

Jean Maria Arrigo, PhD  
110 Oxford St.  
Irvine, CA 92612  
November 16, 2010

APA Ethics Office  
750 First Street, NE  
Washington, DC 20002

APA Ethics Office:

Please investigate my enclosed ethics complaint against Maj. Linda S. Estes, PhD, an APA member licensed in the State of Arizona.

As context for my complaint, the forensic testimony of Dr. Estes against Maj. Gen. Thomas J. Fiscus exemplifies two recurring problems in military use of clinical psychologists, as identified by security-sector interviewees in my long-term study of intelligence ethics.

1. Commanders' opportunistic use of clinical diagnosis by military psychologists to discredit troublesome personnel, including moral dissidents.<sup>i,ii</sup> — Even military commanders<sup>iii</sup> have stated that appeal to the Inspector General is unlikely to curb misuse of psychologists because the Inspector General is in the same chain of command as the commander and the psychologist.
2. Use of clinical diagnosis by military psychologists as a substitute for comprehensive, unbiased, evidence-based investigations of alleged crimes and misconduct of military personnel, so as to produce easy convictions.<sup>iv</sup> — Upon preview of this letter of complaint to the APA Ethics Office, U. S. Air Force [Special Investigator] (ret) added: "I'm available to discuss this issue with them or provide my insight as a former [Office of Special Investigations] officer if they would like to speak with me" (October 19, 2010, personal communication)."

The case at hand gains historical importance from the fact that Gen. Fiscus, 14th Judge Advocate General of the U.S. Air Force (USAFA), was a notable opponent of "enhanced" interrogation practices under the Bush Administration. However, neither the political position of Gen. Fiscus nor his guilt or innocence of professional misconduct as alleged by the USAFA are material to my complaint.

Investigation of my complaint against Dr. Estes is a significant opportunity for the APA Ethics Office to support the integrity of military psychologists in clinical roles.

Sincerely,

Jean Maria Arrigo, PhD  
APA Member #7031-0461

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## References

- <sup>i</sup> Brewer, Stephanie E., & Arrigo, Jean Maria. (2008). Places that medical ethics can't find: Preliminary data on why health professionals fail to stop torture in overseas counterterrorism operations. In Mindy Roseman & Ryan Goodman (eds.), *Interrogations, forced feedings, and the role of health professionals: New perspectives on international human rights, humanitarian law and ethics*, pp. 1–20. Cambridge, MA: Human Rights Program and Harvard Law School.
- <sup>ii</sup> Rockwood, Lawrence. (2003, November 18, & 2004, April 4). Moral and spiritual initiative by a U.S. Army counterintelligence officer. Oral history interviews conducted by J.M. Arrigo. *Intelligence Ethics Collection*, Hoover Institution Archives, Stanford University, Stanford, CA.
- <sup>iii</sup> Commander A (anonymous). (2008, June 29). Prisoner handling and interrogation in the first Gulf War, *Psychology and military intelligence casebook on ethics of interrogation* meeting. Herndon, Virginia. *Intelligence Ethics Collection. Ibid.*
- <sup>iv</sup> \_\_\_\_\_. (2010, November 6). USAF OSI opportunistic use of clinical psychologists in criminal investigations, disciplinary actions, and indirect assessments. Interview conducted by J.M. Arrigo, San Francisco, CA. *Intelligence Ethics Collection. Ibid.* [To be deposited December 2010].

ETHICS COMPLAINT FORM  
APA ETHICS OFFICE

Please type or print in ink. The document entitled "Information for Individuals Filing APA Ethics Complaints" which is included as part of the Ethics Complaint Packet may assist you in completing this form.

1. Person Making Complaint: Jean Maria Arrigo, Ph.D.

Address: 110 Oxford St.  
Irvine, CA 92612

Phone: (949) 854-8841

2. Member(s) Against Whom You Are Complaining: \_\_\_\_\_

Linda S. Estes

Address: ICON/51 AFOSI,

1535 Command Dr. Ste A 302, Andrews AFB, MD 20762

Phone: ( ) \_\_\_\_\_

3. Please specify as accurately as possible the earliest date and the most recent date of the alleged unethical behavior:

September 23, 2004 (Discovered by me in November 2008)

