DRAFT EXPERT REPORT:

CASE HEADING

WEISS Wolpe report 2007-10-10

1. I, Paul Root Wolpe, Ph.D., have agreed to serve as an expert witness in this case. I have prepared this report and also agreed to testify if necessary at trial.

EXPERT QUALIFICATIONS

2. I currently serve as Associate Professor of Sociology in Psychiatry in the Department of Psychiatry at the University of Pennsylvania, where I also hold appointments in the Department of Medical Ethics and the Department of Sociology. I am a Senior Fellow of U. Penn's Center for Bioethics, and the Director of the Scattergood Program for the Applied Ethics of Behavioral Health and Director of the Program in Psychiatry and Ethics at the School of Medicine. I am also a Senior Fellow of the Leonard Davis Institute for Health Economics, and a member of Penn's Cancer Center and Center for AIDS Research.

3. I currently serve as President of the American Society for Bioethics and Humanities, the national professional organization for scholars in bioethics and the medical humanities and also as Co-Editor of the American Journal of Bioethics.

4. I also serve as the first Chief of Bioethics for the National Aeronautics and Space Administration (NASA). The office is responsible for safeguarding the protections of research subjects and astronauts both within NASA and among our international space partners.

5. I serve as the first National Bioethics Advisor for Planned Parenthood Federation of America, helping that organization plan for the changing social dynamics and emerging reproductive technologies over the coming decades. I am one of the few non-physicians to be elected a Fellow of the College of Physicians of Philadelphia, the country's oldest medical society.

6. My educational background includes undergraduate work in the sociology and psychology of religion at the University of Pennsylvania. I received my Ph.D. in Medical Sociology from Yale University under an NIMH grant in Mental Health Services Research and Evaluation. After graduate school in 1986, I began teaching at the University of Pennsylvania and have taught there in one capacity or another ever since. From 1988-1992, I served full-time as Coordinator of Research, Program Evaluator of the Inpatient Units, and Research Ethics Reviewer in the Department of Psychiatry at Jefferson Medical College.

7. I am a member of the relevant scientific and bioethics communities for this case. I am the author of over 100 articles and book chapters in sociology, medicine, and

bioethics. I have also contributed to a variety of encyclopedias on bioethical issues. I am a founder of the field of neuroethics, which examines the ethical implications of neuroscience and behavioral health, and I have also written about many other topics including mental health and illness. I sit on a number of national and international non-profit organizational boards and working groups, as well as the editorial boards of a dozen journals. I am a consultant to academic institutions and the biomedical industry. I am also a frequent contributor and commentator in both the broadcast and print media.

SUMMARY OF OPINIONS IN THIS MATTER

-- OPINIONS REGARDING GENERAL PRINCIPLES --

8. There is substantial international consensus on bioethical rules and guidelines that offer essential protections for patients involved in clinical research. The Nuremberg Code, the Declaration of Helsinki, and the Belmont Report provide the basis for those guidelines and help establish minimum standards for the protection of human subjects. In addition, and most importantly for human subjects research in the United States, Federal Code 45 CFR §46, http://www.hhs.gov/ohrp/faq.html establish human protection regulations for all federally funded projects. Those guidelines have become the de facto minimum standards for all clinical and scientific research on human subjects done in the United States.

9. It is essential that IRB professionals, research professionals and especially principal investigators on research involving human subjects, be aware of, well trained in, and knowledgeable about the rules and guidelines provided by the Federal Code 45 CFR §46 and related materials, and be familiar with the rationale and history behind those rules as reflected in the Nuremberg Code, the Declaration of Helsinki, and the Belmont Report. Research can be contaminated and human subjects may be injured if these rules and guidelines are not learned, understood and followed. Moreover, the entire enterprise of medical research can be put in jeopardy if potential subjects are not confident that researchers understand and adhere to the highest level of research ethics and human subjects protections.

10. Informed consent is a fundamental human right in research involving human subjects. Informed consent consists of A) relaying to the subjects in an understandable way all the relevant information about a proposed experiment, and to determine their capacity to understand and appreciate that information, and B) assuring that the subjects are free of any coercion from the researchers or other external forces that would compromise their ability to make a free and unencumbered decision. Subjects should be fully and fairly informed of the risks and benefits of the proposed treatment, alternative treatments and of no treatment. Informed consent should also include assurances that the decision to take part in the research is fully voluntary, and that refusal to participate or withdrawal from participation will involve no penalty or withdrawal of care the person might otherwise receive. The process of informed consent is a fundamental principle of biomedical ethics and of research involving human subjects, and failure to provide

adequate informed consent is a human rights violation as well as a research ethics violation.

