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This is in response¹ to the ethics Complaint (“the Complaint”) brought against me by Drs. ‘A’, ‘B’ and ‘C’ (“the Complainants”) and conveyed to me on September 20, 2017 by Katherine C. Nordal, Acting Director of the Ethics Office of the American Psychological Association.

INTRODUCTION

The interrogation of detainees by U.S. officials at the Guantanamo Naval Base and at Abu Ghraib Air Force Base has generated a vigorous public policy debate within the profession of psychology and within the broader community. The debate has embraced, among other questions, disputes about whether specific “enhanced interrogation” techniques employed at those facilities and elsewhere violated prohibitions against torture and other cruel, inhuman and degrading treatment or punishment; whether the American Psychological Association (APA) should have taken a position in opposition to such techniques and what that position should have been and should now be; whether it was proper for psychologists who were members of the APA to assist or participate in such interrogations; and whether and to what extent did psychologists associated with these interrogations collude with APA to influence APA policy on these matters.

This debate has continued for years. And, over those years, I have engaged in public and professional advocacy critical of “enhanced interrogations” and of the complicity of APA psychologists and the APA itself in such practices. The Complainants in this case have also addressed these issues. And, in doing so, they have almost invariably opposed my positions. The Complainants have, in the past, used a number of techniques to challenge my views, from providing alternative interpretations of the facts in various letters and reports to personal criticism and false accusations on various APA listservs. While the expression of the Complainants and their colleagues has at times been harsh, I believe, nonetheless, the discourse has remained consistent with the classic values of free expression and open debate.²

The current Complaint reflects a turning away from the values that underlie our ethics code, including, essentially, the free exchange of ideas, i.e., the fundamental belief that the appropriate response to speech we do not like is “more speech.” It represents, I believe, an effort at intimidation and retaliation for my public and professional advocacy regarding important policy issues of concern to the profession and to the broader community.³ To my understanding,

¹ I am grateful to lawyers from the New York Civil Liberties Union and the Center for Justice and Accountability for their review of the Complaint and for their advice on this response.

² As Justice Brandeis has observed the path to sound democratic decision-making, “lies in the opportunity to discuss freely supposed grievances and proposed remedies, and that the fitting remedy for evil counsel is good ones.” *Whitney v. California*, 274 U.S. 357 (1927).

³ [REDACTED] This Complaint, I submit, has added an unwelcome level of apprehension to my participation in what ought to be a free and open debate of this important issue: New Business Item 35B/Aug 2017: Resolution to Amend Council’s 2009, 2013, and 2015 Resolutions.

this is not the first such use of the ethics Complaint procedure⁴ against those who supported the process of the Independent Review⁵. The current Complaint appears to be part of a campaign to intimidate free expression and deter opposing viewpoints, not only in APA governance, but in publishing and the media as well. Recently, after an author writing a history of these events (“A Teachable Ethics Scandal”) was threatened with litigation and an ethics Complaint⁶, his editor withdrew the article, already accepted, from publication. In the end, the article was published, but only after a public outcry.

Thus, I believe that the current Complaint is an abuse of the ethics process. The Code, after all, is a framework of aspirations and standards created to provide the ground rules for psychologists to work within, so that we can safely apply the knowledge and practice of our field in the best interest of the public. It is not a weapon to be used to target or silence those with whom we disagree. I hope to show that this Complaint should be dismissed on two grounds: (1) the Complainants have incorrectly applied the standards, and (2) that they are incorrect in their assertions about what constitutes true and false statements regarding the issues at hand.

The Preamble to the Ethical Code expressly declares: “Psychologists respect civil and human rights and the central importance of freedom of inquiry and expression in research, teaching and publication.” The Preamble further states that the Ethics Code will be interpreted “in a manner in keeping with basic principles of human rights.” Public advocacy and public discourse lie at the heart of these basic principles and are regarded as among our most fundamental rights. Given that virtually all of the violations claimed by the Complainants are rooted in their disagreement with the content of my public advocacy, I am asking the Ethics Committee to consider the intent and effect of this Complaint in light of these basic principles, and in particular in light of the chilling effect such use of the ethics code would have on “freedom of inquiry and expression in research, teaching, and education,” as well as on the integrity of the process of debate necessary for APA governance.

Moreover, although the Complaint purports to identify statements that I made that were factually untrue, the Complainants do not generally identify erroneous statements of fact. Rather, they quarrel with opinions that I have expressed and with interpretations of events and facts that I have offered. In essence, they offer an alternative reading of the facts, and are attempting to enforce their views with ethical sanction.⁷

The Complaint asserts that I violated the following provisions of the American Psychological Association (APA) Ethical Principles of Psychologists and Code of Conduct (Ethics Code): Ethical Standards 2.01(a) and 2.01 (c) which address Boundaries of Competence; 2.03 relating to Maintenance of Competence; 2.04, relating to the Bases for

⁴ <http://www.hoffmanreportapa.com/resources/APA%20Ethics%20Committee%20resignation%20letter%20June%202013.pdf>

⁵ The Independent Review (“IR”), aka the “Hoffman Report,” was an independent investigation following upon the publication of emails indicating that members of the APA and certain operational psychologists affiliated with the military and the CIA colluded to ensure that the objectives of these psychologists were supported by APA and that no APA policy would contradict the government policies under which these psychologists operated. The central finding of the IR was that indeed operational psychologists from the military colluded in this way with certain APA leaders. It can be found, in full, here: <http://www.apa.org/independent-review/revised-report.pdf>

⁶ Mitchell Handelsman, personal communication to Stephen Soldz.

⁷ In this regard, the Complaint fails to recognize a fundamental distinction that may be relevant here: the distinction between “fact” and “opinion.” In legal decisions regarding defamation, for example, expressions of opinion are not the subject of sanctions, since the only statements that can give rise to defamation claims are those that, both, purport to be statements of fact and that are issued with knowledge of their falsity. This distinction is drawn precisely so that public discourse and advocacy are not unduly impeded. See *Milkoich v. Lorain Journal Co.*, 497 U.S. 1 (1990); *Immuno AG v. Moor-Jankowski*, 77 N.Y.2d 235 (1991).

Scientific and Professional Judgments; 5.01 (a) and 5.01 (b) relating to the Avoidance of False and Deceptive Statements; and 5.04 relating to Media Presentations. Each of these claims can be refuted on twofold grounds: (1) each claim stretches the standards in question beyond their intent, and (2) the statements of mine that the Complainants condemn can be demonstrated to be reasonable conclusions based on evidence and/or based on the authority of reputable others who have drawn similar conclusions from the same data.

For example, Standards 2.01 (a) and (c) of the Ethics Code, relating to the “Boundaries of Competence,” apply only to competence in the performance of providing “services, teach[ing] and conduct[ing] research.” To apply this standard as broadly as the Complainants suggest would promote ongoing monitoring when psychologists speak out as private individuals about matters of public concern regarding professional controversy. Such an application would encourage people with contradictory opinions to comb through one another’s blogs and public statements and would have a chilling effect on robust discussion of important issues.⁸

The allegation that I conveyed “false and deceptive statements” in violation of Ethical Standards 5.01 (a), (b) and 5.04 also stretches the original intent of the standards; it does so in two significant ways. First, the standards were written originally to apply to false or misleading statements in advertisements or public representations that could deceive the public about the qualifications and experience of a psychologist. They were not intended as a restriction on psychologists offering opinions about issues of public import. And second, the standards apply to assertions of fact that are “knowingly” false. The statements of mine identified in the Complaint, and over which the Complainants take issue, are expressions of opinion and interpretations of events. Furthermore, in spite of the Complainants’ claims to the contrary, they have been drawn from facts that are well documented. Again, I will support these the disputed statements with evidence to demonstrate that they are reasonable conclusions from the data, shared by many experts in the field, including those with great familiarity with military culture. While the Complainants might prefer that people accept a different interpretation of the data than the ones I present, I submit that the ethics process is an inappropriate forum for such disagreements to be debated.

I will address each of these matters in some detail below. But, before turning to my refutation of claims that I have violated Standards 2 and 5 of the Ethics Code, I wish to speak to a procedural flaw in the current Complaint that I believe is indicative of the problem with the entire Complaint: that the ethics process has been mobilized and distorted as a means for the Complainants to enforce their political and policy positions while silencing others’ positions.

I. Complainants did not attempt to resolve any ethical violations with me, as required by Ethical Standard 1.04.

Standard 1.04 states that “when psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual, if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved.” Instead of adhering to this protocol, the Complainants assert that they have somehow satisfied the responsibility to attempt informal resolution through circulating public documents critiquing my work: “Dr. Reisner has already been provided, on multiple occasions, considerable information demonstrating that his basic premise regarding military psychologists’ support to interrogations is incorrect.” And that this

⁸ For example, at the 2016 APA convention, one of the Complainants and/or her colleagues appeared at virtually every one of my talks and presentations, making it obvious that they were recording my words. This, in the context of threatened or actual ethics Complaints, creates an environment of intimidation and self-censorship.

ought to have served as an attempt to resolve the issue, but, “Dr. Reisner has refused to consider, much less repudiate, any of the statements listed in this Complaint.”

In fact, I, along with my colleague, Stephen Soldz, did consider the documents referred to (the Division 19 Task Force Report⁹, as well as a similar statement from a different group of operational psychologists¹⁰) and offered a detailed and evidence-based response,¹¹ reflective of detailed study of the facts and the history.¹² Other experts in the field of medical ethics and interrogation practice have reviewed the Task Force Report and reached similar conclusions to ours.¹³

Not only have the Complainants never approached me personally to informally address these issues, at least one of the Complainants rejected my attempt to initiate just such an informal dialogue. I approached Dr. ‘B’ months before the Complaint was lodged, following a forum we both participated in,¹⁴ and suggested we meet to discuss these issues one on one. Dr. ‘B’ did not respond to my invitation. Furthermore, none of the Complainants has ever, as near as I can tell, approached me with a claim that any specific statement that I have made was in violation of the Code of Ethics. Thus, it cannot be said that there was any meaningful effort, on the part of Complainants, to resolve any ethics violation prior to the submission of their Complaint. Had they engaged in such an effort, we might have narrowed the matters upon which we disagree and raised the level of the public discussion regarding these matters.