4. Have you discussed this situation with the psychologist(s) you are complaining about?

\_\_\_\_\_ Yes      X No

5. Are you a member of the American Psychological Association?

X Yes      \_\_\_\_\_ No

6. Have you filed a complaint with any other organization(s)?

\_\_\_\_\_ Yes      X No

**If you answered Yes, please indicate below where else you have filed and the date:**

- \_\_\_\_\_ State Licensing Board \_\_\_\_\_
- \_\_\_\_\_ State Psychology Association Ethics Committee \_\_\_\_\_
- \_\_\_\_\_ Civil suit (e.g., malpractice) \_\_\_\_\_
- \_\_\_\_\_ Grievance Committee \_\_\_\_\_
- \_\_\_\_\_ Other \_\_\_\_\_

{Please describe the status of these complaint(s) in Item #7}

7. Please help us to understand your complaint by providing the following information typed or printed (in ink) on separate paper:

- (a) A **concise**, one paragraph summary of the nature of the alleged ethical misconduct;
- (b) A detailed description of the alleged misconduct, specifying as accurately as possible the dates and:
  - (i) the sequence of events leading up to the behavior,
  - (ii) a complete account of the behavior and the Ethical Standards you believe have been violated,
  - (iii) any relevant information about what happened after the behavior occurred,
  - (iv) the status of any other complaints you have filed and any other steps you have taken to address this situation.

**RELEASES**

8. I hereby give the member(s) against whom I am making this complaint permission to give the APA Ethics Committee any confidential information regarding me, including any records of our interactions, and to answer all questions the Committee may have concerning such information.

Signature: Juan Maria Arreaga Date: November 15, 2010

9. I hereby give the APA Ethics Committee permission to send to the member(s) against whom I am making this complaint copies of any materials submitted by me or on my behalf concerning this complaint.

Signature: Juan Maria Arreaga Date: November 15, 2010

10. I hereby waive any right to subpoena from APA or its agents, for the purposes of private civil litigation, any documents or information concerning this matter.

Signature: Juan Maria Arreaga Date: November 15, 2010

\*\*\*\* IMPORTANT \*\*\*\*

Please sign each of the releases without modification. We will only process your complaint form if these releases are complete. If they are incomplete, processing of your complaint will be delayed while we return this form to you for your signature.

Date revised: August 14, 1996

Please return completed form to:  
APA Ethics Office, 750 First Street, NE, Washington, DC 20002

**ETHICS COMPLAINT FORM**  
**APA ETHICS OFFICE**  
Continued

Complaint against Maj. Linda S. Estes, PhD, by Jean Maria Arrigo, Ph.D.

**Ethics Complaint Form 7 (a) A concise, one paragraph summary of the nature of the alleged misconduct.**

On September 23, 2004, clinical psychologist Maj. Linda S. Estes, Ph.D, Chief of the Behavioral Analysis Division of Air Force Office of Special Investigations, gave expert testimony that Maj. Gen. Thomas J. Fiscus was a “sexual predator.” The Arizona Board, where she was licensed, issued a “letter of concern” to Dr. Estes on December 5, 2005, for providing testimony without adequate evidence. My present complaint against Maj. Estes addresses her violations of APA Ethics Code Sections 9.01 and 9.02, for failure to use appropriate assessment tools and to document her assessment; Section 2.01, for providing forensic testimony beyond her boundaries of competence; and Section 3.06, for testifying under extreme conflict of interest. In November 2010, I became aware of the case of Gen. Fiscus through my longstanding study of the ethics of military intelligence.

**Ethics Complaint Form 7 (b) A detailed description of the alleged misconduct.**

1. This matter involves a professional ethics complaint against Linda Estes, Ph.D. (“Dr. Estes”), a psychologist licensed in the State of Arizona, License Number 3151 who, upon information and belief, is also a member of the American Psychological Association (“APA”).

2. This complaint derives from the formal process set forth in the APA Ethics Committee Rules and Procedures specifically at §5.3.1.

3. As a psychologist and APA member, I believe in good faith that certain activities of Dr. Estes violate ethical principles applicable to the practice of psychology, the upholding of which is a requirement to continue as an APA member in good standing.

4. This complaint alleges that Dr. Estes (a) used her professional skills and knowledge to cause harm to others, (b) that she improperly managed conflicts of interest, and (c) that she misrepresented her professional experience and expertise. I have identified and alleged specific violations that I believe fall within the disciplinary scope of the APA Ethics Committee. I request a prompt, thorough, and impartial investigation into the evidence presented, request that the Committee agree that it is probable that unprofessional conduct has occurred, and bring formal charges against Dr. Estes to be explored at hearing. If through that hearing the APA Ethics Committee finds that Dr. Estes engaged in any of the acts of misconduct alleged herein, I ask the Committee to revoke permanently Dr. Estes’ membership in the American Psychological Association.

