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

Larry C. James, *et al.*,	:	
	:	
Plaintiffs,	:	Case No: 2017 CV 00839
	:	
vs.	:	Judge Timothy N. O'Connell
	:	
David Hoffman, *et al.*,	:	
	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM IN RESPONSE TO
DEFENDANTS' MOTION TO STAY DISCOVERY

On March 27, 2017, Defendants moved to stay discovery in this case pending motions they intend to file in April and May. (On April 3, 2017, Defendants announced their intention to file a "Special Motion to Dismiss" under District of Columbia law that has no counterpart in Ohio procedural or substantive law.) The Court granted their March 27 motion on March 29, 2017, without providing Plaintiff an opportunity to respond.

In order to move speedily through the motion stages of this case and to avoid imposing on the Court's time, Plaintiffs do not object at this time to the imposition of a temporary stay despite the non-burdensome nature of the few non-party depositions they planned. However, Plaintiffs do not agree that there are grounds for imposing a stay until "the final resolution of all pending motions to dismiss or in response to the Complaint," as Defendants requested in their proposed Order to Stay Discovery. Plaintiffs may therefore request the Court to lift the stay at a later point and, if necessary, to issue an order to compel discovery.

Furthermore, Plaintiffs are compelled to respond to what they contend is Defendants' mischaracterization of the nature of the case against them, as well as key aspects of the relevant laws. Defendants' Motion also ignores their past actions relevant to their present attempt to deny

discovery: their ongoing refusal to provide non-privileged documents that could further reveal the factual falsehoods in the report at the heart of this case, and the APA's attempts to intimidate into silence APA members who support Plaintiffs and could provide information to them.

A. Defendants Mischaracterize Hoffman's Factual Statements as Opinions that Warrant First Amendment Protections

Defendants' characterization of this case as an attack against free speech is incorrect, as was their public description of the report as a statement of opinions that "contributed meaningfully to an ongoing dialogue about issues of public importance." Kat Greene, *Sidley-Authored Report on 9/11-Era Torture Defamatory: Suit*, (February 21, 2017) https://www.law360.com/articles/894317/sidley-authored-report-on-9-11-era-torture-defamatory-suit. Those positions fail for two reasons.

First, David Hoffman was hired and paid $4.1 million to conduct a factual investigation and write a factually accurate report. The language of his engagement letter and the report itself make that clear. The engagement letter states that Hoffman and Sidley were "instructed that the sole objective of our review will be to ascertain the truth … following an independent review of all available evidence." In an article referred to on Sidley's website, Hoffman stated that the APA wanted to hire him "to show that we've gotten to the bottom of the facts." A post on Sidley's website also states that "[Sidley] found that leading APA officials did ***in fact*** collude with Defense Department officials to create and maintain permissive APA ethics policies that allowed psychologists to participate in potentially abusive detainee interrogations at Guantanamo Bay and elsewhere." (Emphasis added) Sidley, *Sidley Austin's David Hoffman Discusses Key Considerations for Companies Undertaking Internal Probes During Emerging Scandals*, http://www.sidley.com/news/internal-probes-during-emerging-scandals (accessed April 4, 2017).

Although the more than 540-page report also contains hyperbolic assertions, the core defamatory statements about Plaintiffs are presented as fact capable of proof or disproof. They can be and have been proven false by documents and other factual evidence. They were acted on as facts by the APA when it fired Plaintiff Behnke and by Plaintiff Newman's employer when it demanded his resignation after the report became public. And they were presented as facts by the APA and other persons when they forwarded the report to governmental and international agencies in so-far futile efforts to have Plaintiffs prosecuted.

Courts have routinely recognized that not even all opinions are automatically protected by the First Amendment. In the context of an internal investigation, Ohio and District of Columbia courts have held the core issue to be whether in, the totality of the context in which they were made, the defamatory statements can be proven to be false. *Mehta v. Ohio Univ*., 194 Ohio App.3d 844, 2011-Ohio-3484 (10th Dist.); *Pearce v. Hutton Group, Inc*., 664 F.Supp. 1490, 1509 (D.D.C. 1987), rev'd on other grounds, 828 F.2d 826 (D.C. Cir. 1987).

