

An Open Letter to the APA Membership
January 10, 2018

Defamation Suit Against David Hoffman, Sidley Austin, and APA Enters Its Second Year
More APA members come forward to provide evidence supporting plaintiffs' case.

It has now been more than two years since we presented APA's then-outside counsel, WilmerHale, with clear and credible evidence contradicting the conclusions of what has come to be known as the Hoffman Report. In the months that followed, many other APA members spoke out about Hoffman's distortion of the events he described and about the APA Board's mishandling of its response to the Report. At that time and ever since, we have pressed APA and Sidley to correct the record and repair the destruction wreaked on our careers without the need for litigation. It was only when we received no response to our settlement offers, after having invested months in discussions with the defendants' lawyers, that we filed suit. That suit continues in the D.C. and Ohio courts, with no end in sight.

For more information about the case's background, we refer you to our website: www.hoffmanreportapa.com. For a brief summary, see the 2/16/2017 release regarding the filing of our case under the "[Releases](#)" tab. For a more substantive summary, see the 10/26/2015 "[Second Response](#)" under the same tab. For a full description of what Hoffman and the APA got wrong and why that constitutes defamation, see the first document under the "[D.C. Litigation](#)" tab. The website also contains, among other documents, [letters from the APA's past presidents](#) and former [ethics chairs](#) about the contents of the Reports, their revisions, and APA's handling of them.

This letter is an update, prompted by what APA members have told us about misleading statements by APA officials and about their attempts to prevent members from supporting us publicly.

- Last August, APA issued a press release when a court in Ohio, where Col. James lives and where we first filed suit, decided that his court did not have jurisdiction. However, APA has not issued a press release informing its members that the case was re-filed in the District of Columbia, where the defendants preferred to have it litigated, on the very day the release was issued, or that the Ohio decision is being appealed.
- For the past year, despite knowing that we are open to a settlement, APA and Sidley have evinced no interest in any approach other than continuing to litigate. In the past three months, the defendants have filed, together or separately, five motions in the D.C. court and opposed our attempts to obtain discovery, a classic (and expensive) stalling strategy that they also employed in Ohio. We have offered to dismiss the Ohio appeal if the defendants simply respond to the merits of our D.C. complaint, so we can be sure they are not raising arguments that are better heard in Ohio. They have refused to do so. No one benefits from this approach except the defendants' law firms, which include the former firm of APA's new General Counsel.
- APA's outside counsel has said she is unaware that we and others, including former chairs of the APA Ethics Committee, proposed involving a neutral arbitrator, or that the Board rejected that approach at its March 2, 2016, meeting. Despite this history, APA has now asked the D.C. court to compel the two of us who are former APA employees to arbitrate. We oppose that belated demand for a number of reasons, including that it would require us to retrace before an arbitrator the arduous path we have taken to build our case in the courts. However, we have made clear our willingness to consider mediation, a simpler and less expensive approach. That offer has not been accepted.

- In recent months, we have gathered more evidence from those Hoffman interviewed that he distorted, cherry-picked from, and mischaracterized what they told him or purposefully avoided lines of inquiry that would have contradicted his conclusions. We now have 16 affidavits to that effect (in addition to those of the five plaintiffs).
- We have also gathered evidence proving that APA Board members and officials had been so deeply involved in the events the Report describes that they knew its conclusions were false. Moreover, they were explicitly warned during the investigation's course that Hoffman was not conducting an objective, even-handed investigation.
- APA has tried to intimidate those who support us from speaking up. It has threatened leaders of the APA Division to which three of us belong with adverse consequences if the Division supports us. It has blocked those who have provided affidavits to us from participating in governance activities. It has told Council members that they may not speak about the case even among themselves without the presence of an APA lawyer. In this atmosphere, some who are willing to provide evidence in our favor have said they are afraid to do so unless they are subpoenaed, for fear of retaliation. In contrast, APA has taken no apparent steps to deal with Council members who continue to make false public statements about the actions of APA's military members, statements which go beyond even the Report's false conclusions.

The most troubling fact of all is this: After the Report was issued, many within APA, including Board members, raised concerns about its distortion of events and about the Board's hasty and ill-considered response to it. Now, however, APA officials seem to assume that its members will forget that history, or that a court will overlook those admissions, and that it can, therefore, insist with a straight face that our claims have no merit and that our lawsuit will go away. As a former Board president put it after meeting with the Board in August 2016, [APA leadership seems to have adopted a "duck-and-cover" approach.](#)

As part of that approach, APA has allowed its lawyers to assert that Hoffman's work produced only "opinions" rather than purported statements of fact. That absurd assertion not only beggars belief; it is also contradicted by APA's and Hoffman's own statements about his assignment. As Hoffman was at work, APA said he had been hired "[to determine the facts](#)" and, after the Report's completion, Hoffman described it as providing "[factual findings and conclusions.](#)" With equal absurdity, APA and Sidley have also asked that the lawsuit be dismissed because it attempts to interfere with their rights to free speech.

If the APA's leaders cannot deal straightforwardly with the truth of what happened, rather than attempting to sweep the facts under the rug, then they have little chance of healing the Association's divisions or living up to their commitment to govern transparently. They should step up to their leadership responsibilities, rather than shirking them under the guise of following their lawyers' advice.

We appreciate greatly those whose courage to speak up in affidavits will result in the truth being presented to the court. We would be glad to discuss the case individually with any APA member who would like more information.

L. Morgan Banks, Ph.D.
Stephen H. Behnke, Ph.D., JD
Debra Dunivin, Ph.D., ABPP
Larry C. James, Ph.D., ABPP
Russ Newman, Ph.D., JD
info@hoffmanreportapa.com