## Summary of Alleged Misconduct and Violations

5. A complaint of professional misconduct was filed against Dr. Estes before the Arizona Board of Psychology in 2006 that alleged ethics violations similar to those proffered by the present complaint. The Arizona Board formally determined on December 5, 2006, that the alleged misconduct of Dr. Estes in her capacity as a professional staff psychologist for the Air Force warranted issuance of a public “letter of concern,” a copy of which is annexed to this Complaint as Exhibit 1 and its contents fully incorporated herein by reference. The Arizona Board issued Exhibit 1 based on Dr. Estes’ role in an official disciplinary investigation, wherein she diagnosed Major General Thomas Fiscus, a person whom she had never met, never interviewed, and never independently investigated, as a “sexual predator” in the course of providing a psychological opinion to investigators from the Inspector-General’s office of the Air Force. The action by the Arizona Board was taken pursuant to a consent agreement for a written censure to be placed in Dr. Estes’ permanent professional record for providing the expert opinion that Maj. Gen. Fiscus was a sexual predator, without foundation.

6. On August 15, 2004, an anonymous complaint was allegedly filed against Maj. Gen. Fiscus, who at the time was serving at the Pentagon as the Judge Advocate-General, *i.e.*, the most senior uniformed lawyer in the Air Force. Gen. Fiscus was ultimately responsible for overseeing the provision of legal services to the Air Force worldwide.

7. The anonymous complaint alleged that Gen. Fiscus had conducted improper personal relationships with numerous civilian and military women. In September 2004, the Air Force Inspector-General (IG) initiated an investigation into that anonymous complaint.

8. On September 23, 2004, Dr. Estes was asked to provide an oral expert psychological opinion, referred to as testimony, as part of the IG’s inquiry. The IG officers assigned to the investigation reported to the Inspector-General that “The whole notion that Maj Gen Fiscus . . . appeared implicated in so many violations of standards with so many women appeared so incongruous that the IOs consulted Maj Linda S. Estes, Ph. D., an investigative psychologist, for assistance in explaining the phenomenon.”<sup>1</sup> This statement was made in the final report to the IG and is attached as Exhibit 2.

9. A *curriculum vitae* for Dr. Estes is attached as Exhibit 3. The Arizona Board of Psychology licensed her to practice psychology in 1994. In 2002 she became one of two investigative staff psychologists assigned to the Air Force Office of Special Investigations to “provide[] psychological consultation and suggest[] interviewing strategies for criminal investigations.”

10. When Dr. Estes was contacted by Air Force investigators in 2004 concerning Gen. Fiscus, they provided her with selected email communications and oral discussions of their findings. Based solely upon that information, Dr. Estes concluded that the actions of Gen. Fiscus were “very predatory in nature” and she pronounced him as a “sexual predator.”<sup>2</sup> In the course

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<sup>1</sup>IG Investigation: Social and Psychological Aspects." p. 85-86.

<sup>2</sup>*Id.* p. 7.

of rendering that opinion, Dr. Estes was neither asked for nor did she volunteer any qualifying parameters or explanation of the psychological meaning of the term “sexual predator.” She provided no cautions about the lack of rigor in her methods at reaching that pronouncement. Dr. Estes’ complete “testimony” as an expert witness for the IG is memorialized as a formal transcript and is attached (Exhibit 4) and incorporated fully herein by reference.

11. At no time did Dr. Estes speak to, interview, or conduct an in-person assessment of Gen. Fiscus. She has never met him. Neither did she read the testimony, interview, or speak to any of the collateral witnesses that had been interviewed by the IG’s office.

12. Gen. Fiscus was unaware of Dr. Estes’ evaluation of him until mid-December 2004, when, after the completion of the investigation, he was given five (5) days to respond in writing to disciplinary charges based in part on Dr. Estes’ evaluation.

13. Military procedure which governs investigations of the type conducted of Gen. Fiscus provides only that he be given a copy of the written investigation and that he be allowed five (5) days’ response time, after which the Air Force Inspector-General makes a determination as to what consequences, if any, should follow. There is no trial, no opportunity to confront one’s accusers nor to cross-examine witnesses or explore the basis of expert opinions before an independent trier of fact.

