

and

Sidley Austin LLP  
One South Dearborn  
Chicago, Illinois 60603

and

American Psychological Association  
750 First St., NE  
Washington, District of Columbia 20002

and

JOHN AND/OR JANE DOES 1-50  
Names and Addresses Unknown

## Defendants

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## TABLE OF CONTENTS

	<u>Page</u>
<b>I. NATURE OF THE ACTION.....</b>	<b>1</b>
Unprivileged, False and Defamatory Statements in the Report Made with Actual Malice.....	5
Evidence of Actual Malice from the Conduct of the Investigation .....	7
Evidence of Actual Malice from the Defendants' Conduct After the Report's Completion.....	7
Damages to Plaintiffs.....	9
<b>II. THE PARTIES AND RELEVANT THIRD PARTIES .....</b>	<b>11</b>
<b>III. JURISDICTION AND VENUE.....</b>	<b>18</b>
<b>IV. FACTUAL BACKGROUND.....</b>	<b>20</b>
A. Psychologists' Participation in National Security Interrogations.....	20
B. The PENS Task Force.....	21
C. The Critics on Whom Hoffman Relied .....	23
<b>V. HOFFMAN AND SIDLEY'S THREE PRIMARY CONCLUSIONS ARE FALSE AND DEFAMATORY PER SE .....</b>	<b>23</b>
A. Material in Hoffman and Sidley's Possession Demonstrates They Knew His First Conclusion Was False or Acted in Reckless Disregard of Its Truth.....	25
B. Material in Hoffman and Sidley's Possession Demonstrates They Knew His Second Conclusion Was False or Acted in Reckless Disregard of Its Truth.....	36
C. Material in Hoffman and Sidley's Possession Demonstrates They Knew His Third Conclusion Was False or Acted in Reckless Disregard of Its Truth.....	38
<b>VI. DEFENDANTS' CONDUCT OF THE INVESTIGATION DEMONSTRATES ACTUAL MALICE .....</b>	<b>42</b>
A. The Appointment of the Special Committee: The Roles of Drs. Kaslow and McDaniel.....	42
B. Obscuring the Investigation's Expanded Scope and Direction.....	44
C. Lack of Independence: Hoffman and Sidley's Over-Reliance on the Accusers and Alignment with Their Goals.....	46
D. Lack of Independence: Hoffman and Sidley's Alignment with the Interests of Drs. Kaslow and McDaniel, the Non-Recused Members of the Special Committee ..	49
E. Failure to Follow All the Evidence: Exculpatory Leads.....	50

F.	Failure to Provide Standard <i>Upjohn</i> -Type Warnings or to Warn Plaintiffs When the Investigation Had Become Adverse to Their Interests.....	53
<b>VII.</b>	<b>HOFFMAN AND SIDLEY WROTE THE REPORT IN A MANNER THAT FURTHER DEMONSTRATES ACTUAL MALICE .....</b>	<b>55</b>
A.	The Report Conflates DoD and CIA Policies.....	55
B.	The Report Relies Repeatedly on Over-Statements, Misstatements, and Unsupported Inferences .....	56
<b>VIII.</b>	<b>DEFENDANTS’ ACTIONS SURROUNDING AND AFTER THE REPORT’S PUBLICATION PROVIDE FURTHER EVIDENCE OF ACTUAL MALICE .....</b>	<b>61</b>
A.	Drs. Kaslow and McDaniel Knew that Two of the Report’s Primary Conclusions Were False or Acted with Reckless Disregard of Whether They Were False.....	61
B.	The APA Board Published the Report Hastily and Without Adequate Review.....	63
C.	Defendants Failed to Give Plaintiffs an Opportunity to Respond to Allegations .....	65
D.	Dr. Kaslow’s Statements During and After the Investigation Bolstered the Report’s False Conclusions.....	66
E.	Defendants Made False Claims of Privilege and Work Product .....	69
F.	Defendants Failed to Respond to Evidence of the Report’s Falsity .....	70
G.	The APA’s Re-hiring of Hoffman Despite Conflicts .....	73
<b>IX.</b>	<b>ONGOING DAMAGES TO PLAINTIFFS.....</b>	<b>74</b>
<b>X.</b>	<b>COUNTS 1-12.....</b>	<b>74</b>
<b>XI.</b>	<b>REQUEST FOR RELIEF ON COUNTS 1-12.....</b>	<b>100</b>



## **COMPLAINT<sup>1</sup>**

### **I. NATURE OF THE ACTION**

1. This action is brought by Colonels (Ret.) L. Morgan Banks, III, Debra L. Dunivin, and Larry C. James and Drs. Russell Newman and Stephen Behnke (collectively, the Plaintiffs) against attorney David H. Hoffman (Hoffman) and his law firm Sidley Austin LLP (Sidley) and the American Psychological Association (APA) (Hoffman, Sidley and the APA collectively, the Defendants). It asserts claims of defamation *per se*, defamation by implication, and false light.

2. The lawsuit arises from an independent review and report commissioned from Hoffman and Sidley by the APA (Hoffman Report or Report)<sup>2</sup>. The review was prompted and guided by claims that, in the aftermath of 9/11, the APA colluded with the Bush administration, the Central Intelligence Agency (CIA) and the U.S. military to support torture.

3. More specifically, the review was sparked by the 2014 publication of those claims in the book *Pay Any Price: Greed, Power and Endless War* by James Risen, a *New York Times* reporter. According to the APA Board of Directors' resolution authorizing the review, it was to consider the claims of collusion and, in particular, to focus on three specific allegations made by Risen.

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<sup>1</sup> The Plaintiffs recognize the unusual and unfortunate length of this Complaint. It is necessary, they believe, to plead the facts demonstrating actual malice in the complex fabric of false allegations contained in a 540-plus-page report and in the pattern of intentionally biased behaviors during the investigation and after its completion.

<sup>2</sup> Three versions of the Hoffman Report were published: Hoffman delivered a draft on June 27, 2015. It was leaked to *The New York Times* during the next week and, on information and belief, is the version that was published on the *Times*' website (<http://www.nytimes.com/interactive/2015/07/09/us/document-report.html>). The APA published a final version on its website on July 10 (<http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>), and a revised version on September 4 (<http://www.apa.org/independent-review/revised-report.pdf>). For ease of reference, all three will be referred to collectively as the Report or Hoffman Report. Upon request, Plaintiffs will provide the Court with a printed copy of each of the Reports and their over 6,000 pages of exhibits.

All relevant parties entered into a tolling agreement to extend the relevant statutes of limitations during the period up to and including February 16, 2017.

4. Hoffman did not find evidence to support those allegations. As his review proceeded, however, it became a fishing expedition spanning decades of events not only within the APA, but also within the government, military and CIA. At its end, it resulted in a series of demonstrably false and defamatory allegations against the Plaintiffs.

5. This Complaint will provide concrete examples of the documents and other facts that demonstrate Defendants knew those allegations to be false or acted in reckless disregard of their truth. However, it is not only their cumulative weight that does the defamatory damage. Binding together the Report's 500-plus pages is an overarching false and defamatory narrative: from 2005 to 2014, Plaintiffs and others "colluded" to block the APA from taking any effective steps to prevent psychologists' involvement in abusive interrogations.

6. The Report expressly identifies each Plaintiff by name as being an active partner or participant on behalf of the APA or the Department of Defense (DoD) in this collusive joint enterprise (Hoffman Report, see for examples pp. 9, 10, 12, 36, 43, 65, 340, 363, 386, 388, 429, 446).

7. That narrative was adopted from long-standing critics of the Plaintiffs and the APA on whom Hoffman relied heavily during his investigation. Their narrative was driven by two goals: banning psychologists from any role in the interrogation process and holding psychologists "accountable" for their alleged complicity in torture. Despite having been rebuffed by the Federal Bureau of Investigation (FBI), for years they had been advocating for criminal prosecutions of the Plaintiffs and others.

8. Although with more sophistication and nuance, Hoffman and Sidley adopted the core of that narrative as their own. As is apparent from statements by those Hoffman and his team

interviewed as well as from the Report's language, he assumed the worst about the Plaintiffs' motives from the start, as had the critics, and then described the facts through that distorting lens.

9. Consequently, for example, the normal back-and-forth among members of an organization who are strongly committed to a point of view becomes "collusion." A rational disagreement about the APA guidelines governing its members' participation in the interrogation process – should the guidelines be detailed about specific interrogation techniques or leave that specificity to the military policies the guidelines incorporated? – becomes an effort to allow abuses to continue. APA officials' communication with military psychologists becomes "currying favor" with the DoD, rather than fulfilling the officials' responsibility to serve each of the APA's constituencies.

10. Most egregiously, the Hoffman Report aligned perfectly with the critics' desire for criminal prosecutions. As they publicly acknowledged, they urged Hoffman to expand his investigation in part to overcome what they perceived as statute-of-limitation obstacles to prosecutions. Although Hoffman stated privately to the APA that he found no evidence of criminal activity, the Report deployed terms – "collusion," "joint venture," "joint enterprise" and "deliberate avoidance" – that Hoffman, a former federal prosecutor, knew were drawn from the context of criminal prosecutions.

11. Predictably, the Report led immediately to renewed and ongoing calls for the Plaintiffs to be subjected to criminal and war-crimes prosecution.

12. At the same time, Hoffman nowhere presents a coherent, much less truthful, description of the Plaintiffs' version of the events he investigated – a version that is not only true, but supported by facts in his possession. The military Plaintiffs had worked for years in difficult circumstances, often at detention sites, to help prevent abuses of the kind that followed 9/11.

Soon after news of those horrific abuses emerged, they became directly and energetically involved in drafting policies and implementing training and oversight to prohibit and, as far as possible, prevent future abuses. They could have played it safe in positions where no one could have falsely accused them of countenancing torture. But they did not. They stepped up, and for that Hoffman and their professional organization, the APA, have – shamefully – set out to punish them.

13. The military and the APA Plaintiffs then worked to ensure that the APA guidelines were drafted so that military psychologists could use them within the military to support efforts to prevent abuses, rather than having the military rebuff them as an interference with its ability to set policy for its own officers.

14. Hoffman nowhere allows that true story to be told. An independent and neutral investigator would have done justice to the positions and motives of both sides of these debates. Instead, from the Report's Executive Summary onwards, Hoffman consistently confines the Plaintiffs only to the rebuttal position, just as a prosecutor would in an indictment designed to make a case against them (Hoffman Report, pp. 1-4).

15. As a result, Hoffman failed to follow his charge from the Board to investigate “all the evidence” and “to go wherever the evidence leads.” To make the specific allegations described below fit his pre-determined narrative, Hoffman cherry-picked evidence, ignored contradictory evidence, mischaracterized facts, relied on inferences the facts did not support, and failed to follow obvious investigatory leads. As he acknowledged in a meeting with the APA's Council, its governing body, he set out to “make [the] case” to support his conclusions.

16. That case not only aligned with the critics' long-standing agenda. It also aligned with the desire of some APA Board members to put controversy behind them, and insulate themselves, by

blaming a “small underbelly” of psychologists who had been “involved in abusive interrogation techniques.” That was the language used by Dr. Nadine Kaslow, chair of the Special Committee formed to oversee the investigation, in a media interview after the Report’s release.

17. To build its case, as this Complaint will demonstrate, the Report relies repeatedly on statements of fact that were made with the knowledge that they were false or in reckless disregard of whether they were false. Moreover, Defendants’ conduct of the investigation and their actions surrounding and after its publication demonstrate that, at a minimum, they acted in reckless disregard of the truth both before and after the Report was completed.

***Unprivileged, False and Defamatory Statements in the Report Made with Actual Malice***

18. The Defendants’ engagement letter specified that the Report would be made public and that both it and “the work [Hoffman and Sidley] do to gather facts and evidence” would not be covered by the attorney-client privilege, except as to documents with a pre-existing privilege. The APA had no legal duty to commission the Report or make it public and was not under any threat of litigation when it hired Hoffman and Sidley.

19. The Report makes three primary allegations, each of which is false. It asserts that Plaintiffs and others colluded over a series of years by:

- in 2005, ensuring that the guidelines issued for psychologists involved in the interrogation process were no more restrictive than “existing” military guidelines which, Hoffman falsely asserts, were too loose to constrain abuses that amounted to torture;
- from 2006 to 2009, preventing the APA from banning psychologists’ participation in national-security interrogations; and
- from 2001 to 2014, mishandling ethics complaints to protect national-security psychologists from censure.

20. Each of the three allegations is completely contradicted by documents that were in Hoffman's possession or that he could have found by pursuing obvious lines of inquiry. The allegations rest, therefore, on the intentional and purposeful omission, distortion, and avoidance of evidence that shows them to be false.

21. For example, among the many other omissions and distortions specified in this Complaint, the Report:

- Omits documents showing that, by 2005, "existing" military interrogation policies contained rigorous prohibitions against abusive interrogation methods, including methods that Hoffman asserts were permitted. These policies, some of which the military Plaintiffs helped to draft, were incorporated by reference into the APA guidelines. The documents make nonsense of the Report's allegation that the Plaintiffs set out to avoid constraining abuses.
- Ignores documentary evidence, and distorts and mischaracterizes testimonial evidence, that the proposed ban against psychologists' participation in the interrogation process was debated openly, vigorously, and repeatedly during and beyond the relevant years.
- Excludes evidence in his possession about the investigation of the ethics complaints. That evidence included, for example, a statement by Dr. Kaslow, the then-APA President and later the Chair of the Special Committee, that the most prominent complaint was closed only after "as complete and careful a review of the available evidence ... as possible."

22. In addition to its false and defamatory primary accusations, the Report is rife with many other false statements that also show, at best, a reckless disregard for the truth. They are listed in

Exhibit A and fully incorporated herein by reference. Each of those statements was published with knowledge of their falsity or a reckless disregard for the truth.

***Evidence of Actual Malice from the Conduct of the Investigation***

23. The foundation for Hoffman's skillfully destructive one-sided brief was laid during the investigation. Among other practices that demonstrated at best a reckless disregard for the truth:

- Hoffman collaborated with and gave preferential treatment to long-time critics of the Plaintiffs, promising them confidentiality, relying heavily on them for material, adopting their basic narrative of the events at issue, aligning with their desire to expand the investigation's original scope to provide the framework for criminal and war-crimes prosecutions, and encouraging the APA to give them access to the Report before it was publicly released.
- Defendants failed to warn Plaintiffs that the investigation could be adverse to their interests, even after Hoffman knew that it would be.
- Defendants failed to inform Plaintiffs of the issues that the expanded investigation was exploring, even in response to direct questions, thus making it impossible for them to rebut the allegations Hoffman was forming.
- Hoffman purposefully avoided obvious lines of inquiry, including lines suggested by the Plaintiffs that would have provided direct exculpatory information.

***Evidence of Actual Malice from the Defendants' Conduct After the Report's Completion***

24. The Board's actions when it received the Report constituted at best a reckless disregard of the truth.

25. Five members of the APA Board – including Dr. Kaslow, the Chair of the Special Committee overseeing the investigation – had been directly and substantially involved in many

of the events Hoffman mischaracterized, and therefore knew facts that contradicted his assertions. Consequently, when the APA Board voted to publish the Report, they either knew those assertions were false or acted in reckless disregard of their truth.

26. In the days following the Board's receipt of the Report, it continued to give preferential treatment to the Plaintiffs' critics while keeping Plaintiffs in the dark and giving them no effective opportunity to respond to the attacks against them.

27. On June 28, the day after the APA Board received the Report, it gave it to two of the Plaintiffs' long-time critics who had been sources for James Risen's reporting, and then met with them on July 2. In the following days, the critics published in several places their July 2 comments to the Board, comments that exaggerated and misstated the Report's conclusions.

28. On information and belief, before the July 4 weekend, the Report was leaked to Risen. On July 10, Risen reported about it in *The New York Times* and published the Report itself on the *Times* website. The Board then hastily published the Report on the APA website. Those actions were followed by the tsunami of media coverage described below.

29. In contrast, throughout the period between receiving the Report and publishing it, the Board gave none of the Plaintiffs – including Dr. Behnke, an employee, and Col. James, a member of the APA Council, its governing body – adequate opportunity to respond to the Report's accusations. Plaintiffs Banks, Dunivin and Newman, all APA members at the time, realized they had been attacked only when they read *The New York Times* article on July 10.

30. Almost immediately after the Report's publication, APA members – by no means only the Plaintiffs – began to identify its factual omissions and distortions, provide documents and other evidence Hoffman ignored, and point out that their statements in interviews had been misrepresented. In a June 2016 open letter, nine former APA presidents said the concerns



expressed by four APA divisions and others included – among other failings – “an apparent failure to properly vet” the Report. When the former presidents met with current Board members in August 2016, the current members admitted that “the report contains many inaccuracies” and that the Board’s response to it had been “impulsive and not thought through.”

31. Yet for more than a year, despite having been given direct evidence of the falsehoods in the Report, Hoffman, Sidley and the APA have taken no effective steps to correct its false statements. Although Defendants issued an errata sheet in September 2015 that corrected some factual inaccuracies, it corrected none of the serious falsehoods the Plaintiffs have pointed out. Instead, Defendants have circled the wagons to protect themselves from blame. In the process, as former chairs of the APA Ethics Committee pointed out in an open letter, they have ignored potential conflicts between their interests and the interests of the APA as an organization.

32. In its one significant attempt to address the Report’s problems, in February 2016, the Board decided to re-hire Hoffman to review his conclusions about military interrogation policies. So clear was the conflict, however, that the Council, the APA’s governing body, advised the Board not to rehire Hoffman and Sidley. The Board ignored that advice, engaging Hoffman to produce a “supplemental” report that was due by June 8, 2016. It has still not emerged.

33. As a result of the Defendants’ sustained failure to correct the Report’s false statements, the damage to the Plaintiffs’ reputations and livelihoods has not only continued; it has increased. The Defendants’ inaction manifests a clear and continued purposeful avoidance of the truth.

### ***Damages to Plaintiffs***

34. The Report’s accusations immediately cost two Plaintiffs their jobs. The APA fired Dr. Behnke as the director of the APA Ethics Office, a position he had held for almost 15 years, without notice and without severance. Dr. Newman was forced to resign his positions as Provost

and Senior Vice President of Academic Affairs of Alliant International University. Neither has been able to find full-time employment.