Second, the Defendants' claim that this suit constrains their free-speech rights is unfounded, and the cases they cite that address the chilling effect of punitive litigation and the advocacy of unpopular opinions (Memorandum, page 5-6) are irrelevant. It is in fact the Plaintiffs' voices that have been suppressed.

When the report was leaked to the press in 2015, it became a megaphone broadcasting defamatory accusations against Plaintiffs that were republished around the world by the media and reinforced by interviews given by APA officials. The APA gave Plaintiffs no opportunity to respond to the report's allegations before it was published to a non-APA member who was known to be working with *The New York Times*, to which the report was promptly leaked. Plaintiffs had no opportunity to be heard in a public forum within the critical first 24 hours of the

news cycle while they were being accused of "torture," and while some were advocating publicly for their criminal prosecution. See, for example, Spencer Ackerman, *US Torture Report: Psychologists Should No Longer Aid Military, Group Says*, (July 11, 2015) https://www.theguardian.com/us-news/2015/jul/11/cia-torture-doctors-psychologists-apa-prosecution.

Since the report's publication, the APA has refused to give Plaintiffs an adequate forum for responding to it, and Defendants have failed to acknowledge publicly the report's factual misstatements despite a private acknowledgement by members of the APA Board that the report "contains many inaccuracies." (Complaint, ¶30). Additionally, on September 4, 2015, Defendants published an errata sheet and a "revised" report without allowing any input from any of the Plaintiffs who were on record as objecting to the original document as false and defamatory (Complaint, ¶281). Although the APA rehired Hoffman to review a very limited set of the report's inaccuracies and issue a supplemental report by June 8, 2016, no such supplement has emerged. (Complaint, ¶32). The history of Defendants' stonewalling is outlined in Plaintiffs' Complaint.

As private individuals without the Defendants' institutional platforms and public profiles, Plaintiffs do not have the Defendants' demonstrated access to vast traditional media platforms. In the face of media silence and after more than a year of attempts to have Defendants correct the report's false statements of fact, Plaintiffs filed this suit as a last avenue for having their voices heard.

B. Defendants Mischaracterize the Scope and Applicability District of Columbia and California Anti-SLAPP Laws

Defendants' Memorandum states that they intend to file a motion "for early disposition of the case based on substantive District of Columbia or California law permitting special early

motions to dismiss in lawsuits that burden Defendants' free-speech rights." The laws referred to are the so-called anti-SLAPP laws, SLAPP standing for "strategic lawsuit against public participation." Anti-SLAPP statutes, including the District of Columbia and California statutes, vary greatly. Generally, however, some allow a defendant to stay discovery, get his or her lawsuit dismissed, and recover fees in specific circumstances: if a court finds that the suit (1) arose from the defendant's action in furtherance of his or her right of free speech, advocacy activity, or petition in connection with a public issue in a public forum, and (2) does not carry a *prima facie* showing that the plaintiff will prevail. In such circumstances and when the anti-SLAPP procedural rules are strictly construed, these special procedural motions can be decided on the pleadings without leave to amend.

Defendants fail to apprise the Court of the true nature of those statutes. First, anti-SLAPP laws are not intended to apply to cases such as this where, despite Defendants' assertions, free speech is not threatened and where there is a *prima facie* showing that Plaintiffs will prevail in their defamation claims. Instead, they are intended – as their name indicates – to allow defendants to "expeditiously and economically dispense of litigation" to alleviate the burdens and cost of defending against a suit that is filed not to succeed, but to "prevent or punish" the defendant's speech or advocacy. The anti-SLAPP statutes do not apply to this case because, among other reasons, there was no "economic bullying" by Plaintiffs. See, e.g., *Newmyer v. Sidwell Friends Sch.*, D.C. No. 12-CV-847 (Dec. 5, 2012), https://dcslapplaw.com/files/2013/01/Newmyer_SLAPP_Orders.pdf; *Competitive Enter. Inst., et al. v. Mann*, 150 A.3d 1213 (D.C. Cir. Dec. 22, 2016).

