleID>
      <pdfx:_NewReviewCycle/>
      <pdfx:_EmailSubject> </pdfx:_EmailSubject>
      <pdfx:_AuthorEmail>emaassen@sidley.com</pdfx:_AuthorEmail>
      <pdfx:_AuthorEmailDisplayName>Maassen, Emily</pdfx:_AuthorEmailDisplayName>
      <pdfx:_PreviousAdHocReviewCycleID>-2059491239</pdfx:_PreviousAdHocReviewCycleID>
      <pdfx:_ReviewingToolsShownOnce/>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="r"?>

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<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d"?>
<x:xmpmeta xmlns:x="adobe:meta/" x:xmp:tk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" ">
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>jplatt01</rdf:li>
        </rdf:Seq>
      </dc:creator>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default"/>
        </rdf:Alt>
      </dc:title>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:CreateDate>2015-07-02T03:53:39-05:00</xmp:CreateDate>
      <xmp:CreatorTool>PScript5.dll Version 5.2.2</xmp:CreatorTool>
      <xmp:ModifyDate>2015-07-02T03:53:39-05:00</xmp:ModifyDate>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:9e60fba8-2704-4240-8f50-bda24357a0e0</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:4461ca63-b1c8-41bf-9e6b-a42b9dd509eb</xmpMM:InstanceID>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="r"?>

```

```

<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
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  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-02T03:28:51-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-02T03:28:34-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-02T03:28:51-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:89f19e92-ab86-4141-a9c5-3d1bc699f490</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:eab1003c-e533-43c1-9921-a9fea5adee16</xmpMM:InstanceID>
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      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
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        </rdf:Alt>
      </dc:title>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>D. Hoffman</rdf:li>
        </rdf:Seq>
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    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
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      <pdfx:SourceModified>D:20150702082207</pdfx:SourceModified>
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      <pdfx:DOCID>ACTIVE 208618041v.1</pdfx:DOCID>
      <pdfx:_AdHocReviewCycleID>1755769514</pdfx:_AdHocReviewCycleID>
      <pdfx:_NewReviewCycle/>
      <pdfx:_EmailSubject> </pdfx:_EmailSubject>
      <pdfx:_AuthorEmail>emaassen@sidley.com</pdfx:_AuthorEmail>
      <pdfx:_AuthorEmailDisplayName>Maassen, Emily</pdfx:_AuthorEmailDisplayName>
      <pdfx:_PreviousAdHocReviewCycleID>-2059491239</pdfx:_PreviousAdHocReviewCycleID>
      <pdfx:_ReviewingToolsShownOnce/>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="r"?>

```

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<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmp:tk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-01T23:15:41-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-01T23:15:41-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-01T23:15:41-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:1766c346-73a0-4518-a31a-5deee25a9dcc</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:bee9d2a6-30e6-44db-89fb-17cee4ac7799</xmpMM:InstanceID>
      <xmpMM:subject>
        <rdf:Seq>
          <rdf:li>2</rdf:li>
        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>jplatt01</rdf:li>
        </rdf:Seq>
      </dc:creator>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default"/>
        </rdf:Alt>
      </dc:title>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Adobe PDF Library 10.0</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702041507</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
      <pdfx:DocumentType>pcgBlank</pdfx:DocumentType>
      <pdfx:DOCID> </pdfx:DOCID>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="ï"?">
```

```

<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmp:tk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-02T03:28:14-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-02T03:28:01-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-02T03:28:14-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:89f19e92-ab86-4141-a9c5-3d1bc699f490</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:ccc26013-20e9-4110-838b-d7987e672e6e</xmpMM:InstanceID>
      <xmpMM:subject>
        <rdf:Seq>
          <rdf:li>5</rdf:li>
        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default"></rdf:li>
        </rdf:Alt>
      </dc:title>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>D. Hoffman</rdf:li>
        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702082207</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
      <pdfx:DocumentType>pcgBlank</pdfx:DocumentType>
      <pdfx:DOCID>ACTIVE 208618041v.1</pdfx:DOCID>
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      <pdfx:_NewReviewCycle/>
      <pdfx:_EmailSubject> </pdfx:_EmailSubject>
      <pdfx:_AuthorEmail>emaassen@sidley.com</pdfx:_AuthorEmail>
      <pdfx:_AuthorEmailDisplayName>Maassen, Emily</pdfx:_AuthorEmailDisplayName>
      <pdfx:_PreviousAdHocReviewCycleID>-2059491239</pdfx:_PreviousAdHocReviewCycleID>
      <pdfx:_ReviewingToolsShownOnce/>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="r"?>

```



```
<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmp:tk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-01T23:14:41-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-01T23:14:40-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-01T23:14:41-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:a57ddf19-ab8d-4b7e-8d55-cbe112697504</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:50a02f39-e382-4faf-9520-64a2ea509c14</xmpMM:InstanceID>
      <xmpMM:subject>
        <rdf:Seq>
          <rdf:li>1</rdf:li>
        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>jplatt01</rdf:li>
        </rdf:Seq>
      </dc:creator>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default"/>
        </rdf:Alt>
      </dc:title>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Adobe PDF Library 10.0</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702041435</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
      <pdfx:DocumentType>pcgBlank</pdfx:DocumentType>
      <pdfx:DOCID> </pdfx:DOCID>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="ï"?">
```

```

<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmp:tk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-02T03:27:39-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-02T03:27:20-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-02T03:27:39-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:89f19e92-ab86-4141-a9c5-3d1bc699f490</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:48276bac-1c4d-485f-b3ce-0da63c7e82d7</xmpMM:InstanceID>
      <xmpMM:subject>
        <rdf:Seq>
          <rdf:li>5</rdf:li>
        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default"></rdf:li>
        </rdf:Alt>
      </dc:title>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>D. Hoffman</rdf:li>
        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702082207</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
      <pdfx:DocumentType>pcgBlank</pdfx:DocumentType>
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      <pdfx:_EmailSubject> </pdfx:_EmailSubject>
      <pdfx:_AuthorEmail>emaassen@sidley.com</pdfx:_AuthorEmail>
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      <pdfx:_PreviousAdHocReviewCycleID>-2059491239</pdfx:_PreviousAdHocReviewCycleID>
      <pdfx:_ReviewingToolsShownOnce/>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="r"?>

```

```

<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmpbk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26">
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-02T03:27:07-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-02T03:26:56-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-02T03:27:07-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:89f19e92-ab86-4141-a9c5-3d1bc699f490</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:5d80e129-3c8a-4722-bcdf-db335e3a5d85</xmpMM:InstanceID>
      <xmpMM:subject>
        <rdf:Seq>
          <rdf:li>5</rdf:li>
        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default"></rdf:li>
        </rdf:Alt>
      </dc:title>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>D. Hoffman</rdf:li>
        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702082207</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
      <pdfx:DocumentType>pcgBlank</pdfx:DocumentType>
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      <pdfx:_NewReviewCycle/>
      <pdfx:_EmailSubject> </pdfx:_EmailSubject>
      <pdfx:_AuthorEmail>emaassen@sidley.com</pdfx:_AuthorEmail>
      <pdfx:_AuthorEmailDisplayName>Maassen, Emily</pdfx:_AuthorEmailDisplayName>
      <pdfx:_PreviousAdHocReviewCycleID>-2059491239</pdfx:_PreviousAdHocReviewCycleID>
      <pdfx:_ReviewingToolsShownOnce/>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="r"?>

```

```

<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmp:tk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:ModifyDate>2015-07-02T03:26:36-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-02T03:26:22-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-02T03:26:36-05:00</xmp:MetadataDate>
      <xmp:CreatorTool>Acrobat PDFMaker 10.1 for Word</xmp:CreatorTool>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:89f19e92-ab86-4141-a9c5-3d1bc699f490</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:a7f5d3ac-8dc2-4771-ae97-55b62547e5a1</xmpMM:InstanceID>
      <xmpMM:subject>
        <rdf:Seq>
          <rdf:li>5</rdf:li>
        </rdf:Seq>
      </xmpMM:subject>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default">
            </rdf:li>
          </rdf:Alt>
        </dc:title>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>D. Hoffman</rdf:li>
        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
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      <pdf:Producer>Acrobat Distiller 10.1.13 (Windows)</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdfx="http://ns.adobe.com/pdfx/1.3/">
      <pdfx:SourceModified>D:20150702082207</pdfx:SourceModified>
      <pdfx:Company>Sidley Austin LLP</pdfx:Company>
      <pdfx:DocumentType>pcgBlank</pdfx:DocumentType>
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      <pdfx:_NewReviewCycle/>
      <pdfx:_EmailSubject> </pdfx:_EmailSubject>
      <pdfx:_AuthorEmail>emaassen@sidley.com</pdfx:_AuthorEmail>
      <pdfx:_AuthorEmailDisplayName>Maassen, Emily</pdfx:_AuthorEmailDisplayName>
      <pdfx:_PreviousAdHocReviewCycleID>-2059491239</pdfx:_PreviousAdHocReviewCycleID>
      <pdfx:_ReviewingToolsShownOnce/>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
<?xpacket end="r"?>

```

```
<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmptk="Adobe XMP Core 5.4-c005 78.147326, 2012/08/23-13:03:03"
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#"
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/"
      xmlns:dc="http://purl.org/dc/elements/1.1/"
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/"
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/"
      <xmp:ModifyDate>2015-07-07T20:00:53-04:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-07-02T04:09:03-05:00</xmp:CreateDate>
      <xmp:MetadataDate>2015-07-07T20:00:53-04:00</xmp:MetadataDate>
      <xmp:CreatorTool>Adobe Acrobat Pro 10.1.13</xmp:CreatorTool>
      <dc:format>application/pdf</dc:format>
      <dc:creator>
        <rdf:Seq>
          <rdf:li>D. Hoffman</rdf:li>
        </rdf:Seq>
      </dc:creator>
      <xmpMM:DocumentID>uuid:b9789a60-0ccf-4c87-9083-1e1532818b1f</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:b24b66bf-4007-d14a-b90b-f66ec09ee66a</xmpMM:InstanceID>
      <pdf:Producer>Adobe Acrobat Pro 10.1.13</pdf:Producer>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
```

```
<?xpacket end="w"?>
```



```
<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmpk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:creator>
        <rdf:Seq>
          <rdf:li/>
        </rdf:Seq>
      </dc:creator>
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        </rdf:Alt>
      </dc:title>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:CreateDate>2015-07-03T08:10:38</xmp:CreateDate>
      <xmp:CreatorTool>Aspose Ltd.</xmp:CreatorTool>
      <xmp:ModifyDate>2015-07-03T10:36:15-04:00</xmp:ModifyDate>
      <xmp:MetadataDate>2015-07-03T10:36:15-04:00</xmp:MetadataDate>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Keywords/>
      <pdf:Producer>Aspose.Pdf for .NET 8.6.0</pdf:Producer>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:xmpMM="http://ns.adobe.com/xap/1.0/mm/">
      <xmpMM:DocumentID>uuid:5e820bca-1080-48ef-9387-8e6bcaca12d8</xmpMM:DocumentID>
      <xmpMM:InstanceID>uuid:7a208f7c-44cb-467c-ac52-f0250241f6c7</xmpMM:InstanceID>
    </rdf:Description>
  </rdf:RDF>
</x:xmpmeta>
```

```
<?xpacket end="w"?>
```

```
<?xpacket begin="ï»¿" id="W5M0MpCehiHzreSzNTczkc9d">
<x:xmpmeta xmlns:x="adobe:meta/" x:xmptk="Adobe XMP Core 5.2-c001 63.139439, 2010/09/27-13:37:26" >
  <rdf:RDF xmlns:rdf="http://www.w3.org/1999/02/22-rdf-syntax-ns#">
    <rdf:Description rdf:about=""
      xmlns:xmp="http://ns.adobe.com/xap/1.0/">
      <xmp:CreatorTool>PScript5.dll Version 5.2.2</xmp:CreatorTool>
      <xmp:ModifyDate>2015-09-04T14:10:26-05:00</xmp:ModifyDate>
      <xmp:CreateDate>2015-09-04T14:10:12-05:00</xmp:CreateDate>
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    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:dc="http://purl.org/dc/elements/1.1/">
      <dc:format>application/pdf</dc:format>
      <dc:title>
        <rdf:Alt>
          <rdf:li xml:lang="x-default"/>
        </rdf:Alt>
      </dc:title>
      <dc:creator>
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        </rdf:Seq>
      </dc:creator>
    </rdf:Description>
    <rdf:Description rdf:about=""
      xmlns:pdf="http://ns.adobe.com/pdf/1.3/">
      <pdf:Producer>Acrobat Distiller 10.1.14 (Windows)</pdf:Producer>
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Exhibit C

EXHIBIT C: E-MAILS THE REPORT CLAIMS WERE SECRET OR DELETED

Sender: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Sent: Wednesday, April 25, 2007 12:26:38 PM
Recipient: 'James, Larry C COL TAMC' <larry.james@us.army.mil>
Subject: RE: Eyes Only (UNCLASSIFIED)

Larry, thank you. I cannot overstate how helpful such a letter will be.

Please let me know if you'll be in DC before you're deployed.

Steve

-----Original Message-----

From: James, Larry C COL TAMC [<mailto:larry.james@us.army.mil>]
Sent: Wednesday, April 25, 2007 11:50 AM
To: Behnke, Stephen
Subject: RE: Eyes Only (UNCLASSIFIED)

Classification: UNCLASSIFIED

Caveats: NONE

Sure.

-----Original Message-----

From: Behnke, Stephen [<mailto:sbehnke@apa.org>]
Sent: Tuesday, April 24, 2007 7:09 PM
To: James, Larry C COL TAMC
Subject: Eyes Only

Larry, I'd like to ask something of you, that I know may be difficult or impossible. On the other hand, you have been known to accomplish the impossible...

As you know, there remains considerable passion at APA regarding the issue of interrogations. You've not mentioned where you'll be deployed. My question is this. By the time convention arrives, or shortly before, would it be possible for you to write an open letter to APA, without providing any classified information or even revealing where you are, that says you are now in a setting working with interrogators and are successfully representing the position advanced by APA: That ethical and effective interrogations are based on building relationships and preclude any type of abusive behavior. (Continuing) Based on your first-hand knowledge of detention facilities and of the processes that govern interrogations, the most ethical stance APA can take is to remain fully engaged in consulting to interrogations, and that you write to convey how successful APA has been in promoting the practice and theory of "ethical* interrogations.

I would, of course, be happy to work on language with you. Yours is a very well-respected voice in the association. Would this be possible for you to consider?

Thanks so much, Larry,

Steve

-----Original Message-----

From: James, Larry C COL TAMC [<mailto:larry.james@us.army.mil>]
Sent: Monday, April 23, 2007 1:35 PM

To: Behnke, Stephen; morgan sammons
Subject: RE: Convention 2007 (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Hi Steve,
I have recently learned that I will be deployed in June for a year, so I won't in the U.S. in August.

Larry

-----Original Message-----

From: Behnke, Stephen [<mailto:sbehnke@apa.org>]
Sent: Monday, April 16, 2007 7:04 PM
To: James, Larry C COL TAMC; morgan sammons
Subject: Convention 2007

Hi Larry and Morgan,

I am putting together the program on ethics and interrogations for Convention; could you please tell me how you would like to be listed? (that is, how you would like your name to appear and your institution affiliation)

Thanks so much,

Steve

Classification: UNCLASSIFIED
Caveats: NONE
Classification: UNCLASSIFIED
Caveats: NONE

Sender: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Sent: Sunday, July 30, 2006 12:39:50 PM
Recipient: Morgan Banks
Subject: Eyes Only

Any thoughts appreciated, Morgan.

-----Original Message-----

From: Behnke, Stephen
Sent: Sunday, July 30, 2006 12:21 PM
To: 'Levant, Ronald F'
Cc: 'Gerry Koocher'; Gilfoyle, Nathalie
Subject: RE: [APABODEMG] FW: [SPSMM] APA Stance on interrogations

Ron, I am copying Gerry and Nathalie on this, because I'm mentioning the law, and because this issue may well come up at Convention (e.g., at the town hall meeting), and I want to make sure we're all on the same page here.

I'll make the response as straightforward and succinct as I can:

There have been a number of strong objections to the adequacy of the legal protections and legal process afforded to detainees. Salim Ahmed Hamdan, who was Osama bin Laden's personal chauffeur and a detainee at Guantanamo, challenged the Bush Administration's process for trying detainees. Hamdan's case went through the federal court system to the United States Supreme Court, and on June 29, 2006, in *Hamdan v. Rumsfeld*, the United States Supreme Court agreed with Hamdan's arguments and held that the manner in which the Bush Administration had proceeded violated the US Constitution. The Court stated "...in undertaking to try Hamdan and subject him to criminal punishment, the Executive is bound to comply with the Rule of Law that prevails in this jurisdiction." The consequence of *Hamdan v. Rumsfeld* is that Congress must develop a process for trying detainees that is acceptable under the United States Constitution (i.e., "...the Rule of Law that prevails in this jurisdiction.")

Our system of law is set up in such a way that a Guantanamo detainee had the opportunity to take his objections to the United States Supreme Court. The Supreme Court agreed with the detainee, and as a consequence Congress must now review the complete legal process and protections afforded to detainees. The Administration can't "go it alone." Thus, all three branches of government--the Executive, the Legislative, and the Judicial--will be involved in determining what legal process and protections detainees are to receive.

On July 7, 2006, in response to the Supreme Court's *Hamdan v. Rumsfeld* decision, Gordon England, Deputy Defense Secretary, wrote in a memo to defense officials:

"The Supreme Court has determined that Common Article 3 to the Geneva Convention of 1949 applies as a matter of law to the conflict with Al Qaeda...I request that you promptly review all relevant directives, regulations, policies, practices, and procedures under your purview to ensure that they comply with the standards of Common Article 3."

To those who make the objections below, I would respond: "The United States Supreme Court agrees with you. That is why Congress is now reviewing the entire legal process for trying detainees; the resulting process must be the result of Congressional review and must be acceptable under the United States Constitution."

FOR FURTHER DOWN THE ROAD:

To those who continue to object, that the protections are inadequate following a full review by all three branches of government, I would give the following caution: Our government is based upon a system of checks and balances--a system that ensures, as is happening in this instance, that all three branches are involved in making our laws. If someone doesn't like the laws that result, and therefore argues that psychologists cannot ethically be involved, should we then: 1) prohibit psychologists from working in the criminal justice systems of states that allow the death penalty? (criticized in a recent UN document); 2) prohibit psychologists from working for protective services in states that place severe restrictions on the right of a minor to get an abortion? 3) prohibit psychologists from working for the Chicago police department and "supermax" prisons? (both criticized in a recent UN document.) When is it appropriate to use our ethics to vent our disagreements with the government? One could, after all, argue that it should be unethical for a psychologist to work in the Bush Administration in any capacity...

-----Original Message-----

From: Levant, Ronald F [REDACTED]
Sent: Sunday, July 30, 2006 8:15 AM
To: Behnke, Stephen
Subject: FW: [APABODEMG] FW: [SPSMM] APA Stance on interrogations

Steve: Do you have any thoughts as to how to approach this?
Ron

-----Original Message-----

Folks: Here is another theme that keeps coming up that we should develop a good answer for. I have abstracted it here, but you can read the two postings on this point below.

"...let us suppose that the same suspect was systematically denied the protections afforded by our legal system as these have been progressively elaborated by the courts--denied any access to counsel, any right to petition for habeas corpus, not told what the charges against him were, not allowed to see the evidence against him, and held in detention for an indefinite period. Should it be considered consistent with psychological ethics for a psychologist to provide assistance or consultation with respect to his interrogation? ...the psychologist would be lending assistance in a proceeding that was in violation of the subject's civil rights according to U.S. law and of his human rights as these have been defined by international conventions to which the U.S. government is a signatory. Collaboration by the psychologist in this latter instance would be in his own interest but it would be in violation of Principle B of the Ethics Code: (Fidelity and Responsibility, in which psychologists "are aware of their professional and scientific responsibilities to society.") As Ive observes: "...the people at GTMO are being held outside the borders of the United States specifically to deny them the right to appear in court, and other privileges of the constitution."

Your thoughts?
Ron

-----Original Message-----

From: Facilitate discussion of topics related to the psychology of men & masculinity. [<mailto:SPSMM@LISTS.APA.ORG>] On Behalf Of Ed Tejirian
Sent: Saturday, July 29, 2006 8:55 PM
To: SPSMM@LISTS.APA.ORG
Subject: Re: [SPSMM] APA Stance on interrogations

Ron, Mitch, Ive, and Neil and others,

I'm very glad that we're able to have this discussion on this list. It helps to clarify some of the issues crucial to the debate. I think Mitch and Neil are right to raise questions about the proposal for a blanket prohibition of any participation by psychologists in "interrogations."

Some would argue that any involvement by a psychologist in the questioning of someone suspected of a crime is wrong because such involvement is inherently adversarial and therefore not in the interest

of the person being questioned--and in fact, could do him harm, thus potentially contradicting Principle A of the Ethics Code. The argument against this position is set forth in the PENS report:

"Principle B of the Ethics Code, Fidelity and Responsibility, states that psychologists "are aware of their professional and scientific responsibilities to society." Psychologists have a valuable and ethical role to assist in protecting our nation, other nations, and innocent civilians from harm, which will at times entail gathering information that can be used in our nation's and other nations' defense. The Task Force believes that a central role for psychologists working in the area of national security-related investigations is to assist in ensuring that processes are safe, legal, and ethical for all participants."

Let us suppose that the FBI has arrested someone on suspicion of some crime and wanted the help of a psychological consultant about how to approach the process of questioning the suspect. If he was being held under the laws of the United States and if he was being treated in accordance with legal protections afforded criminal suspects by United States law it would be hard to disagree with Neil's assertion that the psychologist should be allowed to offer his services to the authorities.

NOW let us suppose that the same suspect was systematically denied the protections afforded by our legal system as these have been progressively elaborated by the courts--denied any access to counsel, any right to petition for habeas corpus, not told what the charges against him were, not allowed to see the evidence against him, and held in detention for an indefinite period. Should it be considered consistent with psychological ethics for a psychologist to provide assistance or consultation with respect to his interrogation?

In the first instance the psychologist is lending his services in a legal proceeding that--although it might not be aimed at helping the subject of the investigation--respects his civil rights according to U.S. law and is consistent with international standards of human rights.

In the second instance the psychologist would be lending assistance in a proceeding that was in violation of the subject's civil rights according to U.S. law and of his human rights as these have been defined by international conventions to which the U.S. government is a signatory.

Collaboration by the psychologist in this latter instance would be in his own interest but it would be in violation of Principle B of the Ethics Code:

(Fidelity and Responsibility, in which psychologists "are aware of their professional and scientific responsibilities to society.")

As Ive observes: "...the people at GTMO are being held outside the borders of the United States specifically to deny them the right to appear in court, and other privileges of the constitution."

And I think he is absolutely right when he says:

"I ... feel that we should make a statement that is clear and strong enough to provide psychologists with grounds to refuse duty where there are inadequate safeguards of the population they serve."

So far, the APA Board of Directors has declined to do this. Ron noted, after his visit to Guantanamo:

"The two psychologist-BSCT's that I talked to at GTMO said they advise on establishing rapport, frustration management, and observe from behind one way mirrors to watch for behavioral drift, etc."

What they were doing appears to be benign--but the situation in which they were providing their services was not--and this is not merely my own judgement--the recent ruling of the Supreme Court has agreed.

It's noteworthy that no recent visitors to Guantanamo have been permitted to speak with the detainees there--indeed the United Nations refused to send a delegation because even they would have been refused this opportunity. As I've observed, we don't really know what is going on there. However, in response to Mitch, I think it's fair to repeat that the International Committee of the Red Cross said that activities "tantamount to torture" were in fact occurring in 2003. Currently the situation appears to be better, but as recently as the early part of this year, detainees on a hunger strike were being restrained and forcibly tube fed. Finally, we know that there were a number of suicides recently.

Ed T.

--- "Iverson M. Eicken" **PRIVACY REDACTION** wrote:

- > I am proud of Ron and Neil for the thoughtful work they are doing to
- > try to balance the conflicting issues in the APA's stance about
- > interrogations.
- > Neil brings up some points that are very important.
- > I agree that we
- > shouldn't limit a psychologist's right to seek employment where he/she
- > wants to work. I have several friends who are military psychologists
- > and my son saw a military psychologist when he was a basic officer's
- > training camp. I can't tell you how grateful I was that someone was
- > there for him. I can think of no better function for a psychologist
- > than the one that Neil describes of teaching personnel how to conduct
- > effective, respectful, and humane interrogations. However, by not
- > making a stronger clear statement against abusive situations, or
- > against situations clearly set up to hide and cover up abuse if the
- > government chooses to engage in it, the APA does not give
- > psychologists the support they need to refuse to serve in positions
- > they are uncomfortable with. Perhaps the Resolution Against Torture
- > and Other Cruel, Inhuman, Or Degrading Treatment of Punishment that
- > Neil mentions will help.
- >
- > I think it's great that Ron visited GTMO. That work is incredibly
- > important. He is absolutely right in noting that we cannot treat
- > media reports as if they are complaints, and we have no business
- > investigating them. These thoughts sort of side step one important
- > issue; the people at GTMO are being held outside the borders of the

> United States specifically to deny them the right to appear in court,
> and other privileges of the constitution. They are being held there
> so that they cannot complain. This also has the effect of destroying
> another of the basic tenants of democracy; the public's right to know.

> The situation is set up so that what ever happens there can remain
> secret. I agree with Mitchell in that we can't take every word the
> media says as gospel. My personal belief, however, is that despite
> Ron's visit we don't really know what is going on over there, and
> worse the conditions are intentionally set up so that we can never
> find out.

> Even so, I'm not sure I would advocate for the APA to take on more
> investigative functions. I do feel that we should make a statement
> that is clear and strong enough to provide psychologists with grounds
> to refuse duty where there are inadequate safeguards of the population

> they serve.

> I also want to own my personal baggage. Even though I can cognitively

> understand that there are many issues to consider and that this is an
> incredibly complex issue, for me it is affectively very black and
> white. My head knows that it's not as simple as my heart feels it is.

> I will also own that it is hard to discuss this small grain of sand
> without also talking about the whole beach. Getting the APA to make a

> strong statement about "interrogation" also means that they/we/I will
> be making a very political comment on the behavior of the Bush
> administration.

> The flip side of that
> coin is that by playing the word game, and limiting our statements to
> very narrowly defined "torture" situations we allow big loop holes.
> The reason we have ethics discussions, rather than clearly defined
> rules is to keep us accountable for the loop holes as well as the
> concrete situations.

> Thanks for the productive conversation. It feels like both sides of
> the fence are listening. What a refreshing change from "conflict for
> its own sake" conversation.

> Peace, Blessing & Joy

> Iverson M. Eicken, Ph.D.

> Licensed Psychologist (PSY19750)

> **PRIVACY REDACTION**

>
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>
> <http://www.Dr-Eicken.com>
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Sender: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Sent: Friday, March 10, 2006 12:27:35 AM
Recipient: 'Banks, Louie M. COL' <louie.morgan.banks@us.army.mil>
Subject: RE: Eyes Only

Hey Morgan—will you be in tomorrow? I've been in the middle of preparing for an Ethics Committee meeting, but will be speaking with Sharon Brehm tomorrow afternoon, & want to touch base with you first.

Thanks Morgan,

Steve

From: Banks, Louie M. COL [mailto:louie.morgan.banks@us.army.mil]
Sent: Wednesday, March 08, 2006 5:41 AM
To: Behnke, Stephen
Subject: Re: Eyes Only

I am in town this week. I should be in my office most of the afternoon, and on the cell phone otherwise.

Morgan
COL L. Morgan Banks
Director Psychological Applications Directorate
US Army Special Operations Command
DSN 239-6833 COM (910) 432-6833
PRIVACY REDACTION

-----Original Message-----

From: Behnke, Stephen <sbehnke@apa.org>
To: Banks, Louie M. COL <louie.morgan.banks@us.army.mil>
Sent: Tue Mar 07 20:17:11 2006
Subject: Eyes Only

Morgan, would you be around tomorrow? Sharon Brehm is our president-elect; I'd like to touch base before I speak with her. Thanks, Steve

From: Behnke, Stephen PRIVACY REDACTION
Sent: Tuesday, March 07, 2006 8:13 PM
To: Behnke, Stephen
Subject: FW: PLease note references to psychologists

-----Original Message-----

From: SSB PRIVACY REDACTION
Sent: Tue 3/7/2006 5:41 PM
To: Behnke, Stephen ; sbehnke@apa.org
Cc:
Subject: FW: PLease note references to psychologists

Steve, I was just sent the article below. It's not a new article, but one published late in 05. It repeats some of what was in the 05 New Yorker article. I'd like to talk with you by phone about this. Are you available tomorrow or Friday? If not, how about next week? As always, it will be very helpful to me to have access to your knowledge and expertise. All best regards, Sharon

Interrogation: Doing Unto Others as They Did Unto Us

The New York Times, November 14, 2005

M. Gregg Bloche, Visiting Fellow, Economic Studies

Jonathon H. Marks, Bioethics Fellow, Georgetown University and Johns Hopkins University

M. Gregg Bloche

How did American interrogation tactics after 9/11 come to include abuse rising to the level of torture? Much has been said about the illegality of these tactics, but the strategic error that led to their adoption has been overlooked.

The Pentagon effectively signed off on a strategy that mimics Red Army methods. But those tactics were not only inhumane, they were ineffective. For Communist interrogators, truth was beside the point; their aim was to force compliance to the point of false confession.

Fearful of future terrorist attacks and frustrated by the slow progress of intelligence-gathering from prisoners at Guantánamo Bay, Pentagon officials turned to the closest thing on their organizational charts to a school for torture. That was a classified program at Fort Bragg, N.C., known as SERE, for Survival, Evasion, Resistance, Escape. Based on studies of North Korean and Vietnamese efforts to break American prisoners, SERE was intended to train American soldiers to resist the abuse they might face in enemy custody.