35. The Report's false accusations also caused severe damage to what had been the stellar professional and personal reputations of all the Plaintiffs. That damage has been public and sustained. Because Hoffman's engagement letter specified that the Report would be made public without changes, he was fully aware that his defamatory statements would be republished in the echo chamber of the press. In fact, a tidal wave of media coverage ensued.

36. Sample headlines from articles and editorials based solely on the Report's assertions make clear how the press and the public understood the allegations made in the Report and then reinforced by Dr. Kaslow in media interviews: "Psychologists Who Greenlighted Torture" (from a *New York Times* editorial), "Report: Top psychologists bolstered CIA, Pentagon torture," "US torture doctors could face charges after report alleges post-9/11 'collusion,'" and "Justice Matters: Holding People Who Torture to Account."



37. As some of those headlines indicate, the Report's over-arching narrative and its use of terms implying criminal liability have created an ongoing threat that Plaintiffs will be prosecuted, despite Hoffman's having admitted privately to the APA that he had found no criminal activity. Plaintiffs' critics have relied on the Report to urge criminal prosecutions in the U.S. and war-crimes prosecutions by the United Nations Committee Against Torture and the International Criminal Court.

## **II. THE PARTIES AND RELEVANT THIRD PARTIES**

38. Plaintiff Dr. Larry C. James is an individual residing at 3931 White Spruce Circle, Dayton, Ohio 45424. Dr. James is a retired Army Colonel with 23 years of military service to the nation. He served as Chief of the Department of Psychology at Walter Reed Army Medical Center and Tripler Army Medical Center, and as Director of Behavioral Science at Guantanamo and Abu Ghraib, Iraq. For his service in Iraq, Dr. James was awarded the Bronze Star. In a mid-level position within the DoD hierarchy, Col. James was not in a position to make public or military policy, and he was retired from the military at the time of the Hoffman Report. He was not named in James Risen's book that sparked the Hoffman investigation, he did not voluntarily interject himself into the controversy, and he has no access to broad media channels to defend his reputation. Consequently, Plaintiff James is not a public figure, public official, or limited public figure.

39. Plaintiff Dr. L. Morgan Banks, III is an individual residing at 880 Barber Road, Southern Pines, North Carolina 28387. Dr. Banks is a retired Army Colonel with over 37 years of service to the nation, for which he was awarded the Legion of Merit. His service included tours in Germany, Iraq, and Afghanistan. He served as a staff advisor and consultant, culminating with his service as the Director of Psychological Applications for the United States Army's Special

Operations Command. In that position he provided ethical as well as technical oversight for all Army Special Operations Psychologists. In a mid-level military position within the DoD hierarchy, Dr. Banks was not in a position to make public or military policy, and he was retired from the military at the time of the Hoffman Report. He was not named in James Risen's book that sparked the Hoffman investigation, did not voluntarily interject himself into the controversy, and has no access to broad media channels to defend his reputation. Consequently, he is not a public figure, public official, or limited public figure.

40. Plaintiff Dr. Stephen Behnke is an individual residing at 624 Maryland Avenue, NE, Apt. 8, Washington, District of Columbia 20002. Dr. Behnke received training in law from Yale Law School, in clinical psychology from the University of Michigan, in divinity from the Harvard Divinity School, and in ethics at the Harvard University Program in Ethics and the Professions. Dr. Behnke served as Chair of the Board of Directors of the Saks Institute for Mental Health Law, Policy, and Ethics at the University of Southern California Gould School of Law, has an appointment in the Harvard Medical School Department of Psychiatry, and served as director of the American Psychological Association Ethics Office from 2000 until he was terminated on July 8, 2015. Dr. Behnke has worked with the Ohio Psychological Association, the Ohio State Board of Psychology, the Cleveland, Ohio, Veterans Administration, and educational institutions in Ohio to offer educational programs to Ohio psychologists and psychology students. Plaintiff Behnke was not in a position as an employee to make APA policy (that is the responsibility of the APA Council). Although Dr. Behnke was named in James Risen's book, Mr. Risen did not interview him. He did not voluntarily interject himself into the controversy, and he has no access to broad media channels to defend his reputation. Consequently, Plaintiff Behnke is not a public figure, public official, or limited public figure.

41. Plaintiff Dr. Debra L. Dunivin is an individual residing at 437 New York Avenue, NW, Unit Y-20, Washington DC 20001. Dr. Dunivin is a retired Army Colonel with 20 years of military service to the nation, for which she was awarded the Legion of Merit. She served as Chief of the Departments of Psychology at Walter Reed Army Medical Center and Walter Reed National Military Medical Center. She has consulted with commanders in Guantanamo, Iraq, and the Army Medical Command. She served in the Army Inspector General's inspection of detention facilities. In a mid-level position within the DoD hierarchy, Dr. Dunivin was not in a position to make public or military policy, and was retired from the military at the time of the Hoffman Report. Although she is named in James Risen's book, Mr. Risen did not interview her. She did not voluntarily interject herself into the controversy, and she has no access to media channels to defend her reputation. Consequently, Plaintiff Dunivin is not a public figure, public official, or limited public figure.

42. Plaintiff Dr. Russ Newman is an individual residing at 5265 Cromwell Court, San Diego, California 92116. Dr. Newman began his career as a psychologist at Harding Hospital in Worthington, Ohio, and served on the Board of Directors of the Ohio Psychological Association. He then worked for the APA in Washington, DC for 20 years, working on behalf of the nation's practicing psychologists and the patients they serve. Dr. Newman served as Executive Director for the APA Practice Directorate from 1994 to 2007. In that role, he implemented legislative, legal, public education, and marketplace strategies to support psychology practitioners and to increase access to psychological services. Most recently, Dr. Newman was Provost and Senior Vice President for Academic Affairs at Alliant International University, primarily a graduate school with nine APA-accredited clinical psychology doctoral programs. Plaintiff Newman was not in a position as an employee to make APA policy (that is the responsibility of the APA

Council). Although Dr. Newman was named in James Risen's book, Mr. Risen did not interview him. He did not voluntarily interject himself into the controversy, and he has no access to media channels to defend his reputation. Consequently, Plaintiff Newman is not a public figure, public official, or limited public figure.

43. At the investigation's outset, four of the Plaintiffs became targets because they had been involved in the APA Psychological Ethics in National Security (PENS) Task Force formed in 2005 to create guidelines for psychologists involved in interrogations. Col. Banks and Col. James (a member of the APA Council) were asked to join the task force as subject-matter experts in the psychology of interrogation. Dr. Behnke was asked to staff the task force. Dr. Newman was not a member of the task force or a participant in its listserv but was asked to be a non-voting observer, serving as a resource on professional-practice issues. All were serving in their roles at the request of the APA Board.

44. Col. Dunivin was not a member of the task force and did no more than propose members for it. She was targeted primarily because she is married to Dr. Newman, a fact Hoffman wrongly claims was not adequately disclosed and created a conflict. Because of Hoffman's description of her involvement, especially a phrase that appears to make her a member of the Task Force ("Some of the key DoD officials on the task force, principally Banks and Larry James, as well as Dunivin ....") (Hoffman Report, p. 66), APA members and others have wrongly portrayed her as a member.

45. Defendant David H. Hoffman is an individual residing in Chicago, Illinois, with an office at One South Dearborn, Chicago, Illinois 60603. He is a partner of Sidley Austin LLP and a former federal prosecutor and Inspector General of the City of Chicago. At the time of the research, drafting, delivery, and revision of the Hoffman Report, Hoffman was the lead partner

on the matter for Sidley Austin LLP and all times during his work on the investigation and writing of the Report was acting in his capacity as such. He was the Report's primary author on behalf of Sidley and signed the cover letters delivering two versions to the APA. Hoffman was the only Sidley Austin LLP lawyer referred to in the public communications issued by the APA regarding the firm's engagement for the independent review. Hoffman was retained and compensated by the APA.

46. Defendant Sidley Austin LLP is a law firm with offices in Boston, Century City, Chicago, Dallas, Houston, Los Angeles, New York, Palo Alto, San Francisco, and Washington, DC. Sidley Austin LLP is vicariously liable for all the actions taken by Hoffman arising out of the events described in this Complaint.

47. Defendant APA has more than 117,500 members and 54 divisions in subfields of psychology across the United States. Volunteer governance members play a key role in the direction of the APA's work. The governance groups include the APA's Council of Representatives, which has the sole authority to approve policy and appropriate the association's revenue; the Board of Directors, the administrative agent of the Council of Representatives; the APA President, elected annually by the membership to serve as the face of the association; and committees, boards, and task forces, which focus on particular issues in the field. The APA's daily operations are overseen by its senior staff at the APA headquarters in Washington, DC. The APA has over 500 staff members and is incorporated as a non-profit in the District of Columbia.

48. Defendants John and/or Jane Does 1-50 are individuals whose names are unknown to the Plaintiffs and could not reasonably be ascertained prior to the filing of this Complaint.

49. Non-party Dr. Nadine Kaslow is a psychologist who was the President of the APA and Chair of the Board of Directors when it voted to hire Hoffman in 2014. She was also Chair of the Special Committee that spearheaded the Hoffman investigation for the Board and was charged with overseeing it. Dr. Kaslow's actions were undertaken at all times within the scope of her official duties as an APA officer, Board member, or member of the Special Committee with the full authority to act on the APA's behalf.

50. Non-party Dr. Susan McDaniel is a psychologist who was president-elect of the APA at the time Hoffman conducted his review. Dr. McDaniel is currently the immediate Past President of the APA (while President, she appointed Dr. Kaslow as the Council Parliamentarian) and a member of the Board of Directors. Dr. McDaniel's actions were undertaken at all times within the scope of her official duties as an APA officer, Board member, or member of the Special Committee with the full authority to act on the APA's behalf.

51. Despite their involvement in some of the events Hoffman investigated, unlike others with similar involvement Drs. McDaniel and Kaslow were not named in the Report and therefore not recused from participating in the response to it.

52. Non-party James Risen is a reporter for *The New York Times*. His work has previously been criticized by major publications and journalistic "watch-dogs" for his questionable reporting techniques in the case of government scientist Wen Ho Lee.

53. Non-party Nathaniel Raymond is the director of a human rights program at Harvard. He was formerly employed by Physicians for Human Rights (a human rights group that has led the accusations against the APA) as director of the "Campaign Against Torture." He has also served as a frequent source for James Risen at *The New York Times*. Mr. Raymond has made numerous false inaccurate attacks against Plaintiffs over the last ten years and, in collaboration with Mr.



Risen, he has tried without success to persuade the Department of Justice (DoJ) to open criminal investigations into events discussed in the Report.

54. Non-party Dr. Steven Reisner is a psychologist who is self-employed. He is a consultant for Physicians for Human Rights. At the time of the release of the Report, he was a member of the APA Council. Dr. Reisner has made numerous false attacks against the Plaintiffs over the last ten years. He was interviewed by Hoffman but, in contrast to Hoffman's treatment of the Plaintiffs, the Report did not identify information drawn from his interview or disclose the date of the interview. Dr. Reisner has stated publicly that he was promised confidentiality by Hoffman.

55. Non-party Dr. Stephen Soldz is a psychologist on the faculty of the Boston Graduate School of Psychoanalysis. He is also a consultant for Physicians for Human Rights. At the time of the release of the Report to Dr. Soldz before its public release, he was not a member of the APA, but his membership was rushed through over that weekend. Dr. Soldz has made numerous false attacks against the Plaintiffs over the last ten years. He was interviewed by Hoffman but the Report did not identify information drawn from his interview or disclose the date of the interview.

56. Non-party Dr. Trudy Bond is a psychologist who is self-employed. Dr. Bond has made numerous false attacks on the Plaintiffs over the course of the last ten years, including filing formal ethics complaints against Col. James in Ohio, Louisiana, and Guam and with the APA, none of which resulted in findings against him. Dr. Bond has also recently submitted the Hoffman Report and its contents as evidence of war crimes to the United Nations. She was interviewed by Hoffman on February 19, 2015.

57. Non-party Dr. Jean Maria Arrigo is a social psychologist and oral historian. She was a member of the PENS Task Force, and her notes and archives related to the events in question are partially presented in the Hoffman Report. Her notes were submitted by Mr. Raymond to the DoJ and she submitted them to the Senate Armed Services Committee (SASC), neither of which found any basis in them for action.

### **III. JURISDICTION AND VENUE**

58. This Court has personal jurisdiction and venue over this action pursuant to Ohio Rev. Code Ann. § 2307.382, Ohio Civil Rule 4.3, and Ohio Civil Rule 3.

59. Hoffman and Sidley were retained by Drs. Kaslow and McDaniel, as members of the Special Committee and Board acting on the behalf of the APA, to conduct an investigation for the APA. The APA has over 1500 members, including Plaintiff James, who are licensed to practice psychology in Ohio. The APA accredits psychology programs throughout the State of Ohio. One member of the APA Board resides in Ohio.

60. Dr. Nadine Kaslow e-mailed Plaintiff James in Ohio, as well as other Plaintiffs elsewhere, to ask him to cooperate with Hoffman's investigation.

61. As part of that investigation, Hoffman and one of his associates traveled to Dayton. They were picked up at the airport by Plaintiff James and then interviewed him for approximately six hours at his office in Ohio. Hoffman is licensed to practice law only in Illinois, not in Ohio or DC (the jurisdiction of incorporation of APA).

62. That interview forms the basis for Hoffman and Sidley's false and defamatory statements about Plaintiff James. The statements were published in *The New York Times* and on the APA's website to be circulated, viewed, and read nationwide, including by residents of Montgomery County, Ohio. Plaintiff James has suffered harm in Ohio as a result of the defamatory statements.

63. The Ohio long-arm statute, Ohio Rev. Code Ann. § 2307.382, provides, as is relevant here, that an Ohio court “may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person’s: (1) Transacting any business in this state; ... (3) Causing tortious injury by an act or omission in this state; (4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;... [or] (6) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when he might reasonably have expected that some person would be injured thereby in this state.” Ohio Rev. Code Ann. § 2307.382.

64. Ohio Rule of Civil Procedure 4.3 largely mirrors the long-arm statute, providing that “[s]ervice of process may be made outside of this state, as provided in this rule, in any action in this state, upon a person who, at the time of service of process, is a nonresident of this state ... who, acting directly or by an agent, has caused an event to occur out of which the claim that is the subject of the complaint arose, from the person’s: (1) Transacting any business in this state; ... (3) Causing tortious injury by an act or omission in this state ...; (4) Causing tortious injury in this state by an act or omission outside this state if the person regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state; ... [or] (9) Causing tortious injury in this state to any person by an act outside this state committed with the purpose of injuring persons, when the person to be served might reasonably have expected that some person would be injured by the act in this state.” Ohio R. Civ. P. 4.3.

65. Ohio Civil Rule 3(B)(7) provides that venue is proper “[i]n actions described in Civ. R. 4.3, in the county where plaintiff resides.”

66. Finally, Ohio Rule of Civil Procedure 3 (E) provides: “In any action, brought by one or more plaintiffs against one or more defendants involving one or more claims for relief, the forum shall be deemed a proper forum, and venue in the forum shall be proper, if the venue is proper as to any one party other than a nominal party, or as to any one claim for relief.”

#### **IV. FACTUAL BACKGROUND**

##### **A. Psychologists’ Participation in National Security Interrogations**

67. Following 9/11, the military faced an increased demand for intelligence from human sources. That need created an ongoing requirement for psychologists and other behavioral-science consultants (“BSCTs”) to consult about and observe the interrogation of detainees. This was a relatively new area of practice for military psychologists, but it was very similar to behavioral-science consultation provided by psychologists and others in law-enforcement activities and correctional facilities.

68. The BSCT consultants, including the military Plaintiffs, were not conducting interrogations. Among other responsibilities, they were charged with drafting and implementing policies to ensure humane treatment, prevent abuses, and report any abuses that occurred. Their role was described in the March 28, 2005, policy governing BSCT personnel at Guantanamo, which was drafted in part by Plaintiffs Dunivin and Banks (see Exhibit B):

Use psychological expertise to ... to assist the command in ensuring humane treatment of detainees, the prevention of abuse, and the safety of U.S. personnel. .... it is the responsibility of all BSCT personnel to familiarize themselves with and adhere to the UCMJ [Uniform Code of Military Justice], Geneva Conventions, applicable rules of engagement, local policies, as well as professional ethics and standards of psychological practice. All BSCT personnel will be expected to:...Immediately report any suspicions of abuse of detainees or misconduct by U.S. personnel ....

## **B. The PENS Task Force**

69. Amid the growing press coverage of the role of psychologists and psychiatrists in interrogations, on November 30, 2004, *The New York Times* published an article regarding the possible involvement of psychologists in abusive interrogations, based upon a report of the International Red Cross. Dr. Behnke, as Director of the APA Ethics Office, forwarded the article to members of the APA Executive Management Group who had regular contact with the APA Board.

70. During its December 10-12, 2004 meeting, the Board voted to fund a task force to “explore the ethical dimensions of psychology’s involvement and the use of psychology in national security-related investigations.” This task force became known as the PENS Task Force, “PENS” standing for Psychological Ethics and National Security (“Task Force” or “PENS”).

71. The Board’s charge was not to consider “if” psychologists should participate in those investigations, but “how.” This is a critical distinction: much of Hoffman’s Report, including its discussion of the Task Force’s work, focuses on an alleged “collusion” among the Plaintiffs and others to block the APA from banning its members from participating in any way in the interrogation process.

72. The Task Force consisted of 10 members: three military officers who had experience consulting to national security interrogations, including Plaintiffs Banks and James; three civilians who had previous military experience; and four members who had experience in ethics, human rights, and related issues. Dr. Behnke was to provide staff support.

73. Several observers, including Dr. Newman, were also named to the Task Force. They could not vote, and Dr. Newman did not have access to the Task Force listserv. Although Hoffman claims that Newman “led much of the task force discussions throughout the weekend”

(Hoffman Report, p. 271), that assertion is directly contradicted by detailed, contemporaneous notes of the proceedings, which show that he spoke less frequently than many others.

74. The Task Force met over three days: June 24-26, 2005. At the conclusion of those meetings, it recommended twelve statements about the ethical obligations of the APA members (the PENS Guidelines).

75. Early during the week of June 27, 2005 the APA Ethics Committee approved the PENS Guidelines “as appropriate interpretations and applications of the American Psychological Association Ethical Principles of Psychologists and Code of Conduct (2002).” The PENS Guidelines do not represent changes to the Ethics Code.

