

EXHIBIT 27

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MEMORANDUM

TO: FILE

FROM: David H. Hoffman
Danielle J. Carter

RE: Nina Thomas Interview – February 13, 2015

DATE: February 24, 2015

This memorandum reflects a summary of the information obtained during an interview of Nina Thomas, a psychologist, psychoanalyst, and member of the American Psychological Association (“APA”) Presidential Task Force on Psychological Ethics and National Security (“PENS”), on February 13, 2015. The interview was conducted by David Hoffman (“Hoffman”) and Danielle Carter (“Carter”) of Sidley Austin LLP in their New York office.

The purpose of this memorandum is to record factual information necessary to provide legal advice to the APA. This memorandum does not contain a verbatim, or substantially verbatim, transcript of the interview. Rather, the memorandum sets forth our thoughts, impressions, conclusions, and opinions in connection with the pending matters involving the APA. In particular, this memorandum reflects our judgment as to the relevance of certain information and the interpretation of factual disputes. This memorandum is protected by the attorney work product doctrine.

Prior to the interview starting, Hoffman identified himself and described the purpose of the interview. Hoffman stated that we have been engaged by the APA to conduct a completely independent review relating to allegations that, following the attacks of September 11, 2001, the APA colluded with U.S. government officials to support torture with regard to the interrogations of detainees who were captured and held abroad. Counsel explained that the purpose of the interview was to ascertain the truth of the aforementioned allegations, following 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 the APA.

I. INDEPENDENT INVESTIGATION

Thomas has significant distrust of the APA “bureaucracy.” Certain statements made by APA leadership have made her weary of APA – and what it intends to achieve through the independent investigation.

Thomas recalled that while she was on the PENS Task Force, the Council of Representatives (“COR”), and also part of Section 9 of Division 39 (psychoanalysis), she was taken to task on a national listserv by rabid opponents of the PENS Report. As a result of feeling beaten up, she has stayed away from discussing the specifics of the PENS process and the subsequent resolutions related to psychologists participation in interrogations.

After seeing 2014 APA President Nadine Kaslow’s editorial in the *New York Times*, Thomas questioned Kaslow’s motivations for making the statements in the editorial. She wondered how Kaslow could suggest that APA didn’t know about the activities of James Mitchell and Bruce Jessen prior to 2014.

II. PENS TASK FORCE

A. Timing and Purpose

Thomas recalled that at the time of PENS there was “hullabaloo” regarding how proposed changes to the Ethics Code would affect psychologists working with interrogators in police departments.

The PENS meetings occurred following the release of photos and stories about the abuses at Abu Ghraib. Thomas assumes that the military members of the task force were primed for these issues. Thomas came to the issues with the outrage of a citizen. After September 11, 2001 (“9/11”), the new normal was rabid xenophobia towards anyone who could be viewed as a jihadist. Thomas recalled that Alan Dershowitz had made a statement about the ticking time bomb scenario. The PENS meetings occurred when the ticking time bomb scenario was rife in the land of psychology. This scenario was part of the task force discussions. Thomas thinks that if you know there is a ticking time bomb and you have reliable intelligence, then you have what you need to deal with the situation.

The purpose of the PENS Task Force was to: (1) provide guidance to psychologists in military settings regarding the limits of ethics in practice, and (2) to offer consultation when they were faced with difficult choices (*i.e.*, whether to tell an interrogator that a detainee was afraid of the dark or dogs, so that the interrogator could use that to get information from the detainee). The PENS Report didn’t propose revisions to the Ethics Code, but instead offered justifications for keeping some language the same. Thomas later realized that the PENS Report addressed how the Ethics Code, as written, could be applied to cover psychologists working in national security settings.

B. Pre-Meeting Materials

Thomas recalled receiving a packet of materials prior to the PENS Task Force meetings.¹ After receiving the packet, the task force members began email discussions on the listserv. They discussed military regulations and other things with which Thomas was not familiar. She felt that her lack of familiarity with these items put her at a disadvantage.

In the packet, one document referenced a conference or meeting that APA sponsored or participated in at which Mitchell and Jessen made presentations. After seeing the reference to the conference, Thomas searched for more information about the conference. She does not think that the reference was in any of the APA summaries; she thinks that it was included in the military materials and may have come from Scott Shumate.