The Pentagon appears to have flipped SERE's teachings on their head, mining the program not for resistance techniques but for interrogation methods. At a June 2004 briefing, the chief of the United States Southern Command, Gen. James T. Hill, said a team from Guantánamo went "up to our SERE school and developed a list of techniques" for "high-profile, high-value" detainees. General Hill had sent this list - which included prolonged isolation and sleep deprivation, stress positions, physical assault and the exploitation of detainees' phobias - to Secretary of Defense Donald Rumsfeld, who approved most of the tactics in December 2002.

Some within the Pentagon warned that these tactics constituted torture, but a top adviser to Secretary Rumsfeld justified them by pointing to their use in SERE training, a senior Pentagon official told us last month.

When internal F.B.I. e-mail messages critical of these methods were made public earlier this year, references to SERE were redacted. But we've obtained a less-redacted version of an e-mail exchange among F.B.I. officials, who refer to the methods as "SERE techniques." We also learned from a Pentagon official that the SERE program's chief psychologist, Col. Morgan Banks, issued guidance in early 2003 for the "behavioral science consultants" who helped to devise Guantánamo's interrogation strategy (we've been unable to learn the content of that guidance).

SERE methods are classified, but the program's principles are known. It sought to recreate the brutal conditions American prisoners of war experienced in Korea and Vietnam, where Communist interrogators forced false confessions from some detainees, and broke the spirits of many more, through Pavlovian and other conditioning. Prolonged isolation, sleep deprivation, painful body positions and punitive control over life's most intimate functions produced overwhelming stress in these prisoners. Stress led in turn to despair, uncontrollable anxiety and a collapse of self-esteem. Sometimes hallucinations and delusions ensued. Prisoners who had been through this treatment became pliable and craved companionship, easing the way for captors to obtain the "confessions" they sought.

SERE, as originally envisioned, inoculates American soldiers against these techniques. Its psychologists create mock prison regimens to study the effects of various tactics and identify the coping styles most likely to withstand them. At Guantánamo, SERE-trained mental health professionals applied this knowledge to detainees, working with guards and medical personnel to uncover resistant prisoners' vulnerabilities. "We know if you've been despondent; we know if you've been homesick," General Hill said. "That is given to interrogators and that helps the interrogators" make their plans.

Within the SERE program, abuse is carefully controlled, with the goal of teaching trainees to cope. But under combat conditions, brutal tactics can't be dispassionately "dosed." Fear, fury and loyalty to fellow soldiers facing mortal danger make limits almost impossible to sustain.

By bringing SERE tactics and the Guantánamo model onto the battlefield, the Pentagon opened a Pandora's box of potential abuse. On Nov. 26, 2003, for example, an Iraqi major general, Abed Hamed Mowhoush, was forced into a sleeping bag, then asphyxiated by his American interrogators. We've obtained a memorandum from one of these interrogators - a former SERE trainer - who cites command authorization of "stress positions" as justification for using what he called "the sleeping bag technique."

"A cord," he explained, "was used to limit movement within the bag and help bring on claustrophobic conditions." In SERE, he said, this was called close confinement and could be "very effective." Those who squirmed or screamed in the sleeping bag, he said, were "allowed out as soon as they start to provide information."

Three soldiers have been ordered to stand trial on murder charges in General Mowhoush's death. Yet the Pentagon cannot point to any intelligence gains resulting from the techniques that have so tarnished America's image. That's because the techniques designed by communist interrogators were created to control a prisoner's will rather than to extract useful intelligence.

A full account of how our leaders reacted to terrorism by re-engineering Red Army methods must await an independent inquiry. But the SERE model's embrace by the Pentagon's civilian leaders is further evidence that abuse tantamount to torture was national policy, not merely the product of rogue freelancers. After the shock of 9/11 - when Americans desperately wanted mastery over a world that suddenly seemed terrifying - this policy had visceral appeal. But it's the task of command authority to connect means and ends rationally. The Bush administration has too frequently failed to do this. And so it is urgent that Congress step in to tie our detainee policy to our national interest.

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Note: The views expressed in this piece are those of the author and should not be attributed to the staff, officers or trustees of The Brookings Institution

Anthony J. Marsella, Ph.D., D.H.C.
Professor Emeritus
Department of Psychology
University of Hawaii
Honolulu, Hawaii 96822

"What kind of peace do I mean? What kind of peace do we seek? Not a Pax Americana enforced on the world by American weapons of war. . . . I am talking about genuine peace, the kind of peace that makes life on earth worth living, . . . not merely peace for Americans but peace for all men and women -- not merely peace in our time but peace for all time." President John F. Kennedy, American University, June 10, 1963.

Sender: Morgan Banks
Sent: Tuesday, March 20, 2007 7:34:34 AM
Recipient: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Subject: Eyes Only
Attachments: eyes-only.doc

Steve,

PRIVACY REDACTION

That is why I am sending this to you from my home account. I sent the document to my home account, and will destroy it once you tell me you have received it. This may be a case where the more this gentleman says, the better off we are. We certainly need to make sure that anyone seriously addressing this have at their disposal the new FM and the OTSG policy. If a service member violates the FM, they can be prosecuted under UCMJ. The policy document has less authority behind it, although it applies to Army Medical Personnel.

Morgan

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APA_0091067

UNREDACTED VERSION OF EMAIL AND ATTACHMENT

From: DocMB@aol.com
To: [Behnke, Stephen](#)
Subject: Eyes Only
Date: Tuesday, March 20, 2007 04:34
Attachments: [eyes-only.doc](#)

Steve,

I am at home right now, taking care of my wife who recently had surgery. That is why I am sending this to you from my home account. I sent the document to my home account, and will destroy it once you tell me you have received it. This may be a case where the more this gentleman says, the better off we are. We certainly need to make sure that anyone seriously addressing this have at their disposal the new FM and the OTSG policy. If a service member violates the FM, they can be prosecuted under UCMJ. The policy document has less authority behind it, although it applies to Army Medical Personnel.

Morgan

AOL now offers free email to everyone. Find out more about what's free from AOL at AOL.com.

Neil Altman, Ph.D.
127 W. 79th St. #3
New York, NY 10024
212-595-0821
neilaltman@hotmail.com

Dr. Michael Gelles
Dr. Olivia Moorehead-Slaughter

March 18, 2007

Dear Drs. Gelles and Moorehead-Slaughter,

I appreciate receiving your letter, Dr. Gelles, and I resonate with many of the points you make in it. I admire your courage in reporting your concerns about interrogations to senior leaders, and I agree with you that psychologists can potentially have a positive effect in training interrogators in safe and effective ways, based on the fostering of rapport, of questioning detainees. However, I would like to make some additional points, not addressed in your letter, that have convinced me that it is not appropriate for psychologists to be involved in interrogations at US detention centers holding “enemy combatants”.

1. Psychologists working in the detention centers could legally be ordered to train or otherwise to participate in interrogations that would be illegal under international law, but legal under current US law. As per the military commissions bill of 2006, only “grave breaches” of the Geneva Conventions, as defined by the President, qualify as war crimes under US law. Simple breaches of the Geneva Conventions are not illegal under current US law as long as they do not rise to the level of “grave breaches” in the view of the President. A psychologist who reported abuses to superiors, as you did, would have to make the case that what he or she observed was more than simply a breach of the Geneva Conventions.

2. The use of interrogation techniques that are damaging to the psychological state of detainees is not limited to those who are not properly trained. “Fear up” “Pride and ego down” and “futility” techniques of interrogation are acceptable in the military as long as they do not cross a line into torture, or cruel, inhuman, or inhuman treatment. This line, however, is poorly defined. When does “pride and ego down” become humiliation (banned under the Geneva Conventions), when does “fear up” become a threat (also

Commented [LMB1]: As could any agent of the US, State, or City government, if you want to be precise. We operate by US law, and these days it is fairly specific. See the FM, etc.

Commented [LMB2]: He is incorrect here. They may not be considered “War Crimes”, but they what he is talking about are certainly against the law, and military members are subject to UCMJ action should they abuse detainees. He confused illegal with War Crimes. To be explicit, all War Crimes are illegal, but not all illegal acts are War Crimes.

Commented [LMB3]: Again, factually incorrect, as any JAG could explain better than I. In fact, there are currently numerous reporting requirements, to include reporting requirements in the new OTSG policy document.

Commented [LMB4]: The only people who can conduct interrogations are those who meet specific criteria, and they must all be individually cleared to conduct them. They must be a graduate of an approved school, e.g., Ft. Huachuca.

banned), and so on. The answer has to be: no one can know for certain, because the standard set by the Geneva Conventions is not the same as the standard currently set by the US Government. Psychologists working in the detention centers could be ordered to train interrogators in techniques that create fear and damage the self esteem of detainees, and they would have no right to object unless the damage met the standard set by a “grave” breach of the Geneva Conventions. A psychologist could object that training interrogators in techniques that raise the fear and humiliation level of detainees runs counter to the ethical principles of psychologists that state that psychologists do no harm. Presumably the forthcoming case book could advise psychologists in techniques that are considered unethical from this point of view. Yet, if the techniques are legal under US law, the psychologists could be legally ordered to participate; if they decided to participate for fear of damage to their careers or fear of court martial, they would have an ethical loophole in the form of standards 1.02 and 1.03 that allow psychologists to follow orders even when they run counter to the ethical principles.

Commented [LMB5]: Read the FM. It actually does a pretty good job of explaining this line.

Commented [LMB6]: Finally, we agree. I am only amazed that Dr. Altman actually made this statement. Yes, I fully admit that I am very comfortable damaging the self-esteem of sociopaths who want to kill me. You bet.

Commented [LMB7]: I think he has again missed your point about the tension between do no harm and help society. Presumably he is strongly against court testimony that would put someone in jail for life, or worse yet, might get someone the death penalty.

Commented [LMB8]: He needs to read the manual.

3. Your reporting of abuses to your superiors was a courageous and noble act. It does not follow that such action should be expected from all military psychologists. Assessing the legal status of an interrogation technique and reporting abuses is not in the training and job description of a psychologist. To put psychologists in a position where they would have to do so is to take upon ourselves, as a profession, the burden of trying to prevent or undo the damage caused by inadequate legal protection. This burden properly belongs to politicians and government officials whose job it is to protect basic human rights.

Commented [LMB9]: Tell Mike he is my hero.....

Commented [LMB10]: Actually, such action is not only expected, it is required of all Officers.

Commented [LMB11]: It IS in the job description of a Military Officer.

Commented [LMB12]: What is the inadequate legal protection? There is enormous protection in this area, from whistle blower statutes to the Inspector General.

Commented [LMB13]: No, it is the responsibility of every officer and NCO.

4. I do not think it would be appropriate to call for a moratorium on the presence of psychologists in prisons because, despite the mistreatment of mentally ill prisoners, those prisoners do have legal rights and courts of law to which they can turn to challenge their detentions and the treatment they are receiving. This is not the case for “enemy combatants”.

Commented [LMB14]: If they have no legal rights, how come HAMDAN made it to the supremes?

5. In an ambiguous legal framework, psychologists and others who participate directly and indirectly in interrogations are in danger of damage to their careers if they refuse an order they find unethical or illegal, but in danger of future criminal prosecution if they carry out that order. Government officials are retroactively protected against war crimes prosecution under the 2006 Military Commissions bill, showing how seriously the threat of future criminal prosecution is being taken by those who have authorized interrogation techniques. APA, in my view, needs to take seriously the question of how to protect psychologists from such a no-win situation.

Commented [LMB15]: Can he give ONE example of this, or is this only his overactive imagination?

Commented [LMB16]: If we are in such need, how many psychologists who have actually conducted this work are asking for your help? None? Why is that? IT is nice that this gentleman wants to be big brother and help us, but we have not asked for his help.

I understand that the absence of psychologists in detention centers would do nothing directly or immediately to improve the situation there, and could even lead to short-term deterioration in conditions if advocates for safe and effective interrogations were removed. On the other hand, in my view the problem is systemic, a lack of legal protection of basic human rights, not a few people who are poorly trained and as a result get carried away. APA, all of us as a group, can make a better contribution to changing this situation by publicly recognizing it as untenable for psychologists and for all those

Commented [LMB17]: I think his definition of human rights includes self-esteem. If so, then he may be right. There is no legal protection from a lack of self-esteem.

who live and work in the detention centers. We do not want to create any impression, unjustified though it may be, that we approve of the legal framework around the detention centers by virtue of our functioning within that framework.

Once again, Dr. Gelles, I have the highest respect for you and for what you have done. I appreciate and respect your concern.

Best regards,

Neil Altman, Ph.D.

Sender: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Sent: Monday, March 19, 2007 5:28:42 PM
Recipient: Banks, Louie M. COL <louie.morgan.banks@us.army.mil>
Subject: Eyes only--please do not distribute
Attachments: gelles response.doc

Morgan,

This is in response to a letter from Mike Gelles, strongly supporting APA's position. If you could give me two or three examples of factual inaccuracies to include in a draft response, that would be great.

If you keep between us at the moment, that would be much appreciated,

Thanks, Steve

Sender: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Sent: Monday, March 19, 2007 2:51:23 PM
Recipient: Banks, Louie M. COL <louie.morgan.banks@us.army.mil>
Subject: Final check
Attachments: EC0307final.doc

Morgan, this is what the Committee approved—a couple of slight tweaks in the language (the Committee wanted to ensure that the statement would not cause a problem for SERE training).

Steve

The American Psychological Association has made no less than five statements regarding its absolute and unequivocal prohibition against torture. These include the *Against Torture: Joint Resolution of the American Psychiatric Association and American Psychological Association* (1985); *Resolution Against Torture* (1986); the *Report of the Task Force on Psychological Ethics and National Security* (2005), motions passed by the Council of Representatives in 2005, and the *2006 Resolution Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*. Based on these actions, the APA Ethics Committee further elaborates its position:

Psychologists must never participate in, condone, or in any manner facilitate torture or other cruel, inhuman, or degrading treatment. This unequivocal condemnation includes an absolute prohibition against the use of approaches and techniques to elicit information from incarcerated or detained individuals such as “water-boarding”; mock executions; sexual shaming and degradation; degradation based on culture, ethnicity or religion; sensory deprivation and overload; forced nudity; prolonged sleep deprivation and stress positions; extreme temperatures and induced hypothermia; exploitation of phobias; prolonged isolation; “hooding”; the use of dogs to threaten or intimidate, or threats to use any of the above. While neither this nor any list could be exhaustive, the underlying principle is that legitimate activities, such as eliciting information to prevent acts of violence, do not justify the use of psychology or psychological techniques to inflict abuse and harm upon individuals.

Psychologists must work in accordance with international human rights instruments relevant to their roles. In addition, psychologists must have and are mandated to follow a clear process for reporting when they become aware of acts of torture or cruel, inhuman, or degrading treatment, or when they have reasonable cause to suspect that abusive approaches or techniques such as those identified above are being used. Psychologists must never mix the roles of providing mental health care to an individual and consulting to an interrogation process.

Sender: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Sent: Thursday, March 15, 2007 9:56:38 PM
Recipient: 'Gelles, Michael (US - Washington D.C.)' **PRIVACY REDACTION**
Subject: RE:
Attachments: Gellesletter.doc

Mike, your letter lends itself to an excellent op-ed, or an article. Let's discuss at some point, and I'm sure Rhea will have some thoughts for us as well.

Steve

From: Gelles, Michael (US - Washington D.C.) **PRIVACY REDACTION**
Sent: Thursday, March 15, 2007 7:22 AM
To: Behnke, Stephen
Subject: Re:

Steve it is your guidance that potentiates anything that I do at this point. The letter was forward from the CS account. If you send a word document to this address I will continue to add to our thinking and use it as a talk or short article somewhere perpetuating the importance of the role of psychologists in the GWOT national security and public safety.

If you speak to Olivia and she wants to discuss the letter have her respond here.

Be around all week.

On separate note. I would go ahead and reach out to Mora. I am also going to reach out to Sen Levin's office

-----Original Message-----

From: Behnke, Stephen <sbehnke@apa.org>
To: Gelles, Michael (US - Washington D.C.)
Sent: Wed Mar 14 20:45:30 2007
Subject:

Mike, thanks. The materials are at your cs address. You are doing extremely important work, and the importance of your role extends well beyond APA. I trust you realize that.

Steve

This message (including any attachments) contains confidential information intended for a specific individual and purpose, and is protected by law. If you are not the intended recipient, you should delete this message.

Any disclosure, copying, or distribution of this message, or the taking of any action based on it, is strictly prohibited. [v.E.1]

Sender: Shumate, Scott (GOV) <Scott.Shumate@cifa.mil>
Sent: Wednesday, June 07, 2006 10:37:35 PM
Recipient: Robert Fein Behnke, Stephen
</O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Subject: Re: Eyes only

Steve as always robert is a master. I would recommend noting that national security psychology is a broad application of psychology that focuses on various issues that can facilitate protecting key material and knowledge that can potentiate a terrorist attack as well as be consultative in collecting vital intelligence as well as forensic information.

That national security psychology is actively applying sound and well tested social behavioral research to the growing profession of nsp.

The training and education of specialized skills is at the heart of nsp and that there is much to be learned as there is in other specialized disciplines of psychology. That our basic skills taught in all apa approved graduate programs imbue in its students

That our profession as psychologists is something that can assuage the concerns of all individuals concerned in human rights as well as securing our nation against those intentioned to harm our citizens

Apa position is one of promoting a responsible address against real threats and is aimed at promoting sound policy designed to prevent the conditions that foster the threat of terrorism. Like all policy there is an evolving nature that requires shaping

The shaping of policy requires careful constructive and proven solutions that psychology as a profession is focusing its accumen to benefit mankind

More can be flushed in conversation. Scott

Dr. R. Scott Shumate
Director Behavioral Sciences
DoD/Counterintelligence Field Activity
703-699-7792
scott.shumate@CIFA.MIL
scott.shumate@CIFA.SMIL.MIL

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

-----Original Message-----

From: Robert Fein
To: Behnke, Stephen <sbehnke@apa.org>; Shumate, Scott (GOV) <Scott.Shumate@cifa.mil>
Sent: Wed Jun 07 21:38:55 2006
Subject: Re: Eyes only

Steve, Scott,

Just got off the plane. Long weather delays tonight.

Several points perhaps worth considering (I apologize for the lack of syntactic [is that even a word?] grace):

The combination of increasingly available weapons that can injure many people (range of bombs, possible nucs, biological and chemical weapons), coupled with instantaneous worldwide communication (internet) and an ideology of islamic extremism may be unprecedented in terms of risks of major terrorist violence against countries like the US, Canada, Spain, England, etc. We are only beginning to understand these risks, and what they may mean for our children and grandchildren, especially when it comes to WMD.

As many have noted, it is important for our country and others to devote much thought and research to questions of how to prevent targeted terrorist violence. Some of this involves consideration of social policies, some of research into "causes" of

certain kinds of terrorism, some into research into pre-attack behaviors of persons planning to commit acts of mass destruction, some into the kinds of laws and policies (and for professionals, the ethics) that should guide prevention of targeted terrorism activities.

Some (few) psychologists, by virtue of training (as a psychologist) that focuses attention on behavior, coupled with specialized experiences and further training, may (just may) have insights, perspectives, understandings about behaviors, motives, attitudes, patterns and modes of communication that can help those authorized to protect our country (persons with national security responsibilities, such as intelligence, military, and law enforcement professionals).

Examples of psychologists who may have such experience and expertise might include those who have worked in forensic settings with persons who have committed acts of targeted violence, those who have worked with law enforcement professionals who have protective responsibilities, those who have worked with national security and intelligence organizations which have a mandate to prevent attacks on the U.S., those who have worked in the military in certain capacities.

No one reasonable (whom I know) claims that a psychologist, simply by virtue of having a degree, having completing generic clinical training, being licensed, or practicing psychology, has such special expertise or experience.

Public policy, including the policies and practices of organizations whose members may have expertise in assessing and managing behaviors of concern (like the APA's), should encourage (and certainly not bar) the use of such expertise in consulting to and otherwise assisting national security protectors in their lawful prevention-of-violence activities.

In some (usually rare) situations, such specialized "behavioral", "psychological" expertise may be of use in consulting with persons authorized to interact with persons being held who are seen to have information critical to national security to help convince such persons to provide it so that targeted terrorist attacks may be prevented. (Some of these interactions have been labelled "interrogations.")

I hope that these too crude paragraphs are a start. I will be at my desk tomorrow for much of the day (and certainly from 11 am on): **PRIVACY REDACTION**

Robert

Robert Fein

----- Original message -----

From: "Behnke, Stephen" <sbehnke@apa.org>

> Can you help us formulate a substantive response? We'll need to be able
> to post something in fairly rapid order. Thanks so much.

>

>

>

> Steve

>

>

>

>

>

> From: Council of Representatives [<mailto:COR@LISTS.APA.ORG>] On Behalf Of

> Dr. Trish Crawford

> Sent: Wednesday, June 07, 2006 6:45 PM

> To: COR@LISTS.APA.ORG

> Subject: Re: [COR] Response to New York Times Article

>

>

>

> I'm not sure quite how to say and ask what I would like to say and ask,

> without putting myself in the middle of some controversy but I guess

> that's the risk and responsibility of being a Council delegate (and I

> apologize in advance if I have overlooked some previous information that

> may have clarified these issues).

>
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>
> Do other Council members think it is really important to spell out, very
> concretely, just how:
>
>
>
> "Psychologists have skills that can help prevent future acts of terror."
>
>
>
> Speaking from the perspective of a fairly generically trained clinical
> psychologist, (NYU) I would say the majority of psychologists with
> backgrounds similar to mine, will want to know, just exactly what
> skills psychologists have "that can help prevent future acts of terror".
> How are these skills being used at places like Guantanamo?
>
>
>
> I thought the consensus was that places like Guantanamo, in and of
> themselves, constitute "inhuman, or degrading" treatment and if
> psychologists are working there, that amounts to "countenancing" it. Or
> is there more controversy on that than I am not aware of?
>
>
>
> I do have to say that I am at home today, sick with a bad virus and
> fever, so maybe the obvious escapes me.
>
> However, if as a psychologist I feel a need for more specific
> information and am somewhat mystified, I can only imagine what the lay
> public must think, especially when the American Psychiatric Assn.
> appears to have drawn such a strong line. Are we, as an Assn, in a
> conflict of interest around this issue because of
> financial/professional/political concerns and therefore it makes it
> difficult for us to see the issue clearly? Are there pressures we have
> that the American Psychiatric Assn. does not have? Can we be objective
> about this?
>
>
>
> (At the last Council meetings, a few of us were asking Nathalie Gilfoye
> about conflict of interest issues related to representing our
> "constituency" versus the overall best interests of APA...and it was
> clear we are responsible to APA first, and I believe that is the source
> of my concerns).
>
>
>
> I am quite sure if I posted the Times letter and response to our listserv
> (about 600 psychologists) they would all come back with questions
> similar to mine. So, before I do, I would like to hear the perspective
> on this from other Council members.
>
>
>
>
> Thank you.
>
>
>

> Trish Crawford, Ph.D.

>

> BCPA delegate to COR

>

> ----- Original Message -----

>

> From: O'Brien, Maureen <<mailto:mobrien@APA.ORG>>

>

> To: COR@LISTS.APA.ORG

>

> Sent: Wednesday, June 07, 2006 1:04 PM

>

> Subject: [COR] Response to New York Times Article

>

>

>

> The following letter to the editor has been submitted to the New

> York Times in response to this morning's article.

>

>

> http://www.nytimes.com/2006/06/07/washington/07detain.html?_r=1&oref=slo

> gin

> <http://www.nytimes.com/2006/06/07/washington/07detain.html?_r=1&oref=slo

> ogin>

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> We will also use it to respond to any member inquiries about the

> Times story. Feel free to post to division lists as you see fit.

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> Rhea Farberman

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> To the Editor:

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> Regarding interrogations, (Military Alters the Makeup of

> Interrogations Advisors, June 7) the position of the American

> Psychological Association is clear: Psychologists may never engage in,

> facilitate, or countenance torture or other cruel, inhuman, or degrading

> treatment. Such acts violate the most fundamental maxim of our ethics,

> Do No Harm, and our association will not hesitate to sanction any member

> who violates this ethical rule. At the same time, as experts in human

> behavior, psychologists have skills that can help prevent future acts of

> terror. Preventing harm to others is likewise an ethical mandate for

> our profession.

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> Gerald P. Koocher, PhD, President

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> American Psychological Association

Sender: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Sent: Sunday, July 30, 2006 10:18:48 PM
Recipient: Morgan Banks
Subject: RE: Eyes only thoughts

Morgan, that's very helpful, thanks. You write: "I believe that they have access to those at GTMO, but I cannot speak definitively, or for the US government, on that question. This might be a question that APA's Congressional liaison could ask, and then APA would have a solid answer."

Do you know whom we would approach? I'd very much like to get an answer this week, if we can.

Thanks, Morgan,

Steve

From: Morgan Banks
Sent: Sunday, July 30, 2006 9:45 PM
To: Behnke, Stephen
Subject: Re: Eyes only thoughts

Steve,

I can give you what I believe to be the case, but I would need to check it with the JAGs, for accuracy - much of this gets pretty complicated pretty fast, but here goes:

Certainly POWs can be kept until the end of hostilities. My understanding is that Civilian Internees who are believed to have committed war crimes may also be held until the end of hostilities, or until they are tried and sentenced. My read is that detainees fall into this latter category. They are certainly not POWs. (Openly carry arms, distinctive insignia, etc.)

The question as to the regularly constituted court is what is currently being discussed in the Senate. It looks like they will start with the UCMJ, and then make modifications from that base. For example, I expect they will keep classified information from the detainee. My read of the Senate testimony following Hamdan was that the administration wanted something different, but much of the Senate was moving toward starting with the UCMJ. Bottom line is that this will be a political decision made by Congress. It would be hard to argue that the UCMJ was NOT a regularly constituted court...etc.

The ICRC has access to detainees. I am not qualified to speak on whether or not they have access to every detainee in US custody. They certainly have access to all I am aware of. I believe that they have access to those at GTMO, but I cannot speak definitively, or for the US government, on that question. This might be a question that APA's Congressional liaison could ask, and then APA would have a solid answer.

In fact, you should be able to get a strong statement concerning the role of the ICRC. I don't have the GPW in front of me, and can't remember the term of art used, but the GPW refers to an organization like the ICRC that will monitor the treatment of POWs, and I believe that US policy is to have the ICRC fulfill that role.

Morgan

In a message dated 7/30/2006 5:43:50 P.M. Eastern Daylight Time, sbehnke@apa.org writes:

Morgan, thanks, as always, for your extremely thoughtful message.

Under Geneva, POWs can be kept until the end of hostilities, can't they?

My understanding is that the language in Common Article 3—"...a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples"—can be read

pretty broadly. It would seem prudent to afford such a guarantee—don't you think the UCMJ, even with some tweaking, would meet that standard?

It's my understanding (I got together with Jennifer Bryson a few weeks ago here in DC), that the International Red Cross has a fixed facility in Guantanamo Bay and access to all the detainees who are being interrogated. Is that public information? Is there a policy? I would VERY MUCH like to have Olivia include these facts in her remarks before Council, if correct.

Steve

From: Morgan Banks
Sent: Sunday, July 30, 2006 3:15 PM
To: Behnke, Stephen
Subject: Eyes only thoughts

Steve,

There are a lot of things being discussed, and I decided to keep a running track of some of my thoughts, as they occur.

First, I am heartened by the level of the discussion. Most of the comments are thoughtful, and although I may disagree with some of them, there is room for discussion, and possible compromise.

The difficulty surrounding how to interrogate and prosecute the detainees we have captured should be apparent to everyone. Inherent in the email is some confusion over their status. The GPW was designed specifically to outline the treatment of only three categories of people:

1. POW. I am aware of no serious discussion about whether or not GTMO detainees are POWs. The requirements for this status are very clear, and no one at GTMO comes close to meeting the requirements. There has been some legal discussion as to the process necessary to determine their status, however. In other words, the adequacy of how we determine their POW or non-POW status is currently under debate. (BTW, we did hold POWs for while in Iraq. Consistent with the GPW, they have all been released.)

2. Retained person. I have seen no serious legal discussion on this area. We recognize no retained persons at this point in time. (Chaplains, medical personnel.)

3. Civilian Internees. All of the persons held by the US at this point in time are considered CIs, (given that the question of if we have adequately determined their status is still in up in the air - it is highly unlikely that anyone in our current custody will be considered a POW.)

If a CI is believed to have committed a war crime, then a legal proceeding must be used to determine guilt and sentence. Otherwise, the CIs must be released, (along with any POWs) at the end of hostilities. (It should be noted that contrary to one of the email comments, the Court did not have any problem with holding detainees indefinitely at GTMO, until the end of hostilities. Nor did HAMDAN speak to the issue of the manner in which the US Army conducts interrogations, other than to make explicit that Common Article 3 applies. It is my contention that this will have no effect on DOD interrogations, since they were already operating within those guidelines.) Back to the question. The issue is then how to we try detainees we believe have committed war crimes. (Terrorism = War Crime, by the way.) The Court basically stated that Congress needs to be involved in making sure that these judicial proceedings are "regularly constituted." Sounds good to me.

Now, I have not mentioned the legal protections afforded US citizens when charged with a criminal act. My understanding is that there is nothing in the Court's decision that implies that the detainees have these rights. In fact, my understanding is that they have stated that the GPW is the controlling document. This is one of the major political issues: Do we treat terrorists (who commit War Crimes) as criminals or was combatants that commit war crimes? The Bush administration has been on the side of treating them a combatants who are believed to have committed war crimes. Earlier administrations treated terrorists as simple criminals, subject to US law. (Noriega, as one example.)