14. Dr. Estes, whose job with the Air Force was to investigate and provide psychological advice as staff of the IG’s office, knew or should have known that she had unique power in the circumstances to give psychological opinions that would be insulated from inquiry by the subjects (or targets) of her opinions. Partly as a result of her professional accusation that Gen. Fiscus was a “sexual predator,” Fiscus was demoted from his position as Judge Advocate-General - the senior-most uniformed lawyer in the Air Force - to colonel and forced to retire, after a 32-year career. The publicity of this directive prompted what could arguably be determined to be libelous press coverage in major newspapers across the country and caused unwarranted public humiliation of Gen. Fiscus. It appears that his discipline, demotion, and forced retirement were elements of a likely venture to discredit certain statements and opinions he had expressed respecting the Pentagon’s use of allegedly torturous interrogation methods on prisoners in the U.S.’ “war on terror.”

15. Dr. Estes’ explanation of the so-called “phenomenon” formed the basis for Gen. Fiscus being denounced as a sexual predator, a highly pejorative and damning characterization in this society. Dr. Estes’ opinion strongly influenced the report of the investigating officers and ultimately, the Air Force Inspector-General.

16. The Arizona Board of Psychologist Examiners (ABPE), which issued Dr. Estes her license to practice psychology, determined on December 5, 2006, to censure her with a letter of concern based on her labeling a person a “sexual predator” without foundation, in the context of her clearly-stated role as an expert witness. The resulting action by the Board was a consent agreement for a written censure to be placed in the permanent professional record of Dr. Estes

for unprofessional conduct<sup>3</sup> in that she offered an opinion that Major General Fiscus was a sexual predator, without first developing a factual foundation. While a “letter of concern” is not deemed to be disciplinary in nature,<sup>4</sup> it nonetheless constitutes a finding that “the psychologist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the psychologist's license.” As discussed below, the unique facts of this complaint and the considerable career-destroying capacity of her uninformed, yet damaging psychological opinion as the frontispiece of the investigation require that Dr. Estes be held to account for violations of APA ethics.

17. The evidence before the APA indicates that Dr. Estes, in her capacity as a forensic psychologist:

- failed to take steps to avoid harming an individual for whom she was providing an assessment;
- violated the Bases for Scientific and Professional Judgments and Bases for Assessments as well as the Use of Assessments;
- violated the Boundaries of her Competency;
- violated Conflict of Interest; and
- misused her role as a forensic psychologist.

18. Individually, each act of alleged misconduct falls below the standard of practice established by the APA. Combined, they reveal a serious disregard for the rules that govern the psychology profession. Specifically, Dr. Estes, as a result of her actions as an expert witness in the investigation of Maj. Gen. Fiscus, appears to have violated the following ethical standards of the American Psychological Association:

- Bases for Scientific and Professional Judgments, APA § 2.04
- Bases for Assessments: Base opinions on sufficient information, APA § 9.01(a)
- Bases for Assessments: Only after an examination of the individuals adequate to support their statements or conclusions APA § 9.01(b)
- Bases for Assessments: Sources of information on which they based their conclusions and recommendations, APA § 9.01(c)
- Use of Assessments: Use assessment techniques and interviews in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques, APA § 9.02
- Boundaries of Competence: Psychologists provide services with populations and in areas only within the boundaries of their competence, APA § 2.01(a)

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<sup>3</sup>See Arizona Revised Statutes § 32-2061-13(o): “Providing services that are unnecessary or unsafe or otherwise engaging in activities as a psychologist that are unprofessional by current standards of practice.”

<sup>4</sup>See Arizona Revised Statutes § 32-2061-7: “‘Letter of concern’ means an advisory letter to notify a psychologist that while there is insufficient evidence to support disciplinary action, the board believes the psychologist should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the psychologist's license.”



- Conflict of Interest: Psychologists refrain from taking on a professional role when professional or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists, APA § 3.06

The APA Ethics Committee has the Power and Duty to  
Investigate and Discipline Dr. Estes

19. This Committee possesses the authority and obligation to investigate and, if warranted, impose discipline on a member of the American Psychological Association. Dr. Estes is an APA member who continues to actively practice psychology for the Air Force at Andrews Air Force Base, Maryland. Nothing in the federal law or regulations issued by the Department of Defense prevents this Board from formally investigating the allegations against Dr. Estes and taking appropriate disciplinary action.

20. The military relies on professional associations to regulate, and sanction the conduct of military health professionals.<sup>5</sup>

21. To allow Dr. Estes to remain an APA member in good standing absent proper investigation would send a mistaken message to psychologists that the APA ethical rules do not apply equally to all psychologists who would hold APA membership, and would foster a culture of impunity that would undermine the standards of the sole national professional association of psychologists.

22. Indeed, as Dr. Goodheart, past-president of APA, has defined APA's policy in the following terms, she compels the APA Ethics Committee to take action on this complaint: "Because licensing boards and courts have greater ability than the APA Ethics Committee to compel testimony and order parties to produce documents, the Ethics Committee's practice is to await final determinations in legal and regulatory actions."<sup>6</sup>

23. I respectfully request that the American Psychology Association's Ethics Committee take up this matter as it would all complaints with merit, in accordance with its mandate, conduct a full investigation, analyze the ample evidence against Dr. Estes, and impose appropriate disciplinary sanctions, up to and including permanent expulsion from the APA.

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<sup>5</sup> See 10 U.S.C.A. § 1094 (a)(1); Department of Defense Directive 6025.13 § 5.2.2.2 (May 4, 2004).

<sup>6</sup> Carol Goodheart, e-mail message to the author, August 24, 2010.

## Ethics Violations

### *2.04 Bases for Scientific and Professional Judgments*

*Psychologists' work is based upon established scientific and professional knowledge of the discipline.*

### *9.01 Bases for Assessments*

*(a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings*

*(b) Except as noted in 9.01 (c) psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions.*

### *9.02 Use of Assessments*

*(a) Psychologists administer, adapt, score, interpret, or use assessment techniques, interviews, tests, or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.*

In addition to the above APA Ethics Standards, the Committee on the Ethical Guidelines for Forensic Psychologists §VI(H) states (emphases added):

**Forensic psychologists avoid giving written or oral evidence about the psychological characteristics of particular individuals when they have not had an opportunity to conduct an examination of the individual adequate to the scope of the statements, opinions, or conclusions to be issued.** Forensic psychologists make every reasonable effort to conduct such examinations. When it is not possible or feasible to do so, they **make clear the impact of such limitations on the reliability and validity of their professional products, evidence, or testimony.** <sup>7</sup>

Dr. Estes labeled Major General Fiscus a sexual predator by merely discussing a subjective set of selected emails with two investigating officers. Her entire study and evaluation of Major General Fiscus was made over the course of a few hours, the same day she testified. She did not conduct an “examination of the individual adequate to the scope of her statements, opinions or conclusions,” nor did she use assessment techniques for “for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.” The exact opposite occurred.

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<sup>7</sup> Committee on Ethical Guidelines for Forensic Psychologists, "Specialty Guidelines for Forensic Psychologists," *Law and Human Behavior* (Plenum Publishing Corporation) 15, no. 6 (1991): 663.

Dr. Estes did not base her diagnostic and evaluative statements on information sufficient to substantiate her findings. She never met Major General Fiscus. The 2<sup>nd</sup> Division Appeals court in New York recently annulled the termination of a firefighter based solely on the fact that the firefighter “had no opportunity to cross-examine the counselor or to explain any of the statements he allegedly made to her, or to rebut the information contained in her records.”<sup>8</sup>

As stated previously, the label of sexual predator is a highly pejorative and damning determination to be made by a psychologist, and thus demands that the psychologist make such a determination very carefully, and **only** with established scientific and professional knowledge.

When the Arizona Board of Psychology determined that Dr. Estes had labeled Major General Fiscus as a sexual predator “without foundation,” the Board established that Dr. Estes had violated APA Ethics Codes 2.04 and 9.01. In her role as a forensic psychologist, Dr. Estes’ determination that Major General Fiscus was a sexual predator was not based on information and techniques sufficient to substantiate their findings.

A review of the literature supports the ruling by the Arizona Board. Weissman and DeBow, writing in the authoritative *Volume 11 of the Handbook of Psychology: Forensic Psychology*, state: “Standardized interview protocols and objective testing measures have the greatest likelihood of meeting evidentiary standards in both psychology and law. They are more likely to yield valid findings that are trustworthy and specifically address pertinent legal standards.”<sup>9</sup>

From the same volume, Dawes submits the following: “The greater the degree of structure inherent in an evaluation, the greater the probability that the findings derived therefrom will be reliable and valid.”<sup>10</sup> Conroy, author of the chapter on sexual predators, summarizes by stating, “Given the poor track record of using clinical judgment alone to conduct risk assessment, no authority in the field is likely to recommend using it as the primary predictive tool.”<sup>11</sup>

