

February 29, 2016

## **An Open Letter to the American Psychological Association Membership Concerning the Hoffman Report**

We are writing to address statements we have recently heard, from both within and outside the APA, that the Association faces no risk of litigation as a result of the Hoffman report and the response to it by the APA's leadership. We understand that some have interpreted those statements to mean that, because we have neither filed nor threatened litigation, we have no viable causes of action and will not pursue any of our available remedies. This interpretation is mistaken.

The APA's rush to judgment when it received the report – without taking the time to review the report's evidence or affording us an opportunity to respond – has irreparably damaged our lives and our careers. We would greatly prefer a resolution that avoids embroiling us and the APA in years of expensive turmoil. That result, however, will require the APA leadership to take a more active and fair-minded approach to resolving the controversy than it has so far done.

### ***Our efforts over the last seven months***

Since reading the leaked results of the Hoffman report in the *New York Times* last July, we have worked diligently with our attorney to correct the inaccuracies, false statements and omissions in it. We have reviewed thousands of pages of materials, produced a number of reports, and collected hundreds of pages of documents that support a neutral and historically accurate account of the events surrounding the work of the PENS Task Force—an account that is not provided in the Hoffman report. We have been sustained in this effort by the outpouring of support and assistance we have received from many of you, and for that we are truly grateful.

Collectively, we have been members of the APA for many decades. We are pained not only by our treatment by the APA leadership, but also by the damage done to our profession by the false statements made in the report and subsequently amplified by the press. In spite of our own personal pain, anger and frustration, our work to clear our names has been guided at all times by an overarching desire to minimize any additional harm to our profession. We have repeatedly attempted to engage the APA in a collaborative and professional effort to correct the record. Our patience has been tested, however, as promises to respond to us promptly and to work collaboratively have gone unfulfilled and, at times, our communications have been ignored.

Our multiple good faith efforts to amicably address the damage done to us should not, however, be mistaken for an unwillingness to pursue all remedies available to us. Statements by the APA leadership that it faces no litigation risk belie the extent of the Association's exposure.

### ***Mistakes arose at the beginning of Mr. Hoffman's work***

The problems that create trouble for the APA involve more than the Hoffman report's inaccuracies and the leadership's response to the report. From the very beginning of the so-called "independent review," the process was fraught with mistakes. APA President Kaslow, the Board and Mr. Hoffman induced us (and we assume others as well) to participate in a review by promising that it would be independent and objective. Each of us was repeatedly given the following statement:

“...we are conducting the review in a completely independent fashion with the sole objective of ascertaining the truth about the allegations through an independent review of all available evidence, wherever that evidence leads, without regard to whether the evidence or conclusions may be deemed favorable or unfavorable to APA.”

To the contrary, instead of acting as an impartial, disinterested neutral who would write a report based on “an independent review of all available evidence,” Mr. Hoffman produced a prosecutorial brief that cherry-picked from among the available evidence to specifically support the narrative constructed by the longstanding critics of the PENS Task Force Report. In fact, at Council’s August 2015 meeting, Mr. Hoffman acknowledged that his report, far from being an even-handed, neutral review and description of the facts, was instead designed to “make [his] case.”

Moreover, in contrast to the statements used to induce our participation, the APA now seems to contend that at least one objective of Mr. Hoffman’s work was to give legal advice to the APA with respect to litigation. As we understand it, that is the only basis that the APA and Mr. Hoffman could have for claiming, as they have in public documents, that his notes and other materials in his possession are protected by the attorney-client privilege and work-product doctrine – which are available only when legal advice is given and, in the case of work-product, in the context of litigation. Despite the Special Committee’s repeated calls for “truth” and “transparency,” and its statement that Mr. Hoffman’s source materials are necessary to understand his conclusions, Mr. Hoffman hides behind these purported legal shields to refuse to provide us documents available only to him that could be used to defend ourselves. These documents are particularly important because multiple witnesses have stated that their testimony was mischaracterized in Mr. Hoffman’s report.

These problems are further compounded by three facts:

- Many of those interviewed (including members of Council and of the APA) were actively discouraged from getting legal counsel despite the fact that the Special Committee and Mr. Hoffman were well aware of the possible adverse consequences of the report for the APA members named in it.
- When we sought to clarify the scope and nature of the review, we received at best an ambiguous response, even when the APA and Mr. Hoffman clearly knew that the final report would have severe adverse repercussions, including even the potential for federal criminal prosecution for some members of the APA.
- There were different ground rules for different people. According to public statements by the APA, some witnesses were apparently promised confidentiality, but others were expressly told there was no confidentiality. Indeed, Mr. Hoffman has acknowledged publicly in an interview to the press that it was always the intent of the Board that the investigation was to be made public. Dr. Kaslow also confirmed to the press that APA planned to deliver the Hoffman report to the Senate armed services and intelligence committees and the inspectors general of the Pentagon and the CIA. Yet Mr. Hoffman decided that his notes, portions of statements, and other documents, subject to his sole discretion, are to be withheld on behalf of his client.