Finally, my opinion is that the PENS report is pretty strong. It is clear in its prohibition of abusive behavior. Even though I believe that, I have no objection to making additional statements, assuming they are consistent with the PENS report. I have read the new interrogation FM (that is still trying to final approval). 90% of APA's members will be very comfortable with the document. It discusses treatment in great detail, and in a manner that is very consistent with most American's standards of behavior. The US Army has more protections for free speech than any army in history. Command Channels, IGs, CID, finally, call your congressman. I can remember when I was a young Company Commander, telling my boss, the Battalion Commander, that I would not do what he asked (give out publicly the names of soldiers visiting sick call), because it was unethical. He backed down. As a final note, it is clear to me one of the major negative effects of eliminating the draft is that most people really do not know how their Army works. We have a soldier here at Bragg who made charges against his superiors concerning the treatment of detainees. In spite of the fact that three investigations were conducted, and the abuse was unsubstantiated, this officer then went to the press. Although he has lost some friends, I can personally attest that he is being treated very appropriately (maybe even too carefully). I talk a lot about the various methods for making abuse complaints, but even if someone was not satisfied with them, all you have to do is call your congressman.

Hope your weekend is going well.

Morgan

Sender: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Sent: Monday, June 18, 2007 12:01:15 PM
Recipient: 'Banks, Louie M. COL' <louie.morgan.banks@us.army.mil>
Subject: Confidential: Please read and delete
Attachments: replyletter.doc

Morgan, does this letter look okay to you?

June 18, 2007

Dr. Sharon Brehm
President
American Psychological Association

Dear Dr. Brehm,

I am writing to you in response to an open letter sent to you, as APA President. I have been a member of APA for nearly 20 years and I count many of my APA colleagues as dear friends. The authors of this letter—who do not know me, my values or my work—have seen fit to besmirch my reputation by associating me with the perpetration of torture.

Let me provide just a few facts for the authors' information. I have never been through "SERE" training. I do not teach "SERE" techniques. I do not use nor have I ever used "SERE" techniques in any aspect of my work related to interrogations. Dr. Morgan Banks has emphasized repeatedly that using a "SERE" approach in an interrogation would be *counterproductive* to obtaining useful information. I strongly suspect that using a "SERE" approach to an interrogation would yield data that would be worthless for both investigative and adjudicatory purposes.

I will be as clear as I possibly can: I strongly object to, have never used, and will never use torture, cruel, or abusive treatment or punishment of any kind, for any reason, in any setting. They are antithetical to who I am as a person and as an officer in the United States military. Had any of the individuals who signed the open letter saw fit to ask me, I would have provided this information to them directly. Apparently none believed it worthwhile to give me that opportunity before using my name in a letter that they then distributed widely, including to the media.

Throughout my career, in all my work, I have done my best to adhere to the highest standards of ethical conduct. For me, that has meant treating every individual whom I have encountered—from generals in the United States Army, to custodians at military bases around the globe, to detainees in United States custody—with dignity and with respect. Never has anyone in my chain of command ordered me to do anything inconsistent with this code of behavior.

Having custody and control over an individual is an awesome responsibility. When I was sent to Abu Ghraib, following the well-publicized abuses, I relied upon psychology and well-known psychologists to help me fulfill my mission—to develop training and implement systems designed to *prevent* further acts of abuse. The support of these colleagues, whose research and materials I took with me to Iraq, was invaluable—not only in terms of their expertise, but also because of the values that imbue their approach to psychology. I will be forever grateful to them for being with me in spirit on that difficult mission.

I will likewise be grateful to other colleagues, such as Dr. Mike Gelles, who took concrete action that has been made public, to *stop* detainee abuses. It is my understanding that a United States Senate committee will hold hearings on the issue of interrogation practices. I welcome this news.

Please let me be clear: Letters such as the one sent to you do harm. APA's continuing work has given psychologists an invaluable resource to fight against ill-informed and misguided promoters of harsh and abusive interrogation techniques. *We are making excellent progress in that fight.*

Letters that name and that associate individuals with torture through innuendo have no place in an informed and responsible discussion. They are deeply painful. They are also extremely discouraging to psychologists in the military seeking to do the right thing, many of whom are early in their careers and often in dangerous settings far from family and from loved ones.

In a few days I will be deployed and so will largely be out of contact with APA for the next year. I am proud to be a member of the American Psychological Association, proud for what APA has stood for in these troubling times, and deeply grateful to the Association for supporting me and my colleagues in our quest to ensure that all in our custody are treated with human decency and respect.

Respectfully Yours,

Sender: Banks, Louie M. COL <louie.morgan.banks@us.army.mil>
Sent: Monday, July 02, 2007 9:55:06 AM
Recipient: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Subject: Please review, then destroy
Attachments: Letter to Dr Brehm.doc

Steve,

Thanks in advance. You have my permission to state that I was interviewed (for 3h 20m) by the professional staff of the SASC, for what that's worth.

Here is my first draft of a letter to Dr. Brehm. Please be brutal - this is damn important to me. It has not yet been approved for release, so please destroy it after giving me feedback. As always, your help is really appreciated.

Morgan

<<Letter to Dr Brehm.doc>>

COL L. Morgan Banks
Director, Psychological Applications
US Army Special Operations Command
DSN 239-6833 COM (910) 432-6833

PRIVACY REDACTION

banks1@usasoc.socom.smil.mil/louie.morgan.banks@us.army.mil

DRAFT

Dr. Sharon Brehm
President
American Psychological Association

Dear Dr. Brehm,

I am writing this letter as a formal response to the numerous allegations contained in a recent open letter to you, as APA president. The inaccuracy of this "open letter" is rather astounding to me, and prompted me to write this letter.

I have been a licensed psychologist for over 20 years, all of that serving in the United States Army. In the last several years, as the country has struggled with how to handle detainees captured in Afghanistan and Iraq, there have been numerous disturbing reports on the treatment of these detainees. Some of these reports have implied that I either participated or supported the abusive treatment of these detainees. Partly because of the nature of my work, but mostly because I knew that the reports were totally inaccurate, I have ignored these reports. Unfortunately for me, I have been forced to recognize the adage, "a lie undisputed becomes the truth." Hence the reason for this letter.

Since 1985, I have focused much of my work on the training of soldiers on how to resist the torture and abuse that is likely should they be held by our enemies. My studies began looking at our experiences in the Vietnam War, but gradually expanded to include the experiences of captives in all US conflicts (both US personnel and our POWs), and those of many other nations. Some of my earliest reading in this area was that from Amnesty International on the treatment of captives world wide. This gave me, very early in my career, a very strong belief that the torture or abuse of people in captivity is morally wrong, and something that no nation, and certainly not the United States, must ever tolerate. Everyone who works with me knows my feelings on this issue. This is the major reason I choose to ignore the initial press reports on this topic, since they were so obviously fallacious.

The United States Military has utilized psychologists to support the safe and legal interrogation of detainees for many years. I have seen the positive effects of this role. Psychologists bring a depth of knowledge of how social influences can shape behavior that is unique. Not only does a properly trained psychologist understand the powerful dynamic of the power differential between a guard and a detainee, and the huge danger that this poses, but he or she also has training in how to assist in designing processes that will decrease the likelihood of abuse. I expect there is little dispute on the unique perspective and knowledge we have in this area. This is a major function of every psychologist within in DOD who supports interrogation.

In addition to this safety role, however, I will not back away from the positive role that a psychologist can also play in helping interrogators perform their legal duties. Partly due to television bombardment in our culture, many people believe that successful interrogation must be conducted in a manner that is abusive. Nothing could be further from the truth. In my experience, treating detainees professionally, with dignity and respect, is usually the most powerful method to gather useful, accurate information. This

opinion, however, is not particularly relevant, given that we already have very strict guidelines within DOD on the conduct of interrogations. These guidelines, if followed, preclude abusive interrogations. As a serving officer, I am required to uphold these guidelines. If I see something that is not lawful and I do not report it, then I am equally culpable. In thirty-three years of total military service, I have never been ordered, told, or otherwise pressured to abuse anyone, certainly not any detainee. There have in fact been occasions where I took positive actions that prevented abuse.

The real area of honest controversy, again in my opinion, concerns the ethical dilemmas that can occur when a psychologist is placed in the role of supporting interrogations. On this I hope all can agree: If a psychologist is going to perform this role, then specialized training is required. I recognized this training deficit in 2002, and began to develop a training model, and then a course, that would properly prepare DOD psychologists to perform this mission. At no time have I, or anyone working for me, ever supported using any "technique" that would be abusive. Through the very hard work of a number of dedicated psychologists and others, this training has now become a formal Army training course. A major focus of this course concerns the ethical standards that must be adhered to while performing this mission, and the potential ethical pitfalls of which one must be aware. As you are aware, we have received superb support from the APA on the development and execution of this course. Everything we teach, and have taught, is consistent with the APA ethical guidelines, and most certainly with US law and the international instruments to which the US is a signatory.

Again through the hard work of a number of dedicated psychologists, the outline of this training, and the strong ethical and procedural standards contained in it, were released to the public last year in the Army Medical Command's Policy Memorandum. I welcome, and strongly encourage, informed debate about the standards contained in this document. A debate on how to help sustain the safe, legal, ethical, and effective interrogation of detainees within US control is essential for the profession and for our country. But this debate must be informed by facts and a thoughtful analysis. The psychologists with whom I work care very strongly about maintaining the integrity of their profession, and more importantly, the reputation of our country. They have worked hard to both prevent abuse, and to assist in gathering useful, accurate intelligence from our enemies. They will get no positive public recognition for their work, but I have seen what they do and am incredibly proud of them and what they have accomplished.

Sender: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Sent: Sunday, June 17, 2007 5:48:47 PM
Recipient: Morgan Banks
Subject: RE: Your eyes only

Double deleted

From: Morgan Banks
Sent: Sunday, June 17, 2007 5:48 PM
To: Behnke, Stephen
Subject: Your eyes only

Steve, (Please delete this after reading it. It is for your eyes only.)

I still owe you an answer on that. I completely forgot to ask. My expectation is that it will be OK, but I want to make absolutely sure. There is some REAL politics going on here. I mean REALLY naked politics. There are a couple things I want to run past my lawyer first, based on some of the things they said. I am 95% sure I will give you a bunch that you can say, but not until late tomorrow.

Overall, though, I believe that I was able to give an accurate picture of my behavior, and I think they actually already were predisposed to believe me. They are doing a lot of homework, although some of it is open to interpretation. I did not pick up ANY real issue about the use of psychologists per se; in fact, I was able to articulate how the value of a psychologist in a training environment directly corresponded to that of an operational role. My strong sense (after 3 hours and 20 minutes) was that they fully understood that, and saw the value in it. I gave them a copy of the PENS report, although I expect they were already fully aware of it. They did not question me at all on it, other than a final ethical question that I answered by referring to the report.

Let's talk during the week.

PLEASE DELETE this email after you have read it. Thanks.

Morgan

In a message dated 6/17/2007 3:19:56 P.M. Eastern Daylight Time, sbehnke@apa.org writes:

Thanks, Morgan—

I look forward to hearing about the interview. Is it okay to mention that you have spoken with staff from the Senate Armed Services Committee? That would be helpful to us.

Steve

From: Morgan Banks
Sent: Sunday, June 17, 2007 2:44 PM
To: Behnke, Stephen
Subject: Fwd: Fw: Please read this version instead

Steve,

See my comments. No issues with your comment reference mind altering substances. I had a successful interview, (I think....)
Talk to you later in the week.

Morgan

See what's free at AOL.com.

See what's free at AOL.com.

Sender: Banks, Louie M. COL <louie.morgan.banks@us.army.mil>
Sent: Thursday, March 16, 2006 11:55:26 AM
Recipient: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Subject: RE: Eyes Only

Steve,

This should be considered my personal, but not necessarily private, communication to you. In other words, this is not COL Banks, this is Dr. Banks speaking his own opinion, and I am not representing anyone other than myself.

I strongly condemn any attempt to "reverse engineer" SERE training in order to use this training to conduct interrogations. This training is conducted in order to increase the resilience and hardiness of soldiers, and is based on a stress inoculation model that is designed to increase resistance to exploitation by our enemies. The idea that using techniques developed for this training would simply reduce the resistance of detainees is simply based on ignorance of the psychological components of interrogation. My personal opinion is that using such techniques would likely increase the resistance of anyone undergoing such techniques. In addition, uniformed personnel are legally prohibited, and psychologists are legally and ethically prohibited, from taking any action that is contrary to the law of war, and the APA ethical guidelines. The truth is that psychologists who are involved in supporting legal interrogation activities reduce the likelihood of abuse. Their involvement is critical to help the commanders insure that interrogations are safe, legal, ethical, and effective.

Morgan

COL L. Morgan Banks

Director, Psychological Applications Directorate

US Army Special Operations Command

DSN 239-6833 COM (910) 432-6833

PRIVACY REDACTION

banks1@usasoc.socom.smil.mil/louie.morgan.banks@us.army.mil

From: Behnke, Stephen [mailto:sbehnke@apa.org]
Sent: Wednesday, March 15, 2006 8:10 PM
To: Banks, Louie M. COL
Subject: RE: Eyes Only

Excellent—thanks, Morgan

From: Banks, Louie M. COL [mailto:louie.morgan.banks@us.army.mil]
Sent: Wednesday, March 15, 2006 8:10 PM
To: Behnke, Stephen
Subject: Re: Eyes Only

Thanks Steve. Yes, in fact, I will give you a much stronger statement tomorrow.

COL L. Morgan Banks

Director Psychological Applications Directorate

US Army Special Operations Command

DSN 239-6833 COM (910) 432-6833

PRIVACY REDACTION

APA_0082721

EXHIBIT C-16

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF SALLY HARVEY IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Texas)
) ss:
County of Comal)

1. I, Sally Harvey, having been first duly cautioned and sworn, state the following based upon personal knowledge.
2. From January to December 2017, I was President of the Society of Military Psychology, Division 19 of the American Psychological Association (hereinafter "APA") in which the military plaintiffs in this litigation are members. As President-elect, I chaired the Division 19 Presidential Task Force charged with the careful examination of the Report of the Independent Review to APA (hereinafter "Report") and, in that role, provided a detailed response to the APA in November 2015. A true and correct copy of the Division 19 task force response can be found published by the APA online at https://www.militarypsych.org/uploads/8/5/4/5/85456500/tf19_response_to_the_hoffman_report_div19_excom_approved.pdf
3. Our response found, among other things, no evidence that Division 19 or any Division 19 member supported torture or engaged in unethical behaviors with respect to interrogation support. It found that many of those interviewed by Mr. Hoffman and Sidley felt their witness statements were mischaracterized and that Mr. Hoffman and Sidley had evidence in their possession that contradicted and negated their conclusions but failed to include that evidence in the Report.

4. Our response also found that the Report's conclusions were based upon: an inaccurate understanding of Department of Defense (hereinafter "DoD") interrogation policies in place when the APA Psychological Ethics in National Security (hereinafter "PENS") Task Force met in June 2005; an inadequate understanding of how military interrogations are conducted; a misconception of military culture; and a deep bias against military psychology and military psychologists.

5. In addition to submitting the response to the APA, the then-President of Division 19, Dr. Tom Williams, requested a response from the APA to a number of questions raised by the Division's task force report. To date, despite multiple requests, Division 19 has yet to receive a response from the APA.

6. Consistent with the Report's inadequate understanding of military culture and how it operates, either generally or specifically with regard to interrogation support and detainee operations, the Independent Review's conclusion that Colonels Banks, Dunivin or James speak for or make policy on behalf of the DoD is inaccurate. (See p.25, Division 19 *Response to the Independent Review* cited above.) Any characterization of these individuals as "DoD officials" is a mischaracterization. As mid-level DoD personnel, colonels and lieutenant colonels have no authority to formulate policy for the military or the DoD, they do not have decision-making authority related to policy setting, and they do not govern with respect to setting DoD policies which are set at various levels in the military. They do not speak to the media or the general public on behalf of the military or the DoD, and to the extent that they publically refer to existing policy, do so only as a conduit for stating what is the policy. They do have resident expertise, are expected to execute and follow through with policy directives issued by their commanding officers, at times make recommendations for policy, but never set policy. They would have no control over decisions about appropriate interrogation methods at higher levels of government and the military.

7. In my role as President of the Division, the following facts were reported to me contemporaneously by the Division's then President-elect who was in Washington, DC in January 2017, attending the APA Division Leadership Conference on our behalf.

8. After conclusion of the meeting, our President-elect went to breakfast at the invitation of the newly installed APA President, Dr. Antonio Puente, to discuss some of the issues between Division 19 and the APA concerning the Independent Review. In the course of that discussion, Dr. Puente stated that our Division leadership needed to keep confidential, from the group of litigants, some of what the Division was discussing with him and the APA leadership. He further stated that he would not hesitate to pursue action against our Division if it violated that understanding.

9. Additionally, it was reported that during this conversation, Dr. Puente told our President-elect that he believed the APA Board of Directors had gone overboard in its actions in response to the Report prepared by Mr. Hoffman and his team. He further indicated that the Division would receive a supportive response to its task force *Response to the Hoffman Independent Review*, but not until the lawsuit was settled.

10. On February 16, 2017, an email was sent to the Division leadership from the General Counsel of APA, which stated that I would be excluded from the upcoming APA Council of Representatives meeting because I had assisted the plaintiffs in this lawsuit, three of whom are members of our Division. Attached hereto as Exhibit 1 is a true and correct copy of the General Counsel's email.

11. In February 2017, while I was attending an APA Council of Representatives meeting on behalf of our Division, I had occasion to follow-up with Dr. Puente regarding his conversation with our President-Elect, including what I interpreted to be a threat against the Division in the event that our actions were viewed as supporting our Division members involved with the lawsuit against the APA. Specifically, I told him that he could not accomplish things by threatening a division. He did not respond to that comment other than to make a small shrug of his shoulders. He also reiterated that APA's attorney would not allow me to attend the Executive Session of the Council meeting, implying the reason was because of the belief that I would disclose confidential information from the meeting, a belief that was incorrect and unsubstantiated.

12. In another APA Council of Representatives meeting, in August 2018, the General Counsel of APA threatened that any member of Council that helped the plaintiffs in this lawsuit would be foreclosed from participating in certain governance activities.

13. Given the involvement of the Division's members in the lawsuit, the Division has closely followed the events since the Report was first leaked to the *New York Times*. I am aware from those events and related history that Jean Maria Arrigo has been a very vocal critic of the plaintiffs over the years. Mr. Hoffman relies on her extensively for his factual findings in his Report.

14. Knowing that, I was struck by some of her comments at an APA Council of Representatives meeting in August 2015, in which I was in attendance. At the close of debate and just prior to an electronic vote on a Council agenda item concerning the role of psychologists related to interrogation and detainee welfare in national security settings, Dr. Arrigo stepped to the microphone and proceeded to say that she had spoken with her contact, an individual who had worked for the Central Intelligence Agency who was knowledgeable about counter-intelligence issues. She continued, stating that he had strongly advised her that an electronic vote such as was about to occur should be accomplished as a "roll call" vote. This was necessary, she stated, because the government had the capability to alter the outcome of an electronic vote, and it would be important to be certain the Association had a record of how each individual voted in the event that the outcome was altered in some way. At a minimum, I found this statement to lack credibility or reliability.

15. Following that same Council of Representative's meeting, I received notes¹ summarizing comments to the Council by Mr. Hoffman who came to address the Council

¹ A true and correct copy of those notes can be found at <https://tinyurl.com/yxxxy98rS>.

in the wake of the Report's publication. According to the notes, when asked why he used the negative term "collusion" in the Report, Mr. Hoffman indicated he preferred the terms "collaboration," "coordination," or "behind the scenes communication" and which would have been more accurate," but that he had been specifically asked as part of the review whether there was collusion.

I declare under penalty of perjury that the foregoing is true and correct.

Sally Harvey
Sally Harvey

Sworn and subscribed to before a notary public in the State of Texas, this 14 day of November 2019.



Karen Lowry
Notary Public

EXHIBIT 1

----- Forwarded Message -----

From: Ottaviano, Deanne <DOttaviano@apa.org>
To: staalmark@hotmail.com <staalmark@hotmail.com>;
ann.landes@va.gov <ann.landes@va.gov>;
salsterhead@yahoo.com <salsterhead@yahoo.com>
Cc: Raben, Jesse <jraben@apa.org>
Sent: Thursday, February 16, 2017, 3:56:53 PM CST
Subject: Division 19 Representation on APA Council of
Representatives

Dear Division 19 Presidential Trio:

I understand that, earlier today, Division 19 Council Representative Dr. Larry James alerted Amber Roopan that he would not be attending next week's Council meeting and that Dr. Sally Harvey would attend in his place. Also today, we learned that Dr. James is a plaintiff in a lawsuit filed against the Association in state court in Ohio. We are also aware that Drs. Harvey and Staal have been serving as a conduit for communications with at least one of the Plaintiffs' attorneys in providing information and support related to filing this lawsuit against APA. As you may know, APA Council Representatives have a primary duty of fiduciary responsibility to APA, and not to their Divisions, when serving as members of the APA Council of Representatives, the Association's governing body. The actions of Drs. James, Harvey and Staal are inconsistent with upholding that fiduciary duty to APA.

Should Division 19 wish to send a Council Representative to next week's meeting, we would urge you to identify one who has not been working with the Plaintiffs' attorneys to build a case against APA and one who understands that he or she must maintain an undivided duty of loyalty and confidentiality to APA. At a minimum, please be aware that,

should Dr. Harvey attend next week's Council meeting, she will not be permitted to participate in the Executive Session discussion of the lawsuit brought today against APA.

Thank you for your consideration of this request.

Deanne

Deanne M. Ottaviano | General Counsel
Office of General Counsel | 202-336-6078 |
dottaviano@apa.org
American Psychological Association
750 1st Street NE
Washington, DC 20002
www.apa.org



Advancing psychology to benefit society and improve people's lives



EXHIBIT C-17

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF LARRY C. JAMES IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Ohio)
) ss:
County of Montgomery)

1. I, Larry C. James, having been first duly cautioned and sworn, state the following based upon personal knowledge:

2. I am a resident of and licensed to practice psychology in Ohio, and I am a Professor in the School of Professional Psychology at Wright State University in Dayton, Ohio.

3. I was first contacted by email by the American Psychological Association (hereinafter "APA") President, Nadine Kaslow, asking for my "complete cooperation" with an independent review being undertaken by APA. I was a member of the Psychological Ethics in National Security (hereinafter "PENS") Task Force that was convened in 2005 by then-APA President Ron Levant, and it was as a member of that task force that I received the email from Dr. Kaslow first requesting my participation in the independent review. I was then contacted, by David Hoffman of the law firm Sidley Austin LLP asking me to provide information in his review of the allegations made by James Risen that "APA colluded with the Bush Administration after 9/11 to promote, support, or facilitate the use of enhanced interrogation techniques by the CIA and the Defense Department in the global war on terror." Mr. Hoffman and his team traveled to Dayton to meet with me, and I was interviewed in person at my office on May 1, 2015, and then again by telephone on June 22, 2015.

4. My specific work with the PENS Task Force to create guidelines for psychologists involved in interrogations was as a subject matter expert in the psychology of interrogations. At no point during my work with the APA task force was I given any authority to speak for the Department of Defense (hereinafter "DoD") or to make DoD policy. My attendance at the task force meeting was as an independent, individual psychologist. I attended the meeting in my free time while not on duty, was dressed in civilian clothes, and was not compensated for my participation. I explained all of this to Mr. Hoffman during my interview.

5. Despite efforts to have Mr. Hoffman understand that my PENS Task Force participation was as a subject matter expert and not as an official representative of DoD, the Report states otherwise. One of the Report's primary conclusions mischaracterizes my participation when it states:

Our investigation determined that 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. 9)

I had no authority to represent or set policy for the DoD. As a mid-level employee of the DoD, I was never in a position to formulate DoD or military policy. Although I participated in the drafting and recommending of policies, I did not have decision-making authority to set policy. I was expected to execute policies and directives issued by my superior, commanding officers. Also, I was not in a position to officially speak to the media or the general public on behalf of the DoD or U.S. government; those activities require official designation. To the extent that I would publicly refer to existing policy, it was only as a conduit for stating or explaining what is the policy. Even speaking publicly about my work duties required permission.

6. The Report also confuses policies applicable to the DoD with those applicable to the Central Intelligence Agency. It fails to recognize the way various DoD directives and instructions interlock with theater and local policies and that local policies may be more restrictive than those issued at the DoD level. In fact, the importance of local policies was intentionally and clearly reflected in Statement Four of the PENS Guidelines¹ that I and the other task force members drafted. Although the Report (p. 273) cites language from Statement Four, it ignores the language that expressly creates an obligation to "follow the most recent applicable regulations and rules," including the regional policies in Afghanistan, Iraq, and Cuba. *I referred to those local policies in my interview with Mr. Hoffman as well as multiple times on the PENS listserv discussions which Mr. Hoffman acknowledges reviewing (Report, p. 247-264).*

¹ A true and correct copy of PENS Statement Four is included in the Report's binders and can be found at <http://www.apa.org/independent-review/binder-5.pdf>, PDF p. 731.

7. In 2015, while a member of the APA Council of Representatives (hereinafter "Council") and because I was named in the Independent Review (hereinafter "Report"), I received online, read-only access to the Report on July 7, 2015, before the Report's release to the full Council. The following day, the full Council received a secure password protected copy of the Report that could only be accessed by Council members. However, I was provided no opportunity to meaningfully respond to the Report's allegations against me before it was given to all Council members, published in *The New York Times*, and published on the APA public website. This lack of opportunity to respond was particularly surprising because the Report focused on my actions starting with my involvement on the PENS Task Force in April 2005 and stretching though to discussion of me related to the Leso ethics case, which was closed in December 2013, a longer period of focus than any other individual named in the Report.

8. The length of time the Report focused on my actions was a complete surprise. I had never been made aware that the scope of the investigation was becoming substantially larger than what had been described to me by Dr. Kaslow or Mr. Hoffman. Additionally, I was led to expect that the review process being undertaken would be an objective review and that Mr. Hoffman was serving as an independent, neutral and objective third party in conducting the review. I was not given any type of Upjohn warnings and was not advised that the investigation could be adverse to my interests.

9. In addition to no meaningful opportunity to respond to the Report's allegations, I was never informed that an errata sheet to the Report was being prepared after it was published. Along with Plaintiffs Banks, Dunivin, and Newman, I objected to the contents of the Report in a post on APA's public website on July 31, 2015. A true and correct copy of the comments can be found on APA's public website at <https://tinyurl.com/y3vwdu6z>. None of these objections were included in the errata or the revised version of the Report that was published on September 4, 2015.

10. Given the inadequate time I was afforded to respond to the Report's allegations before it was given to all Council members, I was shocked to learn from the news media and various posts on the Council listserv that known critics of military psychologists, Steven Reisner and Stephen Soldz, were provided with access to a draft of the Report on June 27, 2015, and that they subsequently met with the Board on July 2-3, 2015, to provide recommendations concerning how APA should respond to the Report. It was well known that Drs. Soldz and Reisner had previously accused me quite publicly on numerous occasions of wrongdoing and that they were collaborating with the reporter from *The New York Times*, whose book had sparked the investigation. A true and correct copy of the article that appeared in the *Times* can be found on the public website of the *Times* at <https://www.nytimes.com/2015/05/01/us/report-says-american-psychological-association-collaborated-on-torture-justification.html>.

11. In addition, Dr. Soldz had publicly expressed racial animus towards me in an interview, stating that I had gotten my job "partly because [I] was black," that I don't "show up for work...[and] doesn't do anything," and that I "can't write an English sentence." A true and correct copy of that interview can be found at

<http://www.hoffmanreportapa.com/resources/INTERVIEW%20SOLDZ.pdf>, PDF p. 39.

12. The Report mischaracterizes my APA ethics case related to my interrogation support work and omits important information that creates a perception my case was improperly handled to purposely protect me from censure. For example, the Report (p. 521) states, "Unlike the Leso complaint, which was kept open for approximately seven years, the James complaint was closed within a month of the Ethics Office having received the complaint—disposed of in truly lightning speed so that Deutsch could review it before her Chairmanship was finished." Despite acknowledging that the handling of the complaint was "technically permissible under the Rules," the Report (p. 522) further states, "it demonstrates clear flaws in the adjudication process." Also, the Report omits the fact that all of the state licensing board complaints made against me for my interrogation support work (no fewer than nine reviews by ethics committees, licensing boards, and courts) were found to be without merit, information I specifically provided to Mr. Hoffman in our interviews.

13. The Report appears to rely heavily on information provided by Dr. Trudy Bond, the very individual who brought the unsuccessful APA ethics complaint against me, as well as unsuccessful complaints to the state boards of Ohio and Louisiana, and had an unsuccessful attempt to file a complaint in Guam. In each of the states, in addition to her complaints, she also sued the licensing board in attempt to force the board to take action against me after each had dismissed the complaint; both lawsuits were unsuccessful. As part of the vendetta Dr. Bond appears to have against me, beginning in September 2014 she has also repeatedly submitted information to the United Nations Committee Against Torture, mentioning me specifically in those documents and encouraging war crimes prosecutions. On June 27, 2016, Dr. Bond, relying on the Report, again asked the UN Committee to move forward with prosecutions. True and correct copies of those submissions can be found at <https://tinyurl.com/yxre335t> and <https://tinyurl.com/y57yusrf>.

14. I have stated on multiple occasions, both in documents reviewed by Mr. Hoffman for his investigation and in interviews with him, that I worked to prevent the very abuses that the Report claims I (and others) colluded to allow. Shortly after the Report was published, APA Board member Louise Douce emailed and phoned to tell me she knew I had done nothing wrong and she hoped I did not feel betrayed by her related to the Board's publishing the Report. During a February 2016 Council meeting, the then-President admitted that there was "clear evidence" that Mr. Hoffman may have "distorted" matters in the report.

15. Another APA Board member, Nadine Kaslow, and I have previously discussed on numerous occasions the false allegations made by Dr. Bond against me, including our conversations during her visit to my University at my invitation to speak at the Wright State University graduation in July 2012. Dr. Kaslow admitted to me by email that individuals named in the Report were immediately deemed "guilty" by everyone. Also, I have spoken with Board member Jennifer Kelly on numerous occasions, who most recently approached me to say that she did not want to be deposed in the matter.