In direct contrast to the ethics standards’ insistence on established scientific and professional knowledge sufficient to substantiate the findings and a review of the literature of experts in the field of forensic assessment, a summary of what is referred to as Dr. Estes’ expert testimony as a forensic psychologist falls far short of the established standard of practice. Following are excerpts from Dr. Estes’ testimony, with the content of her evaluation that violates specific ethics standards italicized:

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<sup>8</sup> Matter of Schroeder v. Scoppetta, 5959/09, NYLJ 1202473883195, at \*1 (App. Div 2nd, Decided October 19, 2010)

<sup>9</sup> Herbert N. Weissman and Deborah M. DeBow, *Ethical Principles and Professional Copetencies*, Vol. 11, in *Handbook of Psychology: Forensic Psychology*, ed. Alan M. Goldstein, 41 (Hoboken, New Jersey: John Wiley & Sons, Inc., 2003).

<sup>10</sup> R. M. Dawes, "Experience and validity of clinical judgment: The illusory correlation," in *Handbook of Psychology: Forensic Psychology*, ed. Alan M. Goldstein, 475-467 (Hoboken, NJ: John Wiley & Sons, Inc., 1989).

<sup>11</sup> Mary Alice Conroy, "Evaluation of Sexual Predators," in *Handbook of Psychology: Forsenic Psychology*, ed. Alan M. Goldstein (Hoboken, NJ: John Wiley & Sons, Inc., 2003). p. 472.

From reading the, the information and discussing with you about this case, it does look to me as though there is a pattern here that is very predatory in nature . . . <sup>12</sup>

*I am not an expert in what would be termed the field of sexual addiction . . . It would seem to me, from reading the information that has been available to me this morning, that this is very planned behavior. This doesn't sound like it's very impulsive. It sounds like he goes about a process of grooming and preparing these women for relationships. That to me suggests that there is a, that he has an ability to think through and control his behaviors.*<sup>13</sup>

*I certainly don't see any evidence in the correspondence between the two to suggest that the General engaged in any kind of threatening behavior or coercive behavior towards any of these women, so to that extent I, it certainly doesn't seem that, that he strong, strong-armed these women into any relationships . . . that these were relationships that they voluntarily entered into.*<sup>14</sup>

*My guess is that he, like many individuals who become very, very adept at preying on vulnerable women, he's very good at identifying those kinds of women . . .*<sup>15</sup>

*Now, I'm basing that on limited, limited information so I, I hate to go too far . . . out on a limb on that but just from my reading of the correspondence--yeah, I, I think it fits his pattern.*<sup>16</sup>

*Well, in my thinking about a sexual predator, that, that very much fits in and it parallels what I see in the emails of taking baby steps or, or testing the waters to see, you know, 'What is the reaction going to be if I, if I say this?' you know? 'What is, well how are they gonna deal with that?' and if the reaction is positive, you know, then he escalates.*<sup>17</sup>

*You know I, not, not knowing more about him than what I see in the emails I, I hesitate to say too much about him. But what I can say about my experience of sexual predators is that they're very smart. They're very adept at reading victims or potential victims if you're to use the 'victim'--you know, in the crime world, the cases that I'm used to dealing with. For example, child molesters. They're excellent at identifying the vulnerable child, you know, engaging in the kinds of grooming behaviors to increase the child's comfort with them, to kind of press the*

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<sup>12</sup> Linda Estes, Ph.D., interview by Lt. Col. Tonya Hagmair, Lt. Col. Donald P. Higgins, Jr., *Testimony of Maj Linda Estes, Ph.D.*, (September 23, 2004). p. 1.

<sup>13</sup> *Ibid.* p. 2.

<sup>14</sup> *Ibid.* p. 3.

<sup>15</sup> *Ibid.* p. 4.

<sup>16</sup> *Ibid.* p. 4.

<sup>17</sup> *Ibid.* p. 7.

limits, expand the limits a little bit, see how he how the child reacts and then press a little further and a little further. They're very good at that. They're experts at that and I think that I, I *it appears to me that there is something very similar going on here*, not saying that he's a child molester, but saying that . . . *sexual predators become very, very good at reading the reactions of other people and knowing how far they can go.*<sup>18</sup>

I mean I, in psychology, we, we talk about people being able to put up narcissistic fronts--*and I, I've never met Gen. Fiscus, I really don't know much about him--* but *my clinical guess* would be that he probably puts up a good narcissistic front that he's developed through years and years and years and yet has this hidden aspect of his personality that he probably struggles with to some extent and tries to keep hidden but, but periodically channels it actually, you know . . .<sup>19</sup>

Besides her admitted lack of a factual foundation for her conclusion, Dr. Estes did not have scientific and professional knowledge sufficient to substantiate the finding of sexual predator. Given her repeated acknowledgement of that fact, she also misused scientific and professional knowledge, and did not meet the standard of care, as follows.