Second, by describing the laws in conclusory fashion as "substantive," Defendants obscure two facts: in both the District of Columbia and California, courts have found some or all

aspects of these laws to be purely procedural, and the national trend is to recognize their non-substantive nature. See, e.g. *Intercon Solutions, Inc. v. Basel Action Network, et al.,* 791 F.3d 729 (7th Cir. 2015); *Mobile Diagnostic Imaging, Inc. v. Hooten*, 889 N.W.2d 27 (Minn. Ct. App. 2016).

1. Anti-SLAPP Laws Do Not Govern Claims of the Kind Asserted by Plaintiffs

Anti-SLAPP statutes were created as procedural mechanisms to protect grassroots activists from the litigious excesses of developers and corporations. As Defendants try to force into that context a dispute between defamed private individuals and two large organizations with deep pockets, they fundamentally mischaracterize the nature of Plaintiffs' claims and of Hoffman's reports.

Defendants state that "Plaintiffs' Complaint seeks to hold Defendants liable for exercising their constitutional right to speak about issues of public interest: the formulation of guidelines determining whether and to what extent psychologists may ethically participate in national security interrogations …." (Memorandum, page 6). That statement is incorrect. Plaintiffs do not dispute anyone's right to speak about that issue, and Hoffman is entirely free to engage in public debate about it. Plaintiffs' Complaint deals with Hoffman's factually incorrect assertions on behalf of his client APA, made with actual malice, that (among other things) Defendants colluded to distort that debate within the APA. Those demonstrably false and defamatory statements are not "constitutionally protected speech." (Memorandum, page 6).

Moreover, Hoffman's report was not written "in furtherance of his … right of free speech or petition in connection with a public issue." It was written to "get to the bottom of the facts" so that his client, APA could put a contentious part of its internal governance dispute behind it. It was presented as a "definitive" statement designed to put the internal controversy to rest and

determine the "facts." See e.g., American Psychological Association, *Statement of APA Board of Directors: Outside Counsel to Conduct Independent Review of Allegations of Support for Torture*, (November 12, 2014) http://www.apa.org/news/press/releases/2014/11/risen-allegations.aspx (updated November 28, 2014); American Psychological Association, *APA Response to April 30 New York Times Article*, (April 30, 2015) http://www.apa.org/news/press/response/new-york-times.aspx.

Absent from Defendants' Memorandum is any mention of the Illinois Supreme Court's interpretation of the Illinois anti-SLAPP statute, an interpretation cited in the District of Columbia case of *Competitive Enter. Inst., et al. v. Mann*, 150 A.3d 1213 (D.C. Cir. Dec. 22, 2016). Illinois is the only jurisdiction in which Hoffman is licensed to practice law, and it is the jurisdiction from which the report was sent, among others, to members of the APA Special Committee overseeing the investigation. They reside in three other states, one of which (New Jersey) does not have an anti-SLAPP statute. Moreover, Defendants chose Illinois law to govern any claim arising under or relating to their engagement letter for the investigation. The Illinois Supreme Court has stated "if the plaintiff's intent in bringing the suit is to recover damages for alleged defamation [or other intentional torts] and not to stifle or chill defendants' rights of petition, speech, association, or participation in government," the Illinois anti-SLAPP statute does not apply. *Sandholm v. Kuecker*, 962 N.E.2d 418 (Ill. 2012), at ¶ 42; Sidley Austin LLP, *Report to the Special Committee of the Board of Directors of the American Psychological Association Independent Review Relating to APA Ethics Guidelines, National Security Interrogatories, and Torture,* (July 2, 2015) https://www.apa.org/independent-review/revised-report.pdf (revised Sept. 4, 2015).