The Complainants seem uninterested in such a discussion. They argue that since such a dialogue is unlikely to result in my “repudiating” my views: “any further action to bring about informal resolution would be futile” (Complaint, p.2). Reading this, I was reminded of a family session I once held where an adolescent said to her mother, “We are having a problem communicating.” The mother replied, “We communicate, but you don’t listen to me.”

I believe that the Complainants’ failure to follow Ethical Rule 1.04 indicates that *lodging* this Complaint took priority over attempts at *resolving* the Complaint, and that this failure alone argues in favor of dismissing this Complaint.

II. Review of the Ethics Standards and their Applicability

a. Ethical Standard 2.01(a).

The Complainants allege that my conduct violated Ethical Standard 2.01(a), Boundaries of Competence, which states: “Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience.” I challenge this aspect of the Complaint on two grounds: (a) I do not believe that this rule was meant to apply, nor should it apply, to public advocacy. And, (b), even if it is perceived to apply, I did not act beyond my areas of competence and therefore am not in violation of this standard.

⁹ <http://www.apadivisions.org/division-19/news-events/response-hoffman-report.pdf>.

¹⁰ Banks, et al. <http://www.hoffmanreportapa.com/resources/RESPONSE%20TO%20DAVID%20HOFFMAN%201026.pdf>.

¹¹ <https://www.counterpunch.org/2016/01/05/attacks-on-hoffman-report-from-military-psychologists-obfuscate-detainee-abuse/>.

¹² I would argue that the scope of this response, the detail of the supporting citations and the breadth of the knowledge-base demonstrated, provides evidence of competence in this area, as well as a well-founded belief that my opinions are supported by the facts.

¹³ See, for example, Len Rubenstein’s letter to the then APA President, Interim CEO, and Chair of the Council Leadership Team, March 22, 2016. (Appendix 1).

¹⁴ [REDACTED]

1. Ethical Standard 2.01(a) does not apply to my public statements.

By its terms, Ethical Standard 2.01(a) is limited to “provid[ing] services, teach[ing], and conduct[ing] research.” Yet, in asserting that I violated Standard 2.01(a), the Complainants cite statements that I made while on a listserv, another made during a lecture to non-English speaking audiences, others in radio and online media interviews and in written statements and articles. All of these examples constitute public statements regarding matters of public concern. While such expression is addressed by the Ethics Code, it is not specified in Standard 2 (Competence), but rather in Standard 5 (Advertising and other public Statements).¹⁵ Since it is not specified, it is reasonable to assume that Ethical Standard 2.01(a) should only be applied to providing services, teaching, and conducting research.

This is further reinforced by the APA’s 1992 Ethics Code, which states:

This Ethics Code applies only to psychologists’ work-related activities, that is, activities that are part of the psychologists’ scientific and professional functions or that are psychological in nature. It includes the clinical or counseling practice of psychology, research, teaching, supervision of trainees, development of assessment instruments, conducting assessments, educational counseling, organizational consulting, social intervention, administration, and other activities as well. These work-related activities can be distinguished from the purely private conduct of a psychologist, which ordinarily is not within the purview of the Ethics Code.¹⁶

Standard 2.01(a) reflects this limitation, in that, “providing services,” although not specifically defined within the Ethical Standards, appears to apply to the provision of direct services to a client. This meaning can be drawn from the use of the words “providing services” elsewhere in the Ethical Standards. Ethical Standard 3, for example, refers to services being provided to a client and refers specifically to services being provided to an “individual” or “entity.”¹⁷ Ethical Standard 2.02 uses the same phrase, specifically referring to “services to individuals,” i.e., direct services to a client. It would seem, from these other similar uses in the Code, that public statements and participation in public policy debates do not constitute “providing services.”¹⁸

“Teaching” is also not defined in the Ethics Code; however, Standard 7.03, Accuracy in Teaching, gives a sense of the meaning of the term in the Code. This Standard references

¹⁵ It is reasonable to assume that if the drafters of the Ethical Standards had intended for Standards 2.01(a) and (c) to apply to public advocacy, they would have explicitly referenced such statements as they do in Standard 5. This is the practice when it comes to legal standards, and it would make sense to apply similar reasoning to ethical standards. In New York State Law, for example, it was determined that “A court cannot by implication supply in a statute a provision which it is reasonable to suppose the Legislature intended intentionally to omit; and the failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended.” N.Y. Stat. Law § 74 (McKinney).

¹⁶ <http://www.apa.org/ethics/code/code-1992.aspx>.

¹⁷ Ethical Standard 3.07, 3.10(c).

¹⁸ In addition, in the authoritative text on Ethics Code interpretation, APA ETHICS CODE COMMENTARY AND CASE ILLUSTRATIONS (APA COMMENTARY), there is a distinction made between “direct service” and “media engagement.” This, too supports the idea that “providing services” according to Standard 2 is not intended to include public statements. Linda Campbell et al., *APA Ethics Code Commentary and Case Illustrations*. American Psychological Association Press, p. 163.

“course syllabi,” pedagogy, and an “instructor.” One can thus infer that the word “teaching” was intended to have its plain meaning: the instruction of students.¹⁹ In the many instances in which the Complainants allege that I violated Ethical Standard 2.01(a), I was not “teaching.” Since none of the statements cited by the Complainants were made as part of a course of study where I functioned as an instructor, I believe that, in attempting to apply this standard, Complainants are stretching the intended scope of the code.

Finally, “conducting research” is not defined within the Ethics Code but its plain meaning – “developing theories and testing them through carefully honed research methods involving observation, experimentation and analysis” – may be most appropriate here.²⁰ This can best be understood to mean undertaking quantitative or qualitative research to test psychological hypotheses in order to add to the body of scientific knowledge. Again, under this definition, the advocacy and public statements, which lie at the heart of this Complaint, cannot be regarded as statements made in conjunction with psychological research.²¹

In sum, when considered under these three definitions, it appears clear that Standard 2.01(a) does not apply to the advocacy cited in the Complaint. Based on the context, it is evident that I was not providing services or conducting scientific research. In some instances I was speaking to an audience, but, as there was no syllabus, pedagogy, or teacher-like instruction, I was not teaching. Or, to put it another way, if the activity cited in the Complaint constitutes teaching, then we would have to consider every public statement of opinion made by a psychologist to constitute teaching. Such an expansive interpretation of Standard 2 stretches this provision, too, perhaps to the breaking point by creating a dangerous precedent, along with a host of other potential unintended consequences. .

2. My speech was within the bounds of my competence based on my education, training, supervised experience, consultation, study, and professional experience and did not violate Ethical Standard 2.01(a).

Even if the Ethics Committee were to determine that my statements fall within the activities outlined by Ethical Standard 2.01(a), I believe that I was speaking within the bounds of my competence based on my education, training, supervised experience, consultation, study, and professional experience.

The opinions that I offered on the subjects of the ethics of psychologists cooperating with the military’s enhanced interrogation program are based on my significant professional experience in the areas of trauma, PTSD, human rights, ethics, and, in addition, ongoing study and consultation on the complex issues facing psychologists and other health professionals in such dual roles. My education, study, and training in trauma and PTSD is extensive and has been recognized by New York University, where I taught and supervised in the International Trauma Studies Program for 10 years.²² I have trained United Nations counselors and clinicians

¹⁹ Again, this is the case in the legal interpretation of such terms and may serve as an indication of the meaning in the code as well. See, *for example*, N.Y. Stat. Law § 94 (McKinney): “The legislative intent is to be ascertained from the words and language used, and the statutory language is generally construed according to its natural and most obvious sense, without resorting to an artificial or forced construction.”

²⁰ Definition of Psychology, available at <http://www.apa.org/about/>.

²¹ Even though my professional opinions were not expressed in conjunction with psychological research as that term is commonly used, they are reflective of my education, training, supervised experience, consultation, study, and professional experience in these areas. In other words, whatever research I have undertaken is scholarly research, which, given my history of publications and invitations to present, constitutes the development and demonstration of competence, rather than the lack of it. (See below.)

²² See appendix 2 (Reisner CV).

working in over 30 countries on five continents in the treatment of trauma, PTSD and burnout over a period of eight years. I have served as a member of the Task Force on Medical Professionalism in National Security Detention Centers through the Institute on Medicine as a Profession at the Open Society Institute from 2010 until the publication of the Task Force Report, to which I contributed.²³

In addition, issues relating to professional ethics are well within the boundaries of my competence. I am an advisor on Psychology and Ethics for the Nobel Prize-winning NGO, Physicians for Human Rights, in Boston and am a co-founder of the Coalition for an Ethical Psychology. I have presented an APA-approved continuing education (“CE”) accredited full-day workshop on ethics for the Vermont Psychological Association and also give an annual ethics training lecture to graduate fellows in the Department of Clinical Psychology at Yale University.

I also have recognized competence in the area of ethics as applied specifically to military and law enforcement interrogations: I was invited by the United Nations Rapporteur on Torture to participate as an expert in an “Expert Consultation on Interrogations, Investigations, and Custody Practices.” This two-day conference included medical and interrogation ethics specialists, military and law enforcement interrogators, and psychologist researchers on the efficacy and harms of interrogation techniques. The consultation culminated in a Special Report that was presented at the 71st Session of the UN General Assembly.²⁴ My competence in the area of ethics as it relates to interrogation tactics has also been recognized by the APA itself – I was appointed to the APA Commission on Ethics Processes that was convened to “address the concerns identified in the [Hoffman] report.”²⁵

Further, I have had ample opportunity to become familiar with issues related to the potential conflict between professional ethical responsibilities and military culture during my participation in numerous conferences and Task Forces on medical ethics in national security and psychological operations. I developed this competence through consultation with numerous psychologists, interrogators, JAGs, military medical officers, and others who had worked in both military and CIA capacities.²⁶

The Complainants make the case that only psychologists trained in the “areas of interrogation, interrogation support, or operational psychology” are competent to render an opinion on the ethics of practices in these areas. Such an assertion, if accepted by the ethics office and committee, would mean that a psychologist could only offer opinions about the conduct or work of another psychologist with nearly identical training or professional background. This limitation of the right to speak about the practice of psychologists is more than

²³ “Ethics Abandoned: Medical Professionalism and Detainee Abuse in the War on Terror.” 2013 <http://imapny.org/wp-content/themes/imapny/File%20Library/Documents/IMAP-EthicsTextFinal2.pdf>.

²⁴ Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, August 5, 2016, available at http://antitorture.org/wp-content/uploads/2016/09/Report_A-71-298_English.pdf.

²⁵ Report to APA Board of Directors & Council of Representatives, August 2017, available at <https://www.apa.org/ethics/ethics-processes-report.pdf>.

²⁶ These include, but are not limited to, Brigadier General James P. Cullen, United States Army Reserve Judge Advocate General's Corps; LTC David Frakt, former JAG Attorney at Guantánamo; Albert J. Shimkus, Jr., formerly Commanding Officer, U.S. Naval Hospital, Guantánamo Bay; Brigadier General Stephen N. Xenakis, former Commanding General for the Southeast Army Regional Medical Command and consultant to the Joint Chiefs of Staff; John Kiriakou, former CIA Analyst, case officer and Senior investigator for the Senate Armed Services Committee; Mark Fallon, formerly Naval Criminal Investigative Service, Guantánamo, former Chief of Counterintelligence Operations - Europe, Africa, Middle East Division; Commander.

simply a stretch of the ethical standards beyond their intent; it would have a chilling effect on the ability and willingness of psychologists to speak out against questionable practices and in favor of sensible ones. Such an interpretation of the standards would require, for example, that every member of Council become an expert in every sub-field of psychology before voting on guidelines for that sub-field.²⁷

3. Ethical Standard 2.01(c).

Complainants also allege that I violated Ethical Standard 2.01(c). This rule requires that “Psychologists planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies new to them undertake relevant education, training, supervised experience, consultation, or study.” Similar to 2.01(a), this rule applies only to a psychologist planning to “provide services, teach, or conduct research” and, as stated above, I was not participating in any of those activities when I made the statements that allegedly violated the ethical rules.

Even if this preliminary investigation were to determine that my advocacy did involve any of these activities, it still does not constitute a violation of Ethical Standard 2.01(c) because the areas cited, such as PTSD, trauma, and ethics, as they relate to interrogation and detention practices, are not new to me, but reflect years of continuous study and professional consultation. I have training as a psychologist broadly since my undergraduate years at Princeton University, from which I graduated with a major in Psychology; and more specifically in areas of clinical psychology and research, since 1983, when I began graduate study and received three advanced degrees from Columbia University (as well as an internship at Yale University). I have developed an expertise (pursuing study, practice and teaching) in the area of trauma and PTSD since 1989 and I began specializing in the ethics of torture and the treatment of torture survivors in 2001. I come from a family where issues of torture and medical ethics were directly experienced (my mother was a prisoner at the Auschwitz concentration camp and had personal dealings with Dr. Joseph Mengele; my father was interrogated during the Second World War by the Soviet secret police (NKVD) and was imprisoned for a time in Siberia). As a result, I have undertaken continuous study of these issues since high school. I have published and co-authored several articles, white papers and task force reports on interrogation practices and medical and psychological ethics and continue to add to a personal library of thousands of documents related to the interrogation programs at the CIA, the DoD and around the world.

Although CE credit is not required of psychologists in New York State, nonetheless I attend conferences multiple times per year and frequently share speaking engagements with the world's experts in the field of medical ethics and national security. These would, if I needed them, supply the equivalent of the CE requirements for psychologists in other states.

4. Ethical Standard 2.03.

The Complainants also allege that I have breached Ethical Standard 2.03, Maintaining Competence, which requires that “psychologists undertake ongoing efforts to develop and

²⁷ It might be argued that such an interpretation of the standard would require every member of the ethics committee to become trained in operational psychology or be subject to ethical sanction should they weigh in on the matter at hand.

maintain their competence.” The standard does not specify in which areas a psychologist must maintain competence; however, the APA Ethics Code Commentary and Case Illustrations (“APA Commentary”) is instructive. It states, “maintenance of competence requires psychologists to remain current in their *present area of expertise*” (emphasis added).²⁸ Examples of falling below this standard include circumstances “when new skills and knowledge bases have become part of the standard of competence, or when professional guidelines and criteria have been endorsed by the profession.”²⁹ I have not breached this ethical rule; as demonstrated above, I have undertaken ongoing efforts to develop and maintain my competence in my present areas of expertise: trauma, human rights, ethics, and clinical practice.

Complainants assert that “there is no indication, whatsoever, that Dr. Reisner has undertaken any efforts to acquire competence in military culture, the field of military psychology or the practice of interrogation support” (Complaint, p 2). Aside from the fact that, as I have shown above, this allegation is false, there is a more profound problem with the case the Complainants are making. They assert that psychologists should be prohibited from offering public opinions about the behavior of other psychologists if that behavior takes place in areas of practice outside their training. But in this country, any individual has the right to speak out about the issues of this nation’s enhanced interrogation program, the role of health professionals in that program, and the apparent manipulation of a professional association’s policy in support of such a program. They need not take a test. They need not be certified as an expert on “military culture” to engage in public or professional advocacy on this or any other issue involving public welfare. Complainants have not been able to support their contention that, when it comes to public statements about issues of professional and political interest, professional psychologists should be the only ones among our citizenry barred from speaking out (unless they are the ones engaged in these activities, or have been trained in similar activities).

5. Ethical Standard 2.04

The Complainants allege that I violated Ethical Standard 2.04 but only cite this standard once in the Complaint, as follows: “Standard 2.04 further requires that ‘psychologists’ work is based upon established scientific and professional knowledge of the discipline.’ There is no indication, whatsoever, that Dr. Reisner has undertaken any efforts to acquire competence in military culture, the field of military psychology or the practice of interrogation support.”

There are three fundamental problems with these assertions. First, my public comments cannot be said to represent “psychologists’ work,” but rather represent the results of investigations undertaken as a well-educated citizen. My intellectual and professional training may have contributed to my ability to analyze information and draw reasonable conclusions from the evidence, but that would be true of any responsible, well-educated citizen. Second, as I have shown, I have undertaken great efforts to acquire competence in the areas where I offer my opinions (see above). And third, the Complainants seem to be making the case that only those who have been trained in a particular area may draw conclusions from data that pertains to that area. Aside from the obvious dangers of using ethical sanction in the service of permitting only similarly trained psychologists to weigh in on subjects of importance to all, this

²⁸ APA Commentary, p. 60.

²⁹ APA Commentary, p. 61.

argument asserts that, for our field, experts should be seen as arbiters of truth by virtue of their rarified training and authority, rather than by the persuasiveness of their arguments, evidence and reason.

Here lies the heart of the problem with the Complaint. The Complainants argue that only they have the authority to weigh in on these issues because “these are new areas to the field of psychology, with few psychologists having been formally trained” (p. 3). Since they are trained, their argument must be definitive. Conversely, because I am not trained in their field, my arguments “do not rely on scientific or established professional knowledge.” In other words, the Complainants would assert that experts speak truth, rather than expert opinion. And that to offer a different opinion than an expert is to speak knowing falsehoods. Thus, no matter how much research I have done, no matter how persuasive the evidence upon which I base my claims, no matter how broadly recognized my competence and expertise, if I persist in disagreeing with the experts, I am violating our ethics code and should be sanctioned.³⁰

The Complainants have offered examples of statements of mine that they believe “do not rely on scientific or established professional knowledge, either going beyond or misstating the data.” Below, under the heading **Statements That Complainants Challenge in this Complaint**, I will demonstrate that these statements are, in fact, drawn from a broad knowledge base and from multiple domains of expertise, including operational psychology and military culture, as well as from experts in the field of human rights, ethics and international law. I do not claim that because of these authorities my statements must be true; only that there is strong evidence for my opinions.

6. Ethical Standard 5.01(a) and (b) and 5.04.

The Complainants allege that I violated three provisions of Standard 5, Advertising and Other Public Statements. I will take each of these in turn, but want to begin, once again, by pointing out that it appears to stretch the purpose of Standard 5 to apply it to public statements on matters of public and professional concern. This Standard was originally intended to prevent misstatements in advertisements that could deceive the public about the qualifications and experience of a psychologist. In fact, many of the provisions of this Standard were edited in response to a Federal Trade Commission consent order that precluded the APA from restricting the public statements made by psychologists when advertising their services due to the anti-competitive nature of the restrictions.³¹ As I was not engaged in advertising nor do the Complainants allege that I misrepresented my services or credentials while making public statements on the issue of psychologists’ roles in interrogations, we can question whether the provisions of Standard 5 even apply.

³⁰ This basis for the Complaint – ‘We disagree with your conclusions, you must be wrong because we are the experts, since we have enlightened you and you continue to disagree with our conclusions you are willfully speaking falsehoods, therefore you must be sanctioned and silenced’ – appears to me, on its face, to be an abuse of the ethics process, as its aim is to silence opposing viewpoints rather than to uphold the principles underlying our ethics standards.

³¹ See In the Matter of American Psychological Association, Consent Order in Regard to Alleged Violation of Sec. 5 of the FTC Act, Docket C-3406. Decision, Dec. 16, 1992, available at https://www.ftc.gov/sites/default/files/documents/commission_decision_volumes/volume-115/ftc_volume_decision_115_january_-_december_1992pages_997-1077.pdf.