76. The PENS Guidelines were then sent to the Board. Faced with new articles in the press, on July 1, 2005, then-APA President Dr. Ron Levant asked the Board to declare an emergency that would allow it to vote on the recommendations immediately, and asked it to approve them without modification. The Board approved the PENS Guidelines over e-mail the same day, and they were released to the public the next day.

77. On August 29, 2005, after the APA Council endorsed the PENS Guidelines, it issued a press release calling the PENS Guidelines “strict” and not open to exceptions. That release, which contradicts Hoffman’s claims about the Guidelines’ motivation and effect, was available to him but omitted from his Report. It is still available online (emphases added):

August 29, 2005

## APA Council Endorses Ethical Guidelines for Psychologists Participating in National Security-Related Investigations and Interrogations

WASHINGTON - The American Psychological Association (APA) Council of Representatives, the Association's governing body, has endorsed a Task Force Report on Psychological Ethics and National Security today that sets forth strict ethical guidelines for psychologists' participation in national security-related investigations and interrogations.

Following the recommendations of the Task Force, the APA Council of Representatives reaffirmed an Association resolution against torture and other cruel, inhuman, or degrading treatment. The Task Force Report prohibits psychologists from any participation whatsoever in such abusive behaviors and places an ethical obligation on psychologists to be alert to and report abusive behaviors to the authorities. The Council of Representatives stated that there are no exceptional circumstances whatsoever, whether induced by a state of war or a threat of war, internal political instability or any other public emergency, that may be invoked as a justification for torture, including the invocation of laws, regulations, or orders.

Central to its ethical analysis, the Task Force stated that psychologists are bound by the Association's Ethics Code in all their professional activities, regardless of whether they identify themselves as 'psychologists,' 'behavioral scientists' or some other term. The Council of Representatives directed the Ethics Committee to review a proposed change to the Association's Ethics Code, which would assure that psychologists faced with a conflict between ethics and law follow only those laws that are 'in keeping with basic principles of human rights.' The APA Council of Representatives also noted that possible evidence of unethical behavior should be referred to the APA Ethics Committee, the body charged with investigating and adjudicating ethics complaints.

### C. The Critics on Whom Hoffman Relied

78. In addition to Risen's book and other reporting, Hoffman relied heavily on three long-time critics of the APA and the Plaintiffs: Drs. Steven Reisner and Stephen Soldz and Mr. Nathaniel Raymond (collectively with Dr. Trudy Bond, the Accusers). As the Complaint will describe, they worked closely with Risen and other journalists over the years in a coordinated series of attacks. The direction in which Hoffman took his investigation, therefore, was prompted by a sustained multi-year campaign that culminated successfully in the Hoffman Report.

### V. HOFFMAN AND SIDLEY'S THREE PRIMARY CONCLUSIONS ARE FALSE AND DEFAMATORY *PER SE*

79. Documents and other facts prove that Hoffman's three primary conclusions are false, and that he knew they were false or acted with reckless disregard of whether they were false when the Report was published. Those factual statements are defamatory *per se* because each alleges behavior that is incompatible with the Plaintiffs' continued practice of their professions and, taken together, they allege the criminal activity of colluding to enable torture.

80. Far from "present[ing] as many facts as we were able to discover," (Hoffman Report, p. 8) as the Report claims, "or following all the evidence wherever it may lead," as was his charge

from the APA Board, the Report omits key documents, quotes selectively from others, and misstates key facts.

81. The most relevant omitted documents were in Hoffman's possession, seen by his team during its investigation, or referenced in other documents from which Hoffman quotes. In fact, as specified below, some of these documents were included or referred to in the Report's voluminous supporting binders (6,000-plus pages) but ignored in the text of the Report itself. Still others would have been easily found if Hoffman had followed leads provided by Plaintiffs Dunivin and James, as also specified below.

82. Moreover, as several of those interviewed by Hoffman have stated, he quoted selectively and misleadingly from their interviews.

83. This pattern of selective inclusion, distortion, and omission does not result because Hoffman simply forgot a relevant point or omitted an important fact. Rather, it is a clear and intentional pattern of obfuscating the truth by selecting only those facts which support his false conclusions and consciously omitting or intentionally avoiding contradictory evidence that would not fit into his narrative.

84. So egregious is this pattern, and so obvious to those with first-hand knowledge of the underlying facts, that on July 18, 2015, shortly after the Report was released, one of the most vocal advocates for a ban on the participation of psychologists in national security settings – and thus no fan of the Plaintiffs' position – sent Dr. Behnke a letter that stated:

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.



85. The following paragraphs specify the documents and facts that demonstrate Hoffman knew that each of his three primary conclusions was false or acted with reckless disregard of whether it was false.

**A. Material in Hoffman and Sidley's Possession Demonstrates They Knew His First Conclusion Was False or Acted in Reckless Disregard of Its Truth**

86. The Report's first and most prominent false conclusion alleged the following:

"...key APA officials, principally the APA Ethics Director [Dr. Behnke] 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." (Hoffman Report, p. 9)

This summary conclusion was supported by the following false factual assertions:

"...then-existing DoD guidance ... used high-level concepts and did not prohibit techniques such as stress positions and sleep deprivation..." (Hoffman Report, p. 12)

"...it was well known to APA officials at the time of the [PENS] report that the Bush Administration had defined 'torture' in a very narrow fashion..." (Hoffman Report, p. 12)

The paragraph containing the sentence above clearly and falsely leads the reader to conclude that this narrow definition remained relevant in 2005, when it had in fact been withdrawn long before the PENS Task Force met.

"...abusive interrogation techniques had occurred in the past and that there was a substantial risk that they were continuing ... [there was] an intentional effort not to dig into these concerns and allegations to try to determine whether they had occurred or were still occurring. ... there was a deliberate and strategic attempt not to inquire..." (Hoffman Report, pp. 66-67)

87. At its core, the conclusion falsely asserts that existing military interrogation policies in June 2005 were too loose to constrain abusive interrogations and permitted such techniques as abusive sleep deprivation and stress positions. On that foundation of sand, Hoffman then falsely asserts that the Plaintiffs, among others, wanted the PENS Guidelines to be just as loose to allow for ongoing abuses and turned a blind eye to whether abuses were continuing.

88. In fact, the then-existing military policies – some of which the military Plaintiffs helped to draft – were restrictive and were incorporated by reference into the PENS Guidelines. And the

PENS participants were fully aware of the history of abusive interrogations, which were discussed in documents circulated at the PENS meetings. Hoffman's false and defamatory conclusion turns truth on its head.

89. In particular, the Report:

- Distorts and omits key pieces of the history of governmental and DoD policies governing military interrogations. First, although Hoffman fleetingly acknowledges on a page far into the Report (p. 153) that the Bush Administration memoranda narrowly defining "torture" had been withdrawn well before the time of PENS, throughout the Executive Summary and elsewhere he incorrectly emphasizes the outdated policies as the context for the PENS Task Force's work. Second, the Report consistently conflates military and CIA policies at a time when they had dramatically diverged, with military policies becoming increasingly restrictive, and omits policy statements from late 2003 to early 2005 that applied specifically to the military.
- Omits the updated regional military policies that contained even more restrictive prohibitions against abusive interrogation techniques, including techniques that Hoffman claims were permitted, and instead analyzes outdated regional policies.
- Fails to disclose that the most recent policies, which would have included the regional policies in Afghanistan, Iraq and Guantanamo, were expressly incorporated by reference into the PENS Guidelines, along with the relevant Geneva conventions.
- Fails to describe the role the military Plaintiffs played in writing the regional policies, as well as taking other steps to prevent abuses at the sites to which they were posted.
- Omits articles and other documents passed out during the PENS meeting that focused on the abuses that had occurred at interrogation sites, and omits the prominent role that one

of the Task Force members, Michael Gelles, played in calling abuses to the attention of the then-General Counsel to the Navy, Alberto Mora (Hoffman Report, p. 68).

90. The Report's pattern of intentional omissions, purposeful avoidances, and mischaracterizations is fatal to its first conclusion. It represents the "deliberate avoidance" of which Hoffman accuses the Plaintiffs: a "deliberate and strategic" effort to avoid information – the full and accurate history of the military policies and the role the Plaintiffs played in drafting and implementing them – that would have destroyed his argument.

*1. U.S. Policy Governing National Security Interrogations 2003-2005: Department of Justice and DoD Policies Became Increasingly Restrictive*

91. The events Hoffman was hired to investigate took place in the context of a history of shifting military policies governing interrogations. In the years 2002-2005, these policies were changed a number of times, and those changes ultimately led to increasingly strict policies that prohibited the very techniques Hoffman claims were permitted by the "existing DoD guidance" (Hoffman Report, p. 12).

92. Prior to 9/11, Army interrogators had relied on the guidance of the Army Field Manual (FM 34-52), which contained specific and explicit directions as to which interrogation techniques were allowed and which were prohibited because they were considered abusive or cruel, inhuman or degrading treatment.

93. After 9/11, memoranda issued in late 2002 and early 2003 by the Department of Justice Office of Legal Counsel (OLC) expanded the range of interrogation techniques that would not be regarded as "torture" beyond those expressly permitted in FM 34-52.

94. On December 2, 2002, Secretary of Defense Rumsfeld authorized an expanded set of techniques for the DoD. Those techniques, however, were different from the "enhanced

interrogation” techniques approved for use by the CIA, which operated under separate legal guidance. (Hoffman did not conclude that APA colluded with the CIA (Hoffman Report, p. 9).)

95. Rumsfeld’s December 2002 authorization was rescinded in part on January 15, 2003. From January 16, 2003, until the time of PENS, the authorized techniques did not include the abusive techniques that Hoffman falsely claims were allowed in June of 2005. Moreover, on April 15, 2003 additional restrictions were put in place that further limited the allowable techniques.

96. In late 2003, in response to the reports of abuses in Iraq, Afghanistan and Guantanamo, the Armed Forces began what would become a series of investigations into military detention facilities. Beginning in early 2004, these investigations were followed by numerous public government hearings. The reports of two of those investigations, the Church and Schlesinger investigations, unequivocally stated that none of the abuses that occurred were “authorized” because of the temporary expansion in allowable techniques. Instead, they were the result of behavior that went beyond the authorized interrogation techniques.

97. As a direct result of these events, starting in late 2003 policies governing interrogations became increasingly specific and rigorous. The Hoffman Report fails to describe these changes accurately. Instead, it obscures or distorts the relevant history and leads the reader to believe that the Bush Administration’s temporary expansion of permitted techniques was still in place by the time of PENS – even though the later developments were discussed extensively in the media beginning in late April of 2004, a full year before the PENS meetings.

98. As the Armed Forces investigations began, the OLC separately began to reconsider the legal guidance given to support the interrogation program in the both the DoD and CIA. In late 2003, the OLC withdrew orally the early-2003 memorandum on which the DoD had primarily

relied on for an expanded definition of legal interrogation techniques. (In June of 2004, it withdrew the late-2002 memorandum that provided legal guidance for the CIA.)

99. Then, in December of 2004, the OLC issued another memorandum affirming that interrogations were again governed by a broader definition of torture and by the United Nations Convention Against Torture (CAT), which is incorporated into 18 US Code Section 2340 and therefore governs the conduct of interrogations.

100. Finally, on February 4, 2005, five months before the PENS Task Force meetings, the OLC issued an additional legal opinion to the DoD confirming its withdrawal of its 2003 guidance and also confirming the strict and authoritative guidance provided in the Philbin testimony described below. That OLC opinion and its attachments are attached hereto as Exhibit C and fully incorporated herein by reference.

101. Despite this clear history, the Report's Executive Summary asserts that the Bush Administration's narrower definition of torture contained in the withdrawn memos was the relevant reference point for the "existing" military guidelines of which Hoffman writes, and were in place at the time of PENS (Hoffman Report, pp. 3-4, 12).

102. On July 14, 2004, Associate Attorney General Patrick Philbin's testimony for the House Permanent Select Committee on Intelligence analyzed the relevant statutes, treaties, and constitutional provisions as applied to the 24 techniques then allowed for use at Guantanamo Bay (and, by incorporation, the 17 techniques then allowed for use in Iraq and Afghanistan). While those techniques included sleep adjustment (sleeping during the day rather than at night, for example), they did not include sleep deprivation or stress positions. Philbin made it clear that abuses, or techniques that fell outside the parameters he described, were punishable under a number of statutes and treaties as well as under the U.S. Constitution. This testimony became the

legal guidance for the DoD in late summer of 2004 and remains to this day a foundation for the legal underpinnings of the new Army Field Manual, which has been lauded by human rights groups and the APA as the appropriate bulwark against abusive interrogations. See Exhibit C.

103. At various points in this timeline, the DoD guidance for interrogations diverged significantly from the CIA guidance. DoD was governed by its own policies. By the time of the Philbin testimony at the very latest, those policies clearly did not authorize abusive techniques and were certainly not “loose.” As Hoffman states he was told by one of the architects of the CIA program, Dr. James Mitchell, “DoD was genuinely interested in adhering to the Ethics Code and was seeking clarity about its guidelines, whereas the CIA would not have changed its operational decisions based on the ethical statements of a professional association” (Hoffman Report, p. 144).

104. Hoffman inexplicably fails to describe accurately these developments in late 2003, 2004 and early 2005 (Hoffman Report, p. 153). Instead, he purposefully omits critical details of the history. This is no accident: the Report cites a number of materials that reference Mr. Philbin’s testimony, the approval of the specific 24 techniques, and the timeline of policy changes in detail, as well as other materials that either discuss or refer to a discussion of the strict limitations in place by 2004.

105. For example, in his discussion of the outdated OLC memoranda on which he relies, Hoffman cites extensively from *The Terror Presidency* by Jack Goldsmith and *The Dark Side* by Jane Mayer. Each of those books describes the correct timeline of policy changes, at times within pages of information he does cite. They make it clear that, by the end of 2003, and certainly by the time of Philbin’s public testimony, only the 24 techniques discussed in his testimony were authorized. They did not permit the abusive techniques of sleep deprivation and stress positions

that Hoffman falsely claims were allowed in June of 2005 (Hoffman Report, p. 12). If Hoffman had included this information, he would have had to tell a much different story.

106. In addition, the “Schlesinger Report,” the Report of the Independent Panel to Review DoD Detention Operations which was publicly released in August of 2004, listed exactly which interrogation methods were approved for use in Iraq, Afghanistan, and Guantanamo. The Schlesinger Report was contained in Hoffman’s supporting documents, but he again inexplicably failed to mention the list in the text of his Report. The Schlesinger Report makes it clear that the techniques Hoffman claims were authorized were not authorized in June 2005.

107. Thus, the relevant information about the interrogation policies actually in place in June 2005 was in Hoffman’s possession and was also pointed to by other documents in his possession. He purposefully omitted the critical facts in order to claim that out-of-date policies withdrawn over a year earlier, as the media reported in May and June of 2004, were still relevant to his conclusions at the time of PENS in June of 2005.

108. In what amounts to clear evidence of the purposeful avoidance of the truth, even after being pointed to these documents and policies, Hoffman and APA refuse, after a year, to acknowledge and correct the distortions in his Report.

## *2. The Regional Military Policies Were Even More Specific and Restrictive*

109. From March to May 2004, the Army Field Manual (FM 34-52) restrictions against abusive interrogations were reinforced by a series of more restrictive local policies governing detention operations in Iraq, Afghanistan, and Guantanamo. Generals in each of those locations issued firm and clear public orders restricting interrogation methods that were reported on by the media. Military policy allows local and regional orders to be more restrictive than DoD Pentagon-level policy. By the time of PENS this was indeed the case, in part due to the efforts of the military Plaintiffs in drafting and implementing the local rules and regulations.

110. By June of 2005, when the PENS Task Force met, the DoD interrogation policies in force at each of those locations were even more specific and forceful in their prohibitions against abusive interrogations than the already restrictive DoD policy. They also clarified that the relevant Geneva Conventions applied, although the DoD continued to debate the formal legal applicability of the Geneva Conventions until June of 2006.

111. On May 6, 2004, the general in command for Iraq and Afghanistan, General John Abizaid, issued an order clarifying that only the 17 interrogation techniques in FM 34-52 were authorized for use in all DoD facilities under his command. This order was memorialized in the Church Report, a report on the interrogation of detainees completed by Vice Admiral Albert T. Church, the Navy Inspector General, in March 2005. Hoffman cites that report for other purposes.

112. Numerous media reports, some citing a Pentagon announcement on May 14, 2004, refer to the strict prohibitions and limitations then put on interrogation methods. These reports appeared in *The New York Times* and *Chicago Tribune* and on CNN, among other places.

<http://www.cnn.com/2004/WORLD/meast/05/14/iraq.abuse/>

113. In March 2004, after General Jay Hood arrived at Guantanamo, he issued a policy prohibiting, among other techniques, stress positions and sleep deprivation, which Hoffman claims were still permitted in June 2005. This policy was referred to in the Schmidt Report on interrogations at Guantanamo, released in April 2005. Hoffman includes that report in his supporting documents, and he also interviewed an interrogator who could have told him about the Guantanamo policy had he asked.

114. The March 28, 2005, Guantanamo SOP governing BSCTs (drafted by Col. Dunivin in consultation with Col. Banks) obligated them not only to abide by the Geneva Conventions and



local policies, but also to report any interactions that were considered unsafe, unethical, illegal or in violation of applicable policies and procedures. See Exhibit B which is fully incorporated herein by reference.

115. This SOP was actually contained in the Report's voluminous document binders, but not indexed there or referred to in the text of the Report. It was also contained in files for an APA ethics investigation that Hoffman's team reviewed at least twice. In one of those files, the policy's date had been circled with a handwritten annotation reading "Note," making it impossible to ignore that the policy was in effect at the time of PENS and was drafted at a time when, as the Report noted, Col. Dunivin was serving at Guantanamo.

116. In the text of his Report, however, Hoffman instead analyzed an outdated SOP (Hoffman Report, p. 214). As is evident from footnote 923, he retrieved that SOP from at least two sources that actually also included the updated SOP. Hoffman questioned Col. Dunivin extensively about the outdated SOP but he repeatedly refused to give her the questions she would have had to provide the DoD to receive clearance to discuss other policies that she had drafted during her time at Guantanamo.

