



## LEWIS AND WILKINS LLP

Attorneys at Law

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July 28, 2008

John H. Lewis  
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Dr. W R Woodson, Provost  
Purdue University  
W. Lafayette, IN 47907

Re: Appeals Package in the Matter of Dr. Taleyarkhan

Dear Dr. Woodson:

Please accept the enclosed three copies of the appeal of Dr. Taleyarkhan in relation to the April 18, 2008 Investigation Committee (2008 Inv.C) Report to the Office of Naval Research (ONR). Purdue's release of the April 18, 2008, Investigation Committee Report ahead of the appeals phase was premature and was done to harm Dr. Taleyarkhan. As such, Dr. Taleyarkhan will allow others to review matters.

The package consists of a summary which introduces the Appeal of Dr. Taleyarkhan, the grounds for Appeal, and an accompanying Exhibit 1 to the summary – which provides a point-by-point rebuttal in the main body of the 2008 Inv.C Report.

As has been mentioned earlier, due to the conflict of interests, my client respectfully requests that Purdue's counsel Mr. W. Kealey and Dr. Dunn should be excused from reviewing or handling this Appeal. The problems in the School of Nuclear Engineering have been overlooked and evidence precluded as to misinformation and credibility issues. Further, Dr. Dunn was publicly chastised for the handling of the first investigation. Given the stakes keep increasing and civil litigation is pending and will likely continue in many ways on many fronts, it is respectfully requested that Purdue realize this is not research misconduct of any sort. The evidence used against Dr. Taleyarkhan was spectral evidence, the testimony of the instigators who claimed to see things that benefited themselves but were not there. It is time for this trial to end and allow others, outside of Purdue, to handle these matters.

Dr. W. R. Woodson, Provost  
July 28, 2008  
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Thank you for your consideration. We request an oral hearing on the appeal to be scheduled after your opportunity to review and be able to discuss the matters at hand including any remedial tactics by Purdue.

Sincerely,

A handwritten signature in cursive script that reads "John Lewis / DRW". The signature is written in black ink and is positioned above the typed name and title.

John Lewis,  
Counsel for Dr. Taleyarkhan

cc: P. E. Dunn  
W. P. Kealey  
R. P. Taleyarkhan

Attachments: 3 Copies of Appeals package (Summary and Exhibit 1)

**SUMMARY OF ARGUMENT OF DR. TALEYARKHAN IN REBUTTAL  
TO INVESTIGATION COMMITTEE REPORT DATED APRIL 18, 2008**

Thank you for opening up your hearts and minds to review this appeal and rebuttal given the tremendous challenges and hardship to all over the past few years. This is a terrible situation that has brought great harm to Dr. Taleyarkhan's family, his profession, the Purdue community and the public. There is an overwhelming amount of information and evidence that supports the reversal of the remaining two allegations. Dr. Taleyarkhan respectfully requests you look at his history of good work, the bizarre history of this prolonged process and the fundamentally flawed foundation of the issues you are reviewing. Dr. Taleyarkhan respectfully requests you to reverse the remaining two conclusions of misconduct in the April 18, 2008 Report on following grounds:

**Grounds for requesting dismissal**

- 1. Violation of, and non-conformance of the investigation with prescribed procedures (as required in Executive Memorandum C-22),**
- 2. Falsification and misrepresentation of key facts,**
- 3. Wrongful withholding of key evidence,**
- 4. Formulation of presumptive statements and casting them as fact,**
- 5. Formulation of the C-22 Investigation Committee in violation of intent of C-22,**
- 6. Up-front misinformation offered to the Investigation Committee by Dr. Dunn, thus leading to biasing the committee membership without Dr. Taleyarkhan's knowledge, and,**
- 7. Subjection of Dr. Taleyarkhan to threats of punishment for not going along with the validity of the April 18, 2008 report; this is tantamount to reprisal and intimidation.**

The very foundation of any findings of misconduct is fundamentally flawed. Purdue conducted the first inquiry in 2006 and found in favor of Dr. Taleyarkhan. This first C-22 inquiry committee in 2006 was staffed with distinguished academics who looked at and considered the same information and found in favor of Dr. Taleyarkhan on the same remaining issues that are now in front of this appeal board. Purdue University (Purdue) issued a congratulatory Press Release on February 7, 2007 informing the world of no research misconduct and wishing Dr. Taleyarkhan well in his pursuits. The chaotic conclusions of the 2008 Inv.C Report is exactly why a flawed foundation can't be relied upon; you just never know what the outcome will be when the foundation is not solid.