Ethical Standard 5.01(a), entitled Avoidance of False or Deceptive Statements, prohibits “*knowingly* mak[ing] public statements that are false, deceptive, or fraudulent concerning [my] research, practice, or other work activities or those of persons or organizations with which they are affiliated” (emphasis added).³²

The term “knowingly,” which was added to the Code of Ethics in 2002, is not defined; however, common usage indicates that it “denotes actual knowledge of the fact in question.”³³ So, if I understand the Complaint correctly, it is the Complainants’ allegation that I intentionally conveyed false or untrue information. The common meaning of the term “false” as used in Ethical Standard 5.01(a) is “intentionally untrue”; and the common meaning of “deceptive” is “intended to make someone believe something that is not true.”³⁴ So, just to be clear, a “fraudulent” statement is not simply a misrepresentation of the situation, but requires an intent to deceive.³⁵ As the APA’s *Commentary* clarifies, running afoul of Standard 5 indicates engaging “in subterfuge or intentional misrepresentation of fact.”³⁶

It is critically important to note that for a statement to be determined as false, it must refer to a fact. Expressions of opinion and interpretations of events cannot be regarded as descriptions of facts. Opinions are not subject to determinations of being true or untrue, but rather are subject to determinations of whether they are valid interpretations of the import or meaning of the fact. Such statements about how facts are to be understood or interpreted are subject to agreement, disagreement or clarification in the face of additional facts; however, they reflect opinions and cannot legitimately be described as “true” or “false.” Thus, for example, no matter how often or with what claim to authority the Complainants assert that there were no systematic abuses at Guantánamo after 2004, my reading of the data indicates otherwise. Even though my assertion of a different view than theirs is based on my understanding of the facts, it remains an opinion (albeit a strongly held one). It cannot be seen as a “false” statement, since it is an opinion, and certainly cannot be condemned as a “knowingly” false or “fraudulent” statement, even if I am fully aware that the Complainants have expressed contrary opinions. So, again, this Complaint, if accepted, would stretch the meaning of Standard 5 in ways that would have detrimental consequences to the profession. If strongly held and argued opinions are no longer to be hashed out in public forums or on the floor of Council, but rather via ethics Complaints, it will simply serve to intimidate the free and robust expression of opinion and analysis of important matters upon which the future of our profession depends.

³² Public statements include but are not limited to paid or unpaid advertising, product endorsements, grant applications, licensing applications, other credentialing applications, brochures, printed matter, directory listings, personal resumes or curricula vitae, or comments for use in media such as print or electronic transmission, statements in legal proceedings, lectures and public oral presentations, and published materials. Ethical Standard 5.01(a).

³³ This definition is from the New York State Unified Court System Rules of Professional Conduct, Part 1200 Rules of Professional Conduct, Rule 1.0.

³⁴ See Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/>.

³⁵ “‘Fraud’ or ‘fraudulent’ denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction or has a purpose to deceive, provided that it does not include conduct that, although characterized as fraudulent by statute or administrative rule, lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations that can be reasonably expected to induce detrimental reliance by another.” NYS Unified Court System, Rules of Professional Conduct, Rule 1.0(l), available at <http://www.nycourts.gov/rules/jointappellate/ny-rules-prof-conduct-1200.pdf>.

³⁶ APA *Commentary*, p. 166.

As I will demonstrate below, the statements that make up the yeoman's share of the Complaint are expressions of opinion and interpretation of the facts, and as such, ought not be subject to Standard 5. Where these do refer to specific facts, I can demonstrate the evidence. None fits the criteria of "*knowingly mak[ing]* public statements that are false, deceptive, or fraudulent."

Complainants also allege that I violated Ethical Standard 5.01(b), which requires that "[p]sychologists do not make false, deceptive, or fraudulent statements concerning (1) their training, experience, or competence; (2) their academic degrees; (3) their credentials; (4) their institutional or association affiliations; (5) their services; (6) the scientific or clinical basis for, or results or degree of success of, their services; (7) their fees; or (8) their publications or research findings." However, the APA Commentary explains that Standard 5.01(b) "describes expectations about public statements about credentials."³⁷ But, none of the statements that Complainants challenge here relate to my training, degrees, credentials, affiliations, fees or the promised success of my services, etc.

Complainants also assert that I violated Ethical Standard 5.04, Media Presentations, which states:

When psychologists provide public advice or comment via print, Internet, or other electronic transmission, they take precautions to ensure that statements (1) are based on their professional knowledge, training, or experience in accord with appropriate psychological literature and practice; (2) are otherwise consistent with this Ethics Code; and (3) do not indicate that a professional relationship has been established with the recipient.

The statements cited as violations of Standard 5.04 are virtually all expressions of opinion and interpretation of the facts. Where the statements are expressions of my professional expertise (e.g., the effects of torture; the ethics of interrogation techniques) they are based on my professional knowledge, training, experience, familiarity with the literature and consultation with experts. None of them involve psychological advice or commentary within the usual meaning of this provision; none indicate that a professional relationship has been established with the recipient. As such, none of these statements ought to be subject to sanction under Standard 5.

III. Statements That Complainants Challenge in this Complaint.

The following are specific statements that the Complainants allege demonstrate incompetent practice or the presentation of knowingly false statements. I will present the sources upon which I base my opinions and interpretations to show not only that these statements are supported by evidence but also that a fair reading of that evidence undermines any claim that these statements were made fraudulently.

a. Regarding Standards 2.01, 2.03, and 2.04

³⁷ APA Commentary, p. 166.

COMPLAINT: “[T]here is no evidence to be found, in either his formal training or professional experience, of Dr. Reisner having developed a competency in the areas of interrogation, interrogation support, military psychology [see footnote 11] or operational psychology.” (Complaint, p. 3)

[footnote 11] “As just one example, during a lecture given on May 3, 2017 at the Universidad de los Andes, Dr. Reisner stated ‘My fight has been a chess game with the military psychologists. Not all of them, because 95% of military psychologists simply treat our soldiers — for PTSD. I mean there are some questionable roles they play when a soldier has what is now called shell shock leaves the battlefield, our psychologists are trained to do an intervention so that they go back to the battle. It used to be that 80% of the soldiers when they left the battlefield with shell shock would go back after a month or two because they wanted to — now it is 93% go back. So that is a big question...but they work mostly in VA hospitals with veterans.’ The term “shell shock” was used in conjunction with psychiatric casualties during WW1. However, the military and VA, in their diagnoses, treatment and research, refer to these symptoms as PTSD in accordance with sequential volumes of the DSM, and have done so for decades. The source for Dr. Reisner’s assertion about the percentage of Soldiers returning to the battlefield with PTSD is unknown. Finally, military psychologists do not work for the Veteran’s Administration, which is an entity completely separate from the DOD.” (Complaint, p. 3)

RESPONSE: The Complainants first example (footnote 11) that my statements do not reflect appropriate “education, training, supervised experience, consultation, study or professional experience recognized by the discipline necessary to conduct their work competently” comes from a lecture I gave to a non-professional, Spanish speaking audience, via simultaneous translation in Bogota, Columbia. The Complainants question my competence because of three statements I made. First, I used the phrase “shell shock” instead of PTSD. Second, I made the claim that in earlier wars, 80% of soldiers who complained of battle fatigue returned to the battlefield after treatment and now it’s 93%. They assert that, since they do not know what my evidence is, there must not be any. And third, I stated that most military psychologists work for the VA, when the military and the VA are actually separate entities. I will respond to each in turn:

- (1) As indicated in the Standard cited in the Complaint, I used the term “PTSD” in the beginning of my statement. However, as I was specifically trying to explain to a non-English, non-professional audience about the role of psychologists in treating soldiers’ reaction to battle stress (rather than general PTSD, which may have many different causes and contexts), I simply used a vernacular term.³⁸ My education, study and training on trauma, ‘shell shock,’ PTSD, burnout and resilience is rather extensive and has been recognized by New York University, where I taught and supervised in the International Trauma Studies Program for ten years; at the United Nations, where I have trained UN counselors and clinicians for 8 years; at the International Organization of Migrations, for which I consulted on a multi-year “Psychosocial and Trauma Response” project in Kosovo; the International Criminal Court, and numerous other international aid

³⁸ According to Wikipedia, “The term *shell shock* is still used by the Veterans Administration to describe certain parts of PTSD but mostly it has entered into popular imagination and memory, and is often identified as the signature injury of [World War I].” https://en.wikipedia.org/wiki/Shell_shock.

and social justice organizations (including in Iraq, Turkey, Haiti, Ethiopia, Tanzania and for the French Department of Health).

- (2) The statistic on the percentage of soldiers returning to the battlefield comes from the film, *MIND ZONE: Therapists Behind the Front Lines*, directed by psychologist Jan Haaken. Two military psychologists were interviewed in the film. They reported return to duty rates of 94-97%. They themselves compare these rates with those reported in a U.S. War Department Training Film, "Combat Exhaustion," in 1945, when the return to duty rate was 70-80%. Because of my expertise in PTSD in war, political violence and terrorism, I was also interviewed for the film.³⁹
- (3) The comment on military psychologists working mostly for the VA was a simple way of communicating data to a non-English speaking audience about the fact that so many psychologists in the US work in military-related activities, either with active-duty soldiers or with veterans. I first learned this statistic from Stephen Behnke, the former director of the Ethics Office, who wrote, in his introduction to the second draft of the PENS Task Force Report, "The United States Department of Defense is the largest single employer of psychologists in the country." This statement is only valid if one includes the VA system, which is, in fact, the biggest employer of psychologists. APA tends to put military and VA psychologists together in a manner similar to what I was trying to communicate. Thus, for example, APA has a director within the practice directorate for "veterans and military health policy," even though these are separate entities.

COMPLAINT: "Nowhere is Dr. Reisner's propensity to work outside the limits of his competence more apparent than in his description of military psychologists, principally those engaged as BSCs. As just one example, he repeatedly states that psychologists assigned as BSCs "oversaw" and "supervised" interrogations. This characterization of their work is false." (Complaint, p. 4)

RESPONSE: There are many sources that describe what BSCs actually did at Guantánamo in a manner that is similar to the description I give. One such source is Col. Larry James, who replaced Maj. John Leso at Guantánamo as BSCT #1, in charge of the BSC Team. James also served as Chief Psychologist for the Guantánamo Joint Intelligence Group, and was later sent by Maj. Gen. Geoffrey Miller to establish a BSC Team at Abu Ghraib. Col. James' described his recommendations for role of the BSC at Abu Ghraib as based on his experience at Guantánamo. He wrote:

[Recommendation] 4. Provide 100 percent supervision at all times to the soldiers overseeing the prisoner interviews. I would advise the Intel leadership that if a psychologist was not present, we could not do interrogations – plain and simple.⁴⁰

³⁹ The Complainants assert that "the source for Dr. Reisner's assertion for the percentage of Soldiers returning to the battlefield is unknown," as if that indicates that it doesn't exist. It is just one example of how informal discussion ought to have resolved these concerns; instead they indicate repeatedly that because they did not find evidence of competency, it must not exist. It is an example of why 'absence of evidence' cannot be viewed as 'evidence of absence'. (Complaint, p. 3)

⁴⁰ Larry James, *Fixing Hell: An Army Psychologist Confronts Abu Ghraib*, Grand Central Publishing, 2008. p. 97.