2. Anti-SLAPP Statutes Should Be Regarded as Procedural, Not Substantive, and Therefore Not Applicable to an Action Brought in Ohio

Case law around the country regarding anti-SLAPP statutes is still developing. There is a significant split in federal circuits, and in state courts, as to what is protected, who is protected, what protections are available, and how those protections apply. However, there is a national trend recognizing the true procedural and non-substantive nature of these statutes and demonstrating increasing wariness about their potential for abuse. As Judge Alex Kozinski wrote in a 2016 California case, "anti-SLAPP cases have spread like kudzu …." *Travelers Cas. Ins. Co. of Am. v. Robert Hirsh,* 831 F.3d 1179 (9th Cir. 2016). As one example of this trend, in 2015 the Supreme Court of Washington held that the state's anti-SLAPP Act's "special motion to strike" procedure was unconstitutional because it violated the Washington constitution's right to trial by jury. *Davis v. Cox*, 351 P.3d 862 (Wash. 2015).

In 2015, the District of Columbia Circuit ruled that the District of Columbia's Anti-SLAPP Act cannot apply in federal court because the act's special motion to dismiss provision conflicts with the Federal Rules of Civil Procedure. The District of Columbia Circuit specifically held that the Rules "establish the standards for granting pre-trial judgment to defendants in cases in federal court" and that the Anti-SLAPP Act dictated a pre-trial procedure that conflicted with those rules. *Abbas v. Foreign Policy Group,* 783 F.3d 1328 (D.C. Cir. 2015).

In California, the anti-SLAPP statute is contained in the Rules of Civil Procedure. It has led to what can be characterized at best as a hodgepodge of inconsistent decisions. Although California courts have found aspects of the statute to be substantive, the Ninth Circuit has also expressly ruled that plaintiffs in federal court should be granted leave to amend freely as a matter of right to correct any perceived deficiencies in a complaint. *Verizon Delaware, Inc., et al. v. Covad Comm'ns Co., et al.*, 377 F.3d 1081 (9th Cir. 2004). Similarly, the automatic stay

provisions that are part of the statute have also been found to be "procedural" and therefore invalid in federal court. *Metabolife Int'l v. Wornick*, 264 F.3d 832 (9th Cir. 2001).

Defendants' conclusory characterization of these anti-SLAPP statutes as all "substantive" is a pre-emptive attempt to persuade the Court to apply them in this case, contrary to rulings in the relevant jurisdictions and to the national trend. By using a special motion to dismiss a claim, Defendants would dramatically alter traditional Ohio civil procedure and impermissibly shift a burden of proof.

Without the mechanism of a special motion, Defendants would need to file a motion to dismiss or a motion for summary judgment later in the case after appropriate discovery. In either of those motions, Defendants would carry the burden of persuasion when Plaintiffs' complaint is viewed in the light most favorable to permitting their claims to go forward. Under the special motion, however, if Defendants demonstrate that they were engaged in free-speech activities in a public forum, the burden shifts to Plaintiffs to demonstrate that the defendant's claims of free speech are a sham and to make a *prima facie* case for their claims.

That method greatly differs from this Court's usual method of evaluating the merits of a claim. By removing the favorable inference that a complaint should come forward, the anti-SLAPP laws impermissibly force Plaintiffs to meet a higher burden of proof, while permitting Defendants to seek dismissal without the benefit of discovery. Especially here, where Defendants have inappropriately denied Plaintiffs' legitimate, limited requests for discovery and prematurely rushed into court to further protect themselves, Defendants should not be allowed to then profit from the application of those foreign procedural mechanisms.

Although the District of Columbia and California anti-SLAPP statutes have differing procedural burdens, even if the Court were to apply their procedural aspects to Plaintiffs'

complaint, Plaintiffs can still meet those burdens. For example, under the California anti-SLAPP procedures, the plaintiff need only make a *prima facie* showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited. This showing has been referred to as a minimum level of triability. *Linder v. Thrifty Oil Co*., 23 Cal.4th 429, 438 n. 5 (Cal. 2000); *Mindys Cosmetics, Inc. v. Dakar* 611 F.3d 590, 598 (9th Cir. 2010). An anti-SLAPP-suit motion is not a procedure for testing the strength of a plaintiff's case. *Bikkina v. Mahadevan* 241 Cal.App.4th 70, 88-89 (Cal. Ct. App. 2015).

C. Defendants' Memorandum Ignores The History of Their Attempts to Block Access to Unprivileged Information and Block Plaintiffs' Communications with APA Members

Although Defendants state that their request for a stay was motivated by a desire to conserve the parties' resources and promote efficiency, it is in fact the latest step in a series of efforts to obstruct Plaintiffs' access to relevant information, including efforts to stifle support for the Plaintiffs' case within the APA. These efforts include the refusal to provide unprivileged notes of witness interviews on which Hoffman repeatedly relies in his report, and the intimidation of APA members who have communicated with the Plaintiffs or support their case. Moreover, Defendants' claim that their resources would be unduly burdened by the limited discovery Plaintiffs discussed with them is implausible.

1. Defendants Have Refused to Provide Unprivileged and Highly Relevant Documents Disclosed in and Relied on Extensively in the Reports

Hoffman and Sidley's engagement letter with the APA stated that "the work we do to gather facts and evidence in order to conduct our independent review and prepare the Final Report (the " Fact Finding Work") will not be covered by, and the APA does not expect to assert a claim of, the attorney-client communication privilege as to those matters" (except as to documents already covered by the privilege). Further, although the engagement letter attempts

to claim work-product doctrine protection for Hoffman's notes as well as other documents, Defendants have no legal basis for that claim, as Plaintiffs' Complaint demonstrates.

Consequently, since August 2015, Plaintiffs have repeatedly requested access to Hoffman's factual notes of his interviews taken by his associates. Hoffman's report refers to statements from his interviews more than 200 times and often comments on witnesses' credibility for his purposes. Plaintiffs will present affidavits from several of those interviewed stating that Hoffman intentionally distorted their testimony, along with statements from others that Hoffman deploys the evidence he claims to have collected from these interviews to create a factually inaccurate portrait of the events at issue. (For one example, see Exhibit A.)

Plaintiffs have repeatedly offered to limit their request to only the factual witness statements collected by Hoffman, and to pay all reasonable costs related to their production. Access to those statements is highly relevant to Plaintiffs' claims, and should not be objected to by Defendants if the statements support Hoffman's assertions concerning the interviews.

As to work-product protections, Defendants have never identified any litigation that was anticipated at the time of Hoffman's investigation that would justify a claim to work-product protections. In fact, there was no such litigation. Moreover, Defendants gave the report to "adverse" parties, thus waiving any possible work-product and attorney-client protections. First, within 24 hours of receiving the report on June 27, 2015, and before allowing Plaintiffs any access to its contents, Defendants gave the report to a non-APA member who had been harshly critical of Plaintiffs and was known by all of the Defendants to be working with a *New York Times* reporter. *See* Stephen Soldz, Psychologists for Social Responsibility, *An Open Discussion of the Hoffman Report and Where to Go From Here*, (August 6, 2015) https://www.youtube.com/watch?v=i9u1EOgeEqw. In the next few days, the report was leaked

to that reporter before its formal release by the APA. Second, the Report was sent to the Senate Armed Service Committee in a continuation of unsuccessful attempts years earlier to have it and other governmental entities investigate the events at issue, with the prospect of criminal prosecutions ensuing. Nadine Kaslow and Susan McDaniel, American Psychological Association, Letter to Chairman McCain and Ranking Member Reed of the Committee on Armed Services, (July 30, 2015) https://www.apa.org/news/press/statements/senate-armed-services.pdf

2. *Defendants Have Attempted to Silence Support for Plaintiffs Within the APA and to Block APA Members from Communicating with Plaintiffs*

In addition to denying Plaintiffs unprivileged documents and blocking the depositions of non-party witnesses, Defendant APA has attempted to prevent members of its 160 plus-person Council of Representatives, its governing body, from communicating with Plaintiffs or supporting Plaintiffs' case:

- In a February 16, 2017 e-mail to the Council, the APA's interim CEO, Cynthia Belar, instructed its members not to discuss the case among themselves or with members of the APA divisions they represented without the presence of APA lawyers. This instruction would effectively silence those Council members who believe the Hoffman report is factually incorrect and have spoken to that effect in open meetings.
- As set forth in ¶ 284 of Plaintiffs' Complaint, on January 30, 2017, at a meeting in Washington, DC, the APA President, Dr. Antonio Puente, approached one of the leaders of APA's military psychology division, to which the three military Plaintiffs belong. Dr. Puente told the division leader that, if the division helped the Plaintiffs, the division would experience adverse consequences. Despite there being no evidence that the Division leaders had acted improperly, on February 16, 2017, the

APA General Counsel informed them that the Division's Council representative would be excluded from the executive session's discussion of Plaintiffs' suit on the grounds that she had supported their position and communicated with them, and might inappropriately disclose confidential information in the future.