### *3. The PENS Guidelines Incorporated the Updated and Restrictive Policies*

117. Given the role of Plaintiffs Banks and James in helping to put local policies in place, it is no surprise that those policies, along with the relevant UN and Geneva conventions, were incorporated by reference into Statement Four of the PENS Guidelines (emphasis added):

Psychologists do not engage in behaviors that violate the laws of the United States, although psychologists may refuse for ethical reasons to follow laws or orders that are unjust or that violate basic principles of human rights. Psychologists involved in national security-related activities follow all applicable rules and regulations that govern their roles. ***Over the course of the recent United States military presence in locations such as Afghanistan, Iraq, and Cuba, such rules and regulations have been significantly developed and refined. Psychologists have an ethical responsibility to be informed of, familiar with, and follow the most recent applicable regulations and rules. The Task Force notes that certain rules and***

*regulations incorporate texts that are fundamental to the treatment of individuals whose liberty has been curtailed, such as the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Geneva Convention Relative to the Treatment of Prisoners of War.*

118. Hoffman had to have reviewed the Statement Four because he cites other language from it. But he 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 – and directly contradicts his false assertions that psychologists in regional facilities were not bound by the UN conventions (Hoffman Report, p. 305).

119. During the PENS meetings, Banks and James were highly vocal about their belief that the relevant Geneva Conventions unquestionably applied to interrogations, despite disagreements at higher levels of government. Even Dr. Jean Marie Arrigo, one of the Plaintiffs’ most vocal critics, noted that James and Banks both stated that position. In an e-mail to Hoffman on March 1, 2015, Banks reiterated his belief that the Geneva Conventions had always applied to interrogations, despite disagreements at higher levels of government.

120. These facts are omitted from the Hoffman Report. Instead, he leads the reader to believe that the DoD task members did not want the Geneva Conventions to apply (Hoffman Report, p. 274), and he omits the actual text of Statement Four that makes it clear they did apply.

121. In addition, in a transcript of an audiotape Dr. Arrigo made contemporaneously with her arrival home on the last night of the PENS Task Force, she repeatedly mentions that the military members of the Task Force were adamant about their desire to curtail abuses and to have military standard operating procedures (SOPs, such as the one in Exhibit B) serve that purpose. That audiotape and transcript, which provide a different narrative of the PENS meetings than the one Hoffman creates, was omitted from his Report, although he relies on other material in her archives.

*4. The Military Plaintiffs Took a Leading Role in Creating Policies and Procedures to Prevent Abusive Interrogations*

122. In the aftermath of the abuses at interrogation sites after 9/11, BSCTs, including Plaintiffs Banks, Dunivin, and James, were called upon to help put in place policies to prohibit abuses and to report any of which they became aware.

123. As the abuses at Abu Ghraib began to emerge, Col. Banks was ordered to work with the Army's Inspector General to investigate and decide how to prevent future abuses. He then asked Col. James to serve in Iraq, with the role of drafting policies and instituting procedures to prevent abusive interrogations. Col. Dunivin volunteered to play a similar role at Guantanamo.

124. Hoffman provides none of that contextual background, nor did he ask the military Plaintiffs about it during their interviews. They could not have known that it would become so relevant because the investigation's focus had changed without their knowledge, and, therefore, they did not know enough to insist on volunteering the information.

125. *Col. Banks* became an author of the Army Inspector General's report, issued in July of 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, Col. Banks was consulting to the Army on a revision to the Army Field Manual that, as a *New York Times* article reported, was to contain even more specifics about prohibited interrogation techniques.

126. In stark contrast to Hoffman's allegations about the military Plaintiffs' intentions, Senator Levin, in his remarks when releasing the Senate Armed Services Committee Report in April of 2009, noted that military psychologists – including Col. Banks – warned against the use of harsh techniques as early as 2002: "On October 2, 2002, Lieutenant Colonel Morgan Banks,

the senior Army SERE [Survival Evasion Resistance and Escape] psychologist, warned against using SERE training techniques during interrogations in an e-mail to personnel at GTMO ....”

127. *Col. James*, while on a plane to Iraq, outlined the beginnings of a SOP to prevent abuses. The first restrictive Iraq SOP was put in place in May of 2004, expressly prohibiting sleep deprivation and stress positions and incorporating the Geneva Conventions. While in Iraq, Col. James trained staff on appropriate interviewing techniques that were consistent with those documents.

128. Col. James noted at least twice on the PENS listserv that restrictive policies were in place at the time of PENS that prohibited the abuses alleged to have occurred in earlier years. Although Hoffman had the listserv communications, and although Col. James mentioned the policies in his interview, Hoffman did not ask the obvious and important question: what did the policies say?

129. *Col. Dunivin* was involved in drafting the Guantanamo SOP that instructed BSCTs to ensure interrogation policies were followed and to report violations. As she stated in an e-mail to the then-APA President-Elect, Col. Banks helped consult on the language in that SOP. Col. Dunivin’s e-mail is not referred to in the Report but is available in Hoffman’s supporting materials.

**B. Material in Hoffman and Sidley’s Possession Demonstrates They Knew His Second Conclusion Was False or Acted in Reckless Disregard of Its Truth**

130. The Report’s second primary conclusion stated:

...in the three years following the adoption of the 2005 PENS Task Force report as APA policy, APA officials engaged in a pattern of secret collaboration with DoD officials to defeat efforts by the APA Council of Representatives to introduce and pass resolutions that would have definitively prohibited psychologists from participating in interrogations at Guantanamo Bay and other U.S. detention centers abroad. The principal APA official involved in these efforts was once again the APA Ethics Director, who effectively formed an undisclosed joint

venture with a small number of DoD officials to ensure that APA's statements and actions fell squarely in line with DoD's goals and preferences. (Hoffman Report, p. 9)

131. Not only in the three years following the PENS report but up until 2016, the APA repeatedly discussed the possibility of a total ban on its members' participation in the national-security interrogation process. The issue was openly debated on Council floor and in numerous meetings, including a mini-convention on the topic. (After the Report's publication, the Council voted in favor of the ban but then, in August 2016, it again changed course and rejected the inclusion of a ban in the Ethics Code, which would have rendered it enforceable. Although Col. James, a member of the Council, spoke in opposition to the motion for a ban, Plaintiffs Banks, Dunivin, and Behnke were not present.)

132. The claim that the Plaintiffs somehow colluded to defeat the ban over a decade is contradicted by the clear evidence of an open and ongoing debate. Hoffman had much of that evidence in his possession. Transcripts of those debates still exist and other documents online refer to them. Hoffman failed to include this exculpatory documentation in his Report – although it was easily available on the APA website, among other locations.

133. Here as throughout the Report, Hoffman repeatedly construes as malign and collusive the communications that are a normal part of the exchanges about issues within an organization and between an organization and its constituent interest groups. If he had not used those communications as ammunition to make the case for his conclusions, but had instead viewed them objectively by comparison to other policy debates within the APA and other organizations, his "collusion" theory would have collapsed.

**C. Material in Hoffman and Sidley's Possession Demonstrates They Knew His Third Conclusion Was False or Acted in Reckless Disregard of Its Truth**

134. Ethics complaints against Col. James and one of his mentees at Walter Reed Medical Center, Major John Leso, had been filed with the APA. The complaint against Col. James was closed in 2007 due to lack of sufficient documentation for a cause of action, and the Leso complaint was closed, after years of investigation, in 2013.

135. The Report's third conclusion asserts that these and other ethics complaints were handled in an "improper fashion by the APA in an attempt to protect these psychologists from censure" (Hoffman Report, p. 10). This conclusion leads the reasonable reader to believe that there was some merit to the underlying ethics complaints and that Behnke used his position to ensure that the complaints were not properly handled.

136. In a continuation of the pattern of misleading and obfuscatory reporting, Hoffman fails to identify any conduct by Col. James that would deserve censure or any substantive procedure not followed by Dr. Behnke. Instead, to make his claims Hoffman once again omits or distorts key facts that were in his possession.

137. *First*, Hoffman fails to state that the same complainant who filed the APA complaint against Col. James filed multiple complaints against Col. James with two state licensing boards, including the Ohio board, and that no board, and no court reviewing any of those state board decisions, had found those allegations to have any merit. At this point, Col. James' conduct has been the subject of at least seven actions, none of which has been upheld.

138. Moreover, the Martinez-Lopez Report, the report of an investigation for the Army Surgeon General into detainee medical operations that covered the periods when Col. James was working in Iraq and at Guantanamo, states unequivocally that there was "no indication that BSCT personnel participated in abusive interrogation practices" and "clear evidence that BSCT

personnel took appropriate action and reported any questionable activities when observed.” That report is still available online.

139. Although Hoffman references the Martinez-Lopez Report for his own purposes, he does not include those exculpatory findings. Instead, employing a tactic he uses time and time again, he states that Col. James was present at Guantanamo when the “most serious abuses” were occurring – thus coaxing readers who do not know the facts to conclude falsely that Col. James was involved in those abuses.

140. *Second*, Hoffman never describes policies or procedures for handling ethics complaints that were ignored or violated. In fact, he acknowledges that the handling of Col. James’ case was technically permissible under the rules and procedures governing the APA ethics adjudication program (Hoffman Report, pp. 59 and 522). In October of 2016, nine former ethics chairs issued a statement noting that Hoffman did not identify a single procedure (except for a document placed in a wrong file) or Board policy that had been violated. By using the word “improper,” Hoffman leads the reader to believe there was untoward behavior on the part of Dr. Behnke to protect military psychologists. In fact, the word “improper” appears to mean that Hoffman, after the fact, merely did not like the process that the APA Board had adopted as policy.

141. *Third*, as to the complaint against Major Leso, Hoffman implies that the staff of the Ethics office took little investigatory action beyond “conducting internet searches” (Hoffman Report, p. 60). However, Hoffman and Danielle Carter, the second Sidley partner involved in the investigation, had information in their possession that showed this statement to be false.

142. When Ms. Carter reviewed the Leso file, she found a long list of the voluminous evidence the Ethics Office had gathered and analyzed.

143. That list had been given to the Board members as part of its review of the Leso matter in February 2014. At that time, the Board received two substantive and detailed briefings from the immediate past Ethics Committee Chair, Dr. James N. Bow, assisted by the Ethics Office director (Dr. Behnke) and deputy director. These briefings not only provided the Board members with a substantive overview of the ethics process in relation to the decision in the Leso matter, but also allowed them (and APA executive leaders who attended the second briefing) to ask questions about the process, the subject matter of the Leso complaint, and the decision to close it. The Leso case file was made available to the Board.

144. No one on the Board objected to the closing of the complaint on the grounds that the Ethics Committee should have proceeded against Major Leso, and none suggested at any time that the complaint was handled improperly under the Ethics Committee Rules and Procedures. As the Board stated at the time, it found the closing to be completely appropriate. This decision was also reviewed by the Associate General Counsel of the APA, Ann Springer.

145. On January 23, 2014, Dr. Kaslow (head of the Special Committee overseeing the “independence” of Hoffman’s investigation) issued a communication to the APA membership about the Leso matter. That communication, which is still available on the APA website, stated:

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.



146. On February 20, 2014, the Board, headed by Dr. Kaslow, released another statement, which is also still available on the APA website. It states:

Due to the gravity of this case and the fact that the complaint was held open to allow for the introduction of new information should it become available, rather than one committee chair reviewing the file, two chairs reviewed it (in its entirety during their tenure). In addition, rather than one individual from the ethics office reviewing the file, four individuals did so: the ethics office director, the head of the office's adjudication program, an ethics investigator and the former director of the ethics office. All six came to the same conclusion. That based on the requirements set forth by the Ethics Committee Rules and Procedures, the record in this matter, read in its entirety, did not support bringing formal ethics charges against Dr. Leso.

147. Hoffman omitted this information in his Report, and his list of interviews indicates that he did not even attempt to contact Major Leso to allow him to defend himself.

148. In addition, as former chairs of the Ethics Committee noted in an October 24, 2016 letter, Hoffman failed to examine how the handling of other matters compared to the handling of the matters on which he focused. If he had done so, he would not have been able to conclude that those matters received improperly different treatment. At most, the "flaws" he identifies – such as a too-limited approach to reviews that favored those accused – were flaws in the processes created by the APA Board, not an attempt by Dr. Behnke to protect specific military psychologists from censure.

149. The facts above and the contents of the Leso file, or either alone, demonstrate that Hoffman's conclusion, the third of the Report's main affirmative conclusions, is intentionally false and defamatory and made with actual malice.

150. Moreover, Hoffman failed to note that Dr. Kaslow, the head of the Special Committee that oversaw Hoffman's work, was involved in the Leso ethics decision. Because of that omission, Dr. Kaslow was not named in the Report and therefore not recused from further involvement – and left free to support the recommendation that Dr. Behnke be fired.

151. In total, five of the non-recused 2014 Board members, including Drs. Kaslow and McDaniel, remained on the Board in 2015. Because of their extensive involvement in the Board's review of the Leso matter, they knew this third conclusion to be false, or acted with reckless disregard of whether it was false, when the Board voted to publish the Hoffman Report.

152. In sum, the material Hoffman had in his possession as he wrote the Report demonstrates that he knew his three primary conclusions and the factual statements on which they are based were false, or acted in reckless disregard of whether they were false. If he had done no more than include the facts he intentionally omits from the Report, each of those conclusions would have been directly contradicted and readers would have drawn very different conclusions.

153. In addition to the Report's false content, the facts about the conduct of the investigation, the manner in which the Report was written, and the Defendants' conduct since the release of the Report also demonstrate actual malice.

## **VI. DEFENDANTS' CONDUCT OF THE INVESTIGATION DEMONSTRATES EVIDENCE OF ACTUAL MALICE**

### **A. The Appointment of the Special Committee: The Roles of Drs. Kaslow and McDaniel**

154. When Hoffman was hired in 2014, Dr. Kaslow was President of the APA and chair of the Board. Dr. McDaniel was a member of the Board. They became two of the three members of the Special Committee, with Dr. Kaslow as chair.

155. The initial third member of the Special Committee was removed at the request of the Accusers. His replacement was forced to recuse herself when the Report was published because she was named in it, although she had far less involvement in the underlying events than Dr. Kaslow.

156. During the investigation, Drs. Kaslow and McDaniel had full control over the actions of the Special Committee. They agreed to the investigation's expanded scope, which resulted in Hoffman receiving at least five times more compensation than originally contemplated by the Board. Dr. Kaslow in particular was in frequent contact with Hoffman as the investigation proceeded.

157. At the time Dr. Kaslow became chair of the Special Committee, the Board had reason to question whether she had the requisite judgment to undertake such a sensitive role. Once she became chair, it had reason to exercise more oversight than it did.

158. For example, in e-mails to Dr. Behnke between October 2013 and March 2014, Dr. Kaslow expressed distress over allegations made by a patient that she had engaged in a sexual-boundary violation with him. (None of her exchanges with Dr. Behnke were confidential, as Dr. Behnke explicitly informed her.) A sexual-boundary violation is one of the most serious allegations that can be made against a psychologist. Dr. Kaslow stated that she was working with her attorneys to prepare for a March 2014 mediation to settle the patient's claims.

159. In a later e-mail, Dr. Kaslow expressed relief that the mediation concluded with a settlement, towards which she paid \$100,000 of her private money. Dr. Kaslow reportedly informed Dr. Norman Anderson, APA's CEO, and gave him a letter of resignation in case the matter became public. She stated that the public disclosure of the allegation or settlement would require her to resign as APA president. Dr. Kaslow stated to Dr. Behnke that she had not informed her state licensing board of this settlement.

160. Given this history, Dr. Kaslow should never have agreed to serve on, much less lead, a committee formed to oversee potential ethical misconduct by APA members.

161. Nor should the Board have allowed her to assume that role. Clearly, Dr. Anderson, a key member of the APA Board and Executive Management Group, knew Dr. Kaslow's judgment was questionable when the Board put her in charge the investigation, especially when it covered events in which she had been directly and substantially involved.

162. As the investigation progressed, and as Hoffman and his team repeatedly violated the acknowledged norms for conducting an investigation, Drs. Kaslow and McDaniel failed to exercise effective oversight. Hoffman obscured the investigation's scope and the questions he began to pursue, misled the Plaintiffs about its goals, failed to warn them when the investigation had clearly become adverse to their interests, and purposely avoided following leads that would have produced facts that contradicted his narrative. The Special Committee allowed what was to have been an independent investigation to become a rogue one.

163. Once the Special Committee received the Hoffman Report, Dr. Kaslow knew that it covered events in which she had been involved. At that point, she should have immediately recused herself and explained to the Board the reasons for her recusal.

#### **B. Obscuring the Investigation's Expanded Scope and Direction**

164. In an e-mail to some of those whom Hoffman would interview, Dr. Kaslow stated that the investigation's "sole objective" was to ascertain the truth of Risen's allegations. The relevant time period was specified as the Bush Administration. Hoffman did not find evidence to support Risen's allegations.

165. Within the first few weeks of his review, however, Hoffman met with three other vocal and long-time Accusers of the APA: Drs. Soldz and Reisner and Nathaniel Raymond. As Hoffman and the Special Committee knew, these critics had collaborated closely with Risen and served as sources for his reporting.

166. By the first week of January 2015, Hoffman had broadly expanded the scope of the review beyond the context of the allegations made by Risen. Ultimately the investigation even encompassed events into 2014, far beyond the Bush Administration. This expansion directly aligned with the Accusers' agenda, and in particular their publicly acknowledged goal of overcoming what they wrongly perceived to be statute-of-limitations obstacles to holding the Plaintiffs and others criminally liable for acts in earlier years.

167. Thus, what had begun as a "review" with a specific purpose became a full-blown "investigation" of the Plaintiffs' conduct and motives over the course of ten years, conducted within the framework of a narrative constructed by their Accusers.

168. The investigation's new direction was not disclosed to anyone other than the Accusers and the Special Committee. The Plaintiffs were kept in the dark. Even in response to direct requests to explain the investigation's focus, Hoffman repeatedly refused to clarify its scope adequately or to inform the Plaintiffs what questions, beyond those initially posed by the Board, he was exploring.

169. For example, prompted by another *New York Times* article by Risen (April 30, 2015 (online)/May 1, 2015 (print)) that restated the Accusers' previous allegations, Behnke asked about the scope and questions being pursued no fewer than five times by e-mail over the next 24 hours. The most substantive reply he received stated only that "We are determining the scope of our investigation such that it is consistent with what is outlined in the Board's resolution, public statement, and our communications with the Special Committee." This exchange took place five months into the investigation and two months before the Report was delivered to the Board. At no later point did Dr. Behnke receive any greater clarity.