The difference in the Complainants' perspective and my perspective may derive from the fact that whereas I describe events as they are reported by eye-witnesses on the ground and investigators with access to multiple sources of information, the Complainants cite the descriptions found in policy standards:

Military psychologists serving on BSCTs provide psychological expertise in 1) monitoring, consultation, and feedback regarding the whole of the detention environment in order to assist the command in ensuring the humane treatment of detainees, prevention of abuse and safety of US personnel. And 2) assessing the individual detainee and his environment and providing recommendations to improve the effectiveness of intelligence interrogations, detainee debriefings and detention facility operations. (Complaint, p. 4)⁴¹

Thus the Complainants and I at times are drawing from different data sets. For example, in a report by the International Committee of the Red Cross (ICRC), following a site visit at Guantánamo, the interrogation processes were described as “an intentional system of cruel, unusual and degrading treatment and a form of torture,” and BSCT support for these interrogations was seen as a “flagrant violation of medical ethics.”⁴² Interrogators on the ground at Guantánamo support this version: “The former interrogators said the military doctors' role was to advise them and their fellow interrogators on ways of increasing psychological duress on detainees, sometimes by exploiting their fears...”⁴³ However, an operational psychologist, also present at Guantánamo, presents a rather different version of the events: “The ICRC... concocted the story of medical torture.”⁴⁴

I would argue that, given the breadth of sources that support my rendering of the story (see below for additional documentation, including declassified court documents, excerpts from the DOD-vetted memoirs from those who were present, as well as contemporaneous CIA emails and other sources), my view, that BSCs “oversaw” and “supervised” interrogations and detention conditions, is justified by the data.

Additional documentation from the field, describing the activities of two BSCT psychologists, lends further support to such a description of BSCT roles:

1. Maj. John Leso (BSCT #1).

⁴¹ In actuality, even in the official BSCT policy documents, the description of the BSCT role in detention is not as sanguine as the Complainants represent. This declassified document shows that the BSC influence over every aspect of the detainee environment was substantial: “Environmental Setting Consultation. BSCs, with their expertise in human behavior, can act as consultants to advise detention facility guards, military police, interrogators, military intelligence personnel, and the command on aspects of the environment that will assist in all interrogation and detention operations. The detention environment includes physical aspects of the facilities as well as social and behavioral aspects of detained population. The physical environment includes holding cells, hallways, toilet and bathing facilities, vehicles, and interrogation rooms...The goal is to ensure that the environment maximizes effective detention and interrogation/debriefing operations, while maintaining the safety of all personnel, to include detainees. BSCs can assist in ensuring that everything that a detainee sees, hears, and experiences is a part of the overall interrogation plan.” BSC Policy 2008 (revised 14 April 09).

http://www.ethicalpsychology.org/materials/U.S_Army_Behavioral_Science_Consultation_Team_Policy_2008.pdf.

⁴² http://www.nytimes.com/2004/11/30/politics/red-cross-finds-detainee-abuse-in-guantanamo.html?_r=0.

⁴³ <http://query.nytimes.com/gst/fullpage.html?res=9400E2DA1F3BF937A15755C0A9639C8B63&pagewanted=all>.

⁴⁴ Larry James, *Fixing Hell*. p. 162.

It must be remembered that the torture techniques at Guantánamo were designed by John Leso and a psychiatrist named Maj. Paul Burney (see below) for use on the first high value detainee to be interrogated at Guantanamo: Mohammed Al-Qahtani, after they returned from a training in such techniques at Ft. Bragg. The log of al Qahtani's interrogation was leaked to the press, from which it is known that the Leso directly participated in the first interrogation session: "Control puts detainee in swivel chair at MAJ L[eso]'s ⁴⁵ suggestion to keep him awake and stop him from fixing his eyes on one spot in booth."

Mark Fallon, deputy commander of the Criminal Investigation Task Force involved in counterterrorism investigations at Guantánamo (and elsewhere) and 27-year Special Agent with the Navy Criminal Investigation Service (NCIS), received the log on a daily basis. In his book, *Unjustifiable Means*, Fallon fills in the data regarding the role of the BSCTs in interrogation: "Medical professionals—including [Leso] and Paul Burney — were direct participants in this treatment. Begrudgingly at times, they had helped develop, recommend, and implement practices that were cruel, inhumane, and degrading. [Leso] was actually in the room giving interrogators advice. He would tell interrogators to spin al-Qahtani around in a chair so he could not focus his eyes on an object. He would also assess al-Qahtani to determine if his abuse could continue."⁴⁶

Fallon also describes Leso and Burney's input into detention conditions, which simply contradicts the sanguine description of the Complainants: "The doctors also recommended implementing a "controlled chaos" plan for the general population within the prison camp. Resistant detainees should be limited to four hours of sleep a day and deprived of "comfort items," such as sheets, blankets, mattresses, washcloths, toilet paper, Korans, and other religious items. Fans and generators could be used to create white noise. "All aspects of the [detention] environment," the doctors recommended, "should enhance capture shock, dislocate expectations, foster dependence, and support exploitation to the fullest extent possible."⁴⁷

2. Lt. Col. Diane Zierhoffer.

Further evidence, revealed in court papers, according to reports in the press,⁴⁸ demonstrates the extent that BSCTs influenced the treatment of detainees, beyond the "support" role the Complainants claim.

An adolescent prisoner, Mohammed Jawad, was observed speaking to a poster on the wall of his Guantánamo cell and crying for his parents, according to court documents as reported in the press. A concerned interrogator called in the BSCT psychologist, subsequently identified as Lt. Col. Diane Zierhoffer⁴⁹. Her response was to encourage

⁴⁵ Although Leso's name has been redacted in the log, in Fallon memoir and in the final report of the Senate Armed Services Committee, it was published in an earlier version of the SASC report, and has been verified by numerous sources, including in Larry James, *Fixing Hell*.

⁴⁶ Mark Fallon, *Unjustifiable Means*, Regan Arts, 20117. p. 104.

⁴⁷ Ibid. pp. 85-86.

⁴⁸ <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/testimonies/testimonies-of-military-psychologists-index/the-biscuit-breaker>.

⁴⁹ Mark Fallon, in his book, "Unjustifiable Means" provides more detail regarding this episode and provides the name of the BSCT psychologist.

the interrogators to dial up the emotional pressure on the youth. According to court papers, she told the interrogator:

He appears to be rather frightened, and it looks as if he could break easily if he were isolated from his support network and made to rely solely on the interrogator. Make him as uncomfortable as possible. Work him as hard as possible.

The BSCT psychologist recommended that the boy be placed in social isolation and that interrogators emphasize to him that his family appeared to have forgotten him. Not long afterwards the implementation of this program, the boy attempted suicide.

Each of these cases, including descriptions from those present at Guantánamo reveal BSCT practices that are closer to Larry James' description of "supervision" than to the Complainants' description of "support."⁵⁰

In addition, my interpretation of the reports of BSCT behavior concords with many others, including APA, which issued a statement that the organization was "deeply concerned about the alleged involvement of a psychologist in an abusive interrogation of a Guantanamo detainee."⁵¹

COMPLAINT: "His lack of professional competence also extends to a mischaracterization of military regulations...Dr. Reisner incorrectly states that Appendix 'M' [of the Army Field Manual] permits solitary confinement, sleep deprivation, forms of sensory deprivation, and environmental manipulations." (Complaint, p. 5)

RESPONSE: My claims about Appendix M are informed by and consistent with views of the United Nations Committee Against Torture ("the [U.S.] should abolish the provision contained in the physical deprivation technique which...amounts to authorizing sleep deprivation – a form of ill-treatment...and should abolish sensory deprivation...which...with high probability will create a state of psychosis in the detainee")⁵² as well as those of numerous human rights organizations, including Amnesty International (which described it as "sanctioning cruelty")⁵³ and Human Rights First ("abusive techniques authorized by Appendix M include extreme isolation and sleep manipulation")⁵⁴. My view is also reflected in a 2010 letter to Defense Secretary Gates condemning Appendix 'M', and signed by 14 senior military, CIA, and FBI intelligence officers and interrogators ("The use of sensory deprivation techniques, extreme isolation and stress positions... were clearly banned in previous versions of the manual and they ought to continue to be clearly off limits")⁵⁵.

COMPLAINT: "On November 25, 2015, legislation sponsored by Senators McCain, Feinstein, Reed and Collins was signed into Federal law, strengthening the prohibition on torture and

⁵⁰ JAG attorney for Jawad at Guantánamo, LTC David Frakt, a 23-year Air Force veteran, corroborated this description of the BSCT's role as supervisory and directive, at least in the case of Jawad. Personal communication.

⁵¹ "Statement of the American Psychological Association." American Psychological Association, August 16, 2008. <http://www.apa.org/news/press/releases/2008/08/apa-statement.aspx>.

⁵² <https://www.state.gov/documents/organization/234772.pdf>.

⁵³ <http://www.amnesty.org.au/news/comments/20151/>.

⁵⁴ https://www.humanrightsfirst.org/wp-content/uploads/pdf/Army_Field_Manual.pdf.