11. Patients suffering from mental illnesses, especially those suffering from a psychotic illness, are considered vulnerable subjects and entitled to special protections from coercion, manipulation, and abuse. Standards of care for the protection of human subjects in research, and standards for oversight of the conduct of research on human subjects, require that all subjects enrolling in studies be competent to give informed consent. Patients suffering from psychotic illnesses are often not competent to give informed consent. Assessing levels of competence is a complex, ongoing task for researchers, but competence to participate in informed consent must be fully established before a patient can be approached to participate in a study.

12. It is not uncommon for the investigator of a study to also be the treating physician of subjects recruited for a study. For a medical patient to refuse a request to participate in research made by their personal or treating physician is often difficult, and for the vulnerable subject, such as a dependent, mentally ill patient, refusal may not seem possible. Such a situation involves obviously unethical and dangerous risks of coercion, manipulation and patient abuse. To prevent coercion and its damaging consequences, the physician obtaining informed consent for a research study should not be the subject's main treating physician. For that reason, templates for informed consent in research institutions often require that when the investigator is also the treating physician, inclusion of statements such as the following in informed consent forms are mandated: "The treating physician is both your health care provider and the investigator for this study. This doctor is interested both in your clinical welfare and in the conduct of this study. Before entering this study, or at any time during the research, you may ask for a second opinion about your care from another doctor who is not associated in any way with this study."

-- OPINIONS REGARDING THE FACTS OF THIS CASE --

13. It is my understanding from reviewing the case files including and especially the deposition of Defendant Dr. S. Olson, that Mr. Markingson was a hospitalized patient diagnosed with a psychotic disorder. It is further my understanding, that Dr. Olson was the treating physician at the hospital for Mr. Markingson. Further, that Dr. Olson provided diagnostic and other evidence to a court of law advising the court that Mr. Markingson was mentally ill, lacked insight into his illness, and needed treatment. It is further my understanding, that the court issued a commitment order for Mr. Markingson that was stayed provided Mr. Markingson followed the treatment recommendations of his treatment team, headed by Dr. Olson. Further, that within a few days of this court ruling, Dr. Olson and his associates obtained consent from Mr. Markingson to enter into a drug treatment clinical research trial, a trial directed by Dr. Olson as Principal Investigator. It is further my understanding that Dr. Olson, at the end of Mr. Markingson's six month stayed commitment period, offered evidence of Mr Markingson's continuing mental illness to convince the court to reinstate the order of stayed commitment for an additional

six month period. It is also my understanding that Mr. Markingson committed suicide shortly thereafter. In sum, it is my understanding that Dr. Olson served as a) Mr. Markingson's treating physician in the hospital, b) as a provider of evidence for a court hearing regarding Mr. Markingson for commitment and loss of liberty, c) as the principal investigator (with attending financial and professional interests) of the Minnesota CAFE clinical trial research study in which Mr. Markingson was a subject, d) as Mr Markingson's treating physician during the CAFE study, e) as the research physician for the CAFE study, f) as the employer of, and witness for, a staff person who allegedly obtained informed consent from Mr. Markingson to enter Dr. Olson's CAFE study. For one physician/ researcher to assume so many serious and life controlling roles for Mr. Markingson given the obvious financial, social and professional conflicts of interest inherent in those roles, and to take no apparent actions to minimize, mitigate, or provide mediation for those conflicting roles, constitutes a violation of bioethical standards. Such violations pose serious dangers for patients and can lead to predictable results such as injury or death.

14. It is my opinion that this case represents a violation of biomedical standards upon which there is widespread consensus for informed consent and human subjects protection. For a physician to exercise such medical, research, and legal power and control over a research subject without checks or external, independent oversight or review constitutes unethical coercive practices. Given his obvious financial and professional conflicts of interest, Dr. Olson, the principal investigator and treating physician, should have obtained an independent medical evaluation of Dan Markingson's ability to consent. To exercise bioethical standards and principles for research with human subjects, Dr. Olson should have had an independent party obtain informed consent from Mr. Markingson, not an employee under his direct control and direction.

15. It is my opinion that no university IRB official should tolerate or condone the practices described above and documented in the case of Dan Markingson.

16. It is my opinion that no university or medical center should tolerate or condone the practices described above and documented in the case of Dan Markingson.

-- ONGOING INVESTIGATION --

17.My investigation of this case is ongoing and I anticipate rendering additional and more detailed opinions at trial.

18. I also anticipate rendering additional and more detailed opinions regarding the testimony of other experts during depositions and at trial, if necessary.

Signed,

Paul Root Wolpe, Ph.D. DATE: October 11, 2007