



AMERICAN
PSYCHOLOGICAL
ASSOCIATION

April 2, 2016

Dear Former Chairs of the APA Ethics Committee:

Thank you for your February 16, 2016, Open Letter regarding the *Independent Review* conducted by David Hoffman and his law firm, Sidley Austin LLP. The Board of Directors appreciates your collective service to APA and welcomes the opportunity to engage with you on these important issues. Your letter raises a number of concerns regarding the findings of the *Independent Review*, the process by which it was conducted, and the corrective action undertaken by the Board of Directors subsequent to its publication.¹ We address each of these issues in turn below.

First, your letter suggests the need to conduct a “transparent and thoughtful review” of Mr. Hoffman’s Amended Final Report in light of recent substantive criticism—specifically, that Mr. Hoffman mischaracterized or omitted information provided to him during interviews; that the Report reflects a misunderstanding of Ethics Committee policies and procedures; and that documents have been published that “sharply undercut the asserted factual basis” for Mr. Hoffman’s conclusions. As you know, the Board of Directors commissioned the *Independent Review* in response to the public controversy surrounding psychologists’ participation in military interrogations, including the portrayal of APA in James Risen’s book, “Pay any Price: Greed, Power, and Endless War.”² Because the Association’s objectivity and credibility on this issue had been repeatedly called into question—by the established media and by APA-member critics—the Board of Directors determined that a wholly independent review was necessary to appropriately assess APA’s conduct. As the Board Resolution makes clear, APA personnel and governance members were not to play any fact-finding role in this independent investigation. The Board provided Mr. Hoffman broad and independent authority to review “all available evidence, wherever that evidence leads, without regard to whether the evidence or conclusions may be deemed favorable or unfavorable to APA.”³

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¹ As noted in your letter, Mr. Hoffman’s Report was initially released in July 2015. An Amended Final Report was published on September 4, 2015.

² The Board Resolution noted that the allegations in Risen’s book “created concern and confusion for the public and APA members,” and that it was “in the best interests of APA to authorize an independent review by outside legal counsel to carefully consider the allegations and ascertain the truth with respect to them.” APA Board of Directors Resolution Regarding Independent Review, Nov. 12, 2014.

³ *Id.* 750 First Street, NE
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In accordance with the Board Resolution, the Association relied on Mr. Hoffman’s findings and accepted his conclusions after carefully reviewing the draft report—which totaled over 500 pages—and the key documents cited therein. Although the Board of Directors was briefed on Mr. Hoffman’s investigative process and received updates on his progress during the course of the engagement, it has not undertaken an investigation of the investigation or sought to independently analyze each of Mr. Hoffman’s findings to identify possible factual omissions or inaccuracies. Doing so would undermine the very purpose for which the *Independent Review* was commissioned—to preclude APA from assessing its own conduct.

APA instead has invited extensive public comment on the Report, as discussed in more detail below, to ensure Mr. Hoffman’s methodology, findings, and conclusions are critically examined. APA members likewise were able to raise factual inaccuracies or misstatements in the Report directly to and for consideration by Mr. Hoffman. Mr. Hoffman took members’ feedback into account, as reflected in his Amended Final Report and accompanying errata sheet published on September 4, 2015.

Second, your letter references allegations that certain APA members were given preferential access to Mr. Hoffman, “introducing a risk of investigatory bias,” whereas others with information potentially relevant to the *Independent Review* were not consulted. For the reasons discussed above, the Board of Directors is not in a position to evaluate the process by which Mr. Hoffman conducted his *Independent Review*. We note, however, that Mr. Hoffman considered a range of viewpoints during his investigation; his Report was based on over 200 interviews of 148 people, including military psychologists, prominent critics of APA, and nine former Chairs of the Ethics Committee.⁴ In addition, at the outset of the investigation, Sidley Austin established a special email address and phone line that anyone could use to share information with the investigators.⁵ Sidley Austin reportedly received nearly 300 emails to the special email address and more than 30 phone calls to the confidential phone line.⁶

Third, your letter addresses the premature “leak” of Mr. Hoffman’s Report to the *New York Times* and the Association’s response thereto. Prior to its public release, APA’s Board of Directors transmitted the *Independent Review* to Council for its confidential review on July 8, 2015.⁷ The Board took steps to guard against release of the Report without authorization, including by providing restricted access to a labeled draft via a secure website. The document became public two days later, on July 10, 2015, when it was leaked to the *New York Times*. We note that the final pdf posted by the *New York Times* was not the restricted watermarked version that APA posted on its secure website. APA has been unable to identify who improperly released the Report. Although the Board of Directors considered investigating the leak, we were informed that such investigations are enormously expensive and rarely successful. The Board has no mechanism to compel the *New York Times* to disclose the source of the leak. Nor can

⁴ David Hoffman, *Independent Review Relating to APA Ethics Guidelines, National Security Interrogations, and Torture*, Sept. 4, 2015, at 7.