⁵⁵ https://web.archive.org/web/20120315072816/http://harpers.org/media/image/blogs/misc/letter_to_sec_gates_from_14interrogators_and_intelligence_officials.pdf.

making the Army's Interrogation Manual, of which Appendix 'M' is a component, the standard for all U.S. government interrogations. On June 9, 2015, seven separate human rights organizations issued a joint communication praising this proposed legislation. Dr. Reisner, on February 8, 2016 posted a strongly supportive public statement on Facebook, praising Senator McCain, including a link to a statement made by the Senator which, itself, included a link to an affirmative statement regarding the Army Field Manual." (Complaint, footnote 22)

RESPONSE: The Complainants assert that my support for the McCain-Feinstein amendment to the National Defense Authorization Act (NDAA) for FY 2016, which mandated that all government national security interrogations must adhere to the AFM, is evidence that my claims that several major human rights organizations opposed Appendix M is false. While it is the case that I, as well as these organizations, along with APA, supported passage of McCain-Feinstein, as an improvement to prior law, the Complainants nonetheless ignore statements by numerous human rights organizations that clearly and unequivocally condemn Appendix M, *including many of those that supported McCain-Feinstein*. APA's Council repudiated Appendix M long after the passage of McCain-Feinstein, stating officially that, in the eyes of the Association, cruel, inhuman, or degrading treatment "includes interrogation techniques related to 'separation,' e.g., solitary confinement and sleep deprivation, as authorized in Appendix M of the Army Field Manual."⁵⁶

b. Regarding Standards 5.01 and 5.04

COMPLAINT: "There is no evidence that the Bush administration needed, wanted or sought "protection" for its interrogation program from the APA. None of the OLC memorandums make any reference to either the APA or the APA's Code of Conduct. In addition, the Hoffman report found no evidence that APA was motivated at the time to create the PENS Task Force in order to endorse or accommodate guidance from the Department of Justice's OLC." (Complaint, pp. 7-8)

RESPONSE: I never asserted that the Bush administration sought "protection" from the APA. What I did assert was an informed opinion based on an interpretation of multifaceted historical data. It is derived from my (and others') understanding of the complex ramifications of the legal rationale offered by the Department of Justice's Office of Legal Counsel ("OLC") in the so-called "torture memos." The OLC memos provide an elaborate rationale to provide protection from legal sanction for those involved in these interrogations and for those who ordered the interrogations. The memos make the case that those involved in the interrogations could be indemnified from legal sanction, so long as a psychologist and physician were present to certify that the techniques used were not likely to cause "severe" or "lasting" harm. According to the Memorandum from Jay C. Bybee to Alberto Gonzales,

A defendant could show that he acted in good faith by taking such steps as surveying professional literature, consulting with experts, or reviewing evidence gained from past experience...Because the presence of good faith would negate the specific intent element of torture, it is a complete defense to such a charge.⁵⁷

⁵⁶ <https://www.apa.org/independent-review/psychologists-interrogation.pdf>. It is noteworthy that Dr. Soldz and I have made this point to the Complainants in our response to the TF19 report.

⁵⁷ Memorandum for Alberto R. Gonzales Counsel to the President Re: Standards of Conduct for Interrogation under 18 U.S.C. §§2340-2340A, p. 1. <http://www.tomjoan.org/bybeememo.htm> p. 8.

We believe that if an interrogator acts with the honest belief that the interrogation methods used on a particular detainee do not present a serious risk to the detainee's health or safety, he will not have acted with deliberate indifference. An honest belief might be demonstrated by due diligence as to the effects of a particular interrogation technique combined with an assessment of the prisoner's psychological health.⁵⁸

As a result of these opinions (and identical opinions regarding the interrogation program at Guantánamo⁵⁹), it was required that qualified medical staff must be present or available for any enhanced interrogation.^{60 61} At Guantánamo, this responsibility fell to the BSCT.

For psychologists, however, the law itself was not sufficient protection, as medical professionals are vulnerable as well to ethical sanction. According to documents, the issue of possible ethical sanction had been of concern to psychologists at both the CIA and the DoD even prior to the release of the ICRC report condemning their roles as constituting violations of medical ethics (see below). It likely became an even more pressing issue when the American Medical Association and the American Psychiatric Association announced that participating in BSCT activity violated their profession's respective ethics codes.

A reading of the proceedings of the PENS task force⁶² reveals the pressure those connected to the Defense Department felt to produce a document quickly and report the results to the Secretary of Defense and the Army Surgeon General. Soon after, in direct response to the PENS Task Force Report, the military announced that they would "try to use only psychologists" in these roles.⁶³ Thus, it is a reasonable interpretation of the data that there was pressure at the time of PENS to demonstrate that, unlike other medical professions, the APA's ethics code could not be interpreted to prohibit such activities.⁶⁴

COMPLAINT: "The assertion that psychologists in the CIA 'needed' cover from 'a higher authority' is also completely without merit. During the interview with Mr. Hoffman, James Mitchell was reported to have stated that the CIA was not as concerned with training and ethics because it did not face the same set of circumstances as DoD which oversaw many young psychologists early in their careers. Dr. Mitchell was also quoted to have said that '*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' (emphasis added) (Hoffman report, p. 144)." (Complaint, p. 8)

⁵⁸ Ibid, p. 65.

⁵⁹ https://www.aclu.org/sites/default/files/pdfs/safefree/yoo_army_torture_memo.pdf

⁶⁰ <http://nsarchive2.gwu.edu/NSAEBB/NSAEBB127/03.04.16.pdf>

⁶¹ http://hrlibrary.umn.edu/OathBetrayed/olc_Bradbury.pdf

⁶² <https://www.documentcloud.org/documents/1445-e-mails-from-the-american-psychological-associations-task-force-on-ethics-and-national-security#p=1>

⁶³ <http://www.nytimes.com/2006/06/07/washington/07detain.html?scp=4&sq=neil%20lewis%20biscuit&st=cse>

⁶⁴ The argument that the Hoffman report "found no evidence that APA was motivated at the time to create the PENS Task Force in order to endorse or accommodate guidance from the Department of Justice" is problematic on two grounds. First, the Complainants criticize the conclusions drawn by the Independent Review throughout the Complaint, so it is difficult to understand their citing Hoffman's conclusions in this instance as definitive. Second, the IR states clearly the limit of its evidence base, asserting that in many cases states, the investigators did not have access to the material that would support or refute my findings (see, for example, discussion of the relationship between the CIA and the APA below). In other words, in Hoffman's report, too, the absence of evidence cannot be construed as evidence of absence.

RESPONSE: Evidence supports the idea that the CIA leadership was indeed concerned about whether these “enhanced interrogation techniques” ran afoul of the ethics code. For example, in 2002, the chief of CIA medical services filed a Complaint against Mitchell’s involvement in the interrogation program on ethical grounds.⁶⁵ In response, the Chief of the CIA Counterterrorism Center requested a report from CIA contractor and APA member, Dr. Melvin Gravitz. Gravitz determined that the APA ethics code permitted Mitchell’s activities and “As a result of Gravitz’s opinion...Mitchell was able to continue his participation in the interrogation program.”⁶⁶

COMPLAINT: “Dr. Reisner continued in his mischaracterization of military psychologists when, during an interview on CBC radio in February 2016, he stated ‘What happened was that two psychologists in the CIA and the number of psychologists in the Department of Defense created an entire program aimed at torturing and abusing detainees in the hopes of getting information out of them.’ The public record makes clear that two psychologists contracted by the CIA were involved with developing and applying enhanced interrogation techniques. However, the Senate Armed Service Committee (SASC) Report 27 never states that a military psychologist ‘created’ the enhanced interrogation program.” (Complaint, p. 8)

RESPONSE: The Complaint acknowledges the role of Mitchell and Jessen in creating the CIA program; the remaining issue is that the Complainants and I appear to draw quite different conclusions from the Senate Armed Services Committee (SASC) Report. Here are excerpts from the SASC Report that I drew from to inform my opinion on these matters:

According to MAJ Burney, he and [Leso] wrote a memo of suggested detention and interrogation policies in the course of an evening. MAJ Burney told the Committee that some of the interrogation approaches identified in the memo came from their JPRA training in Fort Bragg and other approaches were simply made up by the BSCT. [Leso], the BSCT psychologist, also told the Committee that the BSCT used information from the JPRA training at Fort Bragg to draft the memo...

The October 2, 2002 memo proposed three categories of interrogation techniques... Category I techniques included incentives and "mildly adverse approaches" such as telling a detainee that he was going to be at GTMO forever unless he cooperated....

Category II techniques were designed for 'high priority' detainees, ... [and] included stress positions; the use of isolation for up to 30 days (with the possibility of additional 30 day periods, if authorized by the Chief Interrogator); depriving a detainee of food for up to 12 hours (or as long as the interrogator goes without food during an interrogation); the use of back-to-back 20 hour interrogations once per week; removal of all comfort items including religious items; forced grooming; handcuffing a detainee; and placing a hood on a detainee during questioning or movement.

The memo reserved Category III techniques "ONLY for detainees that have evidenced advanced resistance and are suspected of having significant information pertinent to national security. " Category III techniques included the daily use of 20 hour interrogations; the use of strict isolation without the right of visitation by treating medical

⁶⁵ Prados, John. The Ghosts of Langley: Into the CIA's Heart of Darkness.

⁶⁶ Independent review, p. 255n.

professionals or the International Committee of the Red Cross (ICRC); the use of food restriction for 24 hours once a week; the use of scenarios designed to convince the detainee he might experience a painful or fatal outcome; non-injurious physical consequences; removal of clothing; and exposure to cold weather or water until such time as the detainee began to shiver.⁶⁷

My interpretation of the meaning of SASC report corresponds with conclusions drawn by at least two eyewitnesses to these proceedings:

With Morgan Banks's assistance, [Leso] and Burney were planning to begin "psychological exploitation" of al-Qahtani. And they were doing so with techniques that looked suspiciously like Mitchell and Jessen's EITs. In a sense, they were serving a similar role as Mitchell and Jessen, but instead of providing medical cover for torture in the CIA, they were doing so in the DOD. The programs they were developing also owed a debt to Martin Seligman's concept of learned helplessness. Of course, Seligman had observed learned helplessness in dogs that had received a constant battery of electric shocks. [Leso] and Burney were designing treatment for human beings.⁶⁸

COMPLAINT: "A frequent focus of Dr. Reisner's public statements has been his allegations that the APA Ethics Code was intentionally altered to, at the least, enable military psychologists to participate in abusive interrogations with detainees." (Complaint, pp. 8-9)

RESPONSE: Complainants cite four interviews, in which I discussed changes to APA's ethics policy and code. None of those interviews supports the Complainants' allegation. In my publications and public statements (and almost all of my research does not reflect my work alone, but was part of one or another investigative team), I have always attempted to be clear about two essential distinctions: (1) the differences between changes to the ethics code which had the *effect* of supporting interrogation and research abuse versus changes which had the *aim* of supporting abuse; and (2) the difference between the actual ethics *code* and the ethics *policy* which purported to be an applicable interpretation of the code.

The Complainants quote my words out of context with no regard to my efforts at maintaining these distinctions. Thus, many of their citations derive from interviews following the publication of "All the President's Psychologists" by the New York Times⁶⁹ in April 2015, and must be seen as references to the case made in that article:

It is important to note that previous changes to the APA Ethics Code appear to have helped set the stage for psychologists to conduct research on a vulnerable population (e.g. detainees) without their consent. While such conduct has been deemed unethical for health professionals since Nuremberg, the APA ethics code had been revised in 2002 in ways that weakened key research protections established by the Nuremberg

⁶⁷ Executive Summary, Senate Armed Services Committee Inquiry Into the Treatment of Detainees in US Custody (SASC report), p. xiii, available at <http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf>. pp. 50-52.

⁶⁸ Fallon, *Unjustifiable Means*, p. 65. Fallon goes on to report that when Mike Gelles, chief psychologist for the Naval Criminal Investigative Service at Guantánamo, observed these developments, he remarked, "I can't believe these psychologists are getting directly involved in interrogations...They are going to lose their licenses" (p. 66).

⁶⁹ <https://www.nytimes.com/interactive/2015/05/01/us/document-report.html>.

Code under customary international law and the Common Rule under US Federal Law. One such change, apparently drafted into the code after 9/11, determined that the requirement to obtain informed consent could be dispensed with when “permitted by law or federal or institutional regulations” (Ethical Standard 8.05: American Psychological Association, 2002b).⁷⁰

Other changes, already being considered prior to 9/11 but made APA policy in August 2002, included permitting psychologists to more readily employ deception, restricting only “research that is reasonably expected to cause physical pain or severe emotional distress” (Ethical Standard 8.07), and most strikingly, to forego their ethical obligations altogether, if these “conflict with law, regulations, or other governing legal authority” (Ethical Standard 1.02).

The comments made during those interviews must be viewed in the context of the data provided in the article that formed the basis of the interviews. That case was, briefly, that the PENS Task Force consisted of a hand-picked group of psychologists the majority of whom had direct connections to the interrogations program; and their aim was to create an ethics *policy* that (a) permitted operational psychologists to participate in the then-current Bush Administration interrogation processes and (b) ensured that no APA *policy* contradicted the policies in place. The evidence for these statements can be found in that article.⁷¹ In brief, then, I provided evidence for each of my statements. There may be disagreement about the interpretation of the evidence or its validity, but that is very different from the Complainants’ charge that I knowingly and purposely made deceptive statements.

COMPLAINT: “While the falsity of his statements with regard to the interactions between APA, DoD, and CIA made prior to the release of the Hoffman report may be attributed to Dr. Reisner’s lack of competence in understanding governmental structure, he has continued to make similar statements after gaining access to that report, which expressly stated that there was no evidence of collusion with the CIA.”

RESPONSE: I made no claim that DoD and CIA had a structural relationship with the APA; I did make the case that psychologists from both CIA and DOD had an express interest in APA’s ethics code and policy and how it related to their interrogation programs, and that these psychologists worked together to advance these interests with APA. Thus, even in the statement that Complainants cite in support of this claim, I specified that “*military and CIA psychologists ... came together*” (Complaint, p. 10), not the APA and the CIA or DOD. Support for my contention that psychologists from these agencies worked together can be found in

⁷⁰ Morgan Banks, in his instructions for BSCTs at Guantánamo referenced this changed standard when he wrote, “[I]t is not appropriate, given the functions of the psychologist in this role and the Department of Defense, to inform the detainee that he is being assessed by a psychologist. In fact, it would increase the likelihood of misunderstanding by the detainee of the psychologist’s role.” <https://www.scribd.com/document/60959907/U-S-Army-Behavioral-Science-Consultation-Team-Policy-2008>.

⁷¹ The Independent Review drew similar conclusions: “The evidence establishes that the composition of the PENS Task Force, the key ethical statements in the task force report, and many related APA public statements and policy positions were the result of close and confidential collaboration with certain Defense Department officials before, during, and after the task force met... Their joint objective was to, at a minimum, create APA ethics guidelines that went no farther than—and were in fact virtually identical to—the internal guidelines that were already in place at DoD or that the key DoD officials wanted to put in place. Thus, their joint objective was to create APA ethics guidelines that placed no significant additional constraints on DoD interrogation practices.” Independent Review, p. 10.

contemporaneous emails that show that one year prior to the PENS Task Force plans had been made for a private meeting with representatives from both CIA and DoD (including 'C', one of the Complainants) to address relevant issues of APA ethics and national security interrogations. As we wrote in our investigative report:

On June 3, 2004, one year before the publication of the PENS Task Force report and roughly three months after the Abu Ghraib scandal was made public, Geoff Mumford, APA Director of Science Policy, sent a "save-the-date" email notice, announcing a confidential meeting between senior APA staff and senior national security psychologists and behavioral research personnel, to be held on July 20, 2004⁷². The purpose was to discuss the role of psychological ethics in national security work.

Recipients of Mumford's June 3 "save-the-date" email included... Dr. Kirk Hubbard [Chief of Operations, CIA Operational Assessment Division]; Dr. Charles "Andy" Morgan III, MD. [research psychiatrist at Yale University Medical School, and CIA researcher credited with major findings on the effect of SERE (Survival, Evasion, Resistance, Escape) techniques on stress hormones]; Dr. Susan Brandon [White House Office of Science and Technology Policy psychologist]; Dr. Kirk Kennedy, [DoD's Counterintelligence Field Activity (CIFA) and formerly with the CIA Counterterrorism Center; and FBI psychologist Dr. Steve Band, who was Chief of the FBI's Behavioral Science Unit and supported counterintelligence operations as Senior Consulting Psychologist to the DoD Behavioral Science Directorate.

Four top APA officials were copied on the "save-the-date": Dr. Michael Honaker, Deputy Chief CEO; Dr. Stephen Behnke, Director of the Ethics Office; Dr. Steven Breckler, then Director of the Science Directorate; and Ms. Rhea Farberman, Executive Director for Public and Member Communications.⁷³

The meeting took place on July 20, 2004. Hubbard sent an email stating that Kennedy would be unable to participate because of a conflicting conference that Kennedy and "other DoD shrinks" were required to attend (Email 11). Hubbard proposed that he and Kennedy "consult on the issues that concern CIA and DoD" in advance, so that Hubbard could "represent both of us on July 20. I'll then brief him on what happened so he will be prepared to meet with us on the second meeting."⁷⁴

Soon after Mumford's "save-the-date" was sent, APA's Ethics Director, Stephen Behnke sent an official invitation to potential participants, which included both CIA and DoD psychologists:

The Ethics Office and Science Directorate would like to take a forward looking, positive approach, in which we convey a sensitivity to and appreciation of the important work mental health professionals are doing in the national security arena, and in a supportive way offer our assistance in helping them navigate through thorny ethical dilemmas, if they feel that need (informal conversations with people in the field suggest the need is there)...

I would like to emphasize that we will not advertise the meeting other than this letter to

⁷² <https://www.nytimes.com/interactive/2015/05/01/us/document-report.html>. Pp. 17-18 See, in addition, Appendix II, Email 2.

⁷³ Ibid. See, in addition, Appendix II, email 4.

⁷⁴ Ibid. Appendix II, email 11.

the individual invitees that we will not publish or otherwise make public the names of attendees or the substance of our discussions...⁷⁵

The PENS Task Force meeting took place a year after this private meeting. At its conclusion, Dr. Mumford sent the Task Force report to Dr. Hubbard, who had retired from the CIA at that point. Mumford wrote:

Belated thanks for your note and update...sounds like your settling in nicely... I thought you and many of those copied here would be interested to know that APA grabbed the bull by the horns and released this Task Force Report today:
<http://www.apa.org/releases/pens0705.html>

I also wanted to semipublicly acknowledge your personal contribution as well as those of K2 [Kirk Kennedy] and Andy Morgan in getting this effort off the ground over a year ago. Your views were well represented by very carefully selected Task Force members...⁷⁶

Copied on the email were psychologists with employment histories in intelligence capacities at the DoD and the CIA, including Complainant Kirk Kennedy.

As for the Complainants' assertion that the Hoffman report, "expressly stated that there was no evidence of collusion with the CIA," I refer to the Hoffman report:

We found that current and former APA officials had very substantial interactions with the CIA in the 2001 to 2004 time period, including on topics relating to interrogations, and were motivated to curry favor with the CIA in a similar fashion to DoD. But we did not find evidence that the relationship with the CIA contributed to the outcome of the PENS Task Force, apparently because APA's key CIA contact for the APA retired in 2005 before the PENS Task Force met...⁷⁷

The "key contact" to which Hoffman refers, was Dr. Hubbard who had retired from the CIA. At the time of these emails, Hubbard had indeed retired, and, as he had previously reported to Dr. Mumford, was then working for Mitchell Jessen & Associates, the firm with the CIA contract to implement the CIA's Enhanced Interrogation Program. So, to be clear, Hoffman found that APA worked to curry favor with the CIA prior to PENS, particularly via one "key CIA contact," Kirk Hubbard, with whom conferences were arranged and at least one private, high-level meeting to navigate "thorny ethical issues" was held. Not only were Mitchell and Jessen present at a number of these events⁷⁸, but Hubbard did not hide the fact from his contact at APA that when

⁷⁵ Ibid. Appendix II, email 3.

⁷⁶ Ibid. Appendix II, email 1.

⁷⁷ Independent review, p.10.

⁷⁸ According to a recently released CIA email, written by a CIA psychologist, in June 2003, Mitchell and Jessen sought the opportunity to meet with senior psychologist/academics and requested funding for a trip to accomplish this goal: "Without specifying what they are doing for us, J&B want to elicit info on latest developments [redacted] efforts in the psychology/interrogation field. [Redacted] approve a trip by J&B to meet [redacted] to accomplish this task. All worthy goals - hope they enjoy their trip(s) [redacted] Just hope our vision of the interrogation process doesn't come back to haunt us." Indeed, Hubbard worked to set up just such a workshop, paid for by the CIA and co-organized by APA and Rand Corporation in August 2003, entitled "The 'Science of Deception: Integration of Practice and Theory.'" The conference explored questions relevant to the enhanced interrogation program, including, "How do we find out if the informant has knowledge of which s/he is not aware?" "What pharmacological agents are known to affect apparent truth-telling behavior?" "What are the effects of sensory overloads on the maintenance of deceptive

the two of them were unavailable, it was because they were “doing special things to special people in special places.”⁷⁹

COMPLAINT: “Dr. Reisner consistently mistakes the purpose of the PENS Task Force in order to support the contention that the military psychologist members of the Task Force, as well as Dr. Newman, were serving their personal interests...The charge of the Task Force was *not* to make a determination as to whether any psychologist had behaved unethically – such determination is solely the responsibility of the Ethics Committee.” (Complaint, p. 12)

RESPONSE: The Complainants completely misunderstand the case that Stephen Soldz and I, and many others (including Hoffman), have made concerning the clear conflict of interest in placing psychologists in charge of determining how and whether ethics policy affects their own (or their spouse's) actions. This is from our article:

It is a *prima facie* conflict of interest for an active duty military psychologist whose career, reputation, and income derive from and depend on their role in national security interrogations and interrogation policy to serve on a task force charged with independently assessing ethics and ethical policy regarding those very interrogations. Further, it is a “classic conflict of interest,” as the Hoffman Report describes (p. 13), for the spouse of such an individual to play any role in a task force charged with determining whether the activities of the military psychologist were in violation of professional ethics.⁸⁰

We did not argue that the PENS Task Force was an adjudicating body. Rather we made what seems to me to be a self-evident case, that individuals working in interrogation support should not be the ones to determine whether such activity is ethical according to the Ethics Code. It is quite unlikely that such a group would ever interpret the Ethics Code such that they or their colleagues (or spouse) might be seen as in violation of its provisions.

COMPLAINT: “Simply stated, Dr. Reisner has distorted the conclusions made by the Hoffman report to fit his own assumptions and agenda. The fact that Dr. Reisner asserted that these activities “reach the level of war crimes” is outrageous, even more so in context of an acknowledgment that he had not had an opportunity to read the entire document. This was not the first time Dr. Reisner has made such allegations. On September 29, 2014, Advocates for U.S. Torture Prosecutions submitted a shadow report to the U.N. Committee Against Torture. Dr. Reisner is a signatory to that document, which cites 6 separate charges of professional misconduct that were filed against 3 military psychologists with 3 different state psychology boards, with appeals heard by 4 different courts — Dr. Reisner was directly involved in one of these cases, *all* of which were dismissed.” (Complaint, p. 14, emphasis in original).

RESPONSE: This assertion brings into relief the many failings of this Complaint. In this one paragraph, Complainants (a) falsify my statement, (b) manipulate the presentation of what are

behaviors? How might we overload the system or overwhelm the senses and see how it affects deceptive behaviors?” Hubbard, Mitchell, Jessen and senior APA staff were present.

<http://www.apa.org/ppo/issues/deceptscenarios.html>.

⁷⁹ <https://www.nytimes.com/interactive/2015/05/01/us/document-report.html> Appendix II, email 4.

⁸⁰ Soldz and Reisner, Rebuttal to Hoffman Report Critics p. 13.

<https://www.scribd.com/document/296540456/Rebuttal-to-Hoffman-Report-Critics>

ethical practices so that they appear as unethical ones, and (c) twist the meanings of words.

(a) Complainants cite at length a passage from my opening remarks, presented, at the request of the APA Board of Directors, to a meeting of the non-recused Board members immediately after they received the Hoffman report. The Complainants attempt to support their allegation that I have distorted Hoffman's conclusions to fit my agenda by asserting as "outrageous" my alleged statement "that these activities 'reach the level of war crimes.'" However, I did not, in fact, say that the activities described in the Hoffman Report 'reach the level of war crimes,' but amount to "support for war crimes."

The Hoffman report indeed provided conclusions that support such an interpretation:

The evidence supports the conclusion that APA officials colluded with DoD officials to, at the least, adopt and maintain APA ethics policies that were not more restrictive than the guidelines that key DoD officials wanted, and that were as closely aligned as possible with DoD policies, guidelines, practices, or preferences, as articulated to APA by these DoD officials. Notably, *APA officials made their decisions based on these motives, and in collaboration with DoD officials, without serious regard for the concerns raised that harsh and abusive techniques were occurring, and that they might occur in the future... APA officials did so even in the face of clear and strong indications that such abuse had in fact occurred* (and APA did not even inquire with CIA officials on the topic, despite public allegations that the CIA had engaged in abusive interrogation techniques). Based on strategic goals, APA intentionally decided not to make inquiries into or express concern regarding abuses that were occurring, thus effectively hiding its head in the sand (emphasis added).⁸¹

The "indications" to which Hoffman alludes, which prompted the creation of the PENS Task Force, included the New York Times' publication of excerpts from the ICRC report describing "an intentional system of cruel, unusual and degrading treatment and a form of torture." These are war crimes.

(b) Further justification for the Complainants' "outrage" is to be found "in context of an acknowledgment that he had not had an opportunity to read the entire document." To be precise, Dr. Soldz and I stated:

We would like to emphasize that these comments and ideas were put down less than 48 hours after we obtained access to the 500-plus page Report. Neither of us has even read the entire Report, much less absorbed it. Thus, these ideas are preliminary and may well be supplemented by others as we fully absorb the Report and discuss with colleagues what should be done.

This disclaimer was made precisely because we believed that it was our ethical responsibility to make clear the limitations of the evidence base and process upon which we were basing our tentative conclusions. The Complainants neglect to mention that, once we were able to read the Hoffman report carefully, Dr. Soldz and I sent the Board and Council a revised version of our comments (see Ethics Standard 8.10), which we also widely circulated. In other words, we

⁸¹ Independent review, p. 11

couched our initial recommendations with clear limitations, and, once we had more information, made corrections.⁸² This is a far cry from the implication of the Complaint that Dr. Soldz and I made “outrageous” statements to fit our “assumptions and agenda.”

(c) Complainants appear to be claiming that I asserted false claims by having co-signed a document submitted to the United Nations Committee Against Torture that cited evidence of abuses in the cases of “3 military psychologists” since “all of [the cases] were dismissed.” The implication is that I knew the charges were groundless, especially since I “was directly involved in one of these cases” and yet I repeated them before the United Nations Committee against Torture, therefore making “knowingly” false statements.

A review of the facts of these cases reveals that not one of the dismissals of “the 6 separate charges of professional misconduct that were filed against 3 military psychologists with 3 different state psychology boards, with appeals heard by 4 different courts”⁸³ was based on any investigation of the evidence. Rather, the cases were dismissed without investigation, predominantly because of lack of standing of the plaintiffs, jurisdiction of the courts or because the statute of limitations had run out.⁸⁴ No court or psychology licensing board has dismissed any complaints on the merits. None were dismissed due to an assessment of the evidence brought before the court. The evidence cited in the report to the UN Committee Against Torture was derived entirely from public documents and was vetted by the Harvard Law School Human Rights Clinic.

Furthermore, the details of the dispositions of all of these cases were included in an Appendix to the ‘shadow report.’⁸⁵ Thus, the implication that I attempted to mislead the Court by omitting information about the disposition of these cases is false.⁸⁶

CONCLUSION

The Complaint asserts that I have rendered opinions on matters regarding the behavior of military and operational psychology without having been trained in either field, and that I have made statements that knowingly misrepresent the facts. I have argued that: a) applying these standards to public speech on matters of concern to everyone stretches our ethics process beyond its intent or purpose; b) that even if the Ethics Committee chooses to accept this application of the standards, I did not violate them; and c) the Complainants have presented this Complaint in order to silence and punish a vocal advocate of a position that they disagree with. As such, this Complaint can be understood as the equivalent of a Strategic Lawsuit against

⁸² As we wrote in our cover letter to the new recommendations: “On July 2, 2015, Stephen Soldz and I presented our initial responses and recommendations to the Board, based on our, then, incomplete reading of the Hoffman Report. Since that time we have had the opportunity to give the report a more thorough reading and have, accordingly, updated our recommendations.”

⁸³ The Complainants are not quite correct about these data. In fact, there were the 7 separate charges of professional misconduct that were filed against military psychologists with 4 different state psychology boards, with appeals heard by 5 different courts.

⁸⁴ Only one of these military psychologists has thus far been the subject of a lawsuit brought by plaintiffs with standing (Mitchell). In this case, where an investigation was undertaken; the case was settled for a monetary payment.

⁸⁵ *Shadow Report to the United Nations Committee Against Torture on the Review of the Periodic Report of the United States of America*, Sept. 29, 2014. Appendix E, pp. 37-39.
<http://www.ushrnetwork.org/sites/ushrnetwork.org/files/06-ntl-harvard.pdf>.

⁸⁶ For the record, I was one signatory among 237 individuals (including a former UN Special Rapporteur on Torture) and 49 organizations.

Public Participation (SLAPP).⁸⁷ I believe I have shown that my writing and public advocacy regarding these issues are the result of extensive study, education, consultation, and research, which has been acknowledged by various authorities, including the American Psychological Association. I have demonstrated that my statements are grounded in careful reading of the data, I do not draw conclusions lightly, and I try and correct errors if they occur.

I believe that, in bringing this Complaint, the Complainants are attempting to use the tools of ethical sanction to re-argue a debate that did not go well for them in public discourse or in APA governance. While it is appropriate to attempt to influence public opinion and professional policy based on a fair reading of the facts; it is not appropriate to wield the cudgel of an ethics process to attempt to silence those who have expressed different opinions.

The ethics process should be reserved for serious acts of misbehavior that violate reasonable standards of conduct. It should not be used as a weapon to punish those engaged in public discourse on issues of deep concern to the profession and the community at large.

Steven Reisner, PhD

November 27, 2017

⁸⁷ "A strategic lawsuit against public participation (SLAPP) is a lawsuit that is intended to censor, intimidate, and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition. Such lawsuits have been made illegal in many jurisdictions on the grounds that they impede freedom of speech." https://en.wikipedia.org/wiki/Strategic_lawsuit_against_public_participation