- As Plaintiffs are prepared to demonstrate when they are allowed to proceed with depositions, they have been contacted by APA staff and members who have asked to be "deposed" so they may speak the truth without fear of retaliation.

It is not Defendants' rights to free speech that are at risk of being chilled in this case. Defendants are attempting to effectively silence Plaintiffs by denying them access to documents and witnesses to develop their case and by stifling open debate about their claims within the APA.

CONCLUSION

Defendants' Motion for Stay is not an exercise designed to promote judicial economy or free speech. Nor will their next motions be. To the contrary, after having rebuffed Plaintiffs' efforts to repair their reputations and careers without resorting to litigation, Defendants are now setting out to use their considerable resources and deep pockets to deprive Plaintiffs of their day in Court. Plaintiffs are confident that their defamation claims can meet the most stringent standards of proof. If Defendants are also convinced of their case, let us proceed promptly and efficiently to trial.

Respectfully submitted,

/s/ Gerhardt A. Gosnell II

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CERTIFICATE OF SERVICE

The undersigned certifies that on April 5, 2017 a true and correct copy of the foregoing Plaintiffs' Memorandum in Response to Defendants' Motion to Stay Discovery was filed using the Clerk of Court's cm/ecf system which by its operation will give notice of this filing to all registered users. Parties may access the filing through that system.

/s/ Gerhardt A. Gosnell II
Gerhardt A. Gosnell II

Webster UNIVERSITY

Stephen H. Behnke, PhD, JD, MDiv July 18, 2015

Dear Steve,

Over the past week, I have had the opportunity to read the Hoffman Report. I am stunned by the misinformation, mischaracterization, and biased presentation of this Report. When the James Risen book chapter raised the issue of APA involvement in prisoner abuses, I wrote Dr. Nadine Kaslow, APA President, and recommended an independent review. Other individuals issued a similar call. I very much regret that decision, as it is quite clear that the review was anything but unbiased.

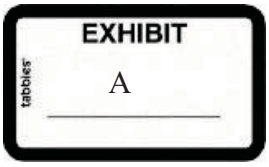
I so appreciated our work together on the 2006 APA Resolution Against Torture, the 2007 Resolution, and more recently the 2013 Policy Related to Psychologists' Work in National Security Settings and Reaffirmation of the APA Position Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. As a Peace Psychologist and Professor of Psychology and International Human Rights, I anticipated our work to be challenging, as I knew many within APA were strongly supportive of psychologist work in national security settings. During my term as President of Division 48 (Peace Psychology Division), I found that even among peace psychologists there was not a single view about torture or enhanced interrogations. Regardless, I felt very strongly that APA needed a strong anti-torture policy and ideally a prohibition on psychologist involvement in national security interrogations. You were always open to differences of opinion. I remember when the 2007 committee started to craft policy that I could not support and I resigned, you respectfully appreciated my decision and remained open to my feedback.

Perhaps, the most distressing aspect of the Hoffman Report is the tenor of the Report. I'm struck with how efforts to navigate complex policy waters became characterized as "collusion" or "manipulations." I have drafted university policies as well as written book chapters, articles, etc. with others. It is a back and forth collaborative process to get it right. Our conversation and process is presented but then totally misrepresented. For example:

Within APA, I have volunteered on a number of Education Directorate projects related to diversity and international issues. Staff members always served as a resource and provided feedback. Regardless, the final product has always been attributed to the Task Force members and not staff. Hence I was angered to read: "Wanting to maximize the appearance that this was purely a Division 48 resolution, and not one managed and watered down by him, Behnke suggested a response that acknowledged contact with APA staff, but falsely implied that the contact was merely procedural." The evidence for this claim? It was your email where you wrote: "The Movers would like to move the Resolution forward as expeditiously as possible, and have asked staff to indicate what mechanisms are available to get the Resolution before Council at the earliest date." I remain clueless as to how they achieved their conclusion based on your simple email, even more confusing as it is taken out of context.