16. Based on my experience with these Board members, I believe that when Dr. Kaslow voted to publish the Report on behalf of APA, she knew that many of its allegations were completely false, as did additional Board members, Drs. Douce and Kelley. My belief is further buttressed by a June 23, 2007, open letter posted on the Council listserv, signed by 18 Council members including Dr. Kelly, recognizing me "as a hero in [my] work at Abu Ghraib to develop training and to implement systems to prevent further acts of abuse." This letter was included in the Report's reference binders and a true and correct copy can be found on the APA website at <http://www.apa.org/independent-review/binder-2.pdf>, PDF pp. 955-956.

17. At the time the Report was published, I was long retired (since 2008) from the military, I did not hold public office or public employment, and was not engaged in any public service. Nor did I use my status as a retired military officer to put myself in the public eye or attempt to influence public policies. I became the subject of public attention only because of the actions of the critics and APA and what was written in the Report, not because I sought public exposure. In addition, I did not have access to the media to rebut the allegations made against me in the Report, and the objections that I and Plaintiffs Banks, Dunivin, and Newman posted on the APA public website received no media coverage in contrast to the overwhelming coverage received by the Report and its allegations.

18. An additional mischaracterization about me in the Report occurred when the Report (pp. 425-427) creates the impression that my appointment to replace Sharon Manne as the Representative of Division 38 (Health Psychology) for the August 2007 Council meeting was intentionally coordinated in attempt to manipulate a vote on a motion dealing with psychologists' participation in the interrogation of detainees. Despite the fact that I told Mr. Hoffman that Dr. Manne was not asked to step down so I could replace her, the Report's discussion of the surrounding events leads to the inaccurate picture that malign motives were at work.

19. The mischaracterizations in the Report, the number of omissions of information that would show I had done nothing wrong or improper, and the unannounced expansion of the scope of the review lead me to believe that Mr. Hoffman had a predetermined outcome in mind for which he used the information gathering process to support and confirm.

20. As a result of the mischaracterizations and false statements about me in the Report, my career has been materially harmed. While the vast majority of my Dean colleagues at my university with much less experience and credentials have gone on to be university presidents, provosts and deans at larger universities, I have struggled to even be invited to interview at smaller universities, and I have been denied those positions for advancement to which I have applied.

I declare under penalty of perjury that the foregoing is true and correct.


Larry C. James

Sworn and subscribed to before a notary public in the State of Ohio, this 14th day of November 2019.


Notary Public



Kimberly A. Baumgardner
Notary Public, State of Ohio
My Commission Expires 03-29-2023

EXHIBIT C-18

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

AFFIDAVIT OF KIRK KENNEDY IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT

State of Virginia)
) ss:
County of Stafford)

1. I, Kirk Kennedy, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I am a licensed clinical psychologist with over 30 years of post-doctoral experience in clinical and operational applications of psychology, including the military and Department of Defense as well as the National Security Agency, Central Intelligence Agency, and Federal Bureau of Investigation. I am currently primarily engaged in psychological assessment and selection services for high risk, high gain jobs (e.g., special forces, police, undercover officers, fire fighters).
3. I was first contacted by David Hoffman of the law firm Sidley Austin LLP in the Spring of 2015 in order to schedule an interview as a part of the ongoing Independent Review being conducted on behalf of the American Psychological Association (hereinafter "APA") regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA policies including the Psychological Ethics in National Security (hereinafter "PENS") Task Force. I was interviewed in person for several hours by Mr. Hoffman and Danielle Carter on May 28, 2015.
4. During the interview, I was asked multiple times by Mr. Hoffman whether I thought Dr. Russ Newman, the Executive Director of the APA's Practice Directorate, had a

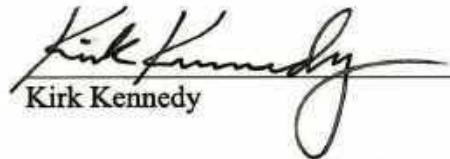
conflict of interest when he attended the PENS Task Force meeting in June 2005 by virtue of his wife's position as a military psychologist with deployment to Guantanamo. Given that I was not a member of the task force and did not attend the meeting—something the discussion made clear Mr. Hoffman was well aware of—I responded each time that I had limited personal knowledge relevant to the question. In particular, I stated that I would need additional information such as Dr. Newman's actual role at the meeting to have an opinion about a possible conflict of interest. Because Mr. Hoffman repeatedly came back to and pressed this question during the interview, I ultimately told him that, with the benefit of hindsight, I could understand there was an *appearance* of a conflict of interest but could not say if there *was an actual conflict* without more information, most notably Dr. Newman's role at the meeting.

5. The Report of the Independent Review (hereinafter "Report") significantly mischaracterized my response to the question of conflict of interest when it stated with reference to me, "it was immediately clear to him that the Newman-Dunivin relationship was an obvious conflict of interest for both Newman and APA." (p. 212) This representation by the Report is not only inaccurate, but has the effect of putting words in my mouth that I did not say. In fact, had I known at the time of the interview that Dr. Newman was a non-voting observer at the task force meeting (something Mr. Hoffman did not explain to me), I would have told him that I *did not believe* there was a conflict of interest.

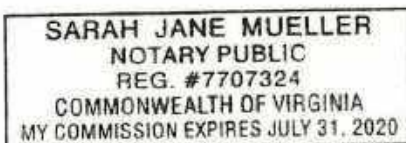
6. The Report (p. 217) further cites an email exchange between Dr. Geoff Mumford and me to falsely imply I believed Dr. Newman's attendance at the PENS task force was a conflict of interest. The email exchange I had with Dr. Mumford was solely for the purpose of ensuring Dr. Mumford was aware of information that I had been given by a colleague. It was not intended to suggest in any way that I believed a conflict existed.

7. The repetitive, almost obsessed nature of Mr. Hoffman's questions about a conflict of interest for Dr. Newman, even after I said I needed more information, combined with the Report's mischaracterization of my response, led me to conclude that Mr. Hoffman had a predetermined narrative he was more intent on verifying than he was on discovering what I believed to be true.

I declare under penalty of perjury that the foregoing is true and correct.


Kirk Kennedy

Sworn and subscribed to before a notary public in the State of Virginia, this 25th day of October 2019.







Notary Public

EXHIBIT C-19

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

AFFIDAVIT OF ROBERT KINSCHERFF IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT

Commonwealth of Massachusetts)
) ss:
County of Suffolk)

1. I, Robert Kinscherff, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was interviewed by Mr. David Hoffman and Ms. Heather Benzmilller of the law firm Sidley Austin LLP, in Boston on April 20, 2015, in connection with the ongoing independent review being conducted on behalf of the American Psychological Association (hereinafter "APA") regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (hereinafter "PENS") Task Force. I agreed to the interview with the understanding that the purpose of the review was to find facts related to APA's work on the role of psychologists in interrogations and that the investigators were neutral with regard to the review's outcome. My best recollection is that the interview lasted approximately two hours. Ms. Benzmilller took notes while I was speaking.
3. I am currently an Associate Vice President and Associate Professor in the Doctoral Clinical Psychology Program at William James College in Newton, Massachusetts. I have authored or co-authored sixty-five chapters, articles, and monographs, including a book on professional ethics in psychology published by the APA and cited by Mr. Hoffman in the Report of the Independent Review to the APA (hereinafter "Report"). I have served in a number of roles in the APA including, as a member and two-term Chair of the Ethics Committee (1998-2001) and as a member and Chair of the Committee on Legal Issues (2002-2004). I have provided and continue to provide ethics training for the APA Continuing Education program, including a dedicated day-

long ethics workshop in the pre-convention offerings of the APA annual convention, a webinar ethics series, and day-long ethics workshops offered as APA webinars.

4. Upon reading the Report, I found numerous inaccuracies and mischaracterizations regarding statements attributed to me. The cumulative effect of these is not trivial but instead leads the reader to the false conclusion that matters were handled in an “improper” fashion or in a manner inconsistent with APA or standard practice, and that those involved had a bad or nefarious motive.

5. The Report (pp. 87-88, fn 156) cites me as describing the Ethics Committee Task Force (hereinafter “ECTF”) as relying on “consensus” for agreeing to revisions of the Ethics Code. I did not provide that information since I did not have first-hand knowledge of the voting procedures or other processes by which language revising the Ethics Code was adopted by the ECTF. I may have responded to a question about what I *thought* the ECTF procedures might be, but I did not provide information based either upon my own experience with the ECTF or, since I did not have any discussions regarding the ECTF process, a recollection of what I had been told by another person.

6. The Report (p. 88, fn 166) cites me as a source for the following description of ECTF activities: “With the exception of Fisher, no other ECTF members or observers played a lead role in the meetings or discussions.” I did not offer any such statement as I was never a participant at ECTF meetings and had no way of knowing who may or may not have “played a lead role” at those meetings.

7. The Report (p. 89, fn 170) cites me as a source of information for the following description of the role of APA staff in ECTF meetings: “ECTF members told Sidley that none of the staff members took over the process or were overbearing in commentary or suggestions.” I did not offer any such statement as I did not attend ECTF meetings, was never a participant at ECTF meetings and had no way of knowing the conduct of APA staff during those meetings.

8. Footnote 786 (p. 187) of the Report states: “As Brandon and Mumford began to prepare the agenda, Kinscherff made it clear that he did not want his affiliations disclosed to participants.” In the context of the Report, this statement seems to imply some suspicious motivation or intent on my part. I was not asked during my interview with Mr. Hoffman why I did not want my affiliations disclosed to the participants. Had I been asked, I would have explained, at that time, I was employed within the Massachusetts Trial Court and did not want to create any possible inference that the Trial Court was in any way supporting or otherwise involved with my attendance at the meeting. My attendance was solely due to my affiliation with APA.

9. The Report (pp. 196-197) states: “The [National Academy of Science] NAS was hoping to find individuals to represent a range of perspectives on coercive interrogation, and turned to the Science Directorate for recommendations for ‘speakers who would SUPPORT coercive interrogation tactics.’ In response to this same request, Mumford also reached out to Robert Kinscherff, who suggested that Behnke might have contact information for Michael Gelles or Robert Fein.” (emphasis in original) I do not recall being told the request was specifically for speakers who “support coercive interrogation tactics,” nor do I recall being asked by Mr.

Hoffman why I suggested Gelles or Fein. I likely suggested them given their knowledge of the national security community, but it would not have occurred to me that either would provide a perspective supporting coercive interrogation tactics. Based on my personal knowledge of Fein and Gelles, I believe that they would oppose, not support, the use of coercive interrogation tactics.

10. The Report (pp. 214-215) states: "Behnke specifically mentioned that Robert Kinscherff, a friend and then-chair of the APA Committee on Legal Issues ('COLI') would make 'an excellent chair' [for the PENS Task Force which was being appointed at that time]." As written, the statement leads the reader to infer that I would be more likely to act in a manner viewed favorably by Dr. Behnke based upon a personal relationship. A friendship would not have influenced my opinion based on subject matter expertise, had I been selected for the PENS Task Force (which I was not).

11. The Report (p. 86, fn 139) makes reference to a guidebook I co-authored with three other psychologists, the 2010 *APA Ethics Code Commentary and Case Illustrations*, by Linda Campbell, Melba Vasquez, Stephen Behnke, and Robert Kinscherff. The Report states that the guidebook "is helpful not only for its general insight into ethics and the APA Ethics Code, but also as a reference for how its authors, some 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." The Report fails to point out that the approach to writing ethics policy in this commentary is consistent with the approach adopted by the PENS Task Force.

12. Based on my knowledge and experience with the development and application of ethics codes, I believe the Report mischaracterizes the role of specific and proscriptive language in the development of ethical guidelines causing the reader to believe that the APA code was somehow deficient or different from how other ethics codes are drafted. For example, the Report (p. 12) states:

On the most important issue the PENS Task Force was asked to consider—where to draw the line for psychologists between unethical and ethical interrogation practices—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. (Emphasis added)

In actuality, ethical decision making is best viewed as a process in which the application of ethics guidelines are typically dependent on context; guidelines need to state general principles and a framework that can be applied, not specific proscriptions. As the Report itself quotes an ethics committee member who stated regarding the PENS report, "We do not need incorporated in our current Code or any code a list of prohibited activities." (p. 311, fn. 1378) In May 2017, the APA issued a call for nominations to constitute a task force to revise its current ethics code. In its call for nominations, which I received as a former member of the APA Ethics Committee, APA specifically called for a code that is "based in clear values and ethical decision making," and that considers "contextual" factors. A true and correct copy of that APA call for nominations

is available online at <http://www.apa.org/ethics/nominations.aspx>. This is precisely the approach that the Report criticized Dr. Behnke for supporting in the PENS Report.

13. During the interview, Mr. Hoffman did not ask me about Dr. Behnke's or the PENS Task Force's approach to ethics policy, standards, and decision-making. Had he inquired, I would have informed him that I find no inconsistency between this contextual approach and the 2005 PENS Report. I would have also told him that the appropriate role of a professional association is to identify ethical frameworks and standards that permit application of rules across multiple potential contexts rather than to craft detailed and proscriptive rules.

14. In addition, had he asked me about Dr. Behnke's approach, I would have informed him that at no time before or after the 9/11 attack did Dr. Behnke make any statements to me that would have led me to be concerned that he sought to craft ethical guidance or influence the PENS process in a manner that would permit wide latitude to the conduct of psychologists in national security interrogations, or would provide "cover" for involvement of psychologists in any aspect of "harsh interrogation" techniques or torture.

15. That I was not asked about either the PENS Task Force or Dr. Behnke's approach to ethics policy, standards, and decision-making leads me to believe that Mr. Hoffman approached the interview with a preconceived narrative for which he did not want additional information. This is particularly striking given the Report's emphasis on the putatively non-specific nature of the PENS guidelines in its conclusions that the Task Force and Dr. Behnke had improperly kept the guidelines loose and high-level to not conflict with or restrict the DoD .

15. The Report (p. 10) inaccurately asserts that the APA ethics disciplinary cases regarding national security psychologists were handled in "an improper fashion," in order to "protect these psychologists from censure." There is no evidence cited in the Report to support that factual assertion, nor was it consistent with my personal experience with the handling of the ethics cases.

16. I was the acting Chair of the Ethics Committee for the Gelles disciplinary case, and I was delegated ongoing responsibility by the subsequent Chair due to my familiarity with the matter. The Gelles case was handled in a manner consistent with APA governance procedures, including all relevant Ethics Committee rules and procedures, contrary to the Report's assertion. The Report's own discussion of the case (pp.475-486) contradicts the factual assertion on page 10 that the case was handled improperly. The discussion in the Report of the specifics of the case show the Gelles case was handled properly under the relevant APA procedures governing ethics adjudication.

17. Mr. Hoffman did not ask me questions regarding the Gelles case when he interviewed me, despite the fact that the Report (p. 478) specifically mentions my role in the Gelles case adjudication. My understanding was that the independent review was to examine the role of psychologists in post-9/11 detainee interrogations. The Gelles case involved pre-9/11 behaviors in relation to a U.S. citizen. I was therefore surprised to see a detailed discussion of the Gelles case in the Report (pp. 475-486). That I was not asked about the Gelles case leads me to

conclude that Mr. Hoffman had a preconceived narrative about the Ethics Office and Committee's handling of that case and was uninterested in additional information that might conflict with his narrative.

18. Further, the Report's reference binders contain confidential information from the Gelles ethics complaint in 2002, a proceeding that I oversaw as Chair of the Ethics Committee for that case and for which I never authorized information disclosure as would be required by APA Ethics Committee's *Rules and Procedures* Part II, section 3.1. (See Report, Binder 4, PDF pp.1418-1425 <http://www.apa.org/independent-review/binder-4.pdf>) This information provides a description of the case's handling consistent with Ethics Committee rules and procedures.

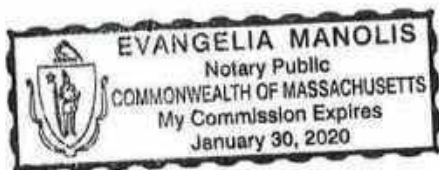
19. Neither APA nor Mr. Hoffman/Sidley Austin informed me personally (despite my participation as a witness in the independent review) that, following publication of the Report in July 2015, Mr. Hoffman was working on a revised, corrected Report. Neither APA nor Mr. Hoffman/Sidley Austin notified me that I should provide to Mr. Hoffman inaccuracies to be corrected in anticipation of a revised, correct report. I was therefore surprised to see a revised, corrected Report published in September 2014. Had I been informed that Mr. Hoffman was working on a revised, corrected Report, I would have provided him correct information regarding the above points.

20. Finally, I am a signatory to three "open letters" from former APA Ethics Committee Chairs to the APA Board of Directors and the APA Commission on Ethics Processes detailing: inaccuracies in the Report regarding conclusions about the handling of ethics complaints related to national security activities; the Report's inappropriate disclosure of confidential information from ethics cases; allegations of flawed processes by which the independent review was undertaken; and concerns about perceived, potential or actual conflicts of interest connected with APA's re-hiring of Mr. Hoffman for a self-review of his Report. Attached hereto as Exhibits A, B, and C are true and correct copies of these letters. They are also available online at <http://www.hoffmanreportapa.com/resources/letter%20from%20former%20Ethics%20Committee%20chairs%202-16-16.pdf>, <http://www.hoffmanreportapa.com/resources/APA%20Second%20Letter%20Ethics%20Chairs.pdf> and <http://www.hoffmanreportapa.com/resources/October%202016%20Letter%20from%20Former%20Chairs%20of%20Ethics%20Committee.pdf>, respectively.

I declare under penalty of perjury that the foregoing is true and correct.


Robert Kinscherff

Sworn and subscribed to before a notary public in the State of Massachusetts, this 30th
day of November 2018.





Notary Public

Exhibit A

February 16, 2016

An Open Letter to the APA Board of Directors from Former Chairs of the APA Ethics Committee:

The report on the Independent Review conducted by Attorney Hoffman and his colleagues ("Hoffman Report") was released in July 2015. A group of former Chairs of the Ethics Committee had written the Board on July 1, 2015 before the Report was released requesting an opportunity to review the report prior to its public release. This request was intended to assure the accuracy of any characterizations of the operations and processes of the Ethics Committee itself or APA organizational processes regarding ethics issues more broadly, or in any other constructive fashion identified by the BOD of APA. We deeply respect the goals of our association and had hoped to offer constructive feedback. We never intended to advance any preconceived agenda or interfere with the independent review. Now that the Hoffman report has been made available for review, perhaps our feedback to APA would contribute to an informed and transparent process about how best to implement changes that reflect the best interests of our association and society. While the Board acknowledged receipt of the letter, we never received any substantive response and again request an opportunity to contribute.

This has been an extraordinarily difficult time for the Association. The APA has been deeply challenged at every level by the circumstances giving rise to retaining an independent investigator, the Report's release when it was prematurely "leaked" before persons named in the report had an opportunity to review and respond, and the still ongoing impact upon persons, the Association and our profession following its release. We collectively write as past Chairs of the Ethics Committee to support the Board's stated goal of a transparent search for the truth, identification of any core organizational problems giving rise to initiating the Report and responding to it, and opportunities for action to effectively address any identified problems.

This follow-up letter is even more relevant than the previous one when considering the cumulative effect of a number of allegations, reports and responses to the Report. This letter does not assume their accuracy but we

believe that taken together they warrant a transparent and thoughtful review of the Report itself and consideration of what such a review may mean for decisions by Association leadership as APA moves forward. These include:

- Substantive concerns raised about the processes and procedures relied upon by Attorney Hoffman and his colleagues during the course of the investigation;
- The process by which the Report was completed and prematurely “leaked,” including what steps the Association has taken to identify who improperly released the report;
- The process by which a decision was seemingly made following the premature release of the Report to set aside the previously articulated process by which persons named in the report would be individually contacted and provided an opportunity to submit comments or suggested revisions by an established deadline;
- Reports that a number of individuals interviewed during the course of the investigation—both psychologists and non-psychologists—have indicated that the information they provided was mischaracterized or that relevant information they provided was not included in the final Report;
- Reports that some individuals whose information and actions would have been relevant to the investigation were not interviewed (including some Chairs of the Ethics Committee whose terms were during the relevant time period);
- Concerns that the Report’s characterization of Ethics Committee actions involving military psychologists who had complaints filed against them reflected a significant misunderstanding or mischaracterization of Committee procedures in finding that the Committee or its members had acted improperly in those cases;
- Allegations that persons who had been influential in prompting the Association to retain an independent investigator were essentially given preferential access to Attorney Hoffman in a manner which could be viewed as introducing a risk of investigatory bias and later invited to meet with the Board prior to the Report’s release to discuss recommended courses of action;

- The implications of documents generated by individuals and groups subsequent to the release of the Report which, if substantially accurate, would sharply undercut the asserted factual basis for the conclusions of the Report and Mr. Hoffman's core "theory of the case" when he alleges active and improper "collusion" between some Association staff and members with some members of the military.

Other allegations or reports could be included but we believe that those cited above are sufficient grounds for asking the BOD to consider our feedback. Without assuming the accuracy of any one of them or predetermining their impact on decisions to be made going forward, some of them are of sufficient gravity that a good-faith and transparent effort should be made to examine the Report's methods and conclusions, and considering courses of action already taken or planned on the basis of the Report in light of what is learned in revisiting it.

Additionally, because there has been so much intense discussion of the issues related to the report findings we respectfully suggest that the Board provide a clear explanation about the following: the process by which decisions were made in appointing members to the special Ethics Commission; who was invited to review and comment upon nominees; and why the appointment process has been so prolonged. Given the significance of the questions and the potential impact upon APA and the field of psychology, it would be prudent to be as transparently thoughtful as possible.

We appreciate that these have been challenging months for the Board and the Association and that the months ahead likely hold more challenges related to the circumstances giving rise to the Report and to the Report itself. We anticipate and hope that the Board will offer a substantive response to this letter which demonstrates a willingness to consider a process by which the Report is revisited in a thoughtful, meaningful and transparent manner. We are prepared to communicate with the Board about what such a process might entail and particularly in reviewing the Ethics Office and the Ethics Committee

Respectfully submitted,

Robert T. Kinscherff, Ph.D., J.D., Chair 2000, 2001

Steven Sparta, Ph.D., ABPP, Chair 2002

Michael D. Roberts, Ph.D., Chair 2003

Katherine Di Francisca, Ph.D., Chair, 2005

Robin M. Deutsch, Ph.D., ABPP, Chair 2007

W. Brad Johnson, Ph.D. 2008

Jeffrey Barnett, Ph.D., Chair 2009

Nancy McGarrah, Ph.D., Chair 2010

Nadya A. Fouad, Ph.D., Chair, 2012

James N. Bow, Ph.D., ABPP, 2013

Exhibit B

Open Letter from Former Chairs of the APA Ethics Committee to the Board of Directors Perceived, Potential or Actual Conflicts of Interest in Attorney Hoffman Self-Review

May 15, 2016

The Board of Directors again retained Attorney David Hoffman in April 2016. He is to review his previously released and once amended report (referred to as the *Independent Review*). On May 10, 2016 a communication was released to the Council listserve by APA President Susan McDaniel noting that Mr. Hoffman had been “engaged for the limited purpose of analyzing certain Department of Defense (“DoD”) policies recently brought to the Board’s attention in reports by the Association’s Division 19 and several psychologists discussed in the *Independent Review*.” Mr. Hoffman is to specifically “review the relevant policies and assess the extent to which they bear upon the issues, findings, and/or conclusions reflected in the *Independent Review*.” He reportedly “also intends to indicate in his report whether any modifications or clarifications to the *Independent Review* are appropriate in light of these policies.”

President McDaniel characterizes Mr. Hoffman’s current activities as a “supplemental review” that “is a continuation of Mr. Hoffman’s prior work, based on the existence of factual information that has recently been called to our attention.” Mr. Hoffman is described as “shar[ing] APA’s interest in ensuring that his *Independent Review* is fair and accurate.” President McDaniel relies upon these in concluding that new review of his prior work does not constitute a conflict of interest on his part or that of the Board.

A conflict of interest arises when an individual has real or reasonably perceived duties to more than one person or organization which may or does compromise their ability to address potential or actual adverse interests. This includes circumstances in which an individual’s own personal or professional concerns or interests may be or are inconsistent or even adverse to those of a client and/or an organization with whom that individual has a relationship (e.g., employee, an ownership stake, another client). Conflicts of interest may be stark and actions taken clearly self-serving or self-protecting at the cost of the interests of clients or organizations with whom the individual has a relationship. Conflicts of interest may also be more insidious by leading the individual to ignore or discount information in a less conscious process of confirmatory bias or less conscious adoption of self-serving or self-protection rationalizations for decisions or actions which have the result of being self-serving or self-protective at the expense of other parties.

The message from President McDaniel holds that Mr. Hoffman is not being asked to conduct “an investigation of [his] initial investigation” and is instead “a continuation of Mr. Hoffman’s prior work, based on the existence of factual information that has recently been called to our attention.” As a result, Dr. McDaniel asserts that Mr. Hoffman’s re-engagement, to evaluate his prior work, cannot constitute a conflict of interest.

This assertion is problematic in several respects. First, it assumes that a person cannot be in a conflict of interest when being asked to review their own previous work. This not a correct assumption. For example, an attorney being asked to review their own work in a case may be in a conflict of interest if that review may or does reveal evidence of possible legal malpractice. A

physician being asked to review their own work in a case may be in a conflict of interest if that review may or does reveal evidence of injurious medical error. An attorney or physician in these circumstances may intentionally choose to ignore or mischaracterize that evidence, or perhaps even more problematically, engage in well-described processes of confirmatory bias, minimization or rationalization that compromise their ability to identify or to appreciate their earlier missteps.

Second, President McDaniel reports that Mr. Hoffman's review of his own work is prompted, at least in part, "on the existence of factual information that has recently been called to our attention." This "factual information" may have been "recently" called to the attention of the Board but the challenge this information poses is that it was reportedly readily available at the time of the investigation through means as easy as a simple internet search. If so, possibilities are raised about Mr. Hoffman and his investigation that include: (a) the investigation did not attempt to access this readily available information; (b) the information was accessed and Mr. Hoffman failed to recognize the potential relevance of that information and so did not incorporate it into his investigation or even report that he had accessed it; or, (c) decisions were made to ignore the potential implications of this information for his analysis and conclusions and to not report that it had been accessed during the course of the investigation.

Each of these raises potential issues such as a failure of due diligence given the focus and context of the report (a, above), the possibility of significant confirmatory bias that led him to not identify or appreciate the relevance of the information or a need to report that he had reviewed it (b, above), or deliberate exclusion and failure to report accessing information which would have undermined the inferences and conclusions of his report (c, above).

We want to make it clear that we have no idea whether any of these processes were involved and are not alleging that any of them were involved. However, asking Mr. Hoffman to review his own work for potential evidence of any of these and to report this evidence to the Board clearly places him in at least a perceived conflict of interest and perhaps an actual one.

Third, the potential consequences for Mr. Hoffman and the Sidley Austin law firm with whom he is affiliated would be significant if he were to acknowledge witting or unwitting missteps which will now substantively alter the conclusions and recommendations of the *Independent Review*. Under the circumstances, there are factors which could reasonably be expected to contribute to confirmatory bias, unwitting self-protection (minimization, rationalization), or intentional (self-protective advocacy) efforts to affirm the quality, independence and conclusions of the *Independent Review*. Acknowledging serious missteps that would substantively challenge the investigation itself or the conclusions and recommendations it generated could have potentially grave professional and legal implications for both Mr. Hoffman and Sidley Austin. It cannot be simply be assumed that Mr. Hoffman and Sidley Austin now share any interest on the part of the APA that the *Independent Review* is "fair and accurate."

Again, we want to clearly state that we do not know whether any of the potentially problematic processes were involved in the original investigation or the *Independent Review*, and we are not alleging any intentional misconduct or unwitting missteps on the part of Mr. Hoffman, his

investigation team, or Sidley Austin. However, it is naïve to not recognize the potential or real conflicts of interest arising from retaining Mr. Hoffman to assess his *Independent Review* in light of “factual information” which was reportedly readily available during the original investigation. This is particularly the case since there are potentially significant professional, legal and other consequences for him and Sidley Austin should he now acknowledge that failure to identify, appreciate or incorporate this “factual information” will now substantively alter the conclusions and recommendations in the *Independent Review*.

Additionally, any acknowledgement on his part that the *Independent Review* is flawed in any substantive way would also have implications for APA. This report was relied upon to terminate the employment of APA staff, encourage the transitions of others, limit the involvement of psychologists in national security and/or military settings, direct revision of the Ethics Code, and take other steps which have had or could have substantial organizational, professional and legal consequences. The *Independent Review* has resulted in the personal and professional integrity of APA staff, members and others to be directly or indirectly called into question in ways that have had significant consequences for those individuals.

Under these circumstances, an observer could reasonably wonder whether the interests of the recent past-President the current President and the Board are aligned with the interests of Mr. Hoffman and Sidley Austin in determining that the “factual information” he is now asked to consider would have had minimal or no impact upon his investigation or the conclusions of the *Independent Report*.

This potential alignment of interests among APA senior governance, Mr. Hoffman, and Sidley Austin has already created a perception of conflict of interest among some APA members and may constitute a potential or actual conflict of interest between these elements of senior governance and the broad APA membership and APA’s internal constituencies. The interests of APA members and of APA as an organization may diverge—by perception and/or reality—from those of the recent past-President, Dr. McDaniel, and the Board. This potential divergence of interests would be magnified should there ever be (which still could occur) lawsuits against APA or filing of ethics and/or licensure complaints against individuals in APA governance arising from steps taken in reliance upon the *Independent Review*. Yet, APA Presidents and the APA Board of Directors have a prevailing duty to serve the best interests of the membership and the organization and not their own professional, organizational or personal interests.

It is always professionally and organizationally prudent to avoid perceived, potential or actual conflicts of interest whenever possible. Retaining Mr. Hoffman to review his own work raises difficult and potentially unresolvable potential or actual conflicts of interest.

As past Ethics Chairs, we have previously called for an independent assessment of the investigation conducted by Attorney Hoffman and the subsequent *Independent Review* report. We again call for timely initiation of this independent assessment as in the best interests of the Association. Under the current circumstances, simply the perceived potential or actual conflicts of interest arising from the Board retaining Mr. Hoffman to review his own investigation and

report are unlikely to yield an outcome viewed as credible among many APA members or constituencies, or by many external parties.

Respectfully,

Robert Kinscherff, Ph.D., J.D., Chair 2000, 2001

Steven Sparta, Ph.D., ABPP, Chair 2002

Michael D. Roberts, Ph.D., Chair 2003

Katherine Di Francisca, Ph.D., Chair 2005

Robin M. Deutsch, Ph.D., ABPP, Chair 2007

W. Brad Johnson, Ph.D., Chair 2008

Jeffrey Barnett, Ph.D., Chair 2009

Nancy McGarrah, Ph.D., Chair 2010

Nadya A. Fouad, Ph.D., Chair 2012

James N. Bow, Ph.D., ABPP, Chair 2013

Exhibit C

October 24, 2016

To the APA Commission on Ethics Processes:

We write as former chairs of the APA Ethics Committee in response to the Commission's "Call for Comments" as posted on the APA Website. (<http://www.apa.org/ethics/>) We support the Commission's review of the APA Ethics program as "one of the first steps in a series of recommendations" by the Board and Council in response to the Independent Report authored by attorney David Hoffman (hereafter abbreviated as the "IR"). We submit these comments based on our experiences with the Ethics program and, in some cases, our personal knowledge of events described in the IR with the hope that the Commission's activities will support an Ethics Office that continually improves its ability to meet the needs of the APA membership and the public.

The IR addresses the ethics adjudication program in two sections, the Executive Summary (pages 58-63) and the section "APA's handling of Disciplinary Cases against National Security Psychologists" (pages 464-522).

Criticism of the handling of ethics complaints related to national security activities

The IR was highly critical of how the Ethics Committee and Office handled four ethics matters over a period of 12 years. The IR characterized the handling of these four matters as "improper," (e.g., "we found that the handling of ethics complaints against prominent national security psychologists was handled in an improper fashion," page 10, and "Conclusions regarding improper application of APA Ethics Disciplinary System," page 58).

The ethics adjudication program is governed by the APA Bylaws, the Association Rules, the Ethics Committee *Rules and Procedures*, and Ethics Committee policies regarding confidentiality. Despite extensive discussion regarding the handling of ethics matters, the IR failed to cite a single instance in which the Ethics Committee or Office staff violated any specific provision of these governing documents (with the sole exception that a letter may not have been placed in the appropriate file after a matter was closed, page 492). In fact, an informed review of the IR reflects close attention to policies and procedures by the members of the Ethics Committee and the Ethics Office staff. These four disciplinary cases were not handled in an "improper" fashion. The IR's description of Ethics Office staff review of ethics complaints as "a backwards-process wherein the preliminary determination of an ethical violation is made before any specific ethical standards are even considered" (pages 471, 515) is a mischaracterization of how the Ethics Office staff operate. In our experience, Ethics Office staff are professionals with an intimate working knowledge of the Ethics Code and relevant procedures.

Additionally, the IR's failure to include important information reviewed by the Ethics Office in the four matters (e.g., pages 494-520) also hampers a reader's ability to make an informed judgement about how the Ethics Office operates and recognize that these four matters were handled in a manner consistent with how other ethics complaints were handled. The IR's failure to compare how these four matters were handled with how other cases were handled risks

leaving the inaccurate impression—especially for readers without detailed familiarity with Ethics policies and procedures--that these four cases received differential and improper treatment.

The Commission may take this opportunity to clarify whether the Ethics Committee *Rules and Procedures* are to be applied in a manner consistently across all ethics complaints or, as is implied by the IR, whether certain classes of complaints will be treated differently than others. Differential treatment risks cutting against the very notion of due process.

The disclosure of confidential information in the Independent Report

The extensive disclosure of information related to these four ethics matters in the IR may well have violated the Ethics Committee *Rules and Procedures* regarding the confidentiality of ethics complaints (<http://apa.org/ethics/code/committee-2016.aspx>, see especially Part II, sections 3.1 and 3.2). This disclosure has the potential to undermine confidence that APA will respect the confidentiality of ethics-related matters and thus undermine the work of the Ethics Committee and Office. Release of ethics case information in the IR raises legitimate concern about whether information coming to the APA Ethics Office will be kept confidential.

It is essential that the Commission directly address the contours of confidentiality for matters before the Ethics program so that complainants and respondents are fully informed regarding whether information related to an ethics matter will remain confidential or under what circumstances that confidentiality can or must be breached.

Conflicts of interest in the Ethics adjudication program

The Ethics Commission should address conflicts of interest in the adjudication program. Clear rules on recusal will protect APA staff and the adjudication process.

Current procedures require the Director of the Ethics Office and the Chair of the Ethics Committee to conduct an initial review of an ethics complaint, including on occasion review of complaints against members serving in governance roles. Many governance groups are peripheral to the ethics process and Ethics staff have little interaction with those groups. Other governance groups are central to the functioning of APA, and ethics staff have regular contact with group members. It is untenable that an Ethics Office staff member would review a complaint against a member of the Board of Directors. Senior staff have ongoing contact with the Board and often have longstanding relationships with them. Responsibility for personnel decisions rests with the CEO rather than the Board but there are myriad ways in which members of the Board can exercise influence over staff which at times can include staff recognition and even compensation. We strongly encourage the Commission to review the letter of resignation recently submitted by the public member of the Ethics Committee for additional thoughts on the subject of conflicts of interest in the adjudication process.

The role of adjudication in the Ethics Committee and Ethics Office

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 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.

Second, the 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.

The Commission could make a valuable contribution by describing what it views as the appropriate relationship between the APA Ethics program and licensing entities. This would be particularly helpful since the IR failed to report that multiple licensing boards had investigated complaints against one military psychologist named in the IR yet took no action against him. (pages 520-522)

Access to information by the Ethics Committee

The IR correctly indicated that there are times when the Ethics Committee and Office are not able to obtain information necessary to adjudicate an ethics complaint because of limitations on APA’s ability to conduct an investigation. These limitations include the lack of subpoena power and in rare cases, the inability to obtain classified information. Ironically, the IR indicated that its own ability to investigate APA was hampered by these same limitations (e.g., “as non-government investigators, we do not have a security clearance,” page 5) yet criticized APA for making this point, “there was...an accurate (albeit strategically convenient) claim that gathering full information would have been extremely difficult in light of the classified nature of the underlying activities.” (page 67). But it is incorrect to conclude that a lack of access to classified information is the only, or even primary, reason why ethics investigations cannot go forward. There are many reasons why the ethics program may not have access to information necessary to adjudicate an ethics complaint but no analysis of these reasons was offered in the IR.

The Commission can make a valuable contribution by addressing the challenges facing a private association in accessing information in investigating or adjudicating ethics complaints but risks missing the mark if the inquiry focuses upon the rare situation in which the challenge is due to classified information.

We offer our thanks to the Commission for reviewing our comments. We look forward to reading the Commission's recommendations for the Ethics program and commend the Commission for its work on this challenging task.

Sincerely,

Robert T. Kinscherff, Ph.D., J.D., Chair 2000, 2001

Steven Sparta, Ph.D., ABPP, Chair 2002

Michael D. Roberts, Ph.D., Chair 2003

Katherine Di Francisca, Ph.D., Chair, 2005

Robin M. Deutsch, Ph.D., ABPP, Chair 2007

W. Brad Johnson, Ph.D., Chair 2008

Nancy McGarrah, Ph.D., Chair 2010

Nadya A. Fouad, Ph.D., Chair, 2012

James N. Bow, Ph.D., ABPP, Chair, 2013

EXHIBIT C-20

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Todd E. Edelman
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	Initial Conference
	:	Feb. 23, 2018, 9:30 AM
Defendants	:	Courtroom 212
	:	

**AFFIDAVIT OF STEVEN KLEINMAN IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of California)
) ss:
County of Monterey)

1. I, Steven Kleinman, having been first duly cautioned and sworn, state the following based upon personal knowledge:

2. I was first contacted by email by Mr. David Hoffman of the law firm Sidley Austin LLP on May 14, 2015, and asked to provide information in an ongoing independent review being conducted on behalf of the American Psychological Association (APA) regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (PENS) Task Force. I was interviewed by Sidley Austin on May 22, 2015.

3. The interviewers did not focus on issues that I considered relevant to my substantive work with detainees, nor did the Report of the Independent Review (hereinafter "Report") accurately characterize my statements. Additionally, I had to interrupt the interviewers on at least six occasions to state that they were inaccurately characterizing my testimony. Finally, in several instances the interviewers inappropriately asked me to disclose information that I had informed them (and knew from direct experience) was "classified." Despite my warnings, the interviewers appeared to not understand why that was problematic or the implications of what they were asking me to inappropriately reveal.

4. I am a former interrogator, but the interviewers were uninterested in my first-hand experience or in understanding the specific nature of the interrogation process. This was quite surprising to

me given that involvement of psychologists in detainee interrogations was a significant issue in the review process.

5. In the Report to the APA dated July 2, 2015, it states on p. 297, FN 1317:

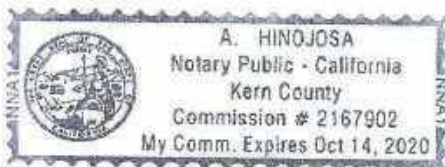
Steve Kleinman, a military intelligence officer, also told Sidley that the 'safe, legal, ethical, and effective' framework was not useful, and that clinical psychologists in general were not the best kind of psychologists to have on BSCTs in the first place. Kleinman interview (May 22, 2015).

This statement was not at all an accurate characterization of what I said in the interview. Upon reading this following publication of the Report, I notified Mr. Hoffman of this. The footnote was subsequently removed in the revised version of the Report published on September 4, 2015, but only after repeated attempts to contact Mr. Hoffman and ultimately threatening Mr. Hoffman with the prospect of litigation.

I declare under penalty of perjury that the foregoing is true and correct.


Steven Kleinman

Sworn and subscribed to before a notary public in the State of California, this 10th day
of ~~January~~ ^{February} 2018.




Notary Public

EXHIBIT C-21

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF BRYCE LEFEVER IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Pennsylvania)
) ss:
County of York)

1. I, Bryce Lefever, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was first contacted by David Hoffman of the law firm Sidley Austin LLP on February 25, 2015, in order to schedule an interview as a part of the ongoing Independent Review being conducted on behalf of the American Psychological Association (hereinafter "APA") regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA policies including the Psychological Ethics in National Security (hereinafter "PENS") Task Force. I served as a member of that task force in 2005. I was interviewed in person by Danielle Carter and Yasir Latifi for several hours on May 3, 2015 at my home in York, PA.
3. I am a clinical psychologist and retired Captain in the United States Navy, Medical Service Corps. I currently maintain a consulting practice and have consulted to the Navy on eliminating the stigma associated with seeking mental health treatment. I have also developed and implemented a first-of-its-kind Mental Fitness and Resilience Training Program for Navy Special Forces. From 1990-1993, I was the psychologist at the Survival Evasion Resistance and Escape (hereinafter "SERE") School, not a SERE "instructor" as the Report of the Independent Review (hereinafter "Report") incorrectly described me. (Report, p. 18)
4. The Report contains numerous statements relevant to me that either distort information I provided to the interviewers or omits contrary information I provided, or both. First, the

Report leaves an inaccurate impression that Morgan Sammons and I had an agenda for my service on the PENS Task Force. It states (pp. 239-240):

[Sammons] recalled that Behnke and him had a conversation, likely after the February [sic] 2005 Council meeting, where Behnke inquired whether Sammons had any nominees for the task force in mind. Sammons told him that he would nominate Lefever. Sammons later spoke with Lefever and, according to Lefever, told him that, if Lefever was interested, "we'll get you on there." Lefever said he was interested, offered his nomination (with Sammons's blessing), and placed on the task force.

I had informed the interviewers that I volunteered to serve on the PENS Task Force because I believed I had relevant background experience to contribute. I specifically stated that I had no agenda for the meeting and did not view myself as supporting any agenda of other members of the task force if, indeed, anyone had an agenda. This information was omitted from the Report.

5. Second, according to the Report (p. 21):

Lefever, different than the other DoD members, believed the task force would accomplish little if it did not provide specific, defined guidance about when a psychologist could intentionally inflict physical pain or psychological distress, and how to determine an approximate line between pain and harm. In his desire for greater specificity, Lefever was actually in agreement with the task force's two substantial dissenters—Wessellis and Arrigo—although he was in sharp disagreement with them about where to draw specific lines. Lefever said that once it became clear to him that the task force's APA leadership (Behnke, Koocher, Anton and Newman) and chair (Moorehead-Slaughter) were not going to insist that the report go beyond a high-level, loose set of guidelines, he stopped trying to push for greater specificity and accepted the result, which he saw as unobjectionable but a clear failure of leadership.

This passage represents a complete distortion of what I told the interviewers and incorrectly implies that I believed the PENS report should have permitted abusive interrogation techniques. I repeatedly emphasized to the interviewers that *prior to addressing specific interrogation techniques*, the PENS Task Force should address underpinning philosophical questions such as how context affects an ethical analysis, the relationship between ethics and human rights, and the distinction between pain and harm. I believed that a thoughtful consideration of these and other philosophical issues *necessarily preceded a discussion of specific techniques, a discussion that never took place*. I did not simply resign myself to going along with what resulted from a "failure of leadership." My position at the PENS meeting, and as I clearly explained it to the Sidley interviewers, was not accurately or fairly represented in the Report.

6. Third, the Report (p. 126) states:

Lefever recalled that Matarazzo was invited by Army psychologists so that he could assess psychologists' involvement with the SERE program and ensure that it was ethical. He stated that Matarazzo's "ethical test" was whether a person would be proud of his actions if they were published on the front page of the newspaper. Matarazzo did not make any specific mention of the Ethics Code, but he indicated that if he could use his skills as a psychologist to further America's cause, he would not hesitate to do so. Lefever said that he completely agreed with Matarazzo's point of view that psychologists should be proud to use their skills to defend the nation.

This passage erroneously implies that I favored inappropriate or abusive interrogation techniques "to defend the nation." I clearly told the interviewers that I endorsed the maxim "Do no harm," which was omitted from the Report. At no point did I state or convey to the interviewers that there was any adequate justification for violating the "Do no harm" principle.

7. Fourth, and similar to the previous two distortions, the Report leaves the false impression that I believed certain inappropriate interrogation techniques would be considered "ethical" under certain circumstances. The Report (p. 269) states:

Lefever...believed there was a difference between techniques that caused pain (which were short-term and ethical) and those caused harm (which were long-term and unethical), and wished to explore this difference during the meeting. He also believed that determining what was ethical was based on community standards. So if a technique was deemed acceptable by the community, then it was ethical. Lefever explained that the ethical question was a separate inquiry from whether a technique was moral. Under this framework, there could be techniques that were ethical but immoral.

In fact, the point I made to the interviewers was precisely the opposite of what the Report communicates. I told the interviewers that "ethics" and "morals" are based upon community standards, but that a community could reach a consensus that was a violation of human rights. Reaching a consensus in and of itself or identifying an interrogation technique as "ethical" and/or "moral" does not justify or permit an abusive technique. This important point was omitted from the Report.

8. Fifth, the Report mischaracterizes me as critical of the "safe, legal, ethical, and effective" framework utilized by some members of the PENS Task Force. It states, "Gelles and Lefever, both told Sidley that they were not impressed with Banks's analytical framework. ...Lefever did not think there was any research to show that psychologists could make interrogations fully 'safe, legal, ethical, and effective.' Lefever described that he went along with the phraseology once it was clear to him that the meetings were not going to delve into the specific techniques and philosophical issues at play during interrogations." (p. 272) What I actually told the interviewers was that I had no objection to this framework and I believe that interrogations should be safe, legal, ethical, and effective.


9. Lastly, and perhaps most significantly, the Report's conclusion that there was collusion among PENS Task Force members to keep ethics guidelines "loose" to permit abusive interrogation techniques mischaracterizes the work of the task force and omits contradictory information I provided to the interviewers. In fact, the interviewers and I had a discussion on this very point. I told them that no one from the APA staff, member of the PENS Task Force, or any other individual, had approached me regarding any "collusive" effort to keep ethics guidelines loose or in any way to enable abusive interrogation techniques. I told them that I would have been an obvious and natural choice to include in such an effort, given my background with SERE, but that prior to the meeting, over the course of the three-day meeting itself, and following the PENS meeting, there was never any mention orally or in email about any such effort. I also informed them that I did not experience any influence or pressure to adopt any particular point of view, and that I did not believe that I needed to or even should agree with other members of the task force who had military or national security experience. None of this information was included in the Report.

10. Taken together, these numerous distortions, mischaracterizations and omissions in the Report regarding what I told the interviewers lead me to conclude that the interviewers were attempting to confirm a preconceived narrative rather than understand and learn from my perspective on relevant history and issues.

I declare under penalty of perjury that the foregoing is true and correct.


Bryce Lefever

Sworn and subscribed to before a notary public in the State of Pennsylvania, this 3 day of November 2019.


Notary Public

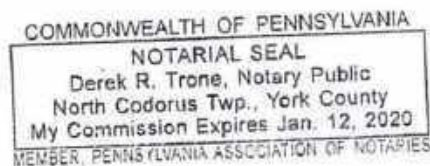


EXHIBIT C-22

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF RONALD LEVANT IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Ohio)
) ss:
County of Summit)

1. I, Ronald Levant, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was President of the American Psychological Association (APA) in 2005, the year that the Psychological Ethics and National Security (PENS) Task Force was convened and worked to produce its "Report on Psychological Ethics and National Security." As a Presidential task force, the PENS Task Force was comprised of ten subject matter experts chosen from over 100 nominations by interested groups and individuals. The APA Board of Directors approved the report by email vote on or about July 1, 2005, following review of the completed PENS report by the APA Ethics Committee and its determination that the 12 guidelines contained within the report were appropriate interpretations and applications of the APA Ethical Principles of Psychologists and Code of Conduct (2002). My tenure on the Board concluded at the end of 2006.
3. I was first contacted regarding the independent review by a letter from Nadine Kaslow in December 2014. The letter asked that I cooperate in the review by providing information regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the PENS Task Force. Subsequently, I was contacted via email from David Hoffman of the law firm Sidley Austin LLP requesting that I be interviewed, and that I allow access to my computer and paper files for any information relevant to the review.

4. Prior to the interview, an individual working on the independent review, whose name I do not recall, came to my home and spent several hours in my home-office searching and downloading files from my computer. This individual also removed paper files from my office and took them away with him. The individual did not identify what files he downloaded from my computer.

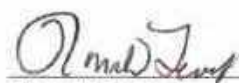
5. On May 13, 2015, Mr. Hoffman, along with an associate, traveled to my home and interviewed me in person. The associate typed on a laptop while I was speaking. The interview lasted the scheduled full four hours, after which time Mr. Hoffman asked to continue longer. I explained to him that because I had other obligations, I was unable to continue beyond the originally scheduled time frame.

6. At the time the independent review was completed, I was a member of the APA Council of Representatives, representing the Society for the Psychological Study of Men and Masculinity (APA Division 51). As a result, I received electronic access to the Report of the Independent Review (hereinafter "Report") on July 8, 2015, along with the other members of Council; access to the accompanying exhibits was not provided until the following day. I accessed and read the Report online.

7. The Report included inaccuracies and mischaracterizations of my role and actions concerning the selection of PENS Task Force members and the adoption of the PENS guidelines. For example, the Report states, "[I]t would have been clear to everyone involved in early 2005 that selecting six voting, [Department of Defense] 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." (p.243) This statement ignores that customary practice when populating task forces at APA is to include a majority of subject matter experts (which is exactly why the DoD members were selected), thereby leaving the false impression that the deck was being inappropriately stacked. In keeping with this customary practice, I selected the members of the task force with no objections from members of the APA Board of Directors. I explained this customary practice of task force member selection to Mr. Hoffman but this information was omitted from the Report.

8. In addition, the Report portrays the emergency action I recommended for the Board's adoption of the PENS report as being unsupported by policy. It states, "These diverse opinions on the emergency action, however, illustrate that APA did not have a clear policy on what constituted an appropriate emergency action." (p. 317) Yet, the Report itself on page 313 acknowledges that APA *did* have a policy on emergency action, and it is this policy that we followed.

I declare under penalty of perjury that the foregoing is true and correct.


Ronald Levant

Sworn and subscribed to before a notary public in the State of Ohio, this 11th day of

October 2019.



NANCY RUSSO
Notary Public, State of Ohio
My Comm. Expires 10-31-2022
Recorded in Medina County

Nancy Russo
Notary Public

EXHIBIT C-23

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF JOSEPH MATARAZZO IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Oregon)
) ss:
County of Multnomah)

1. I, Joseph Matarazzo, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I am a former President of the American Psychological Association (APA), having served in that position in 1989 and on the Board of the APA from 1988 to 1990. In my career as a psychologist, I established the first Department of Medical Psychology at what is now the Oregon Health and Science University in Portland Oregon, and was a professor there for 50 years before retiring in 2007. Also, among other activities during my career, I served on the Advisory Panel on Psychological Assessment of the Central Intelligence Agency (CIA) from 1966 to 1970 and on the Professional Standards Advisory Committee (PSAC) of the CIA from 2000 to 2003. The task of the PSAC was to develop a more reliable and valid paper-and-pencil test for personality assessment of CIA recruits.
3. David Hoffman of the law firm Sidley Austin LLP contacted me in early 2015 and requested to speak with me in connection with the Independent Review he was conducting on behalf of the APA regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (PENS) Task Force work. I agreed, and Mr. Hoffman came to my house in Portland on May 4, 2015, and interviewed me for approximately five hours.

4. As I prepared for my interview with Mr. Hoffman, I was aware that beginning in 2009 a newspaper article and emails from several psychologists had falsely identified me as a participant in the alleged torture activities of Mitchell Jessen & Associates (MJ&A). One of the psychologists making these allegations against me was Stephen Soldz who was (and continues to be) a vocal critic of the APA's position on psychologists working in national security settings. I was certain that Mr. Hoffman would ask about my association with MJ&A so I began to gather relevant information that would present the correct facts regarding my association. Some of this material was on file in the APA Accreditation Office in the form of applications made by MJ&A and a company called Knowledge Works to become APA-recognized providers of continuing education. I requested that the Accreditation Office send both Mr. Hoffman and me the materials; I believed they would provide a clear and accurate picture of my association with MJ&A. I subsequently learned at the outset of the interview that Mr. Hoffman had not read these materials before hand.

5. During the interview, Mr. Hoffman's line of questioning pursued his clear assumption that I was involved in the alleged "torture" activities of MJ&A. I repeatedly attempted to get him to read my copies of the materials that I brought with me to the interview, but he refused. I did my best to explain to him that I had no role in nor gave any input to the interrogation work in which MJ&A was allegedly engaged.

6. The Report itself does not dispel Mr. Hoffman's seemingly preconceived belief that I had played a role with the company's work in interrogation despite acknowledging my statements about the limited roll related only to continuing education that I played with MJ&A. According to the Hoffman Report, because the investigation "did not find any connection [between my role with MJ&A] and the APA's actions or decisions....We therefore did not take further steps to determine what Matarazzo's role was in Mitchell Jessen & Associates." (p. 50)

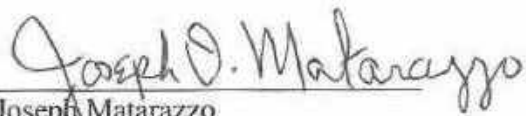
7. The Report further misrepresents my role with MJ&A by failing to include information I had provided to Mr. Hoffman that I did not have a security clearance during the time period in question so I could not have been involved in any MJ&A activities related to detainee interrogations. Failure to include this information leads the reader of the Report to conclude I played a role larger and more significant than in fact it was.

8. At the outset of the interview, my son, Harris Matarazzo, Esq., who accompanied me during the interview, asked Mr. Hoffman for copies of all notes resulting from the meeting. Mr. Hoffman agreed the notes would be provided, in my mind a precondition for going forward with the interview. In addition, at the conclusion of the interview I asked Mr. Hoffman, and he agreed, to allow me to read and correct if necessary his description of my involvement in MJ&A. I was neither provided with the notes nor was I given the opportunity to read and correct the description of my association with MJ&A. I was not even notified by Mr. Hoffman or the APA that the Report had been completed and was about to be published. If I had the chance to read the description of my involvement before it was published, I would have objected to the statement that the propriety of my actions with MJ&A was still an open question. I would also have

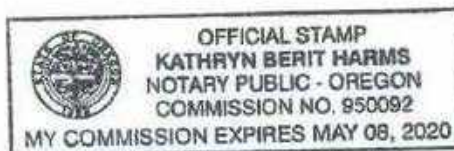
objected to the manner in which the Report presents my past opinion about sleep deprivation and my statements concerning the importance of interrogation after 9/11. Written together with the question of my role in MJ&A, as the Report does, the context presents a negative picture of my actions that is not accurate.

9. Additionally, I was never informed that an errata sheet to the Report was being prepared after the Report was published. I eventually wrote and published a journal article entitled "The American Psychological Association's Hoffman report allegations of my association with the 'CIA torture' program to correct the inaccurate record left by the Hoffman Report. (See Matarazzo September 3, 2018 article Exhibit 1 attached hereto)

I declare under penalty of perjury that the foregoing is true and correct.


Joseph Matarazzo

Sworn and subscribed to before a notary public in the State of Oregon, this 28th
day of December 2018.




Notary Public

The American Psychological Association's Hoffman report allegations of my association with the "CIA torture" program

Joseph D Matarazzo

Abstract

Until now, I have not responded to the undocumented and untrue portrayal of me in the Hoffman report, or the newspaper and email accounts of my alleged role in "torture." I have waited several years because I believed that the American Psychological Association leadership would completely disavow the Hoffman report and find a way to restore my reputation as well as that of the other former American Psychological Association presidents and the small number of its senior staff who were also falsely accused. Although this has not yet happened, I remain optimistic that it will. Here I present the facts as they relate to me.

Keywords

American Psychological Association, Central Intelligence Agency, Hoffman report, Matarazzo, torture program

Since 2009, a small group of psychologists has attempted to associate me, and some seven other former presidents of the American Psychological Association (APA), with a so-called "CIA torture program." I have repeatedly denied such an association, and this has been confirmed by a number of individuals who have firsthand knowledge of the events.

In 1957, I established the first Department of Medical Psychology at what is now the Oregon Health & Science University in Portland, Oregon, and remained a professor there for 50 years before retiring in 2007. During 1966–1970, I served on the Advisory Panel on Psychological Assessment of the Central Intelligence Agency (CIA) along with David Wechsler and a representative from a psychological testing firm in Princeton, New Jersey, and another in Iowa City. And 30 years later (2000–2003), I served as a member of Kirk Hubbard's three-person CIA professional advisory committee. Mel Gravitz and another former APA President, Ron Fox, were the other members. Our task was to help develop a more reliable and valid paper-and-pencil test for personality assessment of recruits to the CIA. One evening, during the completion of my 4-year term, I had dinner with Jim Mitchell and his colleague, John Bruce

Jessen, both former military psychologists. They indicated to me that they were concerned that military psychologists serving overseas needed to be able to earn Continuing Education (CE) credits to fulfill their licensing states' annual requirements. From my long experience as the National Consultant in Clinical Psychology to three Surgeon Generals, I was aware of this need and, together, Jim, Bruce, and I developed a basic framework. The company was named "Knowledge Works," and it would offer a paper-and-pencil CE program to meet the perceived need. Mitchell and Jessen were to be the major stockholders, 50 and 49 percent, respectively, and, at their insistence, I agreed to a token 1 percent ownership. We knew it was not likely to be a money-maker.

Jim and Bruce prepared and submitted an application to the Accreditation Office of the American Psychological

Oregon Health & Science University, USA

Corresponding author:

Joseph D Matarazzo, Oregon Health & Science University, 3550 SW Bond Avenue, Portland, OR 97239, USA.
Email: matarazzo@ohsu.edu



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Association for Knowledge Works as a provider of CE credits. I was identified as one of the principals of the company and also listed as an instructor. APA granted 2 years of provisional accreditation. At this point, what follows is conjecture on my part, as I never was active in Knowledge Works.

From attending short and infrequent meetings of the Board of Directors, I learned that developing such a test was more difficult than anticipated. Furthermore, we became increasingly aware that an insufficient number of military psychologists might need this mechanism to earn CE credits. Accordingly, a new company, Mitchell, Jessen and Associates (MJ&A) was formed and submitted its own application to APA. When I read this second application years later, I learned that I was no longer a principal, but merely listed as an instructor. APA accreditation was not granted to this MJ&A application. It is critical that I add and that I emphasize that I was never involved with the activities of MJ&A again.

Fast forward some years, David Hoffman called me in relation to the alleged involvement of APA in the torture of terrorists. I readily agreed to meet with him. To refresh my memory, I telephoned the APA Accreditation Office and requested copies of the application from Knowledge Works plus the one from MJ&A. I was aware that beginning in 2009 a newspaper article and emails from several psychologists had appeared identifying me as a participant in the alleged torture activities of MJ&A. I was certain from this publicity that David Hoffman would inquire about my relationship to MJ&A. Accordingly, before he arrived I asked the APA Accreditation Office to mail him as well as me copies of those two applications.

Alas, when he arrived at my house, I learned that Hoffman had not read his copies. Accordingly, during his

5-hour-long interview of me, I repeatedly tried to get him to at least read my copies of the Knowledge Works and the MJ&A applications. He opted not to do so and continued pursuing his assumption that I was involved in the alleged "torture" activities of MJ&A. As he left, I asked David Hoffman to promise he would allow me to read, and correct if necessary, his description of my involvement in MJ&A. He agreed to this request.