170. On May 21, 2015, a little more than a month before he delivered the Report to the Board, Hoffman interviewed Col. Banks in his home. Col. Banks asked if Hoffman could confirm the answers to the three questions about Risen's allegations posed by the Board. Hoffman confirmed that the answers were "no," but then said only, in effect, "we are looking at other things," without providing more clarity about the new scope.

171. Because of Hoffman's and the APA's failure to clarify the investigation's expanded scope or the questions on which Hoffman was focusing, the Plaintiffs could rely only on Dr. Kaslow's initial description of the investigation's limited scope (for those who received it) and Hoffman's letter to those interviewed stating that he was "conducting the review in a completely independent fashion ...." They were unable to take steps to protect themselves and, eventually, were blindsided by false assertions without having been able to provide contradictory evidence.

**C. Lack of Independence: Hoffman and Sidley's Over-Reliance on the Accusers and Alignment with Their Goals**

172. Far from treating the Plaintiffs and Accusers even-handedly and neutrally, Hoffman collaborated closely with the Accusers while keeping the Plaintiffs at arm's length and in the dark. As a result of that undisclosed collaboration, Hoffman failed to take an independent approach, maintain the objectivity of the investigation, or present a neutral and objective review of the evidence. Instead, Hoffman used the Accusers' perspective to construct a narrative into which he fit cherry-picked pieces of distorted evidence.

173. Documents, e-mails and other evidence demonstrate his overreliance on the Accusers:

- He acknowledged publicly that he set out to win their trust.
- He promised the Accusers confidentiality, something not offered to the witnesses supporting the Plaintiffs' accounts of the events in question. At the same time, he failed to prevent the Accusers from leaking information from their conversations with him. The

Accusers worked together with Hoffman to build his case; Hoffman told the Plaintiffs not to speak to each other.

- So close did the relationship between Hoffman and the Accusers become that, according to one Accuser, they joked that when Hoffman needed a document, he called Dr. Soldz. <https://www.youtube.com/watch?v=i9u1EOgeEqw>.
- Hoffman knew that many of the Accusers' allegations were to be published by Risen in a *New York Times* article while his investigation was taking place. Shortly after that article was published, Dr. Reisner stated publicly that they had given "detailed updates" about the document on which the article was based to Hoffman "every step along the way."

174. Despite knowing about the close, undisclosed collaboration between Risen, whose allegations sparked the investigation, and the other Accusers on whom Hoffman relied, he did not disclose, much less explore, those facts. Instead, he investigated the actions and motives of only one side of the controversy. If he had turned his prosecutorial zeal to examining the Accusers' "collusion," he would have had to tell a very different story about the genesis of the charges he was investigating.

175. In late 2006, Dr. Reisner and Soldz, with the help of other psychologists, founded the "Coalition for an Ethical Psychology" and several other organizations, such as "Withhold Your Dues," an organization whose goal was to effect change in APA policy by having members withhold membership dues. They were joined in these efforts by Raymond.

176. Over the course of the next nine years, Drs. Soldz and Reisner and Raymond repeatedly made false and defamatory allegations about the Plaintiffs and the APA. At times, they also worked to file ethics complaints against psychologists who were involved in national security interrogations.

177. A close examination of their actions and relationships shows that most of the accusations against the Plaintiffs over the last decade originated with the three of them. They collaborated with several national journalists, including Katherine Eban of *Vanity Fair*, Jane Mayer of the *New Yorker* (who is married to James Risen's editor at *The New York Times*), Mark Benjamin of *Salon*, and ultimately, James Risen. Hoffman relies on reporting from all of these journalists to support his allegations against the Plaintiffs, but never discloses these journalists' relationships with the same Accusers on whom he was relying.

178. Predictably, given Hoffman's collaboration with the Accusers, the Report aligns with their agenda: to have the APA ban psychologists' participation in the interrogation process, and to have the Plaintiffs and others prosecuted domestically under the RICO statute and internationally for war crimes. That alignment is demonstrated not only through the facts Hoffman selectively chose to include or exclude. As previously noted, it is also demonstrated by his use of language such as "collusion," "undisclosed joint venture," and "joint enterprise" that is typically applied to criminal activity, as Hoffman, a former federal prosecutor, knew full well. As the Accusers' actions after the Report's publication demonstrated, that language directly supported their efforts to generate criminal and war-crimes prosecutions.

179. No reasonable reader could see the repeated use of those terms without assuming that criminal activity had taken place. And, indeed, press coverage of the Report reflected that assumption.

180. The use of this language reflecting the Accusers' goals is particularly reprehensible because, after the Report's publication, Hoffman acknowledged privately in a meeting with the APA that he had found no criminal activity. <http://www.aol.co.uk/video/former-apa-president-says-stephen-behnke-was-'terminated'-518940743/> It is revealing that, at another closed-door



meeting with the Council, Hoffman also acknowledged that terms such as “behind-the-scenes communication” would have been more accurate than “collusion.”

<http://www.hoffmanreportapa.com/resources/David%20Hoffman.pdf>

**D. Lack of Independence: Hoffman and Sidley’s Alignment with the Interests of Drs. Kaslow and McDaniel, the Non-Recused Members of the Special Committee**

181. The Board Resolution authorizing the review outlined the role of the Special Committee:

[to] ensure that the independent review is completed in a thorough and independent manner.... It is the intent of the Board that this review will be thorough and fully independent. The sole objective of the review is to ascertain the truth about the allegations described above, 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 APA. The SC shall provide this instruction to the independent counsel.

182. Despite that language, at the beginning of the investigation members of the APA Board suggested (although unsuccessfully) that at least one of the Accusers should be part of the Special Committee.

183. As they stated in public interviews, the lone non-recused members of the Special Committee, Drs. Kaslow and McDaniel, wanted to use the Hoffman Report to “unite” psychology. Their strategy was to blame a “small number of officials” or “small underbelly” of psychologists or “small part of APA” who had been “involved in abusive interrogation techniques” – terms Dr. Kaslow used in an audiotaped interview – to deflect accountability from them and from the APA’s flawed governance procedures.

184. As early as February 2015, Dr. Kaslow discussed having APA issue an apology. In other words, she had reached a conclusion about the validity of the Accusers’ allegations months before the investigation was complete, and she was already fashioning a response.

185. As soon as the Report was received, Drs. Kaslow and McDaniel's agenda was served by the hasty firing of Dr. Behnke, before he had been given adequate opportunity to respond to the attacks against him, and by their public comments about the Report.

186. As they took these steps, Drs. Kaslow and McDaniel were not disinterested parties. As a result of the investigation's expansion, it covered events – such as the ethics reviews and the debate about banning psychologists' participation in the interrogation process – in which they and other members of the Board had been significantly and directly involved. They had a stake, therefore, in how their roles in those events might be portrayed.

187. Yet, despite their involvement in the underlying events, they were improperly not named in the Report, as were others with equivalent involvement, and therefore were not recused from the Committee's or the Board's work. As a result, they were protected by a Report they had been intimately involved in overseeing, including approving the expansion of its scope that resulted in payments of more than \$4 million to Hoffman's firm.

188. Moreover, they had substantial control over the actions of the Board and the APA in response to the Report. Dr. McDaniel was President-Elect in 2015, when the Report was published, and President and chair of the Board in 2016 when, against the advice of the Council, it agreed to pay Hoffman \$200,000 to produce a "supplemental" report. Plaintiffs have a statement from a Board member to a third party that other Board members were instructed they could not vote against re-hiring Hoffman.

#### **E. Failure to Follow All the Evidence: Exculpatory Leads**

189. The Report ignores entire areas of inquiry that, if presented in the Report, would have fundamentally changed its narrative for a reader. Hoffman failed to interview key witnesses and to explore Plaintiffs' exculpatory evidence.

190. The Report asserts that Hoffman interviewed “individuals from virtually every perspective,” including “all the principal APA critics” and “numerous former government officials including key individuals from the CIA and Defense Department.” In fact, while he interviewed “all the principal APA critics” (more than 30, according to the Report’s list of interviewees), he interviewed far fewer military or former military officials. In spite of his charge to follow all the evidence, he failed to interview others who could have provided evidence critical to his false assertions about the military Plaintiffs’ actions and the “existing DoD interrogation guidelines,” about which he makes false and extremely damaging factual assertions.

191. Two of the witnesses interviewed, one a former member of the military and the other a civilian working for the Defense Intelligence Agency, have told the Plaintiffs that Hoffman’s team focused on issues largely irrelevant to their substantive work and did not focus on their first-hand experience related to the subject of the investigation. One has said that, as early as December 2014, Hoffman was clearly targeting Dr. Behnke. She has also stated that the interviewer inquired inappropriately into the nature of her personal relationship with Dr. Behnke. In fact, she and Dr. Behnke were only social acquaintances who had met at church and whose work was related.

192. This witness had been honored twice by DoD for her exceptional achievements in conducting and supervising humane interrogations. Had Hoffman’s team asked her, she would have given him definitive information about “existing DoD interrogation guidelines” (Hoffman Report, p. 9) and whether “enhanced interrogation techniques were occurring at Guantanamo at the time of PENS” (Hoffman Report, p. 66). She could also have told Hoffman’s team that, by the time of PENS, interrogation plans were computerized: interrogators had to choose from a list

of permissible interrogation techniques displayed in a drop-down menu, and the list included only techniques listed in the Army Field Manual. None were the “enhanced interrogation” techniques that Hoffman accuses the Plaintiffs to have colluded to allow in June of 2005.

193. Another military witness has stated that, when he asked Hoffman if he wanted to discuss a certain issue, Hoffman asserted it wasn’t relevant. But Hoffman then wrote 10 pages on the subject in the Report.

194. Col. Banks strongly suggested that Hoffman speak with Lt. Gen. (Ret.) Eric Schoomaker, a former Army Surgeon General, who would have provided directly relevant information, based on his first-hand involvement, about the ethical analysis that supported the definition of BSCTs’ role in the interrogation process. Hoffman did not follow up.

195. In addition to failing to conduct a balanced series of interviews, Hoffman failed to ask Plaintiffs questions that would have elicited information about their efforts to halt abuses, and failed to follow up adequately when they suggested relevant information. Those failures were especially destructive because they did not know enough about the investigation’s direction to insist on providing that information in the face of his apparent indifference.

196. In his interview, Col. James referred to policies governing interrogations repeatedly and suggested that Col. Dunivin could provide them. Hoffman did not inquire further with Col. James and did not follow up with Col. Dunivin.

197. Col. Dunivin asked Hoffman no fewer than six times by e-mail to provide questions that would allow her to ask for clearance to provide relevant information, including information relevant to regional policies. Despite focusing on an out-of-date policy in her interview, he never provided those questions. Instead, he provided questions designed to get clearance only for

discussing the Army Medical Command's BSCT training course, a topic that fit into his pre-determined false narrative.

198. At one point, Hoffman told Col. Dunivin in an e-mail that the only relevant facts were about her interactions with APA. In light of the Report and its focus on interrogation policies and conduct, and of his questions about the 2004 BSCT policy, that statement was profoundly misleading.

199. Taken as a whole, this pattern demonstrates purposeful avoidance of lines of inquiry that would have undercut the tale Hoffman spun in the Report for his readers.

**F. Failure to Provide Standard *Upjohn*-Type Warnings or to Warn Plaintiffs When the Investigation Had Become Adverse to Their Interests**

200. When a lawyer conducts an investigation commissioned by an organization, it is standard best practice to give *Upjohn* warnings (the corporate equivalent of *Miranda* warnings). Although *Upjohn* warnings appear most often in interviews with a company's employees as a means of clarifying the client relationship, the principle behind them applies more broadly to any person who might be confused about the interests the lawyer serves.

201. In this investigation, APA members reasonably assumed that a lawyer hired by the APA had some duty towards its membership, especially those who were asked by the APA Board to undertake the work being investigated by Hoffman, and especially to members who are or have been employees (Drs. Behnke and Newman) or who serve in a governance capacity (Col. James is now a member of the Council, the APA's governing body, and Col. Dunivin has been).

202. DC Bar Ethics Opinion 269 describes the scope of a lawyer's obligation to clarify his or her role in an investigation. That opinion is particularly relevant because Plaintiffs Behnke and Dunivin were interviewed in DC, where Hoffman's client is incorporated (emphases added):

A lawyer retained by a corporation to conduct an internal investigation represents the corporation only, and not any of its constituents, such as officers or employees. Corporate constituents have no right of confidentiality as regards communications with the lawyer, *but the lawyer must advise them of his position as counsel to the corporation in the event of any ambiguity as to his role.* ... The corporate constituent being interviewed by a lawyer for the corporation, however, may consider the lawyer as also representing the employee's personal interests, absent a warning to the contrary. *The employee could understandably conclude that, since he is employed by the corporation and the lawyer has been retained to serve the interests of the corporation, the lawyer would not be pursuing interests adverse to those of the employee.* Rule 1.13(b) specifically addresses this *potential for misunderstanding by the corporate constituent by requiring the lawyer to explain the identity of the lawyer's client "when it is apparent that the organization's interests may be adverse to those of the constituents with whom the lawyer is dealing."* Comment [8] to Rule 1.13 advises the lawyer in such a situation to advise any constituent . . . of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain separate representation. *Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide representation for that constituent individual, and that the discussions between the lawyer for the organization and the individual may not be privileged.*

Disclosure is required not just when an actual conflict exists between the interests of the corporation and those of the employee (for example, when the corporation has already confided to the lawyer that it will concede wrong-doing by the employee but will attempt to avoid corporate responsibility for any illegality). *Disclosure is also required when there "may be" an adversity between the interests of corporation and employee. There "may be" an adversity when the corporation has not yet irretrievably committed itself to a position in the matter, but where one such position might be adverse to the employee. Such a possible adversity would almost always arise, then, when the corporation is able to take a position adverse to the employee.* On the other hand, Rule 1.13(b) applies only when the possible conflict is "apparent," which we interpret to mean *actually apparent to the lawyer or apparent to a reasonable lawyer under the circumstances.* As so interpreted, the obligation of disclosure would not arise in those situations where the lawyer had no reason to believe that there was any possibility of adversity between corporation and employee when the interview was conducted.

203. Hoffman never advised the Plaintiffs that, despite representing APA, he had no obligation to serve the interests of its individual "constituents." Nor did he advise them that the investigation might be adverse to their interests, even when it had become clear to him that its results would severely damage their careers and reputations.

204. To compound this misdirection, several months into the investigation, APA's General Counsel advised employees being interviewed that it would "look bad" for them to engage their

own lawyers. That advice benefited the APA and Hoffman, but its consequences turned out to be destructive for Dr. Behnke.

205. The Plaintiffs thought Hoffman and Sidley were acting as a neutral, objective third party to determine the facts of their actions, all of which had been undertaken in their roles as APA employees or persons who were appointed by APA to become involved in its activities. Several others interviewed by Hoffman's team have stated that they initially had the same belief. However, witnesses have also stated that by the time they were interviewed, as early as one month into the investigation, it was clear that Hoffman had an agenda to attack the Plaintiffs.

## **VII. HOFFMAN AND SIDLEY WROTE THE REPORT IN A MANNER THAT FURTHER DEMONSTRATES ACTUAL MALICE**

### **A. The Report Conflates DoD and CIA Policies**

206. Hoffman repeatedly ignored the critical distinction between DoD and CIA policies at the time of PENS. Those policies had dramatically diverged and were governed by different OLC memos as well as by differing organizational policies. However, instead of analyzing the DoD policies in place at the time that prohibited abusive techniques, Hoffman cites the CIA policies that allowed for abusive interrogation methods. Because his conclusion dealt solely with the DoD, his focus on the irrelevant CIA policies to support his false conclusions is additional evidence of actual malice.

207. This conflation of policies has resulted in ongoing damage to the Plaintiffs in the media. It has enabled the Accusers, including James Risen in *The New York Times*, to continue to contend that the APA did in fact "collude" with the CIA, a conclusion the Report itself denies, and to attribute the CIA's attitude towards acceptable interrogation techniques to military psychologists (and therefore the Plaintiffs).

## **B. The Report Relies Repeatedly on Over-Statements, Misstatements, and Unsupported Inferences**

208. Throughout the Report, Hoffman not only constructs a false narrative upon the facts, but also engages repeatedly in forms of over-statement, misstatement, unsupported inference, and loaded and misleading terminology to falsify what actually happened. Where the facts may be open to more than one explanation, he consistently chooses the one that portrays the Plaintiffs in the worst light and provides the most support for his and the Accusers' narrative.

209. This pattern constitutes actual malice. Here are a few examples:

210. *Example One:* Hoffman makes much of the fact that Banks and Behnke communicated frequently, and that some of their e-mails had headings such as "for your eyes only." In the pre-determined context of Hoffman's narrative, those exchanges are portrayed as collusion for bad purposes. In the real world, they are exchanges between an APA official who could not set APA policy and a military officer who had no authority to speak for the DoD.

211. In particular, Hoffman cites a few e-mails from Col. Banks that he asked Dr. Behnke to delete after reading. Col. Banks had no authority to speak outside the chain of command or take positions that might be construed as representing the DoD's position, especially at a time when the debate over interrogations was so heavily politicized. His concern about the e-mails demonstrates only concern for military protocol.

212. Hoffman ignores this correct and innocent explanation in favor of his false and defamatory interpretation.

213. Even more unjustifiably, he builds upon these exchanges a tower of speculative inference: the two agreed "to destroy the records of their conversations" and "Banks began instructing Behnke to delete their messages ...." He then says that the facts "strongly" suggest



that “records were destroyed in an attempt to conceal the collaboration” (Hoffman Report, p. 396).

214. Hoffman knew the facts indicated that his inference was false. First, Dr. Behnke archived all of his e-mails and placed them in a folder on the APA server to which Hoffman had access. Second, in early February 2015, over two months into the review, Hoffman hired a third-party vendor to image Dr. Behnke’s hard drive. If there were deleted e-mails, the vendor (which touts its forensic capabilities in internal investigations on its webpage) could have retrieved them. Hoffman omits this information from his methods section (Hoffman Report, pp. 6-7).

<http://ldiscovery.com/services/forensics/>

215. Given these facts, and the absence of any evidence that Col. Banks and Dr. Behnke wished to hide their ongoing communications for an improper purpose, Hoffman’s inference is intentionally false, reckless, and damaging.

216. *Example Two:* Hoffman discusses payments by the DoD for ethics workshops conducted by Dr. Behnke, suggesting that Dr. Behnke may have been improperly compensated by the DoD directly. He states:

The evidence (on file with Sidley) appears to show that the payments, ranging from \$1250 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. Our investigation was still receiving evidence from APA on this issue at the time of our report. (Hoffman Report, p. 37, footnote 22)

217. Had Hoffman asked Dr. Behnke for documentation, Behnke would have provided photo copies of the cancelled checks reimbursing APA. If Hoffman had requested information about the payments from the persons at APA who were in charge of administering that DoD training contract, he would also have been confronted with the facts. But his team never interviewed them, despite his stating that he performed an “in-depth analysis” of the financial issues.

218. By leaving open the inference that Dr. Behnke took money from the DoD, Hoffman has caused significant damage to Behnke's reputation. In August of this year, the inference was picked up by a blogger, Jeffrey Kaye, and tweeted to over 3,000 people: "Recently I found former APA Ethics Director Behnke received \$10,000s [sic] for consulting for & teaching Guantanamo BSCTs."

### Invictus

"Sole judge of truth, in endless error hurt'd"

Sunday, August 7, 2016

#### Psychologist Association Ethics Chief Paid \$10,000s for Training Advisers to Guantanamo Interrogations

Back in May 2015, I broke the story that the American Psychological Association's long-time Ethics Director Stephen Behnke worked directly with Department of Defense officials in creating a training curriculum for working with interrogators elsewhere. The issue was July 2015 "independent review" on APA collaboration with the Department of Defense, CIA, and FBI on national security interrogations released by David Hoffman and co-workers at the law firm Sidley Austin (see PDF for full report).

The Hoffman report did a decent job looking at Behnke's work with the Department of Defense on the establishment and training of



219. Moreover, despite Hoffman's assertion that the Board did not know about Dr. Behnke's DoD workshops (Hoffman Report, p. 38), he had in his possession at least one e-mail that clearly showed the APA Chief Executive Officer, a Board member, was very aware of the ethics workshops. Hoffman was directed to that e-mail, in fact, by the APA's Chief Operating Officer, Michael Honaker, after his interview with Hoffman discussing the Board's knowledge of the workshops.

220. *Example Three:* In order to create collusion between two organizations, the DoD and the APA, Hoffman overstates the ability of the Plaintiffs to control events and to speak for their organizations. For example, he states that Dr. Behnke "regularly sought and received pre-

clearance from an influential, senior psychology leader in the U.S. Army Special Operations Command before determining what the APA's position should be, what its public statements should say, and what strategy to pursue on this issue."

221. All of the military Plaintiffs were mid-level DoD personnel, with no ability to commit the DoD to policy positions, to speak for it, or to give "pre-clearance" on its behalf. Banks, the "senior" leader to whom Hoffman refers, could have been accurately described as an informal liaison between the APA and one of its important constituencies, military psychologists. He could not speak for that constituency, of course, without taking into account military protocols, hierarchies, and preferences.

222. If Hoffman had wanted to pursue the truth about the military Plaintiffs' role, he could have easily found it. Two former Army Surgeon Generals, Maj. Gen. (Ret.) Kevin Kiley (whom Hoffman interviewed) and Lt. Gen. (Ret.) Eric Schoomaker (to whom Col. Banks pointed Hoffman), have told Plaintiffs' counsel that Banks, Dunivin, and James could not set policy or speak on behalf of the DoD.

223. Likewise, Dr. Behnke was in a mid-level APA staff role without a vote on any governance body. He was thus in no position to "determine" the APA's position. He had no more influence over decisions made by the Council and the Board, and no more ability to influence the course of their debates, than any other APA staff member whom the APA leadership chose to consult.

224. *Example Four:* The Hoffman Report accuses Dr. Newman of having an "obvious" and "classic" "conflict of interest" that was not adequately disclosed with regard to his participation on the PENS Task Force because of his marriage to Col. Dunivin (Hoffman Report, pp. 13-14).

225. Dr. Newman had disclosed the marriage to his Board and his superiors as well as to many others. In October 2002, in fact, the marriage was reported in the *Monitor*, the official publication of the APA which is sent to all members, with a picture listing Dr. Newman's and Col. Dunivin's titles and positions. Many members of the Task Force were aware of the relationship, and the APA had no conflict of interest policy at that time or at the time of PENS which prohibited Dr. Newman's participation in the Task Force as an observer.

226. Moreover, in 2004, before the PENS Task Force was approved by the Board, Ms. Nathalie Gilfoyle, then the APA General Counsel, requested an opinion from PricewaterhouseCoopers about whether the marriage constituted a conflict that would prevent Col. Dunivin from serving on a different APA committee. The opinion concluded that the marriage did not in itself create a conflict, that potential conflicts could be dealt with on a case-by-case basis, and that full disclosure would minimize the risks.

227. In a footnote, the Report notes that the conflict issue had been raised previously and cites, but does not describe, a document buried in the Report's binders that summarized the PricewaterhouseCoopers opinion's guidance. Although the opinion was requested before the PENS meetings to address a different situation, it was clearly relevant, especially since the General Counsel was aware of it at the time of PENS and could have objected if she believed there was an actual conflict.

228. There was no actual conflict, despite Hoffman's spurious inferences. Col. Dunivin was not a member of the PENS Task Force, did not attend the Task Force meetings, and did not participate in its deliberations at all. Although she proposed members for it, the decisions about whom to include were made by others.

229. As a non-voting observer, Dr. Newman was not a member of the Task Force or of its listserv and did not help to draft its report. A review of the notes of the Task Force meetings finds that he spoke less frequently than many others, and his comments were appropriate for his position as the Executive Director for Professional Practice and for his duty of loyalty to his employer. A review of Dr. Arrigo's notes, on which Hoffman relies, shows that Dr. Newman spoke only 22 times over the course of three days, less than others in attendance. For example, Dr. Robert Fein, whom Hoffman characterizes as having "offered few comments during the PENS meetings," spoke 27 times in the two days for which he was present (Hoffman Report, p. 251).

230. *Example Five:* Hoffman is so far removed from neutrality that he explicitly takes sides on a critical policy issue: can military psychologists help both to make interrogations effective and to prevent abuses? The Accusers and the head of the Special Committee said "no," and Hoffman agrees (Hoffman Report, p. 27). On the basis of no evidence except his intuition, he thus accepts a core assumption that drove the Accusers' most damaging claims: military psychologists were necessarily complicit in abuses and so were APA officials who failed to disagree with them.

## **VIII. DEFENDANTS' ACTIONS SURROUNDING AND AFTER THE REPORT'S PUBLICATION PROVIDE FURTHER EVIDENCE OF ACTUAL MALICE**

### **A. Drs. Kaslow and McDaniel Knew that Two of the Report's Primary Conclusions Were False or Acted with Reckless Disregard of Whether They Were False**

231. As previously noted, Drs. Kaslow and McDaniel and four other members of the Board who voted to publish the false and defamatory allegations in the Hoffman Report held significant leadership positions in the APA throughout the period between 2005, the time of the PENS meetings, and 2014, when the Board reviewed the Leso ethics matter. Drs. Kaslow and McDaniel were on Council or the Board from 2006 through 2014. Dr. Kelly served on Council

or the Board for the entire period of 2005 through 2014. Dr. Douce served on Council from 2006 through 2011 and on the Board in 2013 and 2014. Drs. Prescott and McGraw served on Council or the Board from 2008 and 2010, respectively, through 2014.

232. Those positions gave the Board members first-hand knowledge of many of the events the Report described. That knowledge establishes that, at a minimum, they acted with reckless disregard when publishing its defamatory contents on each occasion.

233. The second of the Report's three primary conclusions was that the Plaintiffs and others engaged in "a pattern of secret collaboration" to prevent the APA from banning psychologists from participating in national security interrogations (Hoffman Report, p. 9). Because of Drs. Kaslow and McDaniel's involvement in APA governance in 2006-2014, they were intimately involved in the series of open debates about this issue that took place in Council meetings, at an APA convention, and in other forums over the years.

234. Moreover, from 2008 to 2010, Dr. McDaniel was on the Committee for the Advancement of Professional Practice, which opposed the moratorium on psychologists' participation in national security interrogations that was proposed in 2007. Dr. Kelly was chair of the Board of Professional Affairs when that body voted that the Council should not adopt the 2007 moratorium resolution.

235. These Board members also knew that, given the APA's governance structure, the Plaintiffs could not have determined the outcome of these debates. They therefore knew the Report's second conclusion to be false or acted with reckless disregard of whether it was false.

236. The third primary conclusion was that "ethics complaints against prominent national security psychologists [were] handled in an improper fashion, in an attempt to protect these psychologists from censure" (Hoffman Report, p. 10).

237. As described earlier in the Complaint, in January and February 2014, because of renewed controversy over the handling of the complaints and in particular the complaint against Major John Leso, the Board received two special briefings about the closing of the Leso complaint. Dr. Kaslow, the 2014 president of the APA, then asked the APA staff to draft a statement from the Board that listed the voluminous evidence that had been considered, the care taken with the complaint's handling, and the sound reasons for its dismissal. She was further personally involved in revising that document and the preparation of an additional statement.

238. As a result of the 2014 review, Drs. Kaslow and McDaniel, along with three other members of the 2014 Board who were also members in 2015, possessed knowledge that demonstrated the Report's conclusion about this matter to be false when they published it on each occasion.

#### **B. The APA Board Published the Report Hastily and Without Adequate Review**

239. At the August 2016 meeting between former Board presidents and current Board members, current members acknowledged that their actions had been impulsive and not thought through, and that the Report contained many inaccuracies. In sum, the Board abdicated its duty of care in its rush to accept, act on, and publish the Report.

240. Within 24 hours of receiving the draft Report on June 27, 2015, the Board, on the advice of Hoffman, published it to two of the most vocal and active Accusers (Drs. Soldz and Reisner) under a promise of confidentiality.

241. The Board then met with Soldz and Reisner on July 2 in Washington, DC, and listened to a presentation by them about how the APA should respond to the Report. On July 4, Soldz and Reisner took to social media, using the hashtag "torture" and claiming they had been "consulted" by the Board.

242. The Board knew about the Accusers' animus towards the Plaintiffs over the course of nine-plus years. For example, Dr. Soldz had publicly expressed racial animus toward James in an online interview, stating that he got his job partly because he was "black," that "he doesn't show up for work," and that he "can't write an English sentence."

243. The Board also knew about the Accusers' active engagement with the press during the course of the investigation. For example, Hoffman, the Special Committee and the Board knew that Soldz and Reisner had worked closely with James Risen just two months earlier.

244. Upon information and belief, the Report was leaked to James Risen on or before the July 4 holiday weekend, almost immediately after Drs. Soldz and Reisner met with the Board in Washington, DC, where Risen works in the Washington Bureau of *The New York Times*.

245. On July 2, 2015, Hoffman and Sidley sent a copy of the final Report to the APA Special Committee, including a recused Board member, Dr. Bonnie Markham.

246. Risen wrote about the Report in the *Times* on July 10, 2015, and published it in full on the paper's website. Mr. Risen was the first journalist to report the story.

247. On the same day, July 10, 2015, as a reaction to that publication, the Board immediately voted to publish the full Report on the APA website to the general public. At that point the Council, the APA's governing body, which had received the "final" Report only on July 8, had had less than two days to review it. Until the evening of July 9, it did not have access to the 6,000-plus pages of exhibits, many of which included information that contradicted the Report's conclusions.

248. So hasty was the Board's review and release of the Report that, as many have noted, the APA ignored its own policies that prohibit making deliberations about ethics investigations public.



### **C. Defendants Failed to Give Plaintiffs an Opportunity to Respond to Allegations**

249. None of the Defendants gave any of the Plaintiffs adequate opportunity to respond to the Report's accusations before publishing it and acting on its conclusions.

250. After having been given approximately 24 hours to respond to the Report's contents, Dr. Behnke registered his objections in writing on July 2, 2015. His attorney, who had been prohibited from participating in a meeting with APA's acting CEO and assistant General Counsel regarding a personnel action against Dr. Behnke, voiced similar complaints on July 7, 2015. On July 8, 2015, APA fired Dr. Behnke, who had worked for the APA for almost 15 years, without a notice period and without a severance payment, and without allowing him to meet with the Board before it acted.

251. While the Board considered the Report, senior members of APA staff – including Dr. Behnke – who had information that could have countered its false allegations sat waiting in their offices to be called to speak to the Board. They were never summoned.

252. Col. James received online, read-only access on July 7, 2015, only the day before the Report's release to the APA's 160-plus member Council. Even if that had given him adequate time to respond, which it clearly did not, he was given no forum for lodging his objections.

253. Plaintiffs Banks, Dunivin, and Newman were never even notified that the Report was complete or that it was about to be published.

254. Much later, on October 2, 2015, Jesse Raben, in-house counsel for the APA, sent an e-mail to the Council stressing that the APA wanted those named in the Report to be able to contact Hoffman to contribute to an errata sheet. But the Defendants never notified the Plaintiffs that the errata sheet was in the works, despite the Plaintiffs' having objected on multiple occasions to the Report's contents, including to APA's outside counsel.

255. Despite these failings, the Board repeatedly claimed that it gave those named in the Report full opportunity to respond. In October 2015, for example, Dr. McDaniel asserted in writing to Council that they had had a chance to object to its accuracy.

256. Those claims are false. At the time of the Report's delivery and after its hasty publication, Plaintiffs were given no significant opportunity to respond to its allegations. In their August 2016 meeting with former Board presidents, current members of the Board admitted that to have been the case.

#### **D. Dr. Kaslow's Statements During and After the Investigation Bolstered the Report's False Conclusions**

257. After the Report was published, Dr. Kaslow made her personal views about the allegations against the Plaintiffs clear to the media, thus greatly compounding the damage to Plaintiffs.

258. *First*, on July 11, 2015, in a video interview still online at <http://www.aol.co.uk/video/former-apa-president-says-stephen-behnke-was-'terminated'-518940743/>, Dr. Kaslow refers viewers to the Report, which mentions each Plaintiff by name. Dr. Kaslow specifically named Dr. Behnke in that interview, and the video displays Dr. Behnke's name and picture prominently.

259. In the interview, Dr. Kaslow says, "Well, I think that the report which is over 500 pages speaks for itself and there are actually quite a bit of detail regarding Dr. Behnke's involvement with the DoD in ways that were collusive and that unfortunately, very unfortunately, enabled psychologists to be involved in abusive interrogation techniques."

260. Any reasonable person would assume that someone who "enabled psychologists to be involved in abusive interrogation techniques" had a direct role in allowing behaviors that are likely illegal. As Chair of the Special Committee, Dr. Kaslow knew or would have known that

accusing military psychologists of involvement in abusive interrogations was tantamount to accusing them of acts that were criminal under military and U.S. law. And, in fact, the video of the interview was titled *Psychologists May Face Charges for Torture Program*.

261. In order to reach other audiences, the videotape was repackaged and rebroadcast online under the same title. In all, the tape was repackaged at least four times and made available on multiple websites.

262. *Second*, in another interview, on July 11, 2015, Dr. Kaslow stated publicly to *The Guardian* that the APA had not ruled out referring the Report to the FBI, although Hoffman had said his investigation found no criminal wrongdoing. The article stated:

... Kaslow said the APA would deliver the Hoffman report to the Senate armed services and intelligence committees and the inspectors general of the Pentagon and the CIA. But she stopped short of committing to referring it to the FBI for potential criminal inquiry, saying Hoffman drew a line short of that in internal discussions. “The issue with the FBI is something we’re continuing to discuss,” she said.

Stephen Soldz, a longtime critic of the APA’s involvement with torture, urged the APA to make such a referral in a meeting the APA held with its dissidents on 2 July in Washington. “We must refer this report and its findings to the FBI and we must cooperate fully in any ensuing investigation,” Soldz urged, according to a presentation acquired by the Guardian.

<https://www.theguardian.com/us-news/2015/jul/11/cia-torture-doctors-psychologists-apa-prosecution>

263. In that interview, Dr. Kaslow also stated her personal opposition to the participation of psychologists in national security interrogations. As an individual psychologist, she had every right to express that view. As Chair of the Special Committee and former president of the APA, her statement took sides in an ongoing debate and reinforced the credibility of Hoffman’s conclusion that there was collusion to defeat such a ban.

264. Finally, Dr. Kaslow used the Report to scapegoat the Plaintiffs as members of a “small underbelly” of the APA. In interviews and other public forums, she apologized for “horrific” acts on the part of a “small group.”

- August 11, 2015, radio interview with WNYC: Title: *APA Votes to Get Out of the Torture Business*. Quotes: “Small number of officials that were involved in this.” “I think what this was, was a small group of people potentially involved or involved with something that was just horrific and wrong and that takes us away from our values on human rights.” <http://www.wnyc.org/story/apa-torture-scandal/>
- July 21, 2015, radio interview with WBUR in Boston: Title: *Report Reveals Close Ties Between Psychologists’ Association and Pentagon*. Quotes: “I think it was a small part of the APA that strayed from that mission. And much of APA was very firm and clear in saying that torture was absolutely unacceptable. So I think that unfortunately we didn’t realize that there was sort of an underbelly, a small underbelly, that was having, as you said, loose ethical guidelines that may have allowed for psychologists to engage in enhanced interrogations.” “I think the report was clear and that the facts of the report speak for themselves on this matter.” “In terms of the issue of Dr. Behnke being a scapegoat, I think that the report goes into exhaustive detail about Dr. Behnke’s role and the facts really do speak for themselves.”  
<http://www.wbur.org/radioboston/2015/07/21/apa-pentagon>

265. In contrast, Dr. Kaslow and the APA treated other APA staff members also implicated in the Report very differently than they treated Dr. Behnke. The Chief Executive Officer, who was also directly implicated, was given a severance payment of \$1.375 million and a farewell party attended by Dr. Kaslow. The General Counsel of the APA and other staff members who were also personally implicated in the Report were not fired, but were offered the chance to correct inaccuracies.

## **E. Defendants Made False Claims of Privilege and Work Product**

266. Sidley's engagement letter with the APA specifically states that the documents gathered for the Report would not be covered by attorney-client privilege (emphasis added):

We and the APA agree as follows with regard to the application of privileges to this Representation. **First, except as provided in the sentences in parentheses that follow this sentence, the Final Report, and 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.** (However, our review of documents with a pre-existing privilege will be covered by the attorney-client communication privilege and will not constitute a waiver of the privilege as to those documents, unless the Board or the Special Committee on behalf of the Board waives the privilege as to specific documents. If we decide that our Final Report should include, quote, describe or cite any such privileged documents, we will let the Special Committee know and request that the privilege be waived so that we can use the document in the Final Report.)

267. However, in a letter to the Council after the Plaintiffs had requested the notes and documents on which Hoffman relied, the Board stated that Hoffman and counsel for the APA had now opined that his notes and other documents are protected by privilege as well as by the work-product doctrine.

268. Even if the engagement letter had not made it clear that privilege would not be claimed, it would still not be available.

269. First, of the 148 interviewees listed in the Report, only approximately 20 could be considered current employees or officers of the APA at the time of their interviews and therefore arguably Sidley and Hoffman's clients.

270. Second, Defendants claimed the sole objective of the "independent" review was to determine the truth, and their after-the-fact claims of giving legal advice are contrary to the facts. Hoffman was hired to find the truth, not to provide legal advice, and the Report states that he made no recommendations (Hoffman Report, p. 72). The engagement letter's *pro forma* assertion that Hoffman was engaged to provide legal advice is not enough to transform his fact-

finding work into legal advice in light of the facts of the investigation and the other representations made by Hoffman during its course and in the Report. Moreover, if he had been providing legal advice, he had an obligation to inform the Plaintiffs, who were constituent members of the corporation to which he was giving advice, that he was engaged for that purpose.

271. Third, the Report relies upon Hoffman's assertions about the content of his team's interviews, assertions that have been contradicted by some of those interviewed. In certain places, the Report actually refers the reader to "See" an interview the notes of which he and the APA now refuse to disclose (Hoffman Report, pp. 88, 89, 114, 223, 240, 349).

272. By relying on witness statements and other documents that they withhold from the Plaintiffs, Defendants are engaged in a fundamentally unfair attempt to shield from the Plaintiffs and the public evidence that could directly contradict Hoffman's conclusions and that could allow the Plaintiffs to further demonstrate the requisite degree of Defendants' fault in publishing their false statements.

273. Moreover, those documents are not protected by the work-product doctrine. There was no threat of litigation, and no legal advice was expected or provided at all, much less in anticipation of litigation. Even if the doctrine applied, the protection has been waived: Hoffman relies heavily not only on assertions about what witnesses said, but also at times on his direct sharing of his impression of their credibility.

274. Finally, and most importantly, the Plaintiffs cannot adequately rebut Hoffman's claims without access to the documents.

#### **F. Defendants Failed to Respond to Evidence of the Report's Falsity**

275. Since the Report's publication, documents and other evidence put forward by the Plaintiffs and others within the APA have led many of its members – by no means only the

Plaintiffs – to conclude that the Report got the facts wrong, that Hoffman was far from objective or reliable in his conduct of the investigation, and that the Report’s conclusions are false.

276. Soon after the Report was published, the Plaintiffs pointed to facts that contradicted those conclusions. In a July 13, 2015, e-mail to the Council, Col. James referred to the local policies designed to prevent abuse to which he had referred on the PENS listserv and to which had pointed Hoffman during his interview.

277. Plaintiffs Banks, Dunivin, James and Newman objected to the contents of the Report in a post on APA’s website on July 31, 2015. On August 3, their counsel contacted APA’s outside counsel about those objections. Documents that Hoffman ignored or that otherwise undercut his false conclusions have been posted on a public website since October 25, 2015, at [www.hoffmanreportapa.com](http://www.hoffmanreportapa.com).

278. In a June 8, 2016, open letter, the APA’s division for psychologists in independent practice (not military psychologists), one of its largest, passed a vote of no confidence in the Board based on the Board’s response to the Report.

279. In a June 11, 2016, open letter, eight former APA presidents summarized the concerns expressed by four of the APA’s divisions and others as including “an apparent failure to properly vet [the Report], failure to protect the rights and reputations of those portrayed negatively, lack of due process for employees who were forced to resign, and more.”

280. In the former presidents’ August 2016 meeting with current Board members, the current members made the following admissions:

- The Board acknowledged that the report contains many inaccuracies.
- Board members seemed to acknowledge there was no evidence that APA officers colluded with the government.
- While former presidents were repeatedly and erroneously accused of supporting or suborning torture and seeking to weaken the ethics code, the Board never attempted to correct those impressions and remained silent.

- Those named in the report had no meaningful opportunity to correct or respond to those allegations.

281. Since the Report's publication, however, neither Hoffman nor the APA Board (led until the end of 2016 by Dr. McDaniel, one of the two non-recused member of the Special Committee, has taken any effective steps to correct its demonstrated factual distortions or to adequately address the Plaintiffs' objections. Hoffman's sole response has been the incomplete errata sheet issued on September 4, 2015, with the corrections incorporated into a revised Report published on the same day. Hoffman refuses to correct the Report's inaccurate portrayal of military policy despite having been given clear and direct evidence of his purposeful distortions. <http://www.hoffmanreportapa.com/resources/RESPONSE%20TO%20THE%20HOFFMAN%20REPORT.pdf>

282. APA continues to display two versions of the Report prominently on its website, despite Board members' admission that it contains inaccuracies.

283. The Defendants' continued unwillingness to correct the Report's demonstrated falsehoods provides clear evidence of purposeful avoidance of the truth.

284. On January 30, 2017, at a meeting in Washington, DC, the new 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. At the same time, however, Dr. Puente admitted that the Board had gone overboard in its actions responding to the Report. He also stated that, after the Plaintiffs' litigation ends, the division would receive what he described as a favorable response to its detailed and thorough critique of the Hoffman Report, a critique that clearly demonstrated the Report's falsehoods. <http://www.hoffmanreportapa.com/resources/TF19%20Response%20to%20the%20Hoffman%20Report.pdf>



### **G. The APA's Re-hiring of Hoffman Despite Conflicts**

285. On April 15, 2016, the APA Board announced that Hoffman had been re-engaged – for additional compensation – for the limited purpose of reviewing only the military policies the Plaintiffs provided, rather than all of the evidence that contradicts the Report's conclusions.

286. The re-hiring flew in the face of a “straw” vote at the February 2016 Council meeting that advised the Board not to re-hire Hoffman because of the obvious conflict in asking the Report's author to review its errors.

287. Since the re-hiring, in an open letter to the Board, ten former chairs of the Ethics Committee stated that the re-hiring raises significant concerns about a potential conflict among the interests of the APA Board, the APA membership, Hoffman and Sidley. The potential conflict arises from the tension between objectively assessing the Report's accuracy and protecting the reputation and other personal interests of those involved in the investigation and Report – including APA Board members as well as Hoffman and Sidley.

288. The APA has not responded to the letter publicly, and continues to assert that Hoffman will produce a “supplemental” report. It was due on June 8, 2016.

289. Despite the potential conflict the former Ethics Chairs identified, throughout 2016, her tenure as APA president, Dr. McDaniel continued to be one of only two APA Board members in charge of matters related to announcements concerning the Report and important Board deliberations about its contents. According to statements from APA Board members to third parties, the full APA Board has not been informed for many months as to the status of discussions with the Plaintiffs.

## **IX. ONGOING DAMAGES TO PLAINTIFFS**

290. All of the Plaintiffs have lost employment opportunities as a result of the Report's false and defamatory allegations. The accusations also caused severe damage to the professional and personal reputations of all the Plaintiffs, damage that has been public and sustained.

291. The damage has continued to this day. Dr. Trudy Bond, one of the Accusers, has repeatedly submitted information to the United Nations Committee Against Torture, mentioning Col. James specifically in those documents and encouraging prosecutions. On June 27, 2016, Dr. Bond, relying on the Hoffman Report, again asked the Committee to move forward with the prosecutions.

292. The Report has also been submitted in support of war crimes prosecutions to the International Criminal Court.

293. Despite knowing about the Report's falsehoods and about the ongoing damage they have been causing, Defendants have repeatedly refused to take any action to repair or mitigate the damage to Plaintiffs. They have turned a blind eye as the damage continues.

## **X. COUNTS 1-12**

### **COUNT 1**

**(Defamation *Per Se* for the False and Misleading Statements in the Hoffman Report  
Published by Hoffman and Sidley on June 27, 2015, to the APA Special Committee and  
Board)**

**All Plaintiffs against Hoffman and Sidley**

294. The Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

295. On June 27, 2015, Hoffman and Sidley published a copy of the Hoffman Report to the Special Committee and the Board of Directors of the APA. On information and belief, that

document was a draft, published without the exhibits. The Report was subsequently republished to additional parties as detailed below.

296. On information and belief, a true and correct copy of the “draft” Report was leaked to *The New York Times* during the next week. A copy of the Report was made available online on their website here: <http://www.nytimes.com/interactive/2015/07/09/us/document-report.html>

297. The Report contained the false and defamatory statements concerning the Plaintiffs.

298. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning each of the Plaintiffs.

299. These statements are false.

300. By publishing the statements, Hoffman and Sidley intended to cause harm, and in fact, did cause harm to the Plaintiffs’ reputations.

301. The statements so harm the Plaintiffs’ reputations as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them.

302. The statements impeach the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

303. The statements are defamatory *per se* because they accuse the Plaintiffs of unlawful conduct.

304. The statements are defamatory *per se* because they impugn the Plaintiffs’ fitness for and conduct in their professions.

305. Hoffman’s statements were made in the course and scope of his employment by Sidley. Hoffman was the only partner of Sidley referenced in public materials about the Report, and he signed the cover letters publishing the Report on each occasion where a letter was included with the Report.

306. Hoffman and Sidley had no privilege to publish the false and defamatory statements or, if they did, Hoffman and Sidley abused that privilege.

307. At the time of publication, Hoffman and Sidley knew these statements were false, or recklessly disregarded the truth.

308. At a minimum, Hoffman and Sidley had serious doubts as to the truth of these statements and a high degree of awareness that they were probably false.

309. Hoffman and Sidley purposefully avoided the truth, and purposely avoided interviewing sources and following fundamental investigative practices in order to avoid the truth.

310. Hoffman and Sidley's conduct amounts to actual malice.

311. These defamatory statements have been repeated and republished in major media outlets. That republication was reasonably foreseeable, because the engagement letter between the Defendants provided that the Report would become public without modification.

312. Hoffman and Sidley's false statements have injured the Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented the Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused the Plaintiffs to suffer damages in an amount to be determined at trial.

313. Hoffman and Sidley are liable to the Plaintiffs for compensatory damages arising out of their defamation of the Plaintiffs.

314. Hoffman and Sidley are liable to the Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for the Plaintiffs' rights.

## **COUNT 2**

### **(Defamation *Per Se* for the False and Misleading Statements in the Hoffman Report Published by the APA Special Committee and Board on June 28, 2015, to Drs. Reisner and Soldz)**

#### **All Plaintiffs against All Defendants**

315. The Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

316. On June 28, 2015, within 24 hours of receiving a draft of the 542-page Hoffman Report, the Special Committee and Board published a “draft” of the Report to Drs. Soldz and Reisner.

317. At the time he received the Report, Dr. Soldz was not a member of APA.

318. On information and belief, that “draft” Report is the document leaked to *The New York Times*. A copy of the Report was made available online here:

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

319. The Report contained the false and defamatory statements concerning the Plaintiffs.

320. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning each of the Plaintiffs.

321. These statements are false.

322. By publishing the statements, Defendants intended to cause harm, and in fact, did cause harm to Plaintiffs’ reputations.

323. The statements so harm the Plaintiffs’ reputations as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them.

324. The statements impeach the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

325. The statements are defamatory *per se* because they accuse the Plaintiffs of unlawful conduct.

326. The statements are defamatory *per se* because they impugn the Plaintiffs' fitness for and conduct in their professions.

327. The republishing of the Report by the members of the Special Committee and Board to Drs. Reisner and Soldz was carried out by those individuals in their official capacities as members of the Special Committee and APA Board.

328. The Defendants had no privilege to publish the false and defamatory statements or, if they did, the Defendants abused that privilege.

329. At the time of publication, the Defendants knew these statements were false, or recklessly disregarded the truth.

330. At a minimum, the Defendants had serious doubts as to the truth of these statements and a high degree of awareness that they were probably false, and therefore were required to investigate their veracity before publishing them.

331. The Defendants' conduct amounts to actual malice.

332. These defamatory statements have been repeated and republished in major media outlets. That republication was reasonably foreseeable, because the engagement letter between the Defendants provided that the Report would become public without modification.

333. Hoffman and Sidley's false statements have injured the Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented the Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused the Plaintiffs to suffer damages in an amount to be determined at trial.

334. The Defendants are liable to the Plaintiffs for compensatory damages arising out of their defamation of the Plaintiffs.

335. The Defendants are liable to the Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for the Plaintiffs' rights.

### **COUNT 3**

**(Defamation *Per Se* for the False and Misleading Statements in the Hoffman Report  
Published on or about July 2, 2015, to James Risen and *The New York Times*)  
All Plaintiffs against All Defendants**

336. The Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

337. Defendants published the Hoffman Report on June 27, 2015, to the Special Committee and Board of the APA (including recused members), and on June 28 to Dr. Soldz (at that time not an APA member) and Dr. Reisner.

338. On information and belief, a true and correct copy of the Report was leaked on or about July 2, 2015, to James Risen of *The New York Times*. A copy of the Report was made available online here: <http://www.nytimes.com/interactive/2015/07/09/us/document-report.html>

339. On information and belief, the version of the Report leaked was a "draft."

340. The Report contained the false and defamatory statements concerning the Plaintiffs.

341. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning each of the Plaintiffs.

342. These statements are false.

343. By publishing the statements, the Defendants intended to cause harm, and in fact, did cause harm to Plaintiffs' reputations.

344. The statements so harm the Plaintiffs reputations as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them.

345. The statements impeach the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

346. The statements are defamatory *per se* because they accuse the Plaintiffs of unlawful conduct.

347. The statements are defamatory *per se* because they impugn the Plaintiffs' fitness for and conduct in their professions.

348. Each of the Defendants when acting were doing so within their capacities on behalf of their respective organization, company or firm.

349. The Defendants had no privilege to publish the false and defamatory statements or, if they did, the Defendants abused that privilege.

350. At the time of publication, the Defendants knew these statements were false, or recklessly disregarded the truth.

351. At a minimum, the Defendants had serious doubts as to the truth of these statements and a high degree of awareness that they were probably false, and therefore were required to investigate their veracity before publishing them.

352. The Defendants purposefully avoided the truth, and purposely avoided interviewing sources and following fundamental investigative practices in order to avoid the truth.

353. The Defendants' conduct amounts to actual malice.

354. The defamatory statements have been repeated and republished in major media outlets. That republication was reasonably foreseeable, because the engagement letter among the Defendants provided that the Report would become public without modification.

355. Hoffman and Sidley's false statements have injured the Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented the



Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused the Plaintiffs to suffer damages in an amount to be determined at trial.

356. The Defendants are liable to the Plaintiffs for compensatory damages arising out of their defamation of Plaintiffs.

357. The Defendants are liable to the Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for the Plaintiffs' rights.

#### **COUNT 4**

**(Defamation *Per Se* for the False and Misleading Statements in the Hoffman Report Published by Hoffman and Sidley on July 2, 2015, to the APA Special Committee and Board)**

**All Plaintiffs against Hoffman and Sidley**

358. The Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

359. Hoffman and Sidley published the final version of the Hoffman Report to the Special Committee and Board of the APA on July 2, 2015. The Report was subsequently republished to additional parties as detailed below. Defendants had agreed in their engagement letter that the statements in the Report would not be privileged.

360. A true and correct copy of the Report is available online at <http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>

361. The Report contained the false and defamatory statements concerning the Plaintiffs.

362. The defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning each of the Plaintiffs.

363. These statements are false.

364. By publishing the statements, Hoffman and Sidley intended to cause harm, and in fact, did cause harm to Plaintiffs' reputations.

365. The statements so harm the Plaintiffs' as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them.

366. The statements impeach the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

367. The statements are defamatory *per se* because they accuse the Plaintiffs of unlawful conduct.

368. The statements are defamatory *per se* because they impugn the Plaintiffs' fitness for and conduct in their professions.

369. Hoffman's statements were made in the course and scope of his employment by Sidley. Hoffman was the only partner of Sidley referenced in public materials about the Report, and he signed the cover letter publishing the Report that was included with the Report.

370. Hoffman and Sidley had no privilege to publish the false and defamatory statements or, if they did, Hoffman and Sidley abused that privilege.

371. At the time of publication, Hoffman and Sidley knew these statements were false, or recklessly disregarded the truth.

372. At a minimum, Hoffman and Sidley had serious doubts as to the truth of these statements and a high degree of awareness that they were probably false, and therefore were required to investigate their veracity before publishing them.

373. Hoffman and Sidley purposefully avoided the truth, and purposely avoided interviewing sources and following fundamental investigative practices in order to avoid the truth.

374. Hoffman's and Sidley's conduct amounts to actual malice.

375. These defamatory statements have been repeated and republished in major media outlets. That republication was reasonably foreseeable, because the engagement letter between the Defendants provided that the Report would become public without modification.

376. Hoffman and Sidley's false statements have injured the Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented the Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused the Plaintiffs to suffer damages in an amount to be determined at trial.

377. Hoffman and Sidley are liable to the Plaintiffs for compensatory damages arising out of their defamation of the Plaintiffs.

378. Hoffman and Sidley are liable to the Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for the Plaintiffs' rights.

### **COUNT 5**

**(Defamation *Per Se* for the False and Misleading Statements Published by the APA to the  
APA Council on July 8, 2015)  
All Plaintiffs against All Defendants**

379. The Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

380. The Special Committee and Board of the APA published the final version of the Hoffman Report to the Council of Representatives of the APA (approximately 170 persons) on July 8, 2015. The Report was subsequently republished to additional parties as detailed below.

381. A true and correct copy of the Report is available online here:  
<http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>

382. The Report contained the false and defamatory statements concerning the Plaintiffs.

383. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning each of the Plaintiffs.

384. These statements are false.

385. By publishing the statements, Defendants intended to cause harm, and in fact, did cause harm to Plaintiffs' reputations.

386. The statements so harm the Plaintiffs' reputations as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them.

387. The statements impeach the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

388. The statements are defamatory *per se* because they accuse the Plaintiffs of unlawful conduct.

389. The statements are defamatory *per se* because they impugn the Plaintiffs' fitness for and conduct in their professions.

390. The republishing of the Report by the members of the Special Committee and the APA Board was done by those individuals in their official capacities as members of the Special Committee and the APA Board.

391. The Defendants had no privilege to publish the false and defamatory statements or, if they did, Defendants abused that privilege.

392. At the time of publication, the Defendants knew these statements were false, or recklessly disregarded the truth.

393. At a minimum, the Defendants had serious doubts as to the truth of these statements and a high degree of awareness that they were probably false, and therefore were required to investigate their veracity before publishing them.

394. The Defendants' conduct amounts to actual malice.

395. The Defendants' false statements have injured the Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented the Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused the Plaintiffs to suffer damages in an amount to be determined at trial.

396. The Defendants are liable to the Plaintiffs for compensatory damages arising out of their defamation of the Plaintiffs.

397. Defendants are liable to the Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for the Plaintiffs' rights.

#### **COUNT 6**

**(Defamation *Per Se* for the False and Misleading Statements in the Report Published on  
July 10, 2015, by James Risen and the *New York Times* to the World)  
All Plaintiffs against All Defendants**

398. The Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

399. The Defendants published both a draft of the Hoffman Report and the final version of the Report a combined total of five times, prior to the publication by *The New York Times* of a copy of the full Report. By publishing those two versions of the Report to multiple parties, the Defendants excessively and recklessly distributed the Report, foreseeably causing harm to Plaintiffs' reputations.

400. A true and correct copy of the Report was made available online at the New York Times website here: <http://www.nytimes.com/interactive/2015/07/09/us/document-report.html>.

401. On information and belief, the copy of the Report published by *The New York Times* was a “draft.”

402. The Report contained the false and defamatory statements concerning the Plaintiffs.

403. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning each of the Plaintiffs.

404. These statements are false.

405. By publishing the statements, Defendants intended to cause harm, and did in fact, harm Plaintiffs.

406. The statements so harm the Plaintiffs’ reputations as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them.

407. The statements impeach the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

408. The statements are defamatory *per se* because they accuse the Plaintiffs of unlawful conduct.

409. The statements are defamatory *per se* because they impugn the Plaintiffs’ fitness for and conduct in their professions.

410. Defendants had no privilege to publish the false and defamatory statements or, if they did, the Defendants abused that privilege.

411. At the time of publication, the Defendants knew these statements were false, or recklessly disregarded the truth.

412. At a minimum, the Defendants had serious doubts as to the truth of these statements and a high degree of awareness that they were probably false, and therefore were required to investigate their veracity before publishing them.

413. Defendants' conduct amounts to actual malice.

414. That republication was reasonably foreseeable, because the engagement letter among the Defendants provided that the Report would become public without modification.

415. Defendants' false statements have injured the Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented the Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused the Plaintiffs to suffer damages in an amount to be determined at trial.

416. The Defendants are liable to the Plaintiffs for compensatory damages arising out of their defamation of the Plaintiffs.

417. The Defendants are liable to the Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for the Plaintiffs' rights.

### **COUNT 7**

#### **(Defamation *Per Se* for the False and Misleading Statements in the Hoffman Report Published by the Board of the APA on the APA Website on July 10, 2015) All Plaintiffs against All Defendants**

418. The Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

419. The Special Committee and Board of the APA published the Hoffman Report on the APA website on July 10, 2015. The Report was subsequently republished to additional parties.

420. A true and correct copy of the Report is available online here:  
<http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf>

421. The Report contained the false and defamatory statements concerning the Plaintiffs.

422. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning each of the Plaintiffs.

423. These statements are false.

424. By publishing the statements, Defendants intended to cause harm, and in fact, did cause harm to Plaintiffs' reputations.

425. The statements so harm the Plaintiffs' reputations as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them.

426. The statements impeach the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

427. The statements are defamatory *per se* because they accuse the Plaintiffs of unlawful conduct.

428. The statements are defamatory *per se* because they impugn the Plaintiffs' fitness for and conduct in their professions.

429. Each of the Defendants when acting were doing so within their capacities on behalf of their respective organization, company or firm.

430. The Defendants had no privilege to publish the false and defamatory statements or, if they did, Defendants abused that privilege.

431. At the time of publication, the Defendants knew these statements were false, or recklessly disregarded the truth.

432. At a minimum, the Defendants had serious doubts as to the truth of these statements and a high degree of awareness that they were probably false, and therefore were required to investigate their veracity before publishing them.

433. The Defendants' conduct amounts to actual malice.



434. These defamatory statements have been repeated and republished in major media outlets. That republication was reasonably foreseeable, because the engagement letter between the Defendants provided that the Report would become public without modification.

435. Defendants' false statements have injured the Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented the Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused the Plaintiffs to suffer damages in an amount to be determined at trial.

436. The Defendants are liable to the Plaintiffs for compensatory damages arising out of their defamation of the Plaintiffs.

437. The Defendants are liable to the Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for the Plaintiffs' rights.

### **COUNT 8**

**(Defamation *Per Se* for the False and Misleading Statements made by Dr. Nadine Kaslow on behalf of the APA to the Public)  
All Plaintiffs against APA**

438. The Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

439. Dr. Kaslow made a number of false and defamatory statements on behalf of the APA in her capacity as the head of the Special Committee.

440. Dr. Kaslow acted with actual malice because she knew her statements were false, or acted in reckless disregard of their truth, at the time she made them, given: 1) her involvement in significant underlying events described in the Report that gave her knowledge that contradicted

the Report's conclusions, and 2) that she had been told by Hoffman that he found no criminal activity as a result of the investigation.

441. The APA's disparate treatment of Dr. Behnke, including its wrongful discharge of him and its defamatory statements, has caused, and continues to cause, grave personal, financial and emotional damage.

442. Dr. Kaslow's defamatory statements were reasonably understood by those who heard them to be statements of fact, of and concerning each of the Plaintiffs.

443. These statements are false.

444. By publishing the statements, the APA intended to cause harm, and in fact, did cause harm to Plaintiffs' reputations.

445. The statements so harm the Plaintiffs' reputations as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them. Each of the statements impeaches the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

446. The statements are defamatory *per se* because they accuse the Plaintiffs of unlawful conduct.

447. The statements are defamatory *per se* because they impugn the Plaintiffs' fitness for and conduct in their professions.

448. Dr. Kaslow's statements were made in the course and scope of her position as head of the Special Committee and member of the Board of the APA.

449. The APA had no privilege to publish the false and defamatory statements or, if they did, the APA abused that privilege.

450. At the time of publication, the APA knew these statements were false, or recklessly disregarded the truth.

451. At a minimum, the APA had serious doubts as to the truth of these statements and a high degree of awareness that they were probably false, and therefore were required to investigate their veracity before publishing them.

452. The APA's false statements have injured Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused Plaintiffs to suffer damages in an amount to be determined at trial.

453. The APA is liable to the Plaintiffs for compensatory damages arising out of their defamation of Plaintiffs.

454. The APA is liable to Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for the Plaintiffs' rights.

### **COUNT 9**

**(Defamation *Per Se* for the False and Misleading Statements in the Hoffman Report published by Hoffman and Sidley on September 4, 2015 to the Special Committee and Board of APA)**

**All Plaintiffs against Defendants Hoffman and Sidley**

455. The Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

456. Hoffman and Sidley published the revised Hoffman Report to the Special Committee and Board of the APA on September 4, 2015.

457. A true and correct copy of the revised Report is available online here: <http://www.apa.org/independent-review/revised-report.pdf>

458. The Report contained the false and defamatory statements concerning the Plaintiffs.

459. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning each of the Plaintiffs.

460. These statements are false.

461. By publishing the statements, Hoffman and Sidley intended to cause harm, and in fact, did cause harm to Plaintiffs' reputations.

462. The statements so harm the Plaintiffs' reputations as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them.

463. The statements impeach the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

464. The statements are defamatory *per se* because they accuse the Plaintiffs of unlawful conduct.

465. The statements are defamatory *per se* because they impugn the Plaintiffs' fitness for and conduct in their professions.

466. Hoffman's statements were made in the course and scope of his employment by Sidley. Hoffman was the only partner of Sidley referenced in public materials about the Report, and he signed the cover letters publishing the Report on each occasion where a letter was included with the Report.

467. Hoffman and Sidley had no privilege to publish the false and defamatory statements or, if they did, Hoffman and Sidley abused that privilege.

468. At the time of publication, Hoffman and Sidley knew these statements were false, or recklessly disregarded the truth.

469. At a minimum, Hoffman and Sidley had serious doubts as to the truth of these statements and a high degree of awareness that they were probably false, and therefore were required to investigate their veracity before publishing them.

470. Hoffman and Sidley purposefully avoided the truth, and purposely avoided interviewing sources and following fundamental investigative practices in order to avoid the truth.

471. Hoffman and Sidley's conduct amounts to actual malice.

472. On June 27, 2016, Dr. Trudy Bond, a psychologist who had repeatedly filed multiple ethics complaints against Col. James (including in Ohio), used a copy of the September 4, 2015 Report to encourage the United Nations Committee Against Torture to seek prosecution of the persons named in the Report for authorizing, acquiescing, or consenting to acts of torture. This action was reasonably foreseeable because she had previously filed multiple complaints with numerous agencies, including the APA (as stated in the Report), seeking censure for Col. James' conduct. Hoffman and Sidley interviewed Dr. Bond during the investigation but intentionally omitted that information from the Report.

473. Hoffman and Sidley's false statements have injured the Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented the Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused Plaintiffs to suffer damages in an amount to be determined at trial.

474. Hoffman and Sidley are liable to the Plaintiffs for compensatory damages arising out of their defamation of the Plaintiffs.

475. Hoffman and Sidley are liable to the Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for the Plaintiffs' rights.

**COUNT 10**

**(Defamation *Per Se* for the False and Misleading Statements in the Hoffman Report  
Published by the Board of APA on the APA Website on September 4, 2015)  
All Plaintiffs against All Defendants**

476. The Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

477. The Special Committee and Board of the APA published the revised Hoffman Report on the APA website on September 4, 2015.

478. A true and correct copy of the revised Report is available online here:  
<http://www.apa.org/independent-review/revised-report.pdf>

479. The Report contained the false and defamatory statements concerning the Plaintiffs.

480. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning each of the Plaintiffs.

481. These statements are false.

482. By publishing the statements, Defendants intended to cause harm, and in fact, did cause harm to Plaintiffs' reputations.

483. The statements so harm the Plaintiffs' reputations as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them.

484. The statements impeach the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

485. The statements are defamatory *per se* because they accuse the Plaintiffs of unlawful conduct.

486. The statements are defamatory *per se* because they impugn the Plaintiffs' fitness for and conduct in their professions.

487. Each of the Defendants when acting were doing so within their capacities on behalf of their respective organization, company or firm.

488. The Defendants had no privilege to publish the false and defamatory statements or, if they did, the Defendants abused that privilege.

489. At the time of publication, the Defendants knew these statements were false, or recklessly disregarded the truth.

490. At a minimum, the Defendants had serious doubts as to the truth of these statements and a high degree of awareness that they were probably false, and therefore were required to investigate their veracity before publishing them.

491. The Defendants' conduct amounts to actual malice.

492. On June 27, 2016, Dr. Trudy Bond, the psychologist who had repeatedly filed multiple ethics complaints against Col. James (including in Ohio) used a copy of the September 4, 2015 Report to encourage the United Nations Committee Against Torture, to seek prosecution of the persons named in the Report for authorizing, acquiescing, or consenting in any way to acts of torture. This action was reasonably foreseeable because she had previously filed multiple complaints with numerous agencies, including the APA (as outlined in the Report), seeking censure for Plaintiffs James' conduct. Hoffman and Sidley interviewed Dr. Bond during the investigation but intentionally omitted that information from the Report.

493. Defendants' false statements have injured the Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused the Plaintiffs to suffer damages in an amount to be determined at trial.

494. Defendants are liable to Plaintiffs for compensatory damages arising out of their defamation of Plaintiffs.

495. Defendants are liable to Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for Plaintiffs' rights.

### **COUNT 11**

#### **(Defamation by Implication or Libel Per Quod) All Plaintiffs against Hoffman and Sidley**

496. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

497. Plaintiffs plead in the alternative that Hoffman and Sidley's statements described herein constitute defamation by implication for the following reasons:

498. By the use of the terms "joint venture," "joint enterprise," "deliberate avoidance," and "collusion," Hoffman and Sidley deliberately or intentionally implied that the Plaintiffs had engaged in criminal conduct.

499. At various points throughout the Report, Hoffman simply repeats the false and defamatory statements of the Accusers without supplying contradictory information in his possession and thus allows the reader to infer a false and defamatory meaning from one-sided narrative. See, e.g. Hoffman Report, p. 4: "Some label APA's actions "criminal,"...with a request they be prosecuted."

500. Hoffman omits from the Report the details of the crucial military history in late 2003, 2004 and early 2005 and the development and implementation of strict and clear "DoD interrogation guidelines." That omission causes the reader to conclude that the out of date guidelines and OLC opinions presented by Hoffman were still in effect and allowed for abusive interrogations. Had Hoffman and Sidley included the facts he intentionally omits from the



Report, each of his primary conclusions, and a majority of his false statements would have been directly and substantially contradicted by those intentionally omitted facts. A reader would have been able to reach non-defamatory conclusions of and concerning the Plaintiffs.

501. Despite acknowledging to the APA that he found no criminal activity, Hoffman makes no such statement in the Report.

502. Hoffman knew that the Accusers had submitted much of the information he relied on to the SASC and FBI, but neither of those organizations had found any actionable conduct. He omits those facts from the Report and such deliberate (or intentional) omission damaged Plaintiffs' reputations.

503. Hoffman knew the Accusers wished to overcome what they perceived to be a statute of limitations problem in order to resubmit the Report to the FBI to support criminal prosecutions against the Plaintiffs.

504. It was reasonably foreseeable that the Accusers would use the Report to renew their calls for criminal prosecution, and that the media would infer the possibility of criminal liability.

505. On June 27, 2016, Dr. Trudy Bond, a psychologist who had repeatedly filed multiple ethics complaints against Col. James (including in Ohio), used the revised Report to encourage the United Nations Committee Against Torture to seek prosecution of those named in it. This action was reasonably foreseeable given her previous persistence in filing complaints against Col. James. Hoffman and Sidley interviewed Dr. Bond during the investigation but omitted that information from the Report.

506. All publications of the Hoffman Report contained the false and defamatory language implying criminal conduct and the deliberate (or intentional) omission of the facts damaged Plaintiffs' reputations.

507. True and correct copies of the Reports are available online here: <http://www.apa.org/independent-review/APA-FINAL-Report-7.2.15.pdf> and here: <http://www.apa.org/independent-review/revised-report.pdf>

508. Those Reports contained the false and defamatory statements concerning the Plaintiffs.

509. These defamatory statements were reasonably understood by those who read them to be statements of fact, of and concerning each of the Plaintiffs.

510. These statements are false.

511. By publishing the statements, Hoffman and Sidley intended to cause harm, and in fact, did cause harm to Plaintiffs' reputations.

512. Hoffman's and Sidley's false statements have injured Plaintiffs in their trade or professions; have damaged their careers and reputations; in some cases have prevented Plaintiffs from obtaining employment as psychologists, despite their qualifications; and have caused Plaintiffs to suffer damages in an amount to be determined at trial.

513. The false statements have so harmed the Plaintiffs' reputations as to lower those reputations in the estimation of their communities or to deter others from associating or dealing with them.

514. The statements impeach the integrity and virtue of the Plaintiffs, thus exposing them to hatred, contempt, and ridicule.

515. The statements are defamatory because they accuse the Plaintiffs of unlawful conduct.

516. The statements are defamatory because they impugn the Plaintiffs' fitness for and conduct in their professions.

517. Hoffman and Sidley had no privilege to publish the false and defamatory statements or, if they did, Defendants abused that privilege.

518. Hoffman and Sidley's conduct amounts to actual malice.

519. Hoffman and Sidley are liable to the Plaintiffs for compensatory damages arising out of their defamation of the Plaintiffs.

520. Hoffman and Sidley are liable to the Plaintiffs for punitive damages because of the willful, wanton, and outrageous nature of the defamation and evidence of conscious disregard for the Plaintiffs' rights.

521. The Plaintiffs have suffered lost employment, emotional distress, and severe personal and professional humiliation and injury to their reputations in the community as a direct and proximate result of Hoffman and Sidley's false and defamatory statements.

522. Col. James has experienced an exacerbation of his post-traumatic stress disorder symptoms as a direct and proximate result of the false and defamatory statements made by Defendants.

## **COUNT 12**

### **(False Light Invasion of Privacy)**

#### **Plaintiffs Behnke, Dunivin, and James against All Defendants**

523. Plaintiffs repeat and re-allege each of the foregoing paragraphs as if set forth fully herein.

524. The defamatory statements alleged herein constitute false light invasion of privacy in that they have subjected Plaintiffs Behnke, Dunivin, and James to unreasonable and highly objectionable publicity by falsely attributing to them characteristics, conduct or beliefs that place them in a false light before the public.

525. The false light in which the Plaintiffs Behnke, Dunivin, and James have been placed would be highly offensive to the reasonable person.

526. Defendants had knowledge of the falsity of the defamatory statements or acted in reckless disregard as to their falsity and the false light in which the Plaintiffs would therefore be placed.

527. Plaintiffs Behnke, Dunivin, and James have been damaged by the Defendants' publication of the defamatory statements because, among other accusations, they impute criminal conduct and unethical practice regarding their personal and professional character as psychologists.

528. Publication of the defamatory statements has caused and will continue to cause Plaintiffs Behnke, Dunivin, and James and members of their families to suffer great mental anguish and emotional distress.

529. Publication of the defamatory statements has caused Plaintiffs Behnke, Dunivin, and James to suffer severe personal and professional humiliation and injury to their reputations in the community – reputations they have built over many years.

530. Consequently, Plaintiffs Behnke, Dunivin, and James' standings in the community have been damaged by publication of the defamatory statements.

#### **X. REQUEST FOR RELIEF ON COUNTS 1-12**

Plaintiffs respectfully request this Court to enter judgment in their favor in an amount exceeding \$25,000 for each Plaintiff, granting the following relief:

- a. damages in an amount to be determined at trial, including compensatory and consequential damages, punitive damages, litigation costs, special damages and attorneys' fees;
- b. damages in an amount to be determined at trial for the Plaintiffs' psychological and emotional pain and suffering; and

c. such other and further relief as this Court deems just and equitable under the circumstances.

Respectfully submitted,

/s/James E. Arnold

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### **JURY DEMAND**

Plaintiffs hereby demand a trial by jury on all issues so triable.

/s/ James E. Arnold

James E. Arnold