⁵ *Id.* at 6.

⁶ *Id.*

⁷ The Board Resolution authorizing the *Independent Review* directed the Special Committee to transmit the final report “without modification to the COR, APA members, and the public.” APA Board of Directors Resolution Regarding Independent Review, Nov. 12, 2014.

APA collect or review the personal communications of individuals affiliated with those trusted parties who had access to the Report prior to its public release. Although APA could interview all of those individuals—including the 170 Council members who received the Report on July 8—that process is unlikely to yield additional information.

Fourth, and relatedly, your letter questions the Board’s purported failure to afford those individuals named in the Report the opportunity to review and submit comments or suggested revisions by an established deadline. We regret that premature release of the *Independent Review* prevented us from sharing it with those mentioned in the Report before it became publicly available. Once the Report had been published by the *New York Times*, however, the Board decided to release it and the 1,100 supporting documents on APA’s website immediately. APA also invited public comment on the Report via its website, and by Monday, July 13, had established an online forum where those involved in the underlying events could “post a response based on the fact presented . . . or provide [their] own account of the issues and events pertaining to [them].”⁸ Mr. Hoffman was also asked to address questions regarding his findings and methodology during APA’s Annual Convention in August 2015.

Fifth, your letter points to criticism that “persons who had been influential in prompting the Association to retain an independent investigator . . . were later invited to meet with the Board prior to the Report’s release to discuss recommended courses of action.” Doctors Reisner and Soldz, to whom we presume your letter refers, were asked to present their perspectives on the *Independent Review* to the Board as representatives of APA’s prominent critics—a constituency that Mr. Hoffman identified as having been marginalized and ignored in the past. The Board viewed this meeting as an important corrective measure and an opportunity to take diverse points of view into account moving forward.

Sixth, your letter asks for an explanation of the process by which APA members have been appointed to the APA Commission on Ethics Processes (“Ethics Commission” or “Commission”), which the Association established in response to the findings and conclusions reflected in the *Independent Review*. The Ethics Commission has been charged with reviewing the processes and procedures of the APA Ethics Office and benchmarking them against those of other professional associations. The Commission also has been asked to ensure APA’s ethics processes comport with applicable human rights principles.

In light of these critical objectives, the Board of Directors took great care in selecting psychologists and non-psychologists with subject matter expertise to serve on the Ethics Commission.⁹ After publishing a call for nominations on APA’s website, the Board established a Vetting Group to independently review and rate each nominee on several “matrix variables,” including subject matter expertise, other desired expertise, practice settings, and

⁸ Responses from Those Mentioned in the Report, <http://www.apa.org/independent-review/responses.aspx>.

⁹ APA specified that nominees were to have substantial expertise in one or more of the following areas: ethics experience; ethics philosophy and pedagogy; international ethics; science, bioethics, and healthcare; legal issues and implications of ethical standards. See APA Commission on Ethics Processes: Call for Nominations, <http://www.apa.org/independent-review/ethics-processes.aspx>.


diversity variables (career stage, race, ethnicity, gender, LGBT, disability, religion, and non-APA membership).¹⁰ After each nominee was rated by three different Vetting Group members, an average rating sheet was compiled for each nominee. These ratings, along with the nominee's letters of interest and other relevant materials, were circulated to the entire Vetting Group, which discussed each nominee, his or her ratings and diversity variables, and assigned each nominee a rating score. Lists of the top scoring applicants in the psychologist and non-psychologist subgroups were provided to APA's Board and Council Leadership Team.

Seventeen distinguished psychologists and ethics experts from other disciplines have been selected to serve on the Ethics Commission. The work of the Commission is expected to be completed later this year. The Commission will provide a progress report during the August 2016 Board and Council meetings, with a final report planned for the February 2017 meetings of the APA Board of Directors, Council Leadership Team, and Council of Representatives.

We have advised the Ethics Commission of your interest in contributing to the review of APA's ethics policies and procedures. As former Chairs of the Ethics Committee, we recognize that you have unique perspectives on the complex issues the Commission will consider over the coming months. While this is not our decision, we believe your input into this process would be very valuable.

Thank you again for your thoughtful feedback on the Association's response to the *Independent Review*. We look forward to continuing to work together to serve the best interests of the Association.

Sincerely yours,

A handwritten signature in black ink that reads "Susan H. McDaniel PhD". The signature is written in a cursive style.

Susan H. McDaniel, PhD, ABPP
President

¹⁰ The Vetting Group consisted of Jennifer F. Kelly, PhD, (Chair), Louise A. Douce, PhD, Richard M. McGraw PhD, and Emily A. Voelkel, PhD representing the Board of Directors; Douglas C. Haldeman, PhD, Bonnie R. Strickland, PhD, and David Mills, PhD representing the Council Leadership Team; and Andrea Barnes, JD, PhD and Linda K. Knauss, PhD representing the Ethics Committee.