The key instigator in this entire situation to the Purdue administration, the government and the media has gone unscathed notwithstanding his role and dedication to the demise of Purdue and Dr. Taleyarkhan. The media leak the instigator created has played a key role as the deliberately falsified information provided to Nature magazine and others was a significant factor in Congressman Miller's review as he cites to that source in his reprimand. The foundation is the

key to any structure, organization or case. This case has a flawed foundation, and if you unravel back to the source, and look at the motives and credibility issues raised before you, there is no question the information provided by Dr. Tsoukalas that was rebuked by the evidence, the investigations and the media have all been misled as they rely on a credibility strapped instigator.

Make no mistake about it, there is overwhelming support from faculty, students and staff of Purdue's School of Nuclear Engineering for Dr. Taleyarkhan. A person's credibility is extremely important and by the findings here if not reversed, you are wrongfully labeling a man who has never once been accused of anything remotely relating to misconduct. However, Leteri Tsoukalas, who Purdue chose as the person in charge of the School of Nuclear Engineering (SNE), has been (under oath) testified to as a person whose "antics were so inappropriate, filled with lies, deceit, was unfair manipulation of fellow faculty, students and staff" that the standard joke around SNE was that you knew Dr. Tsoukalas was lying when his lips were moving. This opinion and information comes from the Administrative Assistant of Dr. Tsoukalas and office manager of SNE for 5 staff and 13 faculty members. This is Purdue's own employee, someone in a management position at Purdue. There is further evidence that Dr. Tsoukalas spread rumors about Dr. Taleyarkhan's research and would call him and other staff members of Indian descent "stupid", "idiot", "thief", "stupid Indians" and "useless Indians". This whole matter begins with and continues to be based on a reliance upon a person who began and spread rumors, started secret committees in violation of express procedures detailed in C-22, leaked misinformation to the media, then continued to turn people against Dr. Taleyarkhan including telling staff members Dr. Taleyarkhan was going to a federal prison. This is not a joke; these actions actually occurred according to Purdue's own personnel as evidenced from the sworn affidavits on record and attached to the Rebuttal (Exhibit 1). Purdue's ex-Provost Mason went so far as to say in 2007 "What you've got are really some individuals who, for whatever reason, are pretty unhappy with each other and are going at it tooth and nail. And they really like to use whoever they can as a scapegoat to make a point." Unfortunately, if this is not reversed Purdue has now after 3 years of inquiry and investigation become the group used as the scapegoat to find issues with Dr. Taleyarkhan. Astoundingly, Purdue has already concluded all 34 allegations of misconduct covering fraud, fabrication, plagiarism and others (as cataloged in Appendix B of the August 27, 2007 C-22/ONR Inquiry Committee Report) to be unsupported, thus directly showing Dr. Tsoukalas and others he conspired with as frauds themselves. Unfortunately, the 2008 Inv.C went back and reversed the original decision of 2006 C-22 Inquiry Committee Report and added two new allegations or at least rehashed two allegations already ruled upon in Dr. Taleyarkhan's favor.

Purdue has acknowledged the problems publicly. Purdue has been publicly reprimanded and described as having institutional failures, yet Dr. Taleyarkhan is the person that ends up being the fall guy, the "scapegoat". What was the result of the investigation at SNE after Purdue learned there was an internal "mafia" at SNE that used intimidation and manipulative tactics to gain pay increases, promotions, or to put down those not in the "mafia"? Purdue's own employees have testified to this environment; this investigation relies on the distorted information from this environment, no way to treat someone who you recruited. Purdue hired Dr. Taleyarkhan, brought his family to West Lafayette from the Oak Ridge National Laboratory (ORNL) where he held the rank of Distinguished R&D Staff/Scientist along with being vetted for and entrusted with the nation's highest levels of security clearances, and his two daughters now attend Purdue. This is by no means a fair way to have treated this man or his family.