One can imagine the shock and deep disappointment I experienced when the Hoffman report was leaked to The New York Times without the knowledge of anyone of us who were named in it. Thus, we were not given the promised opportunity to correct any mistakes it might contain. My shock was compounded when I saw my name prominently displayed in a lead article on the role of psychologists in torture by James Risen on the front page of The New York Times.

Until now, I have not responded to the undocumented and untrue portrayal of me in the Hoffman report, or the newspaper and email accounts of my alleged role in "torture." I have waited several years because I believed that the APA leadership would completely disavow the Hoffman report and find a way to restore my reputation as well as that of the other former APA presidents and the small number of its senior staff who were also falsely accused.

Having waited in vain, now at age 92 I contacted Hubbard and asked him to write a letter on my behalf to the President of APA, describing my relationship to MJ&A. He complied, and I followed up with my own letter to the President, with a copy of it to the Leader of the Council of Representatives, the governing body of the APA. Copies of these two letters, and the response to me from APA, are reproduced here.

May 25, 2018

Dr. Jessica Henderson Daniels, President
American Psychological Association
750 First Street NE
Washington, DC 20002-4242

Dear Dr. Jessica Henderson Daniels,

I have been asked to provide clarification on Dr. Joseph Matarazzo's involvement with Mitchell Jensen & Associates (MJA). As background, I was the Contract Manager for a four year (2004-2008) contract MJA had with the Counterterrorism Center within the Central Intelligence Agency. This contract was commonly referred to as the Enhanced Interrogation Program (EIP).

As Contract Manager, I can state unequivocally that Dr. Matarazzo provided no input, nor was in any way involved in any aspect of the Enhanced Interrogation Program.

It should be noted that totally unrelated to the EIP, Dr. Matarazzo did have a contract with me when I was head of the CIA's Directorate of Science and Technology's Research and Analysis Branch within the Operational Assessment Division from c. 2000 - 2003. His work involved improving the reliability and validity of cross-cultural psychological assessment. He was not required to have a security clearance, nor did he possess one. His contract with my office had no relationship to the Counter Terrorism Center or any aspect of interrogation.

At the expiration of this contract around 2003, Dr. James E. Mitchell and Dr. James B. Jensen asked Dr. Matarazzo to join them in forming a company to provide continuing education for military psychologists serving overseas who needed annual CE credit to maintain their state licenses. That company was called Knowledge Works and in 2004 it received a 2-year preliminary accreditation from the American Psychological Association to offer CE credit. After several years of operation and little activity APA accreditation of the program was ended. The company's Knowledge Works name was dropped, the name Mitchell Jensen and Associates was adopted, and the company changed its education and training mission with a contract from the CIA's Counterterrorism Center.

That Dr. Matarazzo had no relationship to any aspect of EIP has been publicly acknowledged in several sources. First in an article by Jeff Manning, a reporter for a Portland Oregon newspaper, the Oregonian. In his December 17, 2014 article he described Dr. Matarazzo as a participant in the Mitchell Jensen & Associates EIP program. However, Manning was urged by Matarazzo to verify this with the CIA. He did so, and in his published OregonLive electronic version of that same published article, Manning added:

"The CIA backed up Matarazzo's claim Tuesday. 'He has no connection to the detention and interrogation program', said CIA spokesman Ryan Trapani".

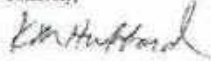
Another clear statement that Dr. Matarazzo had no role in the so-called torture program was provided in the 2016 published book by James E. Mitchell, Ph.D. entitled, "Enhanced Interrogation: Inside the Minds and Motives of the Islamic Terrorists Trying to Destroy America". Because of the effect on Dr. Matarazzo's reputation, and on his university as well as the American Psychological Association of which Dr. Matarazzo was a former President, Dr. Mitchell wrote the following in the Acknowledgements, page 301 of his book:

"I would also like to acknowledge Dr. Joseph D. Matarazzo. He knew nothing of my involvement or the involvement of my company in the CIA's Interrogation Program. He did nothing to support it. Joe has been treated unfairly in the press, and I regret any misery and grief that merely knowing me has brought to him. I mention this here because clearing his name is too important to be obscured in the interior of a book".

As the Mitchell Jensen & Associates Contract Officer for the Enhanced Interrogation Program (EIP), I completely concur with these statements by Ryan Trapani and Dr. James Mitchell, and add to those statements the following. Mitchell Jensen and Associates had 7 Directors on its Board. Dr. Matarazzo held a 1% interest in the company. I was not a board member but did attend all Board meetings in my capacity as Contract Manager. The MJA Board of Directors only addressed business and administrative matters and did not ever become involved with any aspect of operational activity, including detention and interrogation. There was a simple reason for this. Several Board Members, including Dr. Matarazzo, did not have the proper security clearance from the CIA to have access to the any aspect of the EIP. The EIP was a Top Secret Compartmented program. Access to information on the EIP required a higher clearance than the normal Top Secret clearance. Dr. Matarazzo did not have any level of clearance from the CIA. I can state unequivocally that during the time Dr. Matarazzo was present at each of these MJA Board meetings, he provided no input, nor was in any way aware of or involved in any aspect of the EIP. None whatsoever.

Unfortunately, but not surprising, is that much of what is reported in the press regarding the Enhanced Interrogation Program has no basis in fact. Dr. Matarazzo's alleged involvement in the program also has no basis in fact. He is a well-known and highly respected psychologist who has always met the highest ethical standards in his profession.

Sincerely,



Kirk M. Hubbard, Ph.D.

Contract Manager, Mitchell Jensen & Associates
 k.hubbard@mjasa.com
 406-270-6632



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Neuroscience

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Joseph D. Motorazzo, Ph.D.
Professor
jdms@ohsu.edu

Dr. Jessica Hindersman Daniels, President
American Psychological Association
750 First Street, NE
Washington, D.C. 20002-4242

May 20, 2018

Dear Jessica,

As a former president of the American Psychological Association, I am writing to you and Jon Coyne to place the enclosed letter to you from the CIA on the agenda of the next meetings of the APA Board of Directors as well as the APA Council of Representatives.

In 2009 three members of the APA first began falsely accusing me of being a participant in the CIA's Enhanced Interrogation Program (i.e. our country's so-called "torture" program). This accusation was then reported in a number of newspaper and magazine articles as well as in the 2015 Hoffman Report to the APA Board of Directors.

The enclosed copy of the May 25, 2018 letter to you from psychologist Kirk Hubbard, Ph.D., the Contract Officer for the CIA's Enhanced Interrogation Program, states explicitly that I had absolutely no involvement in this so-called CIA torture program. Importantly, Dr. Hubbard's letter includes confirming public statements from a second CIA respondent, Ryan Trapani, as well as from the 2016 book by James Mitchell,

of Mitchell, Jensen & Associates, the director of the company that was responsible for the Enhanced Interrogation Program.

Because of my service as a former president of APA, these false allegations have seriously affected not only the APA, an association I have been proud to serve, but also my 60 year career as a psychologist and the reputation of the Oregon Health and Science University, on whose faculty I long served.

Unlike other colleagues who have been touched by this public tragedy, I have tolerantly waited for APA to address this wrong done by the Hoffman Report to my reputation, and that of my university. By this letter, I am requesting that the APA Board of Directors and the APA Council of Representatives address and remedy this injury by publicly acknowledging that I had no role in the so-called torture program.

Sincerely yours,

Joseph D. Matarazzo, Ph.D.
Professor Emeritus

Please send correspondence to
this address:
3550 S.W. Bond Ave. #3007
Portland, OR 97239

cc: Antonio Puente, Ph.D.
Past President, American Psychological Association

Joseph J. Coyne, Ph.D.
Chair, American Psychological Association Council Leadership
Team



Needless to say, I was very pleased with Hubbard's letter as well as the implications in APA President Jessica Henderson Daniel's reply to me. I believe these three letters should begin the process of repair, and I have little doubt that the reputations of those of us who were maligned in the Hoffman report will be restored.

My last contact with the CIA consisted of a letter from Kirk Hubbard asking if I believed sleep deprivation constituted torture. I had covered the literature on this topic in an annual lecture to medical students and felt qualified to offer an opinion. Hubbard's question consisted of 11 subparts, each dealing with an issue related to sleep deprivation.

After I answered the items in the questionnaire, I felt my opinion would be insufficient to what I sensed were his needs. Accordingly, I sent the questionnaire to five prominent psychologists who I knew had done research on the subject, or had published in an area relevant to the query. I received their replies within a week and returned all five plus mine to Hubbard. From the research I had read on the subject, I was not surprised that all six of us agreed that, although annoying or uncomfortable, sleep deprivation was not torture. However, I do believe that sleep deprivation could be a form of torture when combined with multiple other techniques capable of breaking resistance.

I will end by sharing my belief that, in time, the damage the issue of "torture" has wrought on a number of American psychologists and the APA will have been corrected. Herd mentality on an even larger scale has occurred before in our country. As an example of why I am optimistic, I note that the passage of time has restored the reputations of many individuals who were falsely accused during the 1950s by

Senator McCarthy. I firmly believe that restoration also will happen for those of us who have been unfairly portrayed in the media and in the Hoffman report.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

EXHIBIT C-24

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

State of Oregon)
) ss.
County of Multnomah)

2. I am a licensed attorney in the State of Oregon and the son of Dr. Joseph D. Matarazzo, a psychologist and former President of the American Psychological Association (hereinafter "APA"). Dr. Matarazzo was interviewed by David Hoffman, an attorney with the law firm Sidley Austin LLP, as part of an independent review concerning the post-September 11, 2001 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security Task Force. This review was commissioned by the APA.

4. On May 4, 2015, I accompanied my father to the interview with Mr. Hoffman and was present with him for the entire time, lasting approximately five-hours. Prior to questioning, I explicitly asked Mr. Hoffman for copies of all the notes resulting from that meeting. The stated purpose of this request was to allow Dr. Matarazzo to review those notes in order to, if necessary, correct, respond to, or clarify any statements attributed to

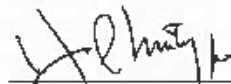
him. This is something I would routinely seek for a client being questioned and, as an academic, something Dr. Matarazzo would require in any investigatory matter. Without an agreement to provide this material, including an opportunity to respond to the contents of those notes in advance of a published report, I would have recommended that the interview not proceed. In effect, the agreement to provide these notes was a condition precedent to Dr. Matarazzo's cooperation. Mr. Hoffman stated that those notes would be provided. My understanding is, however, that the notes were never provided.

5. I observed the interview to be more like a deposition by an opposing counsel, something much different than would be expected from a fact-finder in an independent review with a goal to discover the truth. In contrast, at the outset, my father noted that he "ha[d] nothing to hide," and did not want the meeting to become legalistic. At times, I observed my father, then ninety years old, struggle with the length of the interview, and pressed for breaks on his behalf. None were taken. Eventually, at my insistence, a lunch break did occur, with my father paying to have a group meal brought into the continuing interview.

6. In preparation for the interview, my father spent almost one week gathering, noting, and organizing numerous materials which he believed would be essential for any investigator to review in order to fully understand his, my father's, role in the APA inquiry. His stated goal was to be fully responsive to all questions posed to him, with confirming documentation that could be quickly and easily accessed. I was surprised then, that Mr. Hoffman refused to look at the materials my father believed to be responsive to questions asked, and supportive of answers given. Instead, my father was pressed for strictly verbal answers to questions that appeared to assume that he was deeply involved with a company that was alleged to have engaged in the torture of detainees.

7. That part of the Hoffman Report relating to my father was surprising. Notably, certain written and verbal information Dr. Matarazzo provided was not presented, while other information was set forth in an equivocal manner. The selective presentation of this material left the impression that my father was involved with Mitchell, Jessen and Associates to an extent, and in a manner, that a complete review of the material made available to Mr. Hoffman would have refuted. Similarly, the naming of my father eighty-two times in the Hoffman Report conveyed the misleading impression of an involvement, or level of potential involvement, in questionable activities unsupported by the facts.

I declare under penalty of perjury that the foregoing is true and correct.



Harris S. Matarazzo
Attorney At Law, OSB 86242

Subscribed and sworn to and acknowledged before me by Harris S. Matarazzo
this 28th day of December 2018.




Notary Public for Oregon
My Commission Expires: 2/7/21

EXHIBIT C-25

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF RUSSELL NEWMAN IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of California)
) ss:
County of San Diego)

1. I, Russell Newman, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was first contacted on February 26, 2015 by email by Dr. Nadine Kaslow, of the American Psychological Association (APA), and then by Mr. David Hoffman, of the law firm Sidley Austin LLP on April 15, 2015, and asked to provide information in an ongoing independent review being conducted on behalf of the APA regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Presidential Task Force (Task Force) for Psychological Ethics in National Security (PENS) Task Force. I was interviewed in person by Mr. Hoffman in my office in San Diego, California on April 29, 2015 and then again by telephone on June 15, 2015.
3. Based on communications from Mr. Hoffman in advance of being interviewed, I was led to expect that the review process being under taken would be an objective review and that Mr. Hoffman was serving as an independent, neutral and objective third party in conducting the review. I was never advised that the review could be adverse to my interests, nor was I ever advised that the scope of the review had been extended beyond what Dr. Kaslow's and Mr. Hoffman's communications had described.

4. Among allegations made in the Report, despite contradictory information in Mr. Hoffman's possession at the time, was the allegation "that records were destroyed in attempt to conceal the collaboration" between Col. Banks and Dr. Behnke to secretly further the military's agenda. (Report, p. 396) To support this allegation, the Report claims that Dr. Behnke purposely deleted emails from Col. Banks that were labeled as "eyes only" or that Col. Banks asked be deleted. In fact, all of the alleged deleted emails were contained in the image of Dr. Behnke's hard drive created by the forensic investigation firm Mr. Hoffman hired, something readily confirmed when Plaintiffs' forensic expert reviewed the image produced by Sidley during discovery and found that *no emails had been deleted*.

5. A number of key statements or allegations in the Report pertaining to me or related to questions that I was asked during my interview were inaccurate, mischaracterizations, or distortions. First, The Report (p. 26) states that I "told [the interviewer] 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. This is not accurate. Mr. Hoffman asked me if Dr. Arrigo might be intimidated by my comments given my position at APA, I replied that I would not know that but when I spoke in my professional capacity, I always tried to speak with influence. To rest that as "with clear purpose of trying to strongly influence the outcome" of the task force is a mischaracterization of what I said.

6. Second, the Report describes a conversation that APA staff Geoff Mumford and I presumably had, as recounted by Dr. Mumford concerning Dr. Banks' suggestion to have someone with security clearance on the PENS task force. It states that the 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." (p. 226) When Mr. Hoffman asked me during my interview about the security clearance suggestion, I told him I believed the suggestion was intended to assure that there was someone on the task force who could process the task force's deliberations in light of relevant information that others on the task force would not be privy to. My understanding of the suggestion was omitted from the Report.

7. Third, the Report (p. 227) states:

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."⁹³ 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.

While it is true that I told Mr. Hoffman that Drs. Dunivin and Banks, as well as others, would object to labeling all interrogations as coercive, I indicated that it would be inaccurate and prejudicial to do so as some interrogations may be coercive and others not. An objective study of interrogation techniques would not simply label all interrogations as coercive.

8. The Report (p. 256) states that I “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.” When I was asked about this in my interview, I told Mr. Hoffman that the intended purpose of my comments to the task force about public statements was to reinforce that whatever positions the task force ultimately adopted, their report needed to be written in a clear and understandable fashion so that both the APA membership and the general public would clearly understand what those positions were. This information was omitted from the Report.

9. The Report spends considerable time focused on its conclusion that my participation on the task force along with my marriage to Dr. Dunivin created an undisclosed conflict of interest. (See pp. 11, 13-14, 211-220 253-258, 263). When I was asked in my interview about a conflict of interest, I told Mr. Hoffman that I thought some interests were aligned and some were not. Those not aligned had the *potential* to materialize into a conflict if they were to arise. For example, if the task force were to consider whether individual psychologists participating in interrogation support were considered to be behaving ethically or not, that would be a conflict. However, that was not the task force’s charge and it never raised that issue. Rather, the task force was working to determine whether the existing ethics code covered this type of activity; any determination of whether an individual psychologist was violating the code was solely the jurisdiction of the Ethics Committee. I also believed that any conflicts occurring in the task force meeting were mitigated by the fact that I was an observer and not a member of the task force, had no vote on the task force, and never participated in any of the PENS listserv deliberations leading up to the meeting or following it. In addition, my limited comments¹ in the meeting, consistent with my role as a resource person for the task force and not as a subject matter expert, focused primarily on reminding the task force members that whatever they ultimately determined, the report needed to be clear and understandable, particularly given how misunderstood and contentious the issue of psychologists’ participation in interrogations had been. Although some of this context is included in the Report, it appears to be given little weight in the Report’s broad brush

¹ A true and correct copy of Jean Maria Arrigo’s Notes of the APA PENS Task Force Meeting, which the Report specifically references (pp. 259, 264) and claims “provide[s] the most complete picture of what occurred during the meetings,” can be found at <http://www.ethicalpsychology.org/materials/Arrigo-PENS-Meeting-Notes-Archived-July-2006.pdf>. The notes indicate that I spoke only 22 times over the course of a three day meeting.

conclusion about the existence of a conflict without considering that conflicts of interest occur on an issue by issue basis.

10. The Report further incorrectly states that my marital relationship with Dr. Dunivin was not disclosed. In fact, among other disclosures to Board members the CEO, Norman Anderson, and the APA General Counsel, Nathalie Gilfoyle, the relationship had actually been reported on in *The Monitor*, the Association's major monthly news publication. A true and correct copy of the article can be found at <https://tinyurl.com/u2r77zr>.

11. In yet another mischaracterization, the Report (p. 329) states:

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 discussed 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.

When asked in my interview about a psychologist providing both roles, I told Mr. Hoffman that I did not believe a conflict existed between the 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 was supported by the research on interrogations. However, he never asked why I did not "hone" in on this during the PENS meeting. Had I been asked, I would have told him that it was not my role at the meeting to be addressing issues intended for the subject matter experts on the task force.

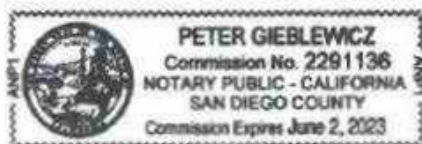
12. Lastly, the Report omits information I provided in my interview regarding the role of the APA Ethics Office and Ethics Officer. Mr. Hoffman questioned me about the role of the Ethics Office in a way that suggested the Director of Ethics, Dr. Behnke, was personally responsible for the Office's redirection away from adjudication of complaints against to education of the membership, seeming to suggest that Dr. Behnke favored protecting members rather than the public. I told him that, in fact, that refocus of the office occurred prior to Dr. Behnke's hiring, was determined by the Board of Directors, and the approach in hiring the next Director (which turned out to be Dr. Behnke) intentionally searched for an individual whose background and strength was ethics education. Mr. Hoffman seemed to push back and with some skepticism asked who would be left to protect the public if that were the case. When I told him the primary function of state licensing boards is public protection, he replied, "fair enough." My comments on this matter were not included in the Report nor was His apparent agreement that public protection is the function of licensing boards.

13. Mr. Hoffman's overall approach during my interview caused me to feel at times that I was more being cross-examined than I was being interviewed for my personal knowledge that could help an investigation attempting to learn what actually happened. As such, I was particularly struck with a published letter from the former Commissioner of Human Resources for the City of Chicago with respect to Mr. Hoffman's investigation of him when Mr. Hoffman was Inspector General in which Mr. Tristen said, "I find it unfortunate that you have allowed your zeal to cloud your judgment and ignore the facts." A true and correct copy of that letter published by the *Chicago Tribune* can be found at <https://tinyurl.com/sd5wgz6>. (The Illinois Bar subsequently investigated the charges against Mr. Tristen and found them to be without merit.) In fact, at times during the interview, my experience was of facing a zealous prosecutor attempting to secure answers to aid his case. Consistent with my experience, Mr. Hoffman has been reported by the *Chicago Tribune* to say in another of his investigations, "Where there's smoke, there's usually fire."² This statement, along with my experience of the interview, when combined with Mr. Tristen's report to Plaintiffs' attorney that Mr. Hoffmann told him, "I use the media to fan the flames," lead me to believe that Mr. Hoffman was pursuing a predetermined outcome in his investigation on behalf of APA.

I declare under penalty of perjury that the foregoing is true and correct.


Russell Newman

Sworn and subscribed to before a notary public in the California, this 14 day of November 2019.




Notary Public

² A true and correct copy of the newspaper account can be found at <https://tinyurl.com/y2c8b7zv>.

EXHIBIT C-26

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF ROBERT J. RESNICK IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Virginia)
) ss:
County of Henrico)

1. I, Robert J. Resnick, having been first duly cautioned and sworn, state the following based upon personal knowledge:

2. I have recently completed my service as a Council of Representatives (hereinafter "Council") member of the American Psychological Association (hereinafter "APA"), representing the Psychologists in Independent Practice/APA Division 42. I am a former president of the APA. I have closely followed the events related to the Independent Review conducted by Mr. David Hoffman of the law firm Sidley Austin LLP on behalf of the APA regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (hereinafter "PENS") Task Force.

3. At the February 2016 Council meeting I attended, the APA Board of Directors announced that it had rehired Mr. Hoffman to review the Report of the Independent Review (hereinafter "Report") in light of certain Department of Defense (hereinafter "DoD") policies provided to him by some individuals named in the Report and which had not previously been referenced or analyzed in the Report. Concerns were expressed to the Board by many Council members that rehiring Mr. Hoffman to review his own work for errors and omissions was, at the least, a potential conflict of interest and not an appropriate action. Despite these expressed concerns and the advice to not rehire Mr. Hoffman, the Board rehired him and his law firm to evaluate the impact of the omitted DoD policies on the Report's original analysis and conclusions. A

supplemental report was due on June 8, 2016. As of today, no supplemental report has been forthcoming.

4. On August 13, 2016, at the request of some former APA Presidents, a meeting was convened with several former presidents and a subset of the APA Board, along with several staff members, to discuss concerns related to the Independent Review and the Board's handling of the resulting Report. I and some other former presidents in attendance at the meeting voiced concern about the way the Board appeared to "rush to judgment," leaving some APA members, APA staff and former presidents with no recourse to the allegations made in the Report, while APA proffered apologies based on the Report's alleged wrong doing. Concern was also expressed that those targeted in the Report were asked to cooperate in the investigation but discouraged from obtaining counsel in advance.

5. Additionally during that meeting, some Board members admitted that their actions were impulsive and not thought through and acknowledged that the Report contained many inaccuracies. Attached hereto as Exhibit 1 is a true and correct copy of the notes of that meeting (with typos from the original corrected), submitted by me to the APA Division 42 Board of Directors several days after the meeting. These notes are an accurate account of the meeting to the best of my knowledge and belief (with the one exception that Norman Abeles was not in attendance though inadvertently listed as being there).

6. In advance of the August 2 & 4, 2017 APA Council of Representatives meeting for which I was scheduled to continue representing the Psychologists in Independent Practice/APA Division 42, I received an email from the APA General Counsel indicating that I should be excluded from certain portions of the meeting due to my having submitted an affidavit on behalf of the Plaintiffs in their Ohio litigation. I responded that I saw no reason to and would not recuse myself for having previously attested to publically available information of which I had personal knowledge (see Exhibit 1 referred to above). Attached hereto as Exhibit 2 is a true and correct copy of my email exchange with the APA General Counsel.

I declare under penalty of perjury that the foregoing is true and correct.


Robert J. Resnick

Sworn and subscribed to before a notary public in the State of Virginia, this 5th day of
February 2019.



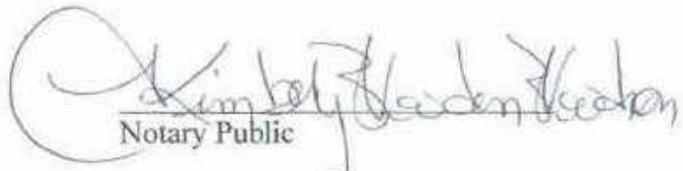

Notary Public

Exhibit 1

Subject:[DIV42BD] Meeting with Former President and the Board of Directors
Date:Thu, 18 Aug 2016 23:25:49 +0000
From:Resnick, Robert <rresnick@RMC.EDU>
Reply-To:Division 42 (Independent Practice) Board of Directors <DIV42BD@LISTS.APA.ORG>
To:DIV42BD@LISTS.APA.ORG

The following is accurate to the best of my knowledge and belief:

On Saturday, 13 August 2016, at 9AM at the request of some former APA Presidents, a meeting was convened with several former presidents and a subset of the Board of Directors (BOD) along with some staffers. To the best of my recollection, the former presidents included Pat Deleon, James Bray, Norm Ables, Dorothy Cantor, Gerry Koocher, Ron Levant, Nadine Kaslow, myself, and perhaps, others. From the Board of Directors was Susan McDaniels, Barry Anton, Jennifer Kelly, Bonnie Markham, and perhaps, others. Several staffers were present but did not speak and, some appeared to be taking notes and, as far as I know, the meeting was not recorded.

Drs. Deleon, Bray and Resnick and others voiced concern and were critical of the way the BOD handled the Hoffman Report and their "rush to judgment" that left some APA members, "executive" staff and former presidents hanging in the wind with no recourse while APA proffered apologies.

From the Former Presidents:

- Before releasing the report the Board permitted Reisner and Soldz (not an APA member at the time) private access to the Hoffman Report even though it was known that both had collaborated with Risen of the NYT in his attacks on APA and some of its members.
- Reisner and Soldz continued to make inappropriate demands concerning former presidents including expulsion, governance bans, redacting awards—none of which are permitted by APA by-laws. The BOD never made in clear that such demands were not permitted by association bylaws and rules.
- Asking those targeted in the report to cooperate and discouraging them from obtaining counsel in advance.
- Early access and opportunity to respond to the report of those members maligned was promised - but never came to fruition.
- By remaining silent, the BOD gave tacit agreement to the conclusions of the Hoffman Report.

From the Board of Directors:

- Several board members admitted that their actions were impulsive and not thought through and should have been more forthcoming about details.
- Then President Kaslow said she had written and re-written a resignation letter from APA several times (though it was never tendered).
- The Board acknowledged that the report contains many inaccuracies.
- They seemed to acknowledge there was no evidence that APA officers colluded with the government.
- There was acknowledgement that while former presidents were repeatedly and erroneously accused of supporting or suborning torture and seeking to weaken the ethics code, the BOD never attempted to correct those impressions and remained silent.
- Those who were named in the report have had no meaningful opportunity to correct or respond to those allegations.

It was my clear impression that the BOD greatest concern was about fall out and possible litigation and that precipitated a duck-and-cover mentality. Further, it appears that the BOD has dug itself into a deep hole with frequent *mea culpa*. The last bullet point from the former presidents, I believe, contributed to 42's concerns about transparency.

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An email will automatically open with "Unsubscribe" in the subject area. Just Send the message, as is, to unsubscribe from this list.

Exhibit 2

Robert Resnick resnick@rmc.edu

Thursday, July 27, 2017 at 3:35 PM

"Ottaviano, Deanne" <DOttaviano@apa.org>

Antonio Puente <antonioenriquepuente@gmail.com>

"jessica.daniel@childres.havard.edu" <jessica.daniel@childres.havard.edu>, "McDaniel,

Susan (Psychiatry)" <SusanH2_McDaniel@URMC.ROCHESTER.EDU>

"jfkphd@aol.com.edu" <jfkphd@aol.com.edu>, Jean Carter <jcarterphd@GMAIL.COM>

"eavans@apa.org" <eavans@apa.org>, "ian.gutierrez.apags@gmial.com"

<ian.gutierrez.apags@gmial.com>, "hcoons@comcast.net" <hcoons@comcast.net>

Stewart Cooper <stewart.cooper@valpo.edu>, "rmcgraw@wcc.net"

<rmcgraw@wcc.net>, "pls@virginia.edu" <pls@virginia.edu>, "slshullman@aol.com"

<slshullman@aol.com>, "frankc@berkeley.edu" <frankc@berkeley.edu>

"drjcoyne@aol.com" <drjcoyne@aol.com>, "aevans@apa.org" <aevans@apa.org>

Council Representatives List <COR@LISTS.APA.ORG>

Subject: REPLY TO: Recusal from Executive Session at Council

Dear Deanne,

I am in receipt of your email of 25 July and frankly surprised by the statement:

"(W)e believe that it would be appropriate for you to be recused from the Executive Session discussion of the matters in *James, et al v. Hoffman, et al.* **because of your support of that litigation matter, including by submitting an affidavit** (*emphasis added*) in support of the plaintiffs' motion to dismiss."

That you rushed to judgement without any discussion with me is egregious. Who is the "we" that made this determination-- staff, CEO, some of the Board, all of the Board, part or the whole of the CLT, or other permutation? Clearly, you are not asking every member of Council who "support(s)" the "litigation matter" to recuse themselves. As to the affidavit cited, nothing in it or the attached exhibit were privileged or confidential. I attested to publicly available information. Indeed, the exhibit was a copy of the email sent to the Division 42 Board of Directors of my recollections of Denver Convention meeting. As you know, that was a meeting of a subset of former presidents, members of the Board of APA, and staff held on 18 August 2016. And, I did not know, as you suggested, that oral arguments were schedule for August 25th.

Lastly, as you should know, I have been active in APA governance for over three decades with 20 plus years on the Council including the Board of Directors (Board member-at-large) and President in 1995-6. Further, I am a former Trustee of the American Psychological Foundation and the APA Insurance Trust. I know and understand my fiduciary responsibilities to APA and am quite clear about the meaning of "Executive Session". Your "belief" that I should recuse myself, promulgates a view that I

would not or could not honor attorney-client privilege or keep confidential matters confidential. I am deeply offended.