Thomas asked a Board member (Laura Barbanell) why APA was sponsoring a conference with the CIA. Barbanell reassured Thomas that APA would never do anything nefarious. Thomas thought that APA's participation in a conference or meeting with the CIA was disturbing. Thomas acknowledged that if she had wanted to pursue this further, she could have taken her concerns to Ron Levant who was APA President at that time. She knew Levant and Gerald Koocher (APA President-elect) well, and could have gone to them with her concerns. She speculated that she might not have raised her concerns with them – because they would have “whitewashed” the issue.

C. Task Force Members and Observers

At the time of PENS, Thomas was in a lot of meetings at APA. Thomas thinks that she likely was asked onto the task force because of her experience working with torture survivors and because she had some experience reviewing legal documents. Thomas said that she received some narcissistic gratification from being selected for the task force; the task force was working on issues that Thomas cared deeply about.

1. *Members*

Olivia Morehead Slaughter was the Chair of the Ethics Committee at the time of the PENS Task Force. She chaired the task force by reason of being chair of the Ethics Committee. As Chair, Morehead-Slaughter did not vote; the chair of a task force never votes. Morehead-Slaughter was responsible for setting the agenda and steering the discussion; she had the role of parliamentarian.

Mike Wessells, Jean Maria Arrigo, and Thomas were the weakest members of the task force. Wessells has worked in Angola and on the ground on torture issues. Thomas has worked in Bosnia and Palestine with torture survivors.

¹ Confirm that we have this packet

Thomas was one of two women on the task force. Thomas, Arrigo, Morehead-Slaughter, and Susan Brandon were the only female task force members and observers. Larry James and Morehead-Slaughter were the only African Americans in the group.

Thomas recalled that Michael Gelles spoke at the meetings. Thomas said that people at the meetings with a lesser rank, who were not backed up by people in authority, were in a precarious position.

2. Observers

Although Russ Newman attended the PENS meetings as an observer, he had a lot to contribute. Thomas does not know if Newman's presence was APA "protecting its own." Shortly after the task force, Thomas had no memory of Newman being at the meetings or what his contribution was to the meetings. She attributed this to wanting to distance herself from PENS and trying not to think about the PENS process.

Thomas recalled that Steven Reisner had called her at 11 p.m. on a Sunday – and told her that Jean Maria Arrigo said that Newman was at the task force meetings. Thomas responded that Arrigo wouldn't have recognized Newman and that he wasn't there.² This exchange was the beginning of an antagonism with Reisner.

Thomas recalled that Gravitz was a task force observer and that he was revered by Behnke, Koocher, and several military members of the task force. The views that Gravitz shared held more "sway" with task force members. Thomas thinks Gravitz might have been brought into the meetings to bolster what military members had to say, as he was the link between the military members and the civilians. Gravitz was not present for all of the meetings; he attended the Saturday meetings and may have attended part of the Sunday meetings. Thomas remembers what Gravitz looks like, where he sat at the table, and that he talked a lot. Gravitz was there to address the trickiest issues of psychologists in interrogation settings and to quote research on interrogations. He had experience in military intelligence and advising on psychologists' contribution to intelligence activities. He was well acquainted with APA members of senior governance. Thomas thinks that Gravitz was from the mid-west; she had never heard of him prior to PENS.

Barry Anton had significant participation in the meetings – although Thomas does not recall his specific contributions. Thomas recalled that at one point during the Iraq war Anton and his wife were in the Reserves, and his wife was called up to go to Iraq; later, both Anton and his wife served in Iraq.

² Thomas said that Newman wasn't a member of the task force, and when she responded to Reisner's statement she was thinking about members of the task force. Afterwards when she reflected back, she realized Newman was, in fact, at the PENS meetings.

Thomas doesn't recall Nathalie Gilfoyle or Norman Anderson being at the meetings. Rhea Farberman was at the meetings at some point because of the discussion of the document they were crafting.

Susan Brandon was at the meetings and was friendly with Scott Shumate.

Thomas has a vague recollection that Levant attended the meetings and left half way through the meetings.

D. Meeting Protocol

During task force meetings, task force members are seated around a table; key APA staff and the chair of the task force are also seated at the table. Task force observers do not typically sit at the table; they observe from elsewhere in the room. During the PENS meetings, however, observers Newman, Gravitz, Anton, and Levant sat at the table. Thomas does not think that Steven Breckler, Executive Director of the Science Directorate, sat at the table, although he might have joined them at the table for some of the meeting. Thomas said that it was typical for the Board liaison, Anton, to be at the table.

Thomas is not sure why Arrigo claims that she could not take notes during the meetings.

E. Discussion During the Meeting

During the PENS meetings, there was no debate regarding whether psychologists should be involved in interrogations. Their attention was not focused on discussing that issue. Instead, they focused on going through provisions in the Ethics Code. Thomas is not sure why the discussion was framed in terms of the Ethics Code. The question they sought to answer was: *Do the provisions of the Ethics Code need to be revised to address psychologists working in national security settings?* They spoke of interrogations in general – in terms of whether they were “safe, ethical, effective.” James used this term. Thomas thinks that these “watch words” came from Koocher or Newman. The safety of an interrogation goes to behavioral drift. The way in which psychologists could make an interrogation effective was not on the table for discussion during PENS.

Morehead-Slaughter and Behnke came in with an agenda for the meetings and framed the discussion on the listserv that preceded the meetings. Thomas does not recall whether anyone said that their task was too narrow. If someone did, it would have been Wessells.

During the meetings, there were votes about various parts of the Ethics Code. They walked through the Code and discussed whether parts of the Code needed to be revised in light of the need for intelligent information and to what degree psychology might be used. There were votes but Thomas did not recall votes on specific standards other than 1.02.

Gelles, James, and Robert Fein likely discussed the ticking time bomb scenario during the meetings. James and Fein argued for severe measures and the freedom to use whatever measures that had to in conducting an interrogation. They thought that psychologists shouldn't

have to constrain interrogations because of limits in the Ethics Code. Gelles' views were more reasonable; he had a broader view of what was involved in interrogations and the ways in which non-military psychologists would be incensed by the perceived approval of torture. Gelles knew and felt deeply troubled by the methods the military was using to get information. He didn't want psychologists contributing to designing methods through which people would be harmed.

Wessells, Arrigo, and Thomas were on the same side of the issue – arguing that there was no excuse for the views expressed by James and Fein. Thomas said that Arrigo took the position of moral purity in the discussions. In the last moments of the meetings, Arrigo produced an article by someone purporting to be a Harvard professor. Thomas was enraged and asked if anyone had heard of the professor or the journal in which the article was published; no one had. After days of meetings, the article felt tangential to Thomas.

Scott Shumate said that there were limitations on what task force members who were working for the government or military could say in the PENS meetings; they were representing the views of their employers and couldn't say or make suggestions that would contravene military positions.

Behnke didn't express opinions about anything during the meetings, but he took notes throughout the meetings. He was reviewing what had been discussed and revising the draft report based on discussions.

Immediately after the PENS meetings, the task force felt good about what they had accomplished because of the time spent on it and because they had accepted their role without objection. In the years after PENS, Thomas gave a presentation about psychologists involvement in interrogations at an APA conference. At that point, unlike Wessells and Arrigo, Thomas did not repudiate the PENS Task Force. Wessells' view is that the task force arrived at the only conclusion they could have reached given the composition of the task force.

In the years since the PENS task force, Thomas has spoken to Behnke, gossiped with Anton, and referred to the task force with Morehead-Slaughter as an experience they shared.

F. Disturbing Aspects of PENS Process

1. *Abiding by Government Rules/Laws*

Thomas recalled that the task force discussed the issue of setting the boundaries of a psychologists' participation in interrogations such that psychologists couldn't participate interrogations that violate U.S. law. Three task force members asked about setting the boundaries at international law – and their concerns were overridden and dismissed. Thomas found the dismissal of international laws regarding torture disturbing.

2. *SERE Training Discussions*

Newman, former head of the Practice Directorate, told the task force that he had gone through Survival Evasion Resistance and Escape (“SERE”) training. Thomas described

Newman as someone who leads with machismo; she is not sure whether Newman's briefing on SERE training was part of his persona. She likened Newman's style of running up to the lecturn to give a speech to that of Ronald Reagan. Thomas found Newman's presentation disturbing because she felt like discussion of reverse engineering of SERE techniques didn't allow for objective consideration of limits of psychologists' participation in interrogations. Newman seemed to have enjoyed the SERE training; Thomas is not sure if she inferred this or if Newman said it.

Newman received SERE training during the time that his wife was working at Guantanamo. At the time of PENS, Thomas did not know that Newman's wife worked at Guantanamo. She thinks that it would've have been helpful to know about Newman's wife.