Purdue's initial (2006 C-22) Inquiry Committee exonerated Dr. Taleyarkhan of any research misconduct and indeed, Purdue issued a Press Release to this effect on February 7, 2007. Congressman Miller writes a scathing letter about how Purdue handles investigations and states "many disturbing questions remain about the scope and adequacy of the investigation". Is anyone at Purdue reprimanded for these failures? Does Purdue change any policies? In fact, Dr. Peter Dunn, who has played a major role throughout, was named in the letter from Congressman Miller as overseeing the first investigation. In a step that would never, ever be considered in the judicial system given the right of a person to not be tried two times for the same allegations, another investigation is launched. Double jeopardy is a defense and a constitutional right that forbids that a person be tried twice for the same crime on the same set of facts. Years go by, memories change, information is destroyed, everything is different. The new investigation committee should have been provided with the information and details and results of the first inquiry, to rely upon if necessary but at least to contrast and compare with more recent information. Unfortunately, this is not what occurred; Purdue's counsel Mr. Kealey denied entry of Purdue's own formal C-22 Inq.C Report dated 12.15.06 when Dr. Taleyarkhan's counsel presented the same (April 7, 2008) for consideration by the 2008 Inv.C, claiming that it was Chairman Dr. Henderson's decision. In a bizarre turn, Dr. Mark Hermodson, Professor of Biochemistry and Chairman of the latest investigating panel, said recently (July 25, 2008 Journal and Courier newspaper article) he couldn't say whether his panel received new evidence because he doesn't know what the original inquiry committee saw. Purdue did not change, the evidence presented to the first inquiry did not change, the witnesses did not change, there was no reason not to review everything that concluded with a supportive finding for Dr. Taleyarkhan. The original inquiry could have been a grand source of information and provided an opportunity to challenge the credibility of those involved at least through the test of time if nothing else. This was not done in this investigation and that in and of itself shows Purdue, in exonerating Dr. Taleyarkhan once but then hammered by Congressman Miller, was not going to exonerate Dr. Taleyarkhan again under any circumstance. The current investigation did not include or rely on information previously received by Purdue which was readily available and ignored.

In violation of basic due process rights and those conferred on any accused, several witnesses were not allowed to testify and facts from sworn affidavits were denied or stricken from consideration and ignored during investigation by Purdue as covered in Exhibit 1. This occurred, even though Purdue's rules clearly try to maintain an aura of fairness and not hold trials where the accused is presumed guilty. The conflict in Purdue's counsel in interpreting and reviewing evidence is extraordinary. Further, Dr. Dunn was the manager of the 2007-2008 flawed investigations. In this "fair" setting, the evidence shifted through Purdue's counsel to its manager who should have never been in charge of the investigation, since it is human nature for him to try to protect himself. These facts divulge details of willful acts of falsification, discrimination, intimidation, reprisal and slander-libel acts engaged-in and/or condoned by Purdue's administration. This mind boggling mountain of information clearly creates questions as to any determination or conclusion and with the evidence that was presented it is clear the findings are not supported as required in C-22. Over three years and with four Committees under the control and creation of Purdue and/or ONR, no research misconduct has ever been found for any of the formally submitted 34 distinct allegation groups for the ONR-mandated Inquiry and Investigation. Egregiously, in violation of their express charge, an in non-conformity with the legal standards governing C-22 and ONR Policies, the 2008 Inv.C has now

added two new allegations for which they suggest research misconduct. These new allegations have no relation to scientific fraud or fabrication, but are limited to academic issues. Incredibly, as mentioned earlier, these two newly added allegations were previously ruled upon by earlier separate committees in 2006 and 2007 for which both committees (one under Purdue University rules and the other under ONR-Purdue rules) concluded no research misconduct.

One could say a mountain has been made out of a mole hill in this matter. Unfortunately, a man's livelihood, his career, his lifelong endeavors are all in the balance, your balance, as you review the attached information. In the public domain, any judgment of misconduct is depicted in sound-bites by the Press as a guilty verdict overall. Despite the hubris generated from detractors, there is great support for Dr. Taleyarkhan and we would appreciate any opportunity to have you hear from scientists around the world, including a Nobel Laureate, if given that chance. Fortunately, you don't need them as your own faculty and scientists right here have testified on behalf of Dr. Taleyarkhan. One of the scientists is Dr. Xu himself, the key principal author of the acoustic fusion study journal paper in question. Dr. Xu has been summarily dismissed in his testimony even though he has testified over and over and over that he controlled and made the decision to involve Mr. Butt, and furthermore, that it was he that performed the experiments which confirmed successful acoustically-driven fusion, derived the data, analyzed the data, drew conclusions and drafted the manuscript for review all by himself (without participation of Dr. Taleyarkhan) and continues to maintain such today as he can not be deterred from telling the truth. The other allegation is also not confirmed by the evidence and in fact the conclusion of misconduct ignores the evidence that the observations were, in fact, independently made without influence from Dr. Taleyarkhan (a fact which has *never* been disputed), and that the observations do, in fact, confirm the earlier work. The evidence, per the rules on appeals, does not establish that Dr. Taleyarkhan committed research misconduct, or you have to throw out all of the testimony by those involved and clearly support the instigator in the whole matter, whose credibility is beyond repair according to affidavits and personal motives overwhelmed the truth.

Dr. Guenter Lohnert (Professor, University of Stuttgart, Germany) in his capacity as Editor-in-Chief (Principal) Editor of the nuclear industry's flagship Nuclear Engineering and Design (NED) journal which published Dr. Xu's 2005 confirmatory paper of acoustic fusion has provided an affidavit to Purdue (Exhibit 1) strongly concurring the conclusions of the 2006 C-22 Inq.C report, and compliments Dr. Taleyarkhan's actions as worthy of praise. Ironically, the April 18, 2008 Report does not reference this affidavit on record, nor also the supporting affidavits of Dr. Taleyarkhan's co-authors and colleagues (Prof. Lahey, ex-Dean of Engineering of RPI, Prof. Block, ex-Assoc. Dean of RPI, Prof. R. Nigmatulin, ex-President of Russian Academy of Sciences, Dr. C. West, retd. ORNL, Prof. W. Bugg, of Stanford and UTK-retd., and Prof. Forringer, LTU).

Dr. Taleyarkhan understands with great achievement comes great challenge. He is not backing down here because his life's work and that of his co-authors (distinguished academics worldwide) must move forward. Although the media and some pundits not familiar with the situation have recently stated this is all that's left, as if these findings of misconduct are no big deal, they are a big deal to Dr. Taleyarkhan. If he made mistakes, that is human everyone makes them. He has prevailed on every single allegation formally brought against him. Close is not

good enough for the caring family man. Herein, the 2008 Inv.C made conclusions that are not fair nor accurate, and not based on substantiated evidence and Dr. Taleyarkhan appeals to your review to look at his history of good work, the history of this prolonged process and the flawed foundation of the issues you are reviewing and reverse these remaining two conclusions. Dr. Taleyarkhan and his family have already been agonizingly punished enough already even though they have fought the good fight and have stood up to the false allegations brought against him.

*Indeed, Purdue's counsel Mr. Kealey relayed to Dr. Taleyarkhan's prior counsel (Mr. L. Selander) on March 25, 2008 Purdue administration's threats of punishment varying with the level of cooperation with the administration's positions to the external world as depicted in their Inc.C Report, including to the federal government. Such outrage meted to Purdue faculty can not and should not be tolerated.*

Dr. Taleyarkhan responds more fully below to the April 18, 2008 Investigation Committee (2008 Inv.C) report to appeal the conclusion of misconduct on two allegations (A.2, B.2).

## **I. Basis for Appeal**

1. A.2 and B.2 Allegations should not have even been considered as they are in non-conformance with prescribed procedures (as required in C-22).
2. Falsification and misrepresentation of key facts (from the supporting documents in official record) directly pertaining to the derivation of conclusions of research misconduct.
3. Wrongful withholding of key evidence (submitted to the 2008 Inv.C) under oath which directly bear on the issue of intent to mislead.
4. The formulation of presumptive statements (by the 2008 Inv.C) on key issues related to determining misconduct) without supporting evidence.
5. The rejection of evidence (to inform the 2008 Inv.C) which demonstrated that allegations A.2 and B.2 were already dismissed after a year long inquiry by a duly formulated Inquiry Committee (Inq.C) which reported no misconduct, after which Purdue University itself issued a Press Release on Feb. 7, 2007.
6. The formulation of the 2008 Inv.C was in violation of C-22. It was populated with individuals who are non-peers of Dr. Taleyarkhan despite Dr. Taleyarkhan's counsel pleading the case that Dr. Taleyarkhan and his co-authors are all predominantly engineers and a majority of their publications on sonofusion were in engineering journals. Objections of counsel were dismissed without cause and finally, only one additional peer member was appointed. It is surprising that the Dean of the College of Engineering deliberately refused to appoint a single engineer to the 2008 Inv.C in relation to passing judgment on research practices followed by a member of her own College; this is in stark contrast to the 2006 Inquiry Committee where the Dean staffed with a majority of engineering peers of Dr. Taleyarkhan.

7. Falsified information was presented to the 2008 Inv.C up front (by Purdue's Associate Vice-Provost for Research) without Dr. Taleyarkhan's knowledge which was prejudicial to Dr. Taleyarkhan's case in terms of determining misconduct, and for which a series of corrective letters with supporting evidence had to be transmitted upon revelation. These letters and evidence are not referred to in the 2008 Inv.C Report.
8. Threats of punishment for not going along with the validity and Conclusions of the Inv.C Report. These threats were conveyed (from Purdue's counsel Mr. W. Kealey) to Dr. Taleyarkhan via his counsel Mr. L. Selander. Mr. Kealey, furthermore, also communicated false information to Dr. Taleyarkhan's counsel that Ms. D. Mize and Ms. Timmerman from the School of Nuclear Engineering did not wish to provide testimony in relation to Purdue's 1.31.08 to 2.2.08 Inv.C board. As such, both Mr. Kealey and Dr. Dunn should be considered as conflicted and removed from the handling of this Appeal. This request was made earlier to the Acting Provost Dr. Lechtenberg, but the request was summarily denied. Is this a way that Purdue treats faculty members, handles it's responsibilities for conducting fair and open investigations, and projects it's tyrannical power on to the members of it's community? If left unchecked, this sort of treatment could be meted out in the future to any other faculty or staff. Besides being illegal, this can not be allowed to continue in a great institution.
9. Inadmissibility of video evidence showing Mr. A. Butt, the co-author of the paper with Dr. Xu, enthusiastically discussing his research work and accomplishments on sonofusion with Purdue's ex-Provost S. Mason during her visit to Dr. Taleyarkhan's laboratory. This video tape was produced at the time Mr. Butt accepted Dr. Xu's invitation to become a co-author, and which today, is being cast as having been done under duress. The signed, sworn affidavits of Mr. Butt's fellow students at the time (Mr. J. Lapinskas and Mr. J. Webster) which support the fact that Mr. Butt was a willing, eager, and deserving co-author of Dr. Xu are also not recognized, nor were they permitted to appear to provide their testimony to the Inv.C in the 1.31.08 to 2.2.08 hearings.

A rebuttal report which focuses on the standards governing the actions of the 2008 Inv.C, and Allegations A.2 and B.2 of the 4/18/08 Inv.C report is attached as Exhibit 1. For convenience, Exhibit 1 presents corrections of fact in the body of the 4/18/08 report itself so the Appeal Committee (AC) may be able to review on a one-on-one basis. All comments, corrections of fact, modifications and rebuttal input are marked in "red" with independent witness/affidavit quotations (from the already entered documents) in "blue" lettering. Disagreements with the as-stated verbiage in the 4/18/08 Report is indicated with ~~strike through~~ lines.

## **II. Appeal**

- A. A.2 and B.2 Allegations Should Not Have Been Considered As They Are In Non-Conformance with Prescribed Procedures (as required in C-22; Section on Appeals).**



Exhibit 1 provides details of the basis from supporting evidence already entered into the formal record of the 2008 Inv.C and Inq.C.

**B. Dismiss Allegation A.2 on Grounds of: falsification of facts, ignoring of entered and presented evidence on record, presumptions without basis, and unfairness.**

The finding of research misconduct based on allegation A2 that “Dr. Taleyarkhan with falsifying intent caused Adam Butt’s name to be added to the author bylines of the papers even though Adam Butt was not a significant contributor to the experiments, the data analyses, or the writing of the manuscripts” is incorrect for the following reasons:

- (a) It ignores the *express testimony* of Dr. Xu that it was his (Dr. Xu’s) decision to include Butt as an author.
- (b) It *ignores* the credible *significant* evidence in the form of affidavits which were presented to the Committee (but apparently not given to the Committee members since the 4.18.2008 Inv.C Report does not appear to reference the same anywhere) that Butt was likely compromised and forced to make claims contrary to Dr. Taleyarkhan’s interest because Tsoukalas threatened Butt concerning the award of Butt’s Master’s degree. The 2008 Inv.C Report makes no reference to these affidavits from Ms. Mize, Ms. Timmerman, Mr. Jenkins, Mr. Lapinskas and Mr. Webster. For example:
  - (i) Paragraph 33 of the Darla Mize affidavit stated that Mize was aware that there was a secret meeting started by Dr. Tsoukalas to investigate Dr. Taleyarkhan for research fraud. Dr. Tsoukalas attended a specific meeting with Adam Butt and this secret committee and Mize stated that Dr. Tsoukalas was the one that called Adam Butt directly into his office to meet with the secret committee. It was clear that Adam Butt did not approach Dr. Tsoukalas.
  - (ii) Next, according to the affidavit of student Joseph R. Lapinskas, he was aware that Dr. Tsoukalas was trying to get Adam Butt to say that Dr. Taleyarkhan told him [Butt] to do something with regard to co-authorship of the paper, and tried to get Butt to write something down and say that Dr. Taleyarkhan forced Butt to be a co-author. (See paragraph 5 of the Lapinskas affidavit). Lapinskas also accounts for the fact that Butt had his thesis pushed through faster than most at the University and noted the unusual nature of Dr. Tsoukalas being present for the thesis defense which usually never happens in the School of Nuclear Engineering.
  - (iii) Finally, student Jeff Webster indicates, as does Lapinskas, that Butt was never unhappy with being noted as a co-author for the

papers. He never heard Butt say anything about the fact that he should not have been a co-author for the paper. In fact, he sat in on meetings in which Xu and Butt *discussed* the papers as co-authors together. Finally, Butt was *excited* to be a co-author. Furthermore, Webster states in paragraph 14 that Butt did have the requisite experience to be a co-author since he was so involved with the sonofusion studies with Xu.

- (iv) These affidavits and particular testimony were specifically left out of the Investigation Committee's evidence with no explanation other than the Committee chair considered the affidavits to be "insufficiently probative for inclusion in the record." These are perhaps the *most* probative pieces of information on this issue in the entire record and must be addressed by this Committee. *See* e-mail from William Kealey, February 28, 2008.
- (v) While paragraph 33 from Darla Mize's affidavit was included in the evidence by the Committee, when taken together with the evidence that was excluded (the affidavits of Lapinkas and Webster), much is lost in terms of the Committee's ability to make an informed decision with regard to Adam Butt's testimony in this matter. Given the weight of the evidence from the affidavit testimony and the plethora of evidence from affiants such as Jere Jenkins (also excluded from the Committee due to "repetitiveness"), it is absolutely clear that Tsoukalas had an agenda against Dr. Taleyarkhan and that it is not unlikely that he coerced Butt into making untoward statements and allegations against Dr. Taleyarkhan in exchange for an approval of his thesis in the School of Nuclear Engineering which, by all accounts was a very quick thesis approval process.
- (c) It ignores the uncontradicted testimony that Butt was happy to be a co-author, consented to it in writing, and claimed the article as his work in support of his thesis.
- (d) Unless this Committee chooses to ignore this evidence, it cannot conclude that the burden of proof on research misconduct on this issue has been met.

#### **Factual inaccuracies in report – summary correction**

**Page 4:** The Inv.C Report conclusion that Dr. Taleyarkhan "compelled" the addition of Mr. Butt "knowing" that he had not substantively contributed is unsupported based on the direct testimony of Dr. Xu which clearly states that the intent and decision to include Mr. Butt as co-author was his (Dr. Xu's) decision and his alone after he (Dr. Xu) was satisfied that the level of input provided to him was sufficient to include Mr. Butt as co-author with no pressure from Dr. Taleyarkhan. This is stated in Dr. Xu's sworn affidavit (paras. 8-12, 14

1.31.08 affidavit). Therefore, the fundamental basis for the conclusions are in stark contrast with direct testimony of the principal author himself and therefore, ***the conclusion of misconduct for Allegation A.2 is simply not based on substantiated evidence.***

**Page 12:** Finding of Fact (FF2) on page 12 falsely states that Dr. Taleyarkhan subsequently contacted Mr. Butt. This key *subsequent* act was the intent of, initiated and performed by Dr. Xu himself (see para. 8, 1/31/08 affidavit). As clearly stated in Dr. Xu's sworn testimony (para 8, 1/31/08) Dr. Xu contacted Mr. Butt after Dr. Taleyarkhan agreed with Dr. Xu's suggestion to engage in due diligence.

**Page 12:** FF3 falsely concludes that Dr. Taleyarkhan "controlled" the decision to include Mr. Butt. There is no substantiated evidence for this. The decision to include or to not include was Dr. Xu's alone. Dr. Taleyarkhan merely agreed with Dr. Xu on his quest for engaging in due diligence.

**Page 12:** FF5 falsely states that on 1/26/05 Dr. Taleyarkhan "asked" Mr. Butt to become an author. Per the records, Dr. Taleyarkhan as a courtesy first "inquired" with Mr. Butt if "he" would be even interested to accept Dr. Xu's request to engage in due diligence work leading to possible co-authorship which was at the sole discretion of Dr. Xu (per his sworn affidavit, para 4). This is also supported from the affidavit of Dr. Revankar.

**Page 13:** FF12 testimony of Mr. Butt was refuted via evidence of email communications of January 2006 itself demonstrating that he was fully knowledgeable of his co-authorship and participation in the NURETH-11 manuscript. This is attested to (with supporting evidence already on record) not only by Dr. Xu but also by Dr. Revankar in their sworn affidavits.

**Page 13:** The conclusion section falsely concludes that Dr. Taleyarkhan made the "ultimate" decision to add Mr. Butt. There is absolutely no evidence to support this presumptive conclusion; only the opposite is evident via direct testimony of the most important player in this issue, Dr. Xu himself who has unequivocally stated in several formal transmittals to Purdue and finally in his sworn testimony and affidavit (para. 8, 1/31/08) that not only was it his intent to seek Mr. Butt's participation and assistance, but it was also his "ultimate" decision to decide if and when the level of participation of Mr. Butt was sufficient to include his junior colleague who he had coached in sonofusion for over 6 months to be a co-author. The adequacy, level and extent of work of Mr. Butt were determined by Dr. Xu and not by Dr. Taleyarkhan. *Therefore, it was Dr. Xu who made the "ultimate" decision (see paragraph 8 of Xu's 1.31.08 affidavit).*

***With these corrections of facts as stated in the 4.18.08 Inv.C Report, the conclusion of misconduct is unsupported as previously concluded by the Purdue's own duly appointed C-22 Inq.C in 2006 in their Dec. 15, 2006 report.***

### **C. Basis for Appeal to Dismiss Allegation B.2**

The finding of research misconduct based on allegation B.2 that "Dr. Taleyarkhan with falsifying intent stated in the opening paragraph of his paper in Physical Review Letters **96**: 034301 (2006) that 'these observations [referring to Science

295: 1868 (2002)] have now been independently confirmed” is not supported for the following reasons:

- It ignores the evidence that the observations were, in fact, independently made without influence from Dr. Taleyarkhan (a fact which has *never* been disputed), and that the observations do, in fact, confirm the earlier work. Table 2 of Exhibit 2 (attached) lists the figures of merit for judging independence as laid out by Purdue’s own 2006 Inq.C in their final report of December 15, 2006. This evidence was presented to the Inv.C (ref. 4) but this evidence was ignored.
- It ignores the fact that Dr. Taleyarkhan’s help in doing the work was expressly *acknowledged* in the published work *itself*.
- There is no direct evidence of intent. In fact, the additional evidence presented with this Rebuttal proves that the original idea to refer to the observations as “independent” in the first place was not the intent of nor originated by Dr. Taleyarkhan (Drs. Lahey and Block confirm it came from them and maintain to this day that it is correct). These formal statements from Drs. Lahey and Block were transmitted to the Inv.C on 4/7/08 (Ref. 4 of the Inv.C Report) but this was ignored. When taken into account there is strong evidence to support the conclusion that Dr. Taleyarkhan did NOT have the intent to mislead.

A gross falsification of the facts has been committed in the 4/18/08 Inv.C Report as it relates to the independence of Dr. Xu’s successful confirmatory work reported in NED.

**Page 7:** FF2 egregiously misrepresents the record by quoting – Dr. Taleyarkhan ... was “sometimes present during actual experimentation” for the data presented in the NED and NURETH manuscripts. The basis for this declaration are given (in the 4.18.08 Inv.C Report) as Ref. 3 composed of the Xu affidavit of 1.31.08, page 11 of the 12.18.08 transmittal from RPT to PD, and page 36 of the 4.7.08 transmittal of the Rebuttal Report to the Inv.C draft report of 3.17.08; in addition Ref. 4 is cited which is the same 4.7.08 transmittal page 36. In actuality, ***there is no reference to Dr. Xu’s statements on page 11 of the 12.18.08 transmittal. Ref. 4 states that Dr. Taleyarkhan was “never” present during actual experimentation .. in the NED and NURETH-11 manuscripts. Furthermore, from the 1.31.08 affidavit of Xu (para 22) Xu states “Taleyarkhan was seldom present during actual experimentation” and confirms categorically “did not participate in any experimentation.” How could so much be overlooked while documenting FF2?*** The Inv.C Report intentionally sends the false message and misrepresents the stated record by giving the clear-cut impression that Dr. Taleyarkhan actually may have participated in the experiments from which data were derived for the NED and NURETH-11 papers. It also disregards to enter the words “never present” from Ref. 4, and as such has cast a totally false impression to the entire world at large on the issue of independence. The Inv.C Report also has deliberately rejected consideration of the 12.15.2006 C-22 Inq.C Report which furthermore concluded (page 2, bottom paragraph) “The IC found no evidence that would contradict Dr. Taleyarkhan’s claim that he (Dr. Taleyarkhan) played absolutely no part in setting up or running experiments, nor obtaining data and conducting

analyses thereafter, for the experiments documented in the Xu et al. papers. Therefore, the Inv.C Report's recorded FF2 is unfair at best and what might most favorably be characterized as severe lack of judgment.

**Page 15:** FF1 misrepresents the facts and circumstances surrounding Dr. Xu's appointment. As written, it gives the impression that Dr. Xu was appointed as Dr. Taleyarkhan's post-doctoral student. FF1 does not reveal that Dr. Xu's appointment letter was signed by Dr. Tsoukalas (Head of School of Nuclear Engineering) without placing Dr. Taleyarkhan on cc list. It was Dr. Tsoukalas who served as Principal Investigator (PI) of the UT-Batelle/DOE Project and as such paid Dr. Xu's salary and directed him to do what he (Tsoukalas) wanted. *The PI serves as director and it is a responsibility that can not be delegated per federal guidelines.* The Inv.C Report, therefore, has willfully falsified the facts surrounding the issue of who provided oversight and supervision of Dr. Xu during the time he was conducting his experimental work using Dr. Tsoukalas's equipment, laboratory space and resources - leading to data generation for his NED paper. Purdue's own business logs show that Dr. Xu's salary was paid for by Dr. Tsoukalas from project funds for which he served as Principal Investigator. The misrepresentation of FF1 has a direct bearing on the conclusion of research misconduct for Allegation B.2. As mentioned earlier in Section I, this is also the very same misrepresentation of facts which were made directly to the Inv.C members by Dr. Peter Dunn (the person in charge of overseeing the Inv.C for maintaining compliance with C-22).

**Page 20:** FF4 falsely declares that Dr. Xu used Dr. Taleyarkhan's equipment for the most part. This is a reversal of actual fact as testified by Dr. Xu himself in his sworn affidavit (paras. 4, 17, 19) where he documents for the record that he used the laboratory, facilities, personnel and expertise from Dr. Tsoukalas's laboratory.

**Page 20:** FF6 falsely states that Dr. Xu did not possess the necessary expertise for conducting successful sonofusion experimentation. This conclusion is simply false and exhibits a level of ignorance on the requirements for successful sonofusion attainment. Exh.1 provides the technical basis to correct this erroneous conclusion. Dr. Xu indeed possessed the needed skill-sets (from past experience and by tutoring from ORNL experts) when the time came for him to conduct his own experiments for his NED paper.

**Page 21:** The Conclusion section concludes that it finds "much fault with Dr. Taleyarkhan's *intent* in advocating the independence of the Xu experiments." This is a reversal of fact. As the 4/7/08 submission cover letter attachments containing statements from Drs. Lahey, Block and West attest, it was not Dr. Taleyarkhan's intent to advocate independence in the group's 2006 PRL 96 publication. It was the intent of and initiated by Drs. Lahey and Block and thereafter, supported by all co-authors who stand together on the veracity and applicability of the statement "these *observations* have now been *independently confirmed*." Indeed, the "observations" were confirmed by Dr. Xu independent of participation of or involvement of any of the co-authors of the original discovery team.

Sworn affidavits have been submitted by all co-authors to assert their position on the appropriateness of the claim "these observations .. independently confirmed." Proactive actions have already been taken by Dr. Taleyarkhan and his team to submit errata and clarifications for the record to internet postings as well as to journals.

Therefore, no research misconduct can be concluded for Allegation B.2 based on the facts of the case and overwhelming proactive actions already taken by all co-authors to publicize and accept the specifics of the involvement in the Dr. Xu et al. NED paper, the fact that it was not even Dr. Taleyarkhan who had the intent nor initiated the use of the word “independent”, the fact that the author Dr. Xu himself has publicly claimed his published NED work to be independent, the fact that the Principal Editor (Prof. G. Lohnert) of the NED journal himself came out and stated he agrees with the claim of independence of Dr. Xu’s NED paper, and finally the undisputed fact that a duly appointed C-22 Inq.C by Purdue University in 2006 (specifically charged to draw conclusions on this very same issue) itself concluded no research misconduct.

The excerpted evidence pertaining to Purdue’s own 12/15/2006 C-22 Inq.C final report of exoneration from misconduct was surprisingly disallowed for consideration by the 2008 Inv.C. The reason given by Purdue’s counsel was that the excerpt was considered as “doctored” and therefore, unacceptable for the record. This already existing formal Purdue University C-22 document signed by Dr. P. Dunn (the person overseeing the 2008 Inv.C itself) is attached without excerpting.

***We respectfully appeal to have the 4/18/08 Inv.C conclusion of misconduct to be overruled on grounds of non-conformance with procedures, and because when the falsified facts (as documented in the 4.18.08 Inv.C Report) are corrected for the record, the burden of proof to determine misconduct based on substantial evidence has not been met.***

### **III. Appeal to correct the record on other charges for which misconduct was not found.**

- The “comment” on <sup>252</sup>Cf issues appearing on page 28 of the draft report is inaccurate as noted herein and identified in Ref. 4 of the 4/18/08 Inv.C Report. This section needs to be removed or corrected.
- The “Concluding Observations” which are made in pages 26 through 29 of the April 18, 2008 report should be *removed* from the report.
  - They exceed the *express charge* given to the Committee.
  - They ignore much of the evidence that was submitted (some of which the Committee as a whole has apparently not seen yet).
- Other suggested changes/corrections/modifications are made in connection with other Allegations upon which this Committee concludes there was no research misconduct. These were communicated to the Inv.C dated 4/7/08 but have been inexplicably ignored for the public record, as such painting a distorted picture of facts to the worldwide community.