Experts in forensic psychology as well as the courts have repeatedly rejected the assertion that there is a "sex offender profile," that is, "a set of clearly identifiable characteristics of persons who commit sex crimes."<sup>20</sup> Conroy states:

Data based on profiles of identified groups may prove useful in researching personality constructs and in determining whether an individual exhibits the symptoms of a certain psychopathology. However, it is misleading to use such data to establish that a particular individual has engaged in a specific type of behavior. It is one thing to consider a defendant's state of mind at the time of a crime and quite another to establish whether the person actually committed the crime in question.<sup>21</sup>

No sex offender classification systems or psychometric instruments for profiling sex offenders have been developed.<sup>22</sup> Federal courts have continued to reaffirm that mental health experts are not allowed to testify as to whether a defendant could or could not have committed the crimes at issue (*U.S. v. Robinson*, 2000).<sup>23</sup> As Conroy summarizes, "Thus it is incumbent on the forensic psychologist to take great care not to imply that any personality characteristics found are probative in establishing whether any individual committed or did not commit a specific

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<sup>18</sup> *Ibid.* p. 9.

<sup>19</sup> *Ibid.* p. 12.

<sup>20</sup> Mary Alice Conroy, "Evaluation of Sexual Predators," in *Handbook of Psychology: Forensic Psychology*, ed. Alan M. Goldstein (Hoboken, NJ: John Wiley & Sons, Inc., 2003). p. 469.

<sup>21</sup> *Ibid.*

<sup>22</sup> A.W. Burgess R.A. Prentky, *Forensic management of sexual offenders* (New York: Kluwer Academic/Plenum, 2000). In *Handbook of Psychology: Forensic Psychology*, ed. Alan M. Goldstein (Hoboken, NJ: John Wiley & Sons, Inc., 2003). p. 469.

<sup>23</sup> *United States v. Robinson*, 94 F. Supp. 2d 751 (2000).

offense or types of offenses.”<sup>24</sup>

Yet, Dr. Estes repeatedly refers to a pattern or “a set of clearly identifiable characteristics of persons who commit sex crimes” in labeling Major General Fiscus as a sexual predator. Again, the content of Dr. Estes’ evaluation that violates specific ethics standards is italicized.

. . . it does look to me as though there is *a pattern here* that is very predatory in nature where *the subject has apparently identified women who appear vulnerable* and *starts out* with a very ingratiating manner, seems very, very casual and informal in his relationships with these females, some of whom are enlisted, all of whom are very junior to him and then it seems that *he moves gradually* into more and more flirtatious behaviors, almost like testing the waters . . .<sup>25</sup>

Now, I’m basing that on limited, limited information so I, I hate to go too far . . . out on a limb on that but just from my reading of the correspondence--yeah, I, I think it fits his pattern.<sup>26</sup>

You know I, not, not knowing more about him than what I see in the emails I, I hesitate to say too much about him. But what I can say about my experience of sexual predators is that they’re very smart. They’re very adept at reading victims or potential victims if your to use the ‘victim’--you know, in the crime world, the cases that I’m used to dealing with. *For example, child molesters. They’re excellent at identifying the vulnerable child, you know, engaging in the kinds of grooming behaviors to increase the child’s comfort with them, to kind of press the limits, expand the limits a little bit, see how he how the child reacts and then press a little further and a little further. They’re very good at that. They’re experts at that and I think that I, I it appears to me that there is something very similar going on here, not saying that he’s a child molester, but saying that . . . sexual predators become very, very good at reading the reactions of other people and knowing how far they can go.*<sup>27</sup>

### 9.01 Bases for Assessments

(b) *Except as noted in 9.01(c), psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, **psychologists document the efforts they made** and the result of those efforts, clarify the probable impact of their limited information on the reliability*

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<sup>24</sup> Mary Alice Conroy, "Evaluation of Sexual Predators," in *Handbook of Psychology: Forensic Psychology*, ed. Alan M. Goldstein (Hoboken, NJ: John Wiley & Sons, Inc., 2003). p. 469.

<sup>25</sup> Linda Estes, Ph.D., interview by Lt. Col. Tonya Hagmer, Lt. Col. Donald P. Higgins, Jr., *Testimony of Maj Linda Estes, Ph.D.*, (September 23, 2004). p. 1.

<sup>26</sup> *Ibid.* p. 4.

<sup>27</sup> *Ibid.* p. 9.

*and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations. [Emphasis added.]*

*(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, **psychologists explain this and the sources of information on which they based their conclusions and recommendations.** [Emphasis added.]*

The only documentation Dr. Estes provided in making a determination that Major General Fiscus was a sexual predator was a single page of hand-written notes consisting of 14 lines (Exhibit 5). One of those 14 lines references a discussion Dr. Estes had with the investigators during her testimony as to how to possibly “ambush” the teenage daughter of a purported victim to get an interview, a “victim” who had been a colleague and friend of Major General Fiscus for 20 years and refused to speak with the investigation.

### *2.01 Boundaries of Competence*

*(a) 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.*

The severity of the designation of sexual predator has been examined previously. The testimony of Dr. Estes gave no indication that would suggest training or experience in the designation of a sexual predator. Her vitae indicates no training related to the investigation, diagnosis or treatment of sexual offenders, other than for victims of childhood sexual abuse. Her only writings appear to be concentrated in the study and treatment of eating disorders. Dr. Estes does not indicate that she consulted with anyone of greater skill or experience than herself in preparing the evaluation of Major General Fiscus.

### *3.06 Conflict of Interest*

*Psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation.*

Even a cursory review of Dr. Estes’ testimony reveals she abandoned her position as a disinterested expert and gave control of her testimony to the investigators. In the transcript, the investigators speak at least twice as much as she. Primarily, beyond her labeling Major General Fiscus a sexual predator, Dr. Estes merely confirms the opinions of the investigators.

The transcribed testimony of Dr. Estes indicates that in over 100 instances, Dr Estes’ response to the investigators’ statements, **not questions**, was a head nod. She simply acceded to the investigators’ views. The fact that both investigators were much senior in rank to Dr. Estes creates a question of Conflict of Interest, as Dr. Estes provides little of her own testimony other

than the designation of sexual predator. She provides no valid documentation to support that determination. As an expert witness, Dr. Estes had a duty to confront the unethical nature of an assessment that was clearly biased by the inspectors. Dr. Estes did not provide an impartial assessment of Maj. Gen. Fiscus.

Rather than an unbiased assessment that would be helpful to the fact finder, Dr. Estes' expert witness testimony seemed designed to prove the investigators' bias, to interpret every piece of evidence into something that would fit into Dr. Estes' model of a sexual predator. The Committee on the Ethical Guidelines for Forensic Psychologists §VII(D) states:

When testifying, forensic psychologists have an obligation to all parties to a legal proceeding to present their findings, conclusions, evidence, or other professional products in a fair manner. This principle does not preclude forceful representation of the data and reasoning upon which a conclusion or professional product is based. It does, however, preclude an attempt, whether active or passive, to engage in partisan distortion or misrepresentation. Forensic psychologists do not, by either commission or omission, participate in a misrepresentation of their evidence, nor do they participate in partisan attempts to avoid, deny, or subvert the presentation of evidence contrary to their own position.<sup>28</sup>

It bears repeating that Dr. Estes was well aware of the nature of the investigatory procedure and that her proffered conclusion would likely be invulnerable to serious challenge, given the extraordinarily short time frame for response by General Fiscus and his inability within that time frame to rebut the Estes opinion with an expert critique. Assuming this awareness on Dr. Estes' part — a legitimate assumption — Dr. Estes' motive to rely on the remote chance of scrutiny becomes an issue. It is difficult to imagine that she was not on a mission to please her superior officers rather than to serve as a somewhat detached expert.

#### Exhibits

Exhibit 1: Letter of Concern from the Arizona Board of Psychology to Dr. Linda Estes dated December 5, 2006

Exhibit 2: IG Investigation Exhibit 39: Social and Psychological Aspects

Exhibit 3: *Curriculum Vitae* for Dr. Linda Estes

Exhibit 4: Exhibit 39, Testimony of Dr. Linda Sue Estes, Case # S6567P – ESTES, dated 9/23/2004.

Exhibit 5: Dr. Estes notes, 23 Sep 04

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<sup>28</sup> Committee on Ethical Guidelines for Forensic Psychologists, "Specialty Guidelines for Forensic Psychologists," *Law and Human Behavior* (Plenum Publishing Corporation) 15, no. 6 (1991): 664.