### ***New information about the lack of neutrality of the investigation and the report***

In January, we received unexpectedly from a third party a number of documents that further disclose the goals and motives of some of our critics, including Drs. Soldz and Reisner and Nathaniel Raymond

(who was working in partnership with James Risen of the *New York Times*<sup>1</sup>). These documents demonstrate unequivocally that they wanted a criminal investigation by the FBI (a step the FBI had previously refused to undertake), were worried that a criminal prosecution would be blocked by the statute of limitations, and hoped the Hoffman report would overcome that problem by showing ongoing collusion that would provide the basis for an extension of the statute of limitations under the Racketeer Influenced and Corrupt Organizations Act (RICO).<sup>2</sup>

Mr. Hoffman received some of these documents early in his investigation and others were publicly available.<sup>3</sup> Yet, despite his repeated claim that he was conducting a review “of all available evidence” and that his report “described the evidence thoroughly so as to present as many facts as we were able to discover<sup>4</sup>,” and despite devoting many pages to his speculations about our motives and goals, *he does not refer to these documents* that so clearly reveal our critics’ motives for participating in the investigation. This omission is all the more disturbing because he wrongly claims there to have been an ongoing pattern of conduct between the APA and individuals affiliated with the Department of Defense. He then applies to that pattern the terms “joint venture,” “joint enterprise,” and “collusion,” terminology drawn from the context of RICO, other criminal statutes, and war-crimes prosecutions. That tactic seems designed to create the perception of ongoing culpable actions over as long a period as possible, so that the statute of limitations would no longer be a bar to criminal liability, and so that all those whom he deems to have “colluded” at any point could become liable under the “joint enterprise” concept. (This is a tactic Mr. Hoffman was very familiar with as a prosecutor.<sup>5</sup>) As a result, Mr. Hoffman wrote a report that exactly suited the previously undisclosed goals of our critics: to find a way to focus on actions that would extend the statute of limitations under RICO.<sup>6</sup>

It is not surprising, therefore, that Drs. Soldz and Reisner called for another referral to the Federal Bureau of Investigation when they met with the Board on July 2. According to documentation that we have now uncovered, Dr. Kaslow and members of the Board actually discussed making that referral without notifying any of the many members – including past Presidents and members of Council as well as employees and former employees – who were named in the report of that possibility.

We have already described the other omissions, distortions and unsupported inferences that demonstrate that the Hoffman report uses evidence selectively to build a biased case.<sup>7</sup> These new documents reveal an even closer alignment between the goals of our critics and the goals of the report

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<sup>1</sup> <https://theintercept.com/2014/10/17/blowing-whistle-cia-torture-beyond-grave/>

<sup>2</sup> One example of a publicly available statement of their intentions is here:

[http://www.democracynow.org/2014/12/23/weaponizing\\_health\\_workers\\_how\\_medical\\_professionals](http://www.democracynow.org/2014/12/23/weaponizing_health_workers_how_medical_professionals)

<sup>3</sup> <https://theintercept.com/2014/11/14/american-psychological-association-reviewing-role-bush-torture-program/>

<sup>4</sup> [Hoffman report](#), page 8, pdf page 23.

<sup>5</sup> Mr. Hoffman has experience as a federal prosecutor, and as an inspector general conducting investigations, and that experience is reflected in the document he produced: a prosecutorial brief that takes sides among members of the APA who were engaged in work on its behalf. We do not believe that Mr. Hoffman complied with the required processes or procedures for an internal investigation when dealing with a corporation, and its members, officers, or former employees.

<sup>6</sup> [http://www.democracynow.org/2015/7/13/psychologists\\_collaborated\\_with\\_cia\\_pentagon\\_on](http://www.democracynow.org/2015/7/13/psychologists_collaborated_with_cia_pentagon_on)

<sup>7</sup> <http://www.hoffmanreportapa.com/resources/RESPONSETODAVIDHOFFMAN1026.pdf>

that Mr. Hoffman nowhere discloses. We will be releasing an analysis of these documents shortly, along with additional documents Mr. Hoffman omitted.

***Our options for action***

The facts leading up to and following the PENS Task Force are complicated, and our analysis of options involves many parties and multiple jurisdictions. To lead the review, Mr. Hoffman, who is licensed only in Illinois, traveled across 10 different states. We are residents of four different states. A comprehensive analysis of the rights and obligations of all the parties, in all possible jurisdictions, has been complex and time consuming. That analysis is now complete, however, and we are prepared to act on any of the viable remedies available to us.

The Board, the APA, Mr. Hoffman, and its legal counsel have had materials in their possession for over four months that clearly establish that Mr. Hoffman's document contains false, defamatory and misleading material and statements. Those statements have caused severe damage to our reputations and careers. But the Hoffman report continues to be posted prominently on the Association's website. In spite of the relevant fiduciary and other obligations, ***no one has taken any steps to mitigate any of the damage that has been done and continues to be done to us.***

We do not desire litigation, and we have publicly suggested resolutions that do not involve litigation. We believe that the APA could resolve these issues without more expense to its members by fulfilling its fiduciary obligations and its commitment to finding the truth of what occurred—as the APA's leaders have repeatedly stated is their goal. We remain hopeful that our overtures to the APA may still receive a response, and that the APA will meet with us to pursue a resolution, as we have suggested on several occasions. Should those overtures prove to be futile, we will not hesitate to pursue alternative courses of action.

Colonel (Ret.) L. Morgan Banks  
Colonel (Ret.) Debra L. Dunivin  
Colonel (Ret.) Larry C. James  
Dr. Russ Newman