I am not recusing myself. And, keeping with the APA goal of more transparency, I am copying both our emails to the CEO, APA Board, CLT, and the Council of Representatives. *Requests for copies of the affidavit and exhibit are available upon request: resnick@rmc.edu.*

Bob

Robert J. Resnick, Ph.D., ABPP
Council Representative Div. 42 Independent Practice
Former President, American Psychological Association
Emeritus Professor of Psychology
Randolph-Macon College
Professor of Psychiatry & Pediatrics, VCU Health Center(ret)
Licensed & Board Certified Clinical Psychologist(ret)

From: "Ottaviano, Deanne" <DOttaviano@apa.org>
Date: Monday, July 24, 2017 at 7:06 PM
To: Robert Resnick <rresnick@rmc.edu>
Subject: Recusal from Executive Session at Council

I wanted to let you know that we believe that it would be appropriate for you to be recused from the Executive Session discussion of the matters in *James, et al v. Hoffman, et al.* because of your support of that litigation matter, including by submitting an affidavit in support of the plaintiffs' motion to dismiss. (As you probably know, however, oral argument on the pending motions to dismiss has been scheduled for August 25, so there will not be much progress to report to Council.) The Executive Session is currently scheduled for the morning of the first day of Council.

At the conclusion of the discussion about the *James* case, I do intend to discuss with Council members during Executive Session some antitrust guidelines for members to consider in connection with the discussion of the masters issue. The masters discussion itself is currently scheduled to occur during the afternoon of the first day.

It would be helpful if you could be available to participate in the masters discussion part of the Executive Session. I was planning on having Ann Springer and Jesse Raben find those who have been excused from the *James* discussion to bring them back for the masters discussion. (There will be a few members who are out for the *James* discussion.)

Let me know if this is acceptable to you, or if you want to discuss.

Deanne

Deanne M. Ottaviano | General Counsel
Office of General Counsel | 202-336-6078 | dottaviano@apa.org
American Psychological Association
750 1st Street NE
Washington, DC 20002
www.apa.org

Advancing psychology to benefit society and improve people's lives.

EXHIBIT C-27

Defendants

[illegible]

Judge Hiram E. Puig-Lugo

) ss:

1. I, Morgan Sammons, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I am currently the Executive Officer of the National Register of Health Service Psychologists, a credentialing organization for psychologists. I am a retired Captain from the U.S. Navy, having served as Director, Clinical Support, of the U.S. Navy Bureau of Medicine and Surgery from 2004-2006 and as the Special Assistant to the US Navy Surgeon General for Mental Health and Traumatic Brain Injury in 2007. In 2006 and 2007, I was deployed in support of First Marine Logistics Group, Surgical Company, Camp Fallujah, Iraq. From 2002 through 2007, I served on the American Psychological Association (hereinafter "APA") Council of Representatives for Division 55, the American Society for the Advancement of Pharmacotherapy.
3. I was first contacted in late May or June, 2015 by a representative of Sidley Austin LLP and asked to provide information in an ongoing independent review being conducted on behalf of the APA regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (hereinafter "PENS") Task Force. This request was subsequent to a February 2015 conversation I had with Dr. Nadine Kaslow, who I knew to be Chair of the Special Committee overseeing the independent review. I was interviewed by Yasir Latifi (along with a female colleague whose name I do not recall) on June 23, 2015, for approximately 90 minutes.

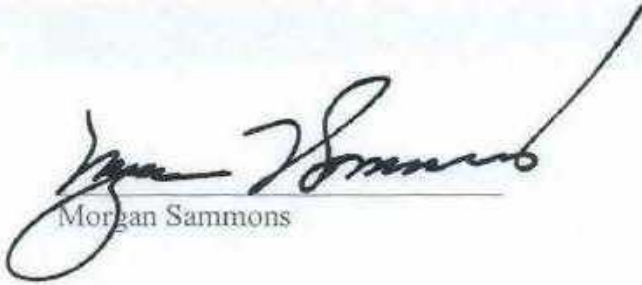
4. In the course of my conversation with Dr. Kaslow, which occurred while we both were attending the annual conference of the Association of Psychologists in Academic Health Centers, held on February 5-7, 2015, in Atlanta, Georgia, I asked what she believed to be the implications of the independent review being conducted by APA. Dr. Kaslow replied, "Heads are going to roll," an answer that surprised me given my understanding that the investigation had only recently been initiated and not yet completed. I understood "Heads are going to roll" to mean the outcome was a foregone conclusion with APA staff likely to lose their jobs, which is precisely what happened.

5. The questions asked of me during my interview, combined with Dr. Kaslow's earlier response to my question about the implications of the independent review, led me to believe that the investigation had a predetermined outcome. This was confirmed for me when I read the Report of the Independent Review (hereinafter "Report") which appeared to present a preconceived narrative, omitting information I had provided the interviewers and that contradicted the Report's narrative.

6. The Report's characterization of how APA staff, most notably Stephen Behnke, were involved in APA policy development is not only incorrect but ignores the information I provided concerning the role of staff working with APA governance groups and members. For example, the Report (pp. 419-422) indicates that Dr. Behnke "manipulated the governance process" and worked to have governance members do his bidding. In contrast, I stated repeatedly in my interview that the appropriate role of APA staff is to *assist* governance members in developing Association policy. This assistance is an ongoing, iterative process that involves staff and governance working together to draft proposed policies that are accurate and that serve the best interests of the Association. The assistance takes a variety of forms, including, as I explained to the interviewers, structuring Council discussions, providing drafts of documents, and drafting "talking points" for governance members' public speaking appearances. Further, *governance members, not APA staff*, set Association policy. They do so with APA staff assistance and support. In fact, with regard to those policies that are discussed in the Report with which I was personally involved, I told the interviewer that APA staff, including Dr. Behnke, behaved appropriately, professionally and in a manner completely in keeping with that of an APA staff interacting with the membership of the Association. This information was not included in the Report.

7. The Report depicts Dr. Behnke as behaving in a self-serving manner that was counter to the Association's best interests. By contrast, I told the interviewer that I believed Dr. Behnke was working to find and present appropriate information to governance groups in an effort to counter highly inaccurate statements that put APA in a negative light, and to protect the Association's reputation. During my time on Council, there was an enormous amount of misinformation circulating about the role of psychologists in military interrogation and about military psychology in general, as well as ill-informed attacks against the APA. I told the Sidley interviewers that Dr. Behnke's effort to counter this misinformation is exactly how I would want an APA staff member to act. This perspective was not included in the Report.

I declare under penalty of perjury that the foregoing is true and correct.


Morgan Sammons

Sworn and subscribed to before a notary public in the District of Columbia this 10 day of
October 2019.

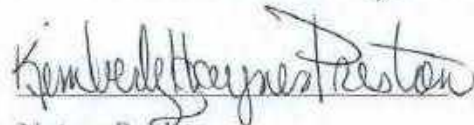

Notary Public



EXHIBIT C-28

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF SCOTT SHUMATE IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Virginia)
) ss:
County of Fairfax)

1. I, Scott Shumate, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I am a psychologist with over 30 years of experience in national security and the founder and CEO of Valutare, LLC, a company that specializes in psychological assessments, intelligence community support and cultural intelligence training.
3. I was first contacted by David Hoffman of the law firm Sidley Austin LLP in early 2015 in order to schedule an interview as a part of the ongoing Independent Review being conducted on behalf of the American Psychological Association (hereinafter "APA") regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA policies including the Psychological Ethics in National Security (hereinafter "PENS") Task Force. I served as a member of that task force in 2005. Mr. Hoffman interviewed me on June 24, 2015, for approximately three to three and a half hours, and the interview was videotaped.
4. Upon reading the Hoffman Report (hereinafter "Report"), I was surprised to find the Report mischaracterized me as having "retained an attorney to negotiate meeting with us, and only made himself available for a grudging interview toward the very end of our investigation after numerous attempts at contacting him." (HR p. 8) This statement places me in an uncooperative light that is unwarranted. While scheduling the interview did take considerable time, I did not refuse to speak with Mr. Hoffman and believe I was fully cooperative. In fact, when I arrived for the meeting with Mr. Hoffman at the agreed

upon time, it was Mr. Hoffman who was not available in a timely fashion. I did request that I be provided with the interview questions ahead of time so that I could review them and adequately prepare. As I recall, Mr. Hoffman did not provide me with any of the questions in advance of the interview. I did retain an attorney to advise me in my preparation for the interview which I viewed as entirely appropriate. It was surprising to me that the Report gives the impression that my decision to retain an attorney was problematic.

5. Before the interview, I requested and received an agreement from Mr. Hoffman that I would not be questioned about my prior work at the Central Intelligence Agency (hereinafter "CIA") given that I signed a statement when leaving the CIA that I would not disclose any of my work activities going forward. Despite the agreement, Mr. Hoffman persisted in asking me about my prior work at the CIA, and I needed to remind him a number of times of our agreement. Also, despite no actual discussion in the interview of my CIA activities, Mr. Hoffman asserts in the Report, "Shumate was present for the interrogation of Abu Zubaydah at a CIA black site in Thailand," (p. 184, fn 769) citing as his source a July 2007 *Vanity Fair* article. Had Mr. Hoffman asked about this article, which he did not, I would have clarified for him that I never spoke to this (or any other) reporter regarding my activities at the CIA.

6. During the interview, Mr. Hoffman's questions indicated a preconceived narrative that Dr. Behnke had behaved inappropriately in his job, particularly by exerting undue influence on the PENS Task Force process and outcome. I told Mr. Hoffman that I did not believe this to be the case. Dr. Behnke effectively supported the task force members' report writing by faithfully recording points we made, both prior to the task force meeting on the PENS listserv and during the meeting itself, and then integrating those points into consecutive drafts of the report that we reviewed for revision and approval. My description of Dr. Behnke's work with the task force was not included in the Report. Rather, the Report inaccurately concludes, "So after one day of task force deliberations, Behnke drafted a document that would largely become the final PENS report's twelve statements." (HR p. 286) This gives the false impression that Dr. Behnke was authoring the PENS Task Force report, which he did not.

7. Also during the interview, Mr. Hoffman suggested that I had a hidden or covert agenda by sending emails to Dr. Behnke that praised him for his work, implying that I was engaged with Dr. Behnke in collusive activity. (see HR p. 36) I told Mr. Hoffman that there was no covert agenda behind my communications to Dr. Behnke who I genuinely believed did a good job. This information was not included in the Report.

8. The Report inaccurately describes other APA staff actions, and these descriptions appear to be part of the preconceived narrative that staff acted improperly. On page 268, the Report states, "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." It is not my recollection that Dr. Newman "appropriated" Dr. Moorehead-Slaughter's role. Dr. Newman did make some comments during the course of the meeting, but he did not take over the role of the chair

or facilitator.

9. The Report characterizes the “non-DOD” task force members’ reactions to the task force’s final report in a manner that is at odds with my recollection and with their own statements about our final product. The Report indicates that these task force members:

...came to regret going along with the report at the end of the meeting. They insist that their failure to issue a final and overall dissent should not be taken as approval...(and) cited a feeling of intense group pressure from the much larger group of DoD task force members and APA leaders (all men, they point out) to go along at the end, in order to enable APA to make a clear and positive public statement that APA was “against torture.” (HR p. 25)

10. I was surprised to read this given that PENS listserv postings from these task force members, written days after the task force meeting ended and the report was completed, indicated the opposite. For example, Dr. Arrigo wrote, “The depth, scope and wisdom of this [PENS] document are indeed impressive.” She also wrote, “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.” Dr. Thomas wrote, “Beyond impressive, beyond complete. To my eye the report incorporates all our last minute changes, suggestions, etc. It certainly has my ok.” Dr. Wessells wrote, “Many thanks for sending this excellent revision.” (A true and correct copy of the PENS listserv communications can be found in the Hoffman Report binders published by the APA online at <http://www.apa.org/independent-review/binder-5.pdf>, pp. 108, 91, 89, 91 PDF pp. 560, 543, 541, 543 respectively.)

11. The Report’s description of my understanding of interrogations appears to be cherry-picked from available information in order to portray me in a biased and misleading light. In focusing on the “ticking bomb scenario” and categorizing me as a “relativist” (HR p. 202), the Report creates the impression that I believe it is permissible under certain circumstances to dispense with the rules that guide interrogations, something I definitely do not believe. The Report omits information I provided to Mr. Hoffman about my commitment to supporting research to understand how best to obtain credible and reliable information and about what the research actually shows—that coercion and abuse are likely to get information but *not information that is credible or reliable*. The Report also omits my membership on the Government Experts Committee on Educating Information, a fact prominently displayed on the first page of the educating information study cited multiple times by Mr. Hoffman. This committee advised the study addressing, among other things, the lack of effectiveness of the use of coercion in interrogations.

I declare under penalty of perjury that the foregoing is true and correct.


Scott Shumate

Sworn and subscribed to before a notary public in the State of Virginia, this 31 day of
October 2019.




Notary Public

EXHIBIT C-29

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	* Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF ROBERT J. STERNBERG IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of New York)
) ss:
County of Tomkins)

1. I, Robert J. Sternberg, having been first duly cautioned and sworn, state the following based upon personal knowledge:

2. I was first contacted by email by Attorney David Hoffman on February 26, 2015. I was previously contacted in December by the American Psychological Association (APA) President, Nadine Kaslow, who indicated that Mr. Hoffman would be contacting me regarding information for a report. Mr. Hoffman, in his email, asked me to provide information in an ongoing independent review being conducted on behalf of the APA regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (PENS) Task Force.

3. I replied to Mr. Hoffman on February 26, 2015, as follows:

"Good afternoon. I have no relevant documents.
I can recall absolutely no discussions on the topic in any board or committee meeting. I can't even remember a personal conversation about the topic.
I cannot speak to what each division of APA has done, but in terms of central APA involvement, I think Risen ought to come forward with his evidence, as he made the accusation. I certainly would like to know what evidence he had for such an accusation. If he has no evidence, he should retract the accusation publicly.
Sincerely, Bob Sternberg"

4. I received the following reply from Mr. Hoffman on February 26, 2015:

"Thank you for your prompt reply Dr. Sternberg.
Best regards, David Hoffman"

5. I was subsequently interviewed by telephone on May 15, 2015. I do not know who conducted the interview, but it was a woman.

6. In the section of the Report of the Independent Review ("hereinafter "Report") entitled "Conclusions Regarding APA's and Psychology's Ties with the CIA, 2001 – 2004," Mr. Hoffman states (p. 53):

The 2003 APA President, Robert Sternberg, made a presentation to Hubbard's group at the CIA in December 2002, accompanied by Brandon and Mumford. The presentation related to the development of psychological assessment tools based on the theory of "successful intelligence." The Science Directorate publicized the visit in its newsletter under the headline, "APA President Sternberg Visits the CIA," and posted his power point presentation on the APA website.

Sternberg was uncooperative with the investigation; he begrudgingly and briefly spoke to Sidley and denied ever giving a presentation to the CIA or visiting the CIA.

7. I had no indication that Mr. Hoffman or his colleague who interviewed me considered me uncooperative until I read the Report. I was taken aback that the Report said I was uncooperative and that it claimed I provided erroneous information. I was convinced I answered any questions I had been asked truthfully, and to the best of my knowledge.

8. I tried to get a transcript of the interview in order to check whether indeed I had made any errors, which certainly would not have been deliberate. I tried to get a transcript from Mr. Hoffman but he twice failed to answer my emails. I also tried to get the transcript from Nathalie Gilfoyle, lead counsel at APA. In particular, I wrote on August 10, 2015:

"Nathalie,

I have written to David Hoffman twice asking for the transcript of my interview with whomever I talked to. I thought his representation of what I said was incorrect and unfair, but then, I don't remember that well exactly what they said or what I said. I would like to review the transcript. But he has not responded to either inquiry.

Do you have any ideas as to how I can get a transcript?

Best, Bob"

9. Nathalie Gilfoyle replied on August 13, 2015:

"Hi Bob and sorry for the delay.

I am out of the office until next Tuesday. I will get back to you then.
Would you update me if you hear anything from Hoffman?
Thanks, Nathalie"

10. On August 19, I received the following email from Jesse Rabin, another APA lawyer:

"Dr. Sternberg,

This responds to your inquiry to Nathalie Gilfoyle about the transcript of your interview with Sidley lawyers as part of the recent independent review. My apologies for the delay but this is the first such request from a witness we have received. Because this review was completely independent we did not control any of the law firm's decisions about how it went about its work. To the best of our knowledge, the interviews were not taped and there are no transcripts. Any notes that Sidley lawyers took during their interviews are in their possession and are subject to a work product privilege.

Please keep us up to date on any response you receive from Mr. Hoffman.

Regards, Jesse "

11. On August 19, 2015, I finally sent this email to Mr. Hoffman:

"This is the third and last time I am writing to request a transcript of my interview with you, if indeed it exists. I have not received a response to my first two requests. If I do not hear from you within 48 hours from the date this request is sent, I will move to the next step.

Bob Sternberg"

12. On August 24, 2015, I received the following email from Attorney Hoffman:

"Dr. Sternberg,

We did not create transcripts of the interviews we conducted.

Best regards, DAVID HOFFMAN"

13. I ended up writing a reply to the Hoffman claims about me on a blog page that APA created. I have no idea what happened to what I wrote.

14. To my knowledge, I did not deny ever having visited the CIA as the Report alleges. This alleged denial surprised me because I was and still am proud of my visit to the CIA, and had told many people of the visit. It was well known that I made a presentation at the CIA, as the Report so states. My topic in that presentation, as in hundreds of other presentations I have given, was the use of improved screening procedures in personnel hiring. Selecting people for positions who are not just analytically intelligent but also creative, practical and wise would be beneficial to the CIA, or to any organization.

15. I do not recall precisely how the questions were posed to me in the interview. If I was asked by Mr. Hoffman whether I had visited the CIA in connection with the subject of terrorism and the anti-terrorism task force, I would have accurately stated that I did not. My purpose in asking for a transcript of the interview was simply to clarify exactly what I was asked and what I said.

16. To this day, I believe that the Report seriously misrepresented what I said, but as I have seen neither a transcript nor even Sidley's notes (the validity of which, at this point, I believe would be questionable), I still cannot say how Mr. Hoffman came to the conclusion he did.

I declare under penalty of perjury that the foregoing is true and correct.


Robert J. Sternberg

Sworn and subscribed to before a notary public in the State of New York, this 26 day
of November 2018.


Notary Public

SUE MUNSON
Notary Public, State of New York
Reg. No. 01MU6359452
Qualified in Tompkins County
Commission Expires May 30, 2021

EXHIBIT C-30

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF JUDITH STRASSBURGER FOX IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

District of Columbia) ss:

1. I, Judith Strassburger Fox, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I am a former employee of the American Psychological Association (APA), having retired after almost 40 years as a staff member. I was contacted by Mr. David Hoffman's office of the law firm Sidley Austin LLP by phone prior to my interview and asked to provide information in an ongoing independent review being conducted on behalf of the APA regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (PENS) Task Force. I was interviewed by Ms. Daneille Carter, a Sidley Austin attorney, on April 3, 2015.
3. My position at the APA during the period of time addressed in the Report of the Independent Review (hereinafter "Report") was Executive Director of the Governance Affairs Division and Staff Liaison to the Board of Directors. These responsibilities required me to have a comprehensive knowledge of APA governance processes as well as broad experience in staff, governance, and member relations. I had a total of 30 years working with governance and nine years as Executive Director that provided me with a thorough and detailed understanding of the practices and procedures necessary for developing and promulgating Association policies.
4. Upon reading the Report, it was clear that it demonstrates a misunderstanding of APA customary and routine staff and governance activities, and incorrectly characterizes certain activities as improper. These misunderstandings and mischaracterizations give a false impression of what occurred at APA. I will cite four, among many, examples contained within the Report.

5. First, the Report repeatedly indicates that staff members behaved improperly in drafting documents, correspondence and "talking points" for elected governance members. (See, e.g., Report pp. 248-249.) In fact, a routine and significant part of certain staff members' responsibilities, especially those serving as liaisons to boards and committees, is precisely to research and draft documents, correspondence and/or "talking points" for members. Such drafting often occurs after the relevant staff and governance members have discussed what the content of the message or the document will be. This was customary practice at the APA. Members of governance vary in how they work with staff members in this regard. Some governance members largely accept staff drafts with few if any revisions, while other governance members edit staff drafts heavily. This difference is one of style and preference. Ms. Carter never raised this issue about staff drafting documents for members. Had she asked, I would have explained this process to her.

6. By not putting the actions of staff in the context of customary practice, the Report creates the erroneous impression that staff members were acting improperly by drafting materials for elected governance members, and that governance members were acting improperly by incorporating staff drafts as their own communications or correspondence. It would be a serious breach of staff protocol if a staff member sent out correspondence under the name of a governance member without the member's knowledge or permission, but the Report provides no instance of this occurring.

7. Second, the Report creates a false impression that an APA member acted improperly by providing recommendations to the APA president regarding who should be appointed to the Presidential Task Force on Psychological Ethics and National Security in 2005 (Report pp. 231-236). Within the APA, member-psychologists constitute the governance groups that develop policy for the Association. These governance groups are boards, committees, task forces, working groups, and other such entities. Membership in some groups is by election; in others members are chosen by nomination and appointment. The APA president makes appointments for a presidential task force, for example. The ultimate selection of members for governance groups is often the source of intense discussion and debate among those with recommending and appointment authority. Ms. Carter never raised this issue concerning the task force appointment process. Had she asked, I would have explained the recommendation and appointment process.

8. When members of a group are chosen by appointment, as was the case for the PENS Task Force which was a presidential task force, it is customary for interested members to approach the individual with appointment authority to recommend, sometimes quite strongly, one or more psychologists to serve on the group. By not describing the PENS Task Force nominations process in this context, the Report mischaracterizes the action of making strong recommendations to the president as unusual and inappropriate when, in actuality, it was quite common and appropriate. Attempting to bypass the governance process in an effort to get someone placed on a governance group would constitute a breach of established procedure, but the Report does not allege that any such violation occurred in relation to the PENS Task Force.

9. Third, the Report gives the false impression at times that it is inappropriate for staff to have a role in the process of policy development; at other times it inaccurately describes staff as *making*

policy. It is appropriate for staff to help with proposed policy language, consistent with the APA Bylaws and Association Rules governing the policy-making process. A true and correct copy of the Bylaws/Rules can be found published by the APA online at <http://www.apa.org/about/governance/index.aspx>. In addition, the APA's governing body, the Council of Representatives, has its own policy manual to guide its legislative actions. A true and correct copy of the Council policy manual can be found published by the APA online at <http://www.apa.org/about/policy/index.aspx>. Staff do not have a vote on any governance body, do not determine the APA's position on policy issues and do not issue policy on behalf of the Association, but it is customary and appropriate for staff to engage with governance groups or members in the back-and-forth legislative process of Association policy development. It is also customary and appropriate for staff to actually facilitate the communication and work of governance groups during the policy development process. Staff serve at the direction the Board, committee chairs, or the Chief Executive Officer and act as resource persons to governance groups. When staff refer to APA policies while speaking with APA members or the general public, they act as a conduit for announcing and/or explaining those policies.

10. The interviewer never questioned me about the process of Association policy-making, somewhat surprising given my position at the APA. If asked, I would have explained that policy-making often entails a complex interplay between governance members and staff members. Each has an important role to play. Yet, the Report repeatedly mischaracterizes these customary back-and-forth interactions between staff and members as inappropriate.

11. The Report specifically mischaracterized my actions when it stated that "APA staff and governance worked to undermine the task force's efforts" in reference to a staff suggestion to reduce the size of a task force (Report p.190). The suggestion to reduce the size of this task force grew out of talks between myself, the CEO, and a member of the Board, and was offered to increase the efficiency of moving the task force forward, not to impede or undermine its effort, as an email included in Mr. Hoffman's own reference materials demonstrates. (See document APA_0179365 contained in Report reference materials Binder 2, p.1424, <http://www.apa.org/independent-review/binder-2.pdf>: "[I]t would be more effective if the group's size was reduced to 5 or 6 people....this would be the most productive was [sic] of getting the task force going."). The Report appears to adopt a preconceived conclusion that I had acted improperly and Ms. Carter never questioned me about the reasons for the suggestion to reduce the size of the task force.

12. Given the APA's size and the complexity of the issues the profession of psychology must address, it would be impossible for the APA to accomplish its work without staff having a significant role in the policy development process. The Report fails to make a critical distinction between the appropriate role of staff in making recommendations, assisting and facilitating different groups of APA members to work together to draft Association policy, and what would be inappropriate staff activities, such as intentionally altering the outcome of a governance vote. The Report does not provide a single instance of such an inappropriate activity occurring. If Ms. Carter had truly wanted to understand the appropriate role of APA staff in the policy development process, she could have asked me about it given my many years experience in this area, but she did not.

13. Fourth, the Report questions and casts doubt on the procedures surrounding the emergency action taken by the Board of Directors to adopt the PENS Report as APA policy when, in fact, these actions were entirely appropriate and in keeping with the Rules of the Association. The Report incorrectly states, "APA did not have a clear policy on what constituted an appropriate emergency action." (Report p. 317) In fact, the APA does have a clear policy on emergency action contained within the APA Bylaws (see below).

14. In contrast to the Report's claim, adoption of the PENS report was fully in accordance with APA standard procedures. The Report itself cites APA Bylaw VII(6) regarding the Board taking emergency action in keeping with its role as the Executive Committee of Council:

If an emergency is declared by a majority of the Board of Directors, the Board shall have power to take actions as though such action were taken by Council. The Board of Directors shall make a report of such emergency actions not later than the next meeting of the Council. It shall furnish a report of all such transactions at each Business Meeting of Council held in conjunction with the Annual Convention. (Report p. 313 FN1396)

A true and correct copy of the relevant APA Bylaw can also be found published by the APA online at <http://www.apa.org/about/governance/bylaws/article-7.aspx>.

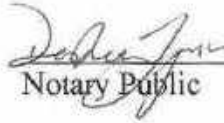
15. As the Executive Director of the Governance Affairs Division, I could have provided Ms. Carter contextual information that would have assisted Mr. Hoffman "to ascertain the truth," as the Board stated was his charge and as I understood the purpose of my interview with Sidley Austin to be. Regrettably, the Sidley investigators did not seek this information when interviewing me.

16. The Report's misunderstandings and mischaracterizations with a false impression of what occurred at APA lead me to believe that the investigation was more intended to confirm a preconceived understanding of what occurred at APA than it was to discover an objective and accurate account of events. In fact, my late husband, Dr. Ron Fox who was heavily involved in APA governance throughout his career, including as a member of many boards and committees, the Board of Directors, the Council of Representatives, and as President, would frequently describe the investigation as "a prosecutor's effort to prove his case while those being investigated went unrepresented by counsel." Based on my experience of the investigation process and my reading of the Report, I agree with this description.

I declare under penalty of perjury that the foregoing is true and correct.


Judith Strassburger Fox

Sworn and subscribed to before a notary public in the District of Columbia, this 21 day of October 2019.


Notary Public

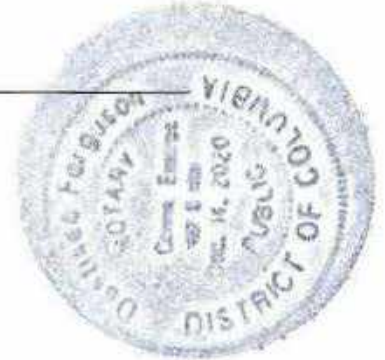


EXHIBIT C-31

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**DECLARATION OF WILLIAM STRICKLAND IN SUPPORT OF PLAINTIFFS'
MOTION FOR LIMITED DISCOVERY REQUESTS PURSUANT TO
DEFENDANTS' ANTI-SLAPP AND ARBITRATION MOTIONS**


State of Virginia)
) ss:
County of Fairfax)

1. I, William Strickland, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was a member of the American Psychological Association Board of Directors (APA) from 2013-2015, during the time that Sidley Austin LLP was hired to conduct the Independent Review. I was a member of the Board during the time that the review was being conducted and the Report was published to the Board. The original purpose of the review was to carefully consider the allegations in James Risen's book, "Pay Any Price: Greed, Power and Endless War," which alleges that APA colluded with the Bush administration, the CIA and the U.S. military to support torture during the war on terror and to ascertain the truth and factual accuracy of those allegations.
2. At the time of the Independent Review, there was no litigation pending or threatened or other legislative threats of action related to these allegations.
3. The Hoffman Report (HR) resulting from the Independent Review repeatedly indicates that staff members, including Ethics Office Director Dr. Stephen Behnke, behaved improperly in drafting documents, correspondence, and "talking points" for APA members serving on governance groups or elected to official APA positions. (See. e.g., HR pp.248-249). It is my understanding from my experience on the APA Board that not only is drafting documents and communications for governance members *not* improper, it is a routine and significant part of certain staff members' job responsibilities, particularly


those staff members who serve as liaisons to boards, committee or task forces as did Dr. Behnke. In fact, during my time on the Board I personally witnessed numerous assignments be made by Board members or the Chief Executive Officer to staff to do just such drafting for governance members or groups.

4. Plaintiffs have not asked me to disclose any information I obtained which could be considered privileged or confidential. I was recused from much of the deliberations surrounding the Report, and all information contained in this affidavit is appropriately shared with the Court. I rotated off the Board of Directors at the end of 2015.

I declare under penalty of perjury that the foregoing is true and correct.


William Strickland

Sworn and subscribed to before a notary public in the State of Virginia, this 3
day of December 2018.


Notary Public

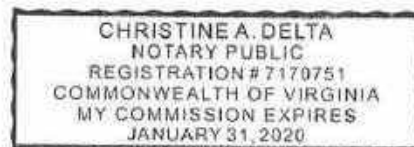


EXHIBIT C-32

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division**

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF ELIZABETH SWENSON IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Ohio)
) ss:
County of Cuyahoga)

1. I, Elizabeth Swenson, having been first duly cautioned and sworn, state the following based upon personal knowledge:

2. I am a resident of and a licensed psychologist in Ohio, and a Professor in the Department of Psychology at John Carroll University (JCU) in University Heights, Ohio. I was first contacted regarding the Hoffman Independent Review on December 12, 2014, by letter from Dr. Nadine Kaslow. Attached to Dr. Kaslow's letter was a letter from Mr. David Hoffman of the law firm Sidley Austin LLP addressed to members of the former Ethics Code Task Force of which I was a member from 1997 to 2000. Dr. Kaslow's letter stated that the "sole objective" of the investigation was to ascertain the truth about allegations made by James Risen regarding the post-9/11 role of psychologists in the Global War on Terror. My understanding was that the purpose of the review was to ascertain facts regarding the post-9/11 involvement of psychologists in detainee interrogations, the American Psychological Association (APA) Ethics Code, and related APA ethics pronouncements including the Psychological Ethics and National Security (PENS) Task Force.