3. *Report / Outcome*

After the PENS meetings, Thomas thought that the process was a waste of time. They had gone through the Ethics Code and determined that the Code allowed psychologists to participate in interrogations in the way that the military wanted to use them.

4. *Government Contracts*

Thomas is disturbed by the amount of government contracts with APA that have a military element; when Thomas raised questions about the contracts, they were always explained away. For example, there are contracts with the military for report writing. Thomas raised this as an issue in Finance Committee meetings (sometime between two and ten years ago).

Thomas did not believe in collusion with the government but had the feeling it was possible when she learned of the APA conference with the CIA and the military contracts. Her sense is that her concerns were "poo pooed" but she doesn't recall exactly how.

III. POST-PENS

After the PENS process, Thomas recalls thinking about why psychologists were in any role in interrogations. There was the idea that psychologists might be able to monitor for behavioral drift. It takes a level of independence to monitor for behavioral drift – and then correct; a psychologist can't have this independence if they are part of the organization conducting the interrogation. Thomas said that there was no way not to be pressured by the context of PENS; the system has its own ethos and you are seduced into one side or another.

Looking back at the PENS process, Thomas questioned why the task force had one weekend to complete their work. She marveled at Behnke's ability to synthesize information and stay up late drafting the report. At the time of PENS, Thomas had no idea or inkling that the report was written in advance.

After the PENS Report, Nina Thomas appeared on the Amy Goodman Show with Len Rubenstein. Arrigo was interviewed by phone for the show. Goodman interviewed Rubenstein first; throughout the interview, there were things that Thomas wanted to say. She asked the

cameraman during a break if her microphone was working; he said that her microphone was off until Goodman was ready to speak to her. On the show, Thomas said that she wasn't an apologist for APA and that it was important to remember that Gelles' statements sparked the task force. Gelles had said that torture was going on and shouldn't be happening and that started a period of change. Gelles' statements stirred the idea that psychologists in national security settings needed guidance. Thomas's statement about not being an apologist became the headline of the day.

At the time of the PENS Task Force, Behnke pointed out that there had been several requests for ethical guidance that stemmed from circumstances that psychologists were placed in. APA members were concerned with how they could participate in interrogations in a way that did not violate the Ethics Code. All that Benke said was that psychologists needed guidance. Thomas considers Behnke a friend; she knows him through the APA and connections within APA. She can only think that it's the effect of working in a group or organization like APA that could cause someone's ethics to be dimmed by producing something worthless like the PENS Report; the systemic issues of APA may have been operating on Behnke. Thomas finds it hard to imagine that Behnke would have had ulterior motives in the PENS process; she's not sure if this is because of friendship or loyalty. She vaguely recalls raising her discomfort regarding the conference with the CIA with Behnke – but he said something to allay her fears. She does not recall the details of what he said.

Thomas speculated that Koocher might have directed Behnke throughout the PENS process. Both were educated out of Boston and an important part of their identities is in APA; APA identity may be less important for Behnke. Thomas said that Koocher can be vitriolic to anyone who crosses him; Behnke has a good relationship with Koocher. Thomas said that she would look for emails with Behnke that shed light on the PENS process.

IV. REFERENDUM

There was a referendum on psychologists' involvement in interrogations that passed in 2008. There were more than 8,000 votes cast in favor of the referendum; it was the largest percentage of APA members to vote on any issue. Those who were opposed to the PENS Task Force were enraged over psychologists' involvement in interrogations. Thomas said that maybe 15,000 votes are cast for APA President, so to have that many votes on the referendum felt important. The referendum called for a change in APA policy.

Thomas was upset by what wasn't done with regard to the referendum. At the time of the referendum, Thomas chaired the public interest caucus – an arm of the COR. Thomas wanted to take Gilfoyle to task for failure to implement the referendum. The only action that APA took to implement the referendum was to send a vacuous letter to branches of the military; getting a bunch of letters for the referendum felt like an affront. There were several occasions when Thomas was chairing APA caucuses when she made reference to the fact that the referendum hadn't been implemented. Gilfoyle was insulted and pointed to what APA had done.

V. FOLLOW UP

We need to ask Thomas to do the following:

- Search her emails for correspondence with Behnke; and
- Think about the collusion hypothesis and whether she has emails or documents that suggest it is or isn't true.

We need to send Thomas the following:

- Email search instructions for her AOL account. Explain whether we can use date restrictions, terms, and names to search AOL; and
- Email addresses of PENS Task Force members.