Another example, as we were working on the final draft, you forwarded it to another interested party (a common procedure) affiliated with the military and you wrote, ""[T]ell me if you see anything problematic"—a pretty straightforward request. However, the Hoffman Report then characterized your actions/comments as "Within ten minutes of receiving this email from Woolf, Behnke forwarded the resolution to Banks to seek his pre-clearance, commenting that he thought it was "tolerable." Similarly, all APA proposed policy must go through a governance review process and is assigned a primary Board/Committee. Anything related to ethics is assigned to the Ethics Office. Yet, the report made it seem as if the Ethics office was meddling and co-opting the process. The Report states, "On March 19, Behnke emailed Woolf, Van Hoorn, and Okorodudu and began efforts to form a partnership with them for the purpose of influencing the language of their resolution." Actually, it was your job to contact us! I can only surmise that Hoffman and Associates know nothing about the legislative process within APA

Throughout the document there are notations such as, "Woolf also suggested that they (1) strengthen one of the "whereas" statements to include specific examples; . . . Later that evening, Behnke responded that he was reviewing the changes with Moorehead-Slaughter on the phone and that the changes looked good." Regardless, the conclusion of the report was that you were working to subvert the process and weaken the Resolution. The Report makes the claim that you tried to stall the process



and yet the Resolution was brought to the Council immediately for an expedited review. The Hoffman Report totally disregarded some events and took other events and bent them to fit a destructive narrative.

Just one last example—there are so many! According to the Report, "Woolf sent Behnke an email titled "[j]ust between us elves!" and attached the working draft from her subgroup on the proposed substitute motion. Woolf told Behnke that they wanted to make sure that the substitute motion 'doesn't weaken in any way the 2006 Resolution'". The email in question was non-substantive. I can only imagine that the Report included a reference to this email to highlight some sort of collusion narrative based on one of my light-hearted subject headings. The report doesn't really understand the back-and-forth nature of all of our work as we endeavored to draft the best possible resolution.

I'm stunned at the number of times the Report states something along the line of "Sidley was not able to find any additional email communications on this point. However, it is clear that Behnke . . . " and then they seem to just make up their conclusion.

Moreover, I had to push for an interview with Hoffman and Associates and recommended that they also contact Judy Van Hoorn and Corann Okorodudu and the attorneys did not contact them. Here are individuals mentioned throughout the Report but they were never interviewed. The Report reached conclusions with inadequate information.

Ironically, you worked just as hard for us, with the same respectful and open style, on the 2013 Policy. The 2013 Policy was an effort to reconcile all the previous policies and put them together in a single document. It exemplifies years of policy development (for which you are described as subverting every policy in the Report so that all policies were weakened and supportive of interrogations) and yet, the final policy is characterized positively in the Report as a reflection of the "Obama Administration's clear rejection of the interrogation program" and "APA responded to the changed climate and reduced its defense of the policies it had earlier fought so hard to defend." Apparently, Hoffman and Associates could not see the contradiction of their own words and Report.

As an aside, I wanted to add how much I have always appreciated your openness to teaching others about ethics. I remember your presentation at the National Institute on the Teaching of Psychology—a forum primarily for High School and undergraduate teachers. You gave a wonderful and very useful workshop for those wanting to integrate more about ethics into their teaching.

Again, I am saddened and dismayed by the Hoffman Report. The Report does not reflect my experiences of working with you during that time. It was a gross injustice.

Sincerely,

Linda M. Woolf, PhD
Professor, Psychology and International Human Rights
Past-President: Society for the Study of Peace, Conflict, & Violence (Div. 48, APA)
Board Member: Institute for the Study of Genocide
Fellow: American Psychological Association