3. I was interviewed by a Sidley Austin attorney by telephone on April 24, 2015 while in my office at JCU. At the end of that interview, I was surprised to be asked about my involvement in the Michael Gelles ethics case, which had not been mentioned in any of the communications from Dr. Kaslow or Mr. Hoffman, nor was it related to my work with the Ethics Code Task Force for which I had been sent the request to interview.. I was subsequently interviewed by telephone again on May 4, 2015, regarding my involvement in the Gelles case.

4. The Report names me as a witness and discusses me in relation to the Ethics Code Task Force and the Michael Gelles case that came before the APA Ethics Committee in 2002. I participated in the Gelles case as a member of the APA Ethics Committee. I was one of two Ethics Committee members assigned the role of "reader," which meant that I and another Committee member each prepared a summary and an independent recommendation to the Committee. In this role, I thoroughly and independently reviewed all case-related materials.


5. The Report contains inaccurate statements characterizing the Ethics Office handling of disciplinary cases. It states that ethics disciplinary cases were handled in "an improper fashion," in order "to protect these psychologists from censure." (p. 10) Based on my personal experience with ethics disciplinary cases, these statements are false. Additionally, the discussion of the Gelles case in the Report itself (pp. 475-486) in combination with the case-related materials contained in the Report's reference binders (See Report, Binder 4, PDF pp.1418-1425 <http://www.apa.org/independent-review/binder-4.pdf>), demonstrate that the Gelles case was handled consistent with the APA Ethics Committee Rules and Procedures.

6. Additionally, it had been my impression during my two interviews that the Sidley Austin interviewers had an agenda and a preconceived narrative that characterized the APA Ethics Office as exercising undue influence over the Ethics Code Task Force and the Ethics Committee deliberations regarding Dr. Gelles. In my personal experience, the Gelles case was handled properly and given thoughtful consideration by the entire APA Ethics Committee. I informed the Sidley Austin interviewers that at no point was I motivated to protect Dr. Gelles from censure, nor did I receive any pressure from the APA Ethics Office or other Ethics Committee members to protect Dr. Gelles from censure. This information was not included in the Report.

I declare under penalty of perjury that the foregoing is true and correct.


Elizabeth Swenson

Sworn and subscribed to before a notary public in the State of Ohio, this 21st day of
October 2019.


Notary Public



Jody L. Malsch
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 09/16/2020

EXHIBIT C-33

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF G. JOHN TAYLOR IN SUPPORT OF PLAINTIFFS'
MEMORANDUM IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT**

State of Georgia)
) ss:
County of Chatham)

1. I, G. John Taylor, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I am a retired Army Lieutenant Colonel who worked in the U.S. Judge Advocate General's (JAG) Corps from 4 October 1987 to 31 January 2009. I was assigned to Task Force Bowie, Bagram, Afghanistan, from November 2001 to May 2002, where my duty assignment was as the Command Judge Advocate (Legal Advisor) to the Commanding General and Staff, Task Force Bowie. In addition, I served as the Headquarters Commandant, Task Force Bowie and, as the sole military Judge Advocate present at Bagram Airfield until sometime in March 2002, I served as the legal advisor to the Bagram Airfield Command, which for most of my time in Bagram reported to the Task Force Bowie Commanding General.
3. In addition to a number of other duties, I provided legal advice concerning the operation of the detention center at Bagram. Due to the unique nature of the Task Force Bowie mission and structure, it would be accurate to say that during the period December 2001 until March 2002, I, along with then-Lieutenant Colonel (later Colonel) Morgan Banks and one other lieutenant colonel, were responsible for detention center operations. My duties included ensuring that the detention center was operated consistently with the laws governing such facilities, including both the law of the United States and international law, as well as any applicable agency policies.

4. As a Judge Advocate, advising the Commanding General and Staff on compliance with various legal and policy guidance concerning the treatment of persons detained by U.S. military forces is a cornerstone of wartime operational duties. During that time, I worked extremely closely with Colonel (Ret.) Morgan Banks whose responsibility it was, among other things, to implement policies to prohibit detainee abuses and to require the reporting of any abuses of which people were aware.

5. Colonel Banks regularly consulted with me on a daily basis as he carried out this responsibility to be certain that he understood and applied clear and appropriate limits to ensure that the detainees were legally and ethically treated by U.S. military forces, consistent with all of our domestic and international legal obligations, including the international laws commonly referred to as the Geneva Conventions. We constantly reviewed all of the legal guidance known to us to ensure that we were operating completely within legal and ethical limits. In addition, I frequently consulted with my technical legal supervisory chain, which included the legal advisor to the Commanding General of the United States Central Command. As much as our fairly primitive communications would allow, I was in contact with her at least weekly to ensure that I was up to date and current on my knowledge of current policy and legal guidance on the treatment of detainees from both the Central Command and the National Command Authority. Colonel Banks and I spoke on a daily basis, often at length, about these matters, and I regularly passed updated guidance and information to him.

6. I am personally aware that Colonel Banks stopped the abuse of at least one detainee. The detainee had some of his blankets taken away during the night, and had been slapped in the stomach by a guard. Colonel Banks was incensed and immediately had the offending individual permanently removed from the facility. He consulted with me to insure that we could prevent that individual from having any further contact with our detainees. Colonel Banks continued to make sure that no abuse occurred while he was responsible for interrogations or for overall detainment. His presence at the U.S. high value detention facility at Bagram, Afghanistan, and later his involvement in developing a small but robust corps of operational psychologists, helped lay the groundwork for just and righteous treatment of detainees caught on the fields of battle.

7. Based on my experience with and observations of Colonel Banks while working together, the Report of the Independent Review to the American Psychological Association (hereinafter "Report") mischaracterizes and inaccurately states his actions. For example, the Report consistently implies that Colonel Banks *made* policy, something that demonstrates a complete ignorance of the role of staff officers and the procedures for the establishment of formal DoD or Army policies. The Report also appears to attribute motives to Colonel Banks that are not only completely contrary to my personal knowledge of him, but also would be inconsistent with the actual DoD and Army Policy that was in place by 2005, which by then had made clear the required treatment of detainees.

8. One concrete example of such misleading errors, contained at page 135, paragraph two of the Report, conflates two distinct time periods when it refers to a discussion that Colonel Banks had with a "Judge Advocate General" and simultaneously discusses Secretary of Defense Rumsfeld's December 2002 authorization of interrogation techniques. I was the Judge Advocate with whom

Colonel Banks conferred regarding AR 190-8, and the conversation took place in December 2001 or January 2002, a year prior to Secretary Rumsfeld's authorization.

9. At the time of that conversation, U.S. Forces had just begun holding detainees. During that time period the legal status of detainees was being analyzed and determined. The specific legal guidance I received at the time from the legal advisor to General Tommy Franks, Commander of the U.S. Central Command--which was based on her discussions with the legal advisor to the Chairman of the Joint Chiefs of Staff--was that detainees were to be treated consistent with the protections of Common Article Three of the Geneva Conventions, which, *inter alia*, required "humane treatment." This is in marked contrast to the Report's statement that Colonel Banks and I concluded "the Geneva Convention protections applied to all detainees held by the Department of Defense at Guantanamo." To have drawn such a sweeping conclusion in the absence of higher authority would have been making policy that neither Colonel Banks nor I were authorized to make. In addition, at the time of this discussion, detainees held by the U.S. Military Forces were not yet being moved to Guantanamo, and Colonel Banks and I were not concerned with detainees anywhere but in Bagram, Afghanistan, where we were located.

10. Officers such as Colonel Banks serving at the level of lieutenant colonel or colonel are in positions expected to *execute* policy and, at times, *make recommendations* for the development of policies; they do not have the authority to formulate policy for the military, they do not have decision-making authority to determine the final result in policy development, and they do not govern with respect to setting DoD policy. Further, they do not speak to the media or the general public on behalf of the military or the DoD and to the extent that they refer to existing policy, they only act as a conduit for announcing or administering that policy.

11. The many implications in the Report that Colonel Banks would support or condone torture or abuse in any form are not consistent with my experience working with Colonel Banks (which predates our deployment to Afghanistan by three years). Colonel Banks has consistently stated, lectured and briefed those in his chain of command that torture does not elicit accurate information. He was persistent in his position with Judge Advocates and interrogators that torture is ineffective, unethical and inhumane, and it should never be employed. In fact, it was Colonel Banks who educated me from the perspective of a practicing psychologist that torture does not work; it produces unreliable information and it is folly to engage in it.

12. Colonel Banks worked closely with me and used his behavioral expertise to help develop one of the approaches that was used by our interrogators at Bagram, referred to as the "carrot-carrot" (versus the "carrot-stick") approach. This approach required all detainees to receive a minimum baseline of humane treatment consistent with U.S. legal obligations, including Common Article Three of the Geneva Conventions, and which was otherwise ethically and morally supportable. Those detainees that provided U.S. Forces with information, or were otherwise cooperative, received additional desirable treatment above and beyond that which met minimum legal requirements. For example, minimum requirements might have been the provision of six blankets or one piece of fresh fruit a day for *all* detainees, while those who were cooperative received additional blankets or fruit for their information or cooperation. This "carrot-carrot" approach, designed to positively encourage detainees to willingly provide information or cooperate, is legally sound, ethically and morally supportable, and it was

developed by our team with the close involvement, advice and recommendations of Colonel Banks.

I declare under penalty of perjury that the foregoing is true and correct.


G. John Taylor

Sworn and subscribed to before a notary public in the State of Georgia, this 11 day of
November 2018.

Staff Judge Advocate
HQS 3rd Inf Div and Ft Stewart
638 Horace Emmet Wilson Blvd
Suite 101 Bldg 1211
Hunter AAF GA 31409-5002


Notary Public
IRWIN J CHAPMAN
SFC, USA



EXHIBIT C-34

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

STEPHEN BEHNKE, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case 2017 CA 005989 B
	:	
vs.	:	Judge Hiram E. Puig-Lugo
	:	
DAVID HOFFMAN, <i>et. al.</i> ,	:	
	:	
Defendants	:	
	:	

**AFFIDAVIT OF THOMAS J. WILLIAMS IN SUPPORT OF PLAINTIFFS'
MEMORANDUMS IN OPPOSITION TO DEFENDANTS' SPECIAL MOTION TO
DISMISS UNDER D.C. ANTI-SLAPP ACT AND MOTION TO COMPEL MANDATORY
ARBITRATION**

State of Texas)
) ss:
County of Harris _____)

1. I, Thomas J. Williams, having been first duly cautioned and sworn, state the following based upon personal knowledge:
2. I was first contacted by email by a representative of the law firm of Sidley Austin LLP representing Mr. David Hoffman and asked to provide information in an ongoing independent review being conducted on behalf of the American Psychological Association (hereinafter "APA") regarding the post-9/11 involvement of psychologists in detainee interrogations, the APA Ethics Code, and related APA ethics pronouncements including the Psychological Ethics in National Security (hereinafter "PENS") Task Force. The Report of the Independent Review (hereinafter "Report") indicates that I was interviewed by an attorney from Sidley Austin on June 8, 2015, and I have no reason to dispute that date.
3. During the telephonic interview, I was asked about two issues: membership on the PENS Task Force and whether I thought there was a *quid pro quo* between APA and the Department of Defense (hereinafter "DoD") related to the DoD Psychopharmacology Demonstration Project (hereinafter "PDP").
4. The representations in the Report offer conjecture but do not accurately state the reasons I offered for me not being selected for membership on the PENS Task Force (i.e., APA's need to

include a U.S. Navy representative to ensure more Joint Service representation). During the interview, I explained that I assumed the task force was looking for a broad representation across the services and there were likely enough Army representatives already selected. I related to the interviewer that I would *expect* representation across the services and that the Society for Military Psychology (APA's Division 19) supported Joint Service representation.

5. Rather than relating my representations, the Report offers conjecture on p. 239:

It is unclear from any of the notes, emails, and interviews why Tom Williams's name was crossed out and replaced by Lefever. Williams was a top-ten choice by Behnke and the Science Directorate in mid-January 2005, Dunivin endorsed him, and he was Division 19's top choice. There is also no indication from the emails Sidley collected that Williams was ever offered a position on the task force and declined. Williams confirmed with Sidley that no one had reached out to him about the PENS Task Force after he had submitted his nomination. It is possible, however, that Behnke may have wanted an active duty Navy representative on the task force.

This account of the selection process completely omitted my stated understanding of the selection process by indicating that it was "unclear" why my name had been "crossed out and replaced by Lefever," the very thing I had clarified for the interviewer regarding Joint Service representation. The wording in the Report seems to create intrigue where none exists; it is reasonable and appropriate to have Joint Service representation on an issue that would likely impact all of the DoD.

6. The Report is completely quiet on the second issue about which I was asked: the representation that I made that there was no *quid pro quo* between APA and the DoD PDP. For example, I was asked about the APA's support for military interrogations as a possible "pay back" for the military's support for prescription privileges for psychologists. I did not believe this was the case. Although I related to the interviewer that I had served as the last Director of the PDP, the Report does not even mention that fact. Even if they missed that fact during the interview, my connection to the PDP is conspicuously displayed on the final report of the PDP, which should have been easily discoverable.

7. The implication of this line of questioning appeared to be that APA's actions were typically intended to curry favor with the military, but I was not asked this directly. And, indeed, the Report leaves the impression that the APA universally supported positions of the DoD. Had I been asked directly, I would have said that in my experience, this is not an accurate perception of the APA.

8. For example, in the 1997-98 timeframe (and prior to the PENS Task Force), the APA Practice Directorate was strongly and actively advocating for the integration of Army, Navy and Air Force mental health services in the Washington capital area--ostensibly as a model for increasing efficiencies in mental health care delivery. At the time, I was serving in dual positions as both the Chief, Department of Psychology and as the Chief, Strategic Planning Division, Walter Reed Army Medical Center and Healthcare System (hereinafter "WRAMC"). From my dual positions, the integration proposal was counter to both WRAMC's strategic future and more directly, would adversely impact the WRAMC psychology internship program. I made that crystal clear to APA's

Practice Directorate and actively took steps to ensure WRAMC leadership understood the negative consequences of the integration plan. We subsequently did not adopt the integration for which APA had been strongly advocating.

9. I was quite surprised that the interviewer did not ask me any questions about operational psychology during the interview, a topic extremely relevant to the investigation and one about which I had knowledge and experience. The Report itself (p. 238) recognizes this when it states, “The earlier set of notes first lists five individuals from the military and DoD (James, Gelles, Schumate [sic], Banks, and Williams) with a bracket around them and the words ‘19/operations’, a reference to Division 19 (military psychology) and the fact that these were military or Defense Department operational psychologists. (emphasis added)

10. My service and experience as a military psychologist during the post-9/11 period appeared relevant to the Division’s consideration to nominate me to serve on the PENS panel. That same service and experience influenced my contributions as co-editor of the book, “Ethical Practice of Operational Psychology: Military and Intelligence Applications” (published in 2010 by the American Psychological Association). This book reviewed the APA ethics code and provided recommendations for how military psychologists could ensure they were adhering to both U.S. law and the APA ethics code. In particular, it contains an important chapter that details APA ethics code considerations, relevant APA policies, reviews relevant DoD policies and guidance, and asserts an unequivocal position on behavioral science consultation to interrogation and debriefing operations. It states in relevant part that:

The United States and the APA have made it clear that psychologists will not support activities that involve torture or result in inhuman and/or degrading treatment... [emphasizing the need for]...informing this process with knowledge and expertise of those doing the actual work...[to]...ensure that the delivery of psychological services in this emerging area of practice continues to meet the highest ethical and professional standards. pp. 102-103.

Yet, as stated above, the interviewer simply asked me about the PENS Task Force nominations process and the PDP.

11. During my tenure as President of the Society of Military Psychology/APA Division 19, I convened a Division Presidential Task Force charged with the careful examination of the Report. The task force provided a detailed response to the APA in November 2015. A true and correct copy of the Division 19 task force response can be found published by the APA online at https://www.militarypsych.org/uploads/8/5/4/5/85456500/tf19_response_to_the_hoffman_report_div19_excom_approved.pdf.

12. Following the Division’s issuance of that response, I wrote to the APA Board of Directors to request that:

Given that Hoffman acknowledges in the IR [Independent Review] that neither he nor members of his team understood the profession of psychology, in light of the inaccuracies and misrepresentations identified by the D19 TF report, appoint a

knowledgeable, neutral third party to complete a thorough review of the IR and report back to the BOD [Board of Directors] their findings.

Attached hereto as Exhibit 1 is a true and correct copy of that letter which can also be found published by the Society of Military Psychology/Division 19 at: https://www.militarypsych.org/uploads/8/5/4/5/85456500/division_19_letter_to_apa_bod_d19_task_force_report_9nov15_1.pdf.

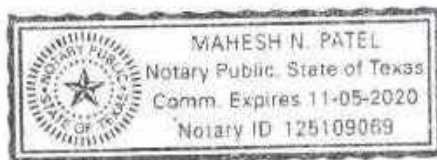
13. This request was based on the Division's expectation that a third party arbiter could work to resolve differences by determining where the Report drew correct conclusions founded on accurate facts and where it did not. The Division leadership made numerous efforts to follow-up with the APA Board of Directors, to include proposing a meeting to discuss the findings and other recommendations of the Division 19 Task Force response; none of which were successful.

14. On April 15, 2016, the APA Board of Directors issued a communication following the re-hiring of Mr. Hoffman and Sidley which rejected our request to hire a new independent neutral third-party to decide the issues (or to resolve the issues on their own as a fact-finder). Attached hereto as Exhibit 2 is a true and correct copy of that communication which can also be found published by the PsychCoalition online at: <http://psychcoalition.org/hoffman-report-articles/apa-board-of-directors-re-hires-david-hoffman-to-evaluate-and-validate-his-own-report>.

I declare under penalty of perjury that the foregoing is true and correct.


Thomas J. Williams

Sworn and subscribed to before a notary public in the State of Texas, this 20 day of April 2019.




Notary Public

EXHIBIT 1



SOCIETY FOR MILITARY PSYCHOLOGY

Division 19 of the American Psychological Association



November 9, 2015

Board of Directors
American Psychological Association
750 First Street, NE
Washington, DC 20002

In the aftermath of the leaking of the Hoffman Independent Review (IR), you, the American Psychological Association's (APA) Board of Directors (BOD), expressed an apology and announced a series of policy and procedural steps in an APA press release dated July 10, 2015. As a consequence of the serious concerns about the accuracy and completeness of the information contained in the IR report, and in consideration of even greater concern about how that flawed information was now being used by the BOD to drive significant organizational change in APA policies and procedures of relevance to Division 19 members of APA, I requested support from the Division 19 Executive Committee to appoint a Division 19 Task Force (D19 TF) to complete a thorough and comprehensive review of those IR findings.

We provided the D19 TF with a "Terms of Reference" (see Appendix A of their attached report) that described their purpose, objectives, and outlined their responsibilities to carefully assess the accuracy of the information pertaining to military psychology and the guidance that helped direct their actions (e.g., APA PENS) that served as the basis for a number of BOD and Special Committee actions taken on behalf of APA and our members.

The Division 19 Task Force (D19 TF) report is forwarded for your consideration and action, as appropriate. The findings contained in this report are quite disturbing. Using information readily available that the Hoffman team should have considered, and by highlighting misquotes, misrepresentations, and contradictions within the IR, this D19 TF report raises serious questions about the accuracy and completeness of the information the BOD and Council of Representatives (COR) used to take actions that have dramatically impacted our membership and our profession.

They also raise important concerns about the accuracy of the information that was provided to, and acted on, by the Co-Chairs of the APA's Special Committee and in their representations and recommendations to the BOD, as appointed representatives of the BOD. This also raises concerns about the accuracy and fidelity of the information the BOD has used in their deliberations and that has prompted various actions (and that was provided to and served to influence both the Council of Representatives (COR) and our members). Given the historical significance and threat posed to the credibility of our profession, it is critical that you, the BOD, have accurate information upon which to act in good faith in support of our collective interests.

Our Division 19 Executive Committee (EXCOM) has reviewed and fully endorses the D19 TF findings and recommendations detailed in pages 5-9 of the attached D19 TF report. We greatly appreciate the efforts of our D19 TF to highlight and identify these important findings in three months and with a budget of \$5000. Our Division 19 leadership is committed to taking those actions recommended that are within our Division's scope of responsibility and control. However, we have identified a number of recommendations that are within the scope of responsibility and control of the APA BOD which are briefly summarized below:

1. That the BOD ensures the APA Ethics Code focuses on behavior, not settings.
2. Given that Hoffman acknowledges in the IR that neither he nor members of his team understood the profession of psychology, in light of the inaccuracies and misrepresentations identified by the D19 TF report, appoint a knowledgeable, neutral third party to complete thorough review of the IR and report back to the BOD their findings.
3. That the BOD provide an explanation for actions that have had a deleterious impact on Division 19 members. To wit:
 - a. The justification and basis the BOD relied on for not establishing processes to allow those Division 19 members most harmed by the alleged findings in the IR an opportunity to review it prior to its release.
 - b. What considerations and legal analysis the BOD relied upon to determine the impact of displacing the U.S. government determinations of compliance with "international law" with the United Nations.
 - c. The justification by BOD for recommendation to COR that they adopt the August 2015 resolution prohibiting psychologists' involvement in interrogation in the absence of any credible claim or evidence that any DoD psychologist engaged in unethical interrogation related activity in the decade following APA's adoption of the PENS report.
 - d. The BOD deliberation and justification for support to August 2015 resolution prohibiting military psychologists from working in detention facilities unless they are working *directly for the detainee* or "for an independent third party" since however unintended, this precludes actions by military psychologists since they work "directly for" DoD but provide mental health care "on behalf" the detainee.
 - e. The BOD justification to allow two non BOD members to have access to and to review the IR prior to its release, and for those individuals to dictate actions to the BOD members.
 - f. The BOD justification to take actions and/or support calls for recusal of BOD members in the absence of any conflict of interest.
 - g. The justification and process by which the BOD decided to allow information about an ethics complaint to get revealed to the public, in apparent violation of the APA Bylaws and Ethics Committees "Rules and Procedures."
 - h. The justification and basis for decision by members of the Special Committee, representing the BOD, to apologize to detainees and their families during the APA Town Hall (disregarding the negative allegations regarding military psychologists such an apology represented).
 - i. What steps the BOD took, consistent with exercising their fiduciary responsibility to monitor the costs associated with the IR.

- j. What justification the BOD has for allowing the Hoffman team to recently "revise" portions of the IR after its release without alerting and affording membership of this action to allow those named in the report a commensurate opportunity to "correct" errors in light of the concerns. Failing to do so creates an appearance of quietly cooperating with the Hoffman team to allow them to protect their legal interests (i.e., potential legal liability for inaccuracies or misrepresentations).
 - k. What actions the BOD will take to correct the Hoffman IR to ensure it accurately addresses DoD policies related to interrogation; conveys accurate information about how interrogations are conducted and supported; reflects military cultural awareness; and is free from bias against military psychology and military psychologists.
4. That the BOD take steps, in the interest of accountability and transparency, to release all material referenced in the Hoffman IR. While the legal opinion to not do so may protect the BOD members from legal liability for their actions, as the owner of that "privilege" and as representatives of those members alleging harm that is now hidden by that privilege, is not the same "duty" to open up "all its electronic and hard copy files" that was provided to the Hoffman team the same "duty" now owed to those who now allege they were harmed by those findings?
 5. That the BOD share the basis for its determination and assertion that military psychologists were "given insufficient guidance" regarding the conduct of interrogations in its 17 September 2015 response to Dr. Brian Baird,

Many will read these recommendations and requests for information and question, why? They may want to "just move on" since this has been such a painful episode for professional psychology. However, leaders of organizations cannot just wish problems away. As our leaders, as those who serve as the "persons of trust" (i.e., fiduciaries) of our organization, we look to you to exercise your moral and legal obligation for your duty of care that demands you carefully analyze and act on the facts, not just react to the fervor evoked from misinformation, innuendos, and misrepresentations contained in the IR.

The D19 TF findings offer you a more factually sound explanation and basis for many of the IR's findings related to the PENS report and to military psychologists and their support to interrogations that have prompted APA BOD and COR policy actions (and concerns within our membership). In light of those actions already taken, and out of concern for those being considered, the attached report provides you with compelling evidence that the IR information used as the basis for the decision-making process and that served as the basis for those and others being considered, was flawed and incomplete.

In addition, while many may be tempted to assert or argue that we all should be passive recipients of the information contained in the IR, that is not appropriate for our leadership. Taking that approach would deny the BOD the ability to exercise their responsibility to make decisions with the requisite care to act in good faith based on the facts (and not based on their personal interests out of fear for, and/or to avoid being attacked or accused of "collusion" if they raise any legitimate opposition to, or concerns about, the IR findings).

Previous calls to address the real and legitimate concerns about the accuracy of the findings in the IR should have alerted you to the need for due diligence and appropriate, deliberative action to address those concerns. A number of these concerns were detailed in the July 29th 2015 letter to the two Co-Chairs of APA's Special Committee and have never been addressed.

The attached D19 TF report will no doubt create a dilemma: it persuasively reveals the flawed nature of much of the relevant information contained in the IR about the PENS report and related to psychologists' support to interrogation, and the information that was used to act on by the BOD and COR. The dilemma is that while some members of APA may emphatically state, "it doesn't matter," since they are opposed to any support to interrogations, the BOD has a legal responsibility to take actions based on an informed basis, in good faith, and with the honest belief that their decisions and actions are based on facts, and not in response to inaccurate misinformation that is used to stir and evoke emotional recriminations about actions that did not happen.

The D19 TF report reinforces "our core values" and the need to ensure that actions taken by our BOD and COR are based on accurate and complete information. As those in whom we place our trust to act in good faith to represent our interests, we encourage your action on these recommendations to help ensure that our "way forward" is one that rests on a foundation of truth, honesty, and accuracy. Our Division leadership stands ready to assist the BOD in their next steps related to these D19 TF revelations.

Thomas J. Williams

Thomas J. Williams, Ph.D.
President
Division 19
Society for Military Psychology

EXHIBIT 2

Dear Council Colleagues:

We would like to inform you that the Board of Directors, after lengthy discussions following Council's input, has decided to re-engage David Hoffman and the law firm Sidley Austin on a very limited basis to examine certain matters brought to our attention by Division 19 (Society for Military Psychology) and several psychologists mentioned in the *Independent Review* (Drs. Morgan Banks, Debra Dunivin, Larry James, and Russ Newman). The Division and these psychologists issued reports raising questions regarding specific Department of Defense (DoD) policies that may be relevant to the findings and conclusions of the *Independent Review* but do not appear to have been addressed. The Board determined that a supplemental review focused on the DoD policies cited in the reports best serves the Association and our members.¹

In deciding on this course of action, the Board seriously considered the concerns expressed by Council members at this past February meeting. We would like to share with you the rationale for the Board's decision.

Once information regarding these DoD policies was brought to the Board's attention, we considered four options for moving forward: 1) take no action; 2) review both reports and available historical data and, on our own, assess the implications of the DoD policies that have been identified; 3) re-engage Mr. Hoffman to examine the significance of the DoD policies at issue; or 4) hire a new independent investigator to do so.

Given the important, though narrow, questions to consider, and in the interest of getting answers in a timely and efficient manner, the Board determined that it would best serve the Association and our members to re-engage Mr. Hoffman in a limited fashion. He is uniquely suited to conduct a supplemental review of the DoD policies that have been recently identified and to evaluate their effect on the findings and conclusions reflected in the *Independent Review*.

His supplemental review will address only the following three questions:

- (1) the extent to which he considered the DoD policies at issue in writing his *Independent Review*;
- (2) the extent to which those DoD policies are relevant to the issues, findings, and/or conclusions addressed and reflected in the *Independent Review*; and
- (3) whether any modifications of the *Independent Review* are warranted in light of the DoD policies.

To be clear, the Board is not seeking an "investigation of the investigation." The intent of this supplemental review is to consider factual information that has recently come to light and which, in our view, requires further examination in the context of the *Independent Review*. The Board's

¹ Two Board members recused themselves and one abstained.

decision to re-engage Mr. Hoffman was driven by our fiduciary responsibility to the Association and our members to recognize and understand the role of the DoD policies in the independent review.

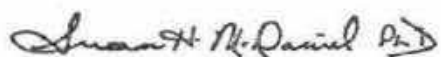
Mr. Hoffman shares APA's interest in ensuring that his *Independent Review* is accurate. He has already demonstrated his willingness to correct factual inaccuracies that are brought to his attention. As you will recall, Mr. Hoffman issued an Amended Final Report in September based on feedback he received from APA members mentioned in the *Independent Review*, as well as released an accompanying errata sheet noting his revisions.

The Board shares the Council's concern about the financial implications of this decision, and has taken a number of critical steps to manage the time and expense to be incurred. Because Mr. Hoffman will be reviewing a discrete set of issues, he expects to complete the review **by June 8**. He has agreed to update APA every two weeks on his progress. He has also agreed that if it appears that this deadline cannot be met, he will inform the Board no later than May 15 and will discuss with the Board the need for an extension and provide a date by which his report can be expected to be received.

Mr. Hoffman and the Board have agreed that the supplemental review should cost no more than \$200,000. He will report his progress to the Board midway through his work to ensure that the Board can properly oversee its scope and cost.

We thank Council for your input and hope that this letter adequately conveys the very careful deliberation that the Board underwent in deciding upon this course of action to address significant concerns raised by our members related to the *Independent Review*. The Board takes very seriously our fiduciary responsibility to our members and our Association to learn and assess the facts when presented with challenging situations and to act accordingly.

Best regards,



Susan H. McDaniel, Ph.D.
2016 President
American Psychological Association