

8 April 2019

MEMORANDUM FOR ALL REVIEWING AUTHORITIES

FROM: DEFENSE COUNSEL (Mr. Frank Spinner, Capt [REDACTED], Capt [REDACTED])

SUBJECT: Response to Notification of Disenrollment, C1C Michael Hannigan, dated 15 Mar 19

EXECUTIVE SUMMARY

There is insufficient evidence to establish or indicate that Cadet Michael Hannigan conspired with the USAFA men's swim team to obstruct justice. The team held three meetings prior to any member being questioned by AFOSI. Cadet Hannigan, as swim team captain, would usually initiate team meetings. The first meeting was held upon the recommendation by 2nd Lt F. Lt F was a recently commissioned officer who had been a cadet on the swim team the year prior. He thought the team should meet as to the potential of an AFOSI investigation. Even if there were discussions about how to approach an OSI investigation, the evidence does not establish that Cadet Hannigan was the one who directed this message. Further, even if such a conclusion is drawn, Cadet Hannigan abandoned any conspiracy to obstruct justice when, at the next two men's swim team meetings, he specifically told everyone to tell the truth. The evidence also establishes that the swim team members answered AFOSI questions to the best of their ability, were never purposefully vague, and told the truth. Finally, it is without precedent to hold Cadet Hannigan responsible for the actions of others when there is no clear evidence of Cadet Hannigan directing swim team members to delete any digital evidence or to engage in misconduct to prevent AFOSI discovering evidence pertaining to its investigation.

OVERVIEW

1. On 15 Mar 19, Col Scott Campbell, Vice Commandant of Cadets, United States Air Force Academy (USAFA), notified Cadet Hannigan of his intent to recommend disenrollment from USAFA for deficiency in conduct, minor misconduct, and/or failing conduct probation IAW para. 18 of USAFAI 36-3504 and AFI 36-3501. On 18 March 2019 an extension request was submitted by defense counsel. The extension request was granted submit matters by 8 April 2019. Cadet Hannigan is represented by Mr. Frank Spinner, civilian defense counsel, Capt [REDACTED] Area Defense Counsel, [REDACTED], and Capt [REDACTED]

2. Cadet Hannigan is currently a cadet at USAFA. He competed intercollegiately as a member of the Men's Swim team for four years, earning the distinct honor of being named "Team Captain" for his Cadet First Class year. He has completed all graduation and commissioning requirements and should have graduated in May 2018 with his classmates. The administration placed Cadet Hannigan in an administrative hold status, preventing him from graduating in May 2018; he is still in that status.

3. On 6 September 2018, three charges and attendant specifications were preferred against Cadet Hannigan for conspiracy to commit dereliction of duty, dereliction of duty in “willfully refraining from engaging in activities that constituted hazing,” and obstruction of justice for “influencing the statements to Air Force Office of Special Investigations of the United States Air Force Academy Men’s Swim team,” in violation of Articles 81, 92, and 134 of the Uniform Code of Military Justice (UCMJ), respectively. This was the first “hazing” case preferred in the venerable history of USAFA. The charges were referred to trial on 24 October 2018. Two other cadets were similarly charged: Cadet Lars Knutson and Cadet Garrett Glaudini. Preceding the first trial commencing, the case of Cadet Lars Knutson, Lt Gen Jay Silveria, Superintendent, USAFA, dismissed all charges and specifications against all three cadets.

4. The dismissal—an abrupt change in direction—occurred mere days before the following witnesses were required to testify in live court pertaining to unlawful command influence, prosecutorial misconduct, and investigative misconduct: The Secretary of the Air Force; The Chief of Staff of the Air Force; Lt Gen Jay Silveria; Lt Gen Sami Said; Brig Gen Kristin Goodwin; Col Scott Campbell; all named witnesses on the Government Witness List, including all freshman swimmers at the time of the Chunker, including AFC Accuser; the AOCs and Group AOCs of all freshmen witnesses on the Government’s witness list; Cadet #8; Cadet #1; Lt Col Gherdovich; Coach Robert Clayton, Mr. Jim Knowlton, Mr. George Nelson, Coach Eric Seremet; Capt Susan Bet-Sayad; Col Thomas Rogers, Jr.; Accuser's mother, Col Kathleen Harrington; Lt Col Anthony Salvatore; SA Michael Evans, SA Stephen Klukovich; SA Steven Torres; all (as yet unidentified) AFOSI investigators, officers, or members of the Commandant’s staff who attended her January 2018 speech to the alleged victims; all (as yet unidentified) members of the USAFA legal office who attended the conference call with the alleged victims’ parents and Vice Commandant in Summer 2018 regarding the January 2018 OSI interviews; and the alleged victims’ parents who attended the conference call with the Vice Commandant in Summer 2018 regarding the January 2018 AFOSI interviews (including, but not limited to, #9 Parents, #10 Parents, and #11 parents).

5. The letter of notification (LON) of disenrollment, ironically, had a brand new allegation as the basis for disenrollment rather than the criminal charges previously alleged. The LON alleges a conspiracy to obstruct justice “to prevent AFOSI agents from discovering information relating to and AFOSI investigation into hazing.” The allegation further alleges some parties, but not Cadet Hannigan, may have deleted digital evidence of hazing, and that some parties, but not Cadet Hannigan, provided intentionally vague answers to AFOSI agents when questioned.

6. Cadet Michael Hannigan should be permitted to graduate from USAFA and commission as an Officer in the United States Air Force. This memorandum will have two main sections. First, the memorandum will analyze how there is little to no evidence to support the allegation as drafted in the LON. There is little to no evidence anyone deleted digital evidence in this case. Furthermore, even if there was, it seeks to hold Cadet Hannigan vicariously liable for others’ actions. Finally, there is little to no evidence of “intentional vagueness” when witnesses interviewed with AFOSI. A more appropriate characterization is that cadets accurately portrayed what they remembered and AFOSI agents and a prosecutor from USAFA/JA threatened, coerced, berated, and tormented cadets into agreeing to pre-determined narrative in order to

secure a conviction. The second section takes a broader view, one that overlooks some, but not all, the misfeasance and unethical behavior of investigators and prosecutors in this case that ultimately led to dismissal of the charges. USAFA officials are now, with this administrative disenrollment, trying to salvage what's left of the mess they made for themselves. By having to fight in the administrative forum instead of the criminal justice form, Cadet Hannigan has been stripped of all rights to due process, confrontation, the right to a speedy and public trial, and the right to have a jury of peers assess guilt, inherent in the 5th and 6th Amendments to the United States Constitution. USAFA officials are subverting the very nature of the rights afforded to defendants in the criminal justice system in order to protect an important public image. His memorandum, this attorney memorandum, and any attachments are the only right to respond he has left. Please read, digest, and discuss each and every single word on every single page to arrive at the one and only just result in this case: Cadet Hannigan must graduate from USAFA immediately and commission as a Second Lieutenant in the greatest Air Force the world has ever seen.

THE BASIS FOR DISENROLLMENT

Facts:

7. Cadet Hannigan was served a disenrollment notification on 15 March 2019. The notification relies upon the AFOSI Report of Investigation (ROI) and eleven immunized cadet witness statements, and nothing else.

8. Leading up to, as well as during, the Winter Holiday Break of 2017, three meetings were held by the USAFA men's swim team. The first meeting was held at the recommendation of 2nd Lt F. Lt F had graduated from USAFA merely 7 months before. Then-Cadet F was a member of the men's swim team as well. He was still stationed at USAFA on casual status in the fall and winter of 2017-2018. Lt F recommended the team meet to discuss the potential of an AFOSI investigation. Lt F was put on notice of this development by Mr. George Nelson, USAFA/AD. At this meeting, the swim team members discussed a variety of topics as to the specific details of the "Chunker" that occurred in the late summer of 2017 and the potential of AFOSI investigating allegations stemming from the night in question.

9. Within days of this meeting Cadet Hannigan called another swim team meeting and he told all the members of the swim team to tell the truth if ever questioned by AFOSI agents. Further, Cadet Hannigan called a third meeting and once again advised the members of the swim team to tell the truth no matter what the consequences could be.

10. The ROI predominately consists of manufactured evidence from the freshman class swim team cadets who were interrogated by AFOSI agents in January 2018. The AFOSI interviews were later described by the identified "victims" as an "interrogation," where freshman cadets were threatened, coerced, berated, and tormented into agreeing to a pre-determined narrative. Agents threatened the USAFA education and Air Force careers of these cadets, inducing cadets to adopt the false information that was being delivered by the AFOSI agents.

11. However, months later, on or about June 2018, almost all of the swim team received Letters of Reprimand (LOR) for the statements they made to AFOSI, because their responses to an incident that occurred almost six months prior were deemed “intentionally vague.” Yet, these statements portray a true indication as to the specifics details surrounding the true events leading up to the AFOSI investigation. No one was intentionally vague.

12. Three months later in September 2018, the Staff Judge Advocate (SJA) office once again initiated another round of interviews in order to get the swim team members to change their testimony. The SJA office presented letters of immunity signed by the convening authority, which required that these eleven cadets make an additional statement.

13. When cadets were brought into the office of the Assistant Trial Counsel (Capt Susan Bet-Sayad) to finalize their grant of immunity, cadets were once again, but now by a different arm of the government, coerced into making statements that adopted a clear narrative that Capt Bet-Sayad pushed onto them. When they did not concur with her proposals, she threatened with disenrollment. This government strategy of coercion mirrors the exact same tactics AFOSI agents used when interrogating cadets by dangling their careers over their heads the entire time, and repeatedly accusing them of lying.

Law:

14. Abandonment of a conspiracy is an affirmative defense. In other words, even if a conspiracy exists, if the plan to commit a crime is affirmatively abandoned, the members of the conspiracy are no longer criminally liable for the conspiracy. Affirmative acts inconsistent with the object of a conspiracy and communicated in a manner reasonably calculated to reach co-conspirators have been regarded as sufficient evidence to establish withdrawal or abandonment from a conspiracy. *See U.S. v. U.S. Gypsum Co.*, 438 U.S. 422, 464-465 (1978). Further, a conspiracy terminates when there is affirmative evidence of abandonment to disavow or defeat the object of the conspiracy. *See U.S. v. Jimenez Recio*, 537 U.S. 270, 272 (2003).

Argument:

15. The LON allegation cannot be met by any evidentiary standard because: 1) there is insufficient evidence of a conspiracy; and 2) even if there was a conspiracy, it was appropriately abandoned. Cadet Hannigan never conspired to obstruct justice nor did he prevent AFOSI from discovering information related to the investigation. Cadet Hannigan told the team multiple times to tell the truth. There is both a lack of proof and a lack of any evidence to indicate that Cadet Hannigan instructed individuals to delete text messages. Finally, the other members of the swim team were truthful with AFOSI the entire time and were never vague.

16. There were three meetings leading up to the initiation of AFOSI’s investigation of the swim team. The first meeting was held based upon the recommendation of 2nd Lt F that the team should meet to discuss the potential of an AFOSI investigation. Even if there were discussions about how to approach an OSI investigation, the evidence does not establish that Cadet Hannigan was the one who directly told the team to be vague or to be selective with the information provided to AFOSI. Further, even if an individual drew such a conclusion,

Cadet Hannigan's actions after this meeting are inconsistent with any conspiracy to obstruct justice because he told the team to tell the truth multiple times. This affirmative evidence is described and portrayed beyond a reasonable doubt from the swim team's LOR responses, which shows that Cadet Hannigan abandoned any idea of conspiring to obstruct justice. If Cadet Hannigan was trying to obstruct justice, why would he tell his teammates multiple times to tell the truth?

Deletion and prevention of discovery

17. There was no conspiracy. There is insufficient evidence that there was an agreement to commit a crime or who was party to that agreement. As for the allegation that Cadet Hannigan prevented AFOSI from discovering information related to its investigation and deleting digital evidence, there is both a lack of proof and a lack of any evidence that indicates Cadet Hannigan did this personally and that he instructed individuals to do the same. It is without precedent to hold Cadet Hannigan responsible for the actions of others when there is no evidence of Cadet Hannigan instructing anyone to engage in this misconduct. Further, Cadet #5 provides in his AF IMT 1168, dated 5 September 2018, that Cadet ██████████ said to delete anything that could be self-incriminating as to our phones, but I nor Hannigan thought anything needed to be deleted from our personal phones." Cadet ██████████ provides even further context in his LOR response dated 15 July 2018 that "I along with several other Four Degrees had noticed that a swimmer had deleted the team's group chat, and the Four Degrees texted one another to meet to determine why...I told the Four Degree swimmers that deleting the group chat had been foolish because it would make the team look like we were hiding something." This evidence further establishes that Cadet Hannigan did not engage in what the LON is accusing him. Therefore, with a lack of evidence, Cadet Hannigan cannot be held responsible for the misconduct of other members of the team just because he was the men's swim team captain.

"Tell the Truth"

18. The following LOR responses establish that even if there was a conspiracy, it was completely abandoned. Abandonment is a complete and total defense.

a. **Cadet #3:** "As a team, we met up a week or two before most of the freshmen started getting called in for questioning to determine that we were each going to tell the truth as best as everyone knew it. We had also met as a team right before most freshmen were called for questioning to reiterate...to tell the truth as best as they knew it. The entire team, including the upperclassmen, were encouraging us and each other to tell the truth so as to avoid punishment."

b. **Cadet Derek Brecht:** "As a senior class we met and decided that we would tell the truth to AFOSI when questioned about anything. We met with the whole team and told each and every one of them to tell the truth. Our meeting prior to the AFOSI investigation were specifically to guide the freshman on the process of how the whole thing worked...none of my past teammates had any intention to obstruct justice or prevent AFOSI from finding out the truth about the events that transpired on our team. Our unanimous decision among the seniors was to tell the whole truth to anyone permitted to hear our side of the story."

c. **Cadet #1:** "We had another meeting mainly led by our team captain

(Cadet Hannigan) and seniors where we agreed that if we elected to waive our right to remain silent, the best course of action was to tell the complete truth because it was the right thing to do and if we did not tell the truth it would create a bigger issue.”

d. **Cadet #7:** “A second meeting was called, and the same upper-classmen who held the first meeting changed their guidance and stated we should not lie and instead we should be forthcoming and truthful with our answers...The directive for truthfulness was reiterated time and time again including in the third meeting, which also happened before my initial questioning on 18 January 2018.”

e. **Cadet #4:** “The very next day we had another meeting and were instructed to tell the complete truth because things would only become worse if we lied.”

f. **Cadet Garrett Gladini:** “We made the decision to tell the truth and be forthcoming. I attended this meeting and personally heard the Captain (Michael Hannigan) state that no one should lie to the OSI Agents and just tell them what actually happened.”

g. **Cadet [REDACTED]:** “Once we found out that an investigation was opening up for the team, Michael called multiple meetings for the entire team to discuss our steps moving forward. At every meeting held, one thing was stressed above all else: Tell the entire truth. We all agreed that the smartest decision was to bring everything out in the open, regardless of how it might affect us and our careers.”

h. **Cadet #5:** “Our swim team captain Michael Hannigan came to my room to discuss our personal convictions as he was torn between his beliefs and his desire to keep his teammates safe. After a long discussion we came to the consensus that even if telling the truth meant the end of an Air Force career, it was not the end to anyone’s life...Michael communicated this information to the entire team, and although it took some convincing, everyone was eventually on board before anyone was interviewed...because of my conversations with Michael, and our team meetings, I was going to tell the truth and I had no intention of being deceitful...Both Michael and I wanted all the swimmers to live with integrity and do the right thing.”

i. **Cadet #6:** “We had a second meeting during which we agreed that obstruction of justice was not a good idea and that everyone was to tell the truth...It was the directive from the second meeting that I carried out during my AFOSI interrogation of me. I never intended to create any conspiracy which could have hindered the investigation that was conducted against the parties involved. I told the truth as accurately as I could remember it, which was entirely my intention from the beginning.”

19. Hence, this evidence shows beyond a reasonable doubt that Cadet Hannigan disavowed any conspiracy to obstruct justice. Further, this evidence establishes again beyond a reasonable doubt that the members of the swim team were not purposefully vague and told the truth to the best of their recollection, concerning an event that took place almost six months before being interrogated.

INVESTIGATIVE AND PROSECUTORIAL MISDCONDUCT

20. Most cadet swimmer-witnesses have three statements: 1) the original statement to OSI; 2) an immunized statement; and 3) a LOR response. The variation among those statements shows the various levels of coercion, deceit, and intimidation applied to the cadets by investigators and the prosecutors. When looked at holistically, the responses create a natural arc. In the first statements to AFOSI, the cadets don't provide the statements investigators deem to be sufficient. The cadets don't remember what exactly happened because the alleged event happened a long time ago and/or the complaining witness's version of the event was misleading or incorrect. The second round of statements are immunized witness statements with the USAFA/JA office. Here, the prosecutor tells witnesses their statements are insufficient and they either need to sign a statement she has prepared for them or include details she requires. The third and final statements are responses to their LORs, where the cadets actually get their first opportunity to breathe and explain the truth. Some representative samples of LOR responses are as follows:

a. **Cadet #2**: “Additionally as you may be aware, my truthfulness in disclosing my knowledge of previously-mentioned investigations to investigators has also subjected me to various interrogations (especially by USAFA’s prosecuting attorney’s office, who made numerous threatening overtures during their interview with me).”

b. **Cadet #3** describes the situation as “pressured.”

c. **Cadet Derek Brecht**: “Unfortunately, AFOSI does not seek the truth; they only seek to prove what one narrative stated, which was not the honest truth of what occurred on our team.”

d. **Cadet #1**: “Additionally, I was questioned about this in my OSI interview and I never told the interrogation party that I did indeed say this, but I told them verbatim “I may have” to move on from questioning because they were trying to put words in my mouth and would not stop questioning me about it no matter how many times I denied it. During the interrogation it seemed as if they were brain washing me to think that I said it after I left the interrogation I put immense thought into if I made an illusion [to] oral sex and came to the conclusion that I had not.”

e. **Cadet #4**: “When I was brought into AFOSI, I was told that I was a victim and therefore not entitled to an Attorney. Before questioning, I specifically asked the AFOSI agents for a lawyer, however, they denied me one. I believe this was wrong on their part because they put me in a position where I was expected to answer not just everything I remembered at the time, but also everything I had ever seen. . . . From that point on there was misconduct by the investigators, who acted like interrogators, instead of investigators. . . . Despite their interrogation, I was not read my Article 31 rights. I was told going into the questioning I was a victim. As the questioning went on they accused me of lying, intentionally avoiding details, and even threatened me with jail time when I provided my responses.”

f. **Cadet #5**, who suffered from post-concussion symptoms during the interrogation: “During the lengthy interview, I was questioned harshly and severely and as my

symptoms rapidly became worse, the stress during the interview increased. I told them I had a concussion and was experiencing severe symptoms. OSI appeared to completely disregard that information and continued to threaten me with the UCMJ for lying or hiding details. I couldn't think of anything more to provide the OSI. As I stated, I was very stressed and was trying to recall an incident that had happened 3-4 months prior, which also occurred on the night of the active shooter incident, which was much more traumatizing to me. . . The Return to Learn concussion protocol for stage 3 states, 'The cadet should not take quizzes or exams, as a taken one while concussed will be unlikely to accurately represent the ability and knowledge of the cadet.' Therefore, it is probable that at some point in the long interview I was vague considering my stress, condition, and length of time that passed between the event and the interview."

g. **Cadet #8**: "Concerning my interview with OSI, after over what was approximately 30 or 40 minutes of friendly, general conversation, suddenly they become hostile and intimidating, and read me rights, saying that I was suspected of hazing. I felt as if I was being accused of lying or covering something up when I did not know the answer or question the investigators posed or could not remember specific details they were asking me to confirm. The investigators' approach seemed to be accusatory and geared towards tripping me up or causing me to admit to things I did not do or witnessing events that I could not recall seeing. Suddenly, I was no longer a witness, but a suspect. I felt harassed, uncomfortable, and intimidated, so I asked to speak to a lawyer because I did not know what else to do. . . . They insinuated that the swim team was spreading rumors of beating OSI and made it clear that they were much more serious than security forces and assured me that the swim team would not be able to beat them. This gave me the impression that there was some sort of vendetta that the agents had against the swim team. . . . When I was being questioned, it became clear I was under attack, and I was not going to be pressured to give statements concerning matters that I did not witness or could not recall."

h. **Cadet #6**: "This was further hindered by the stressful interrogation techniques that were used by the AFOSI agents. I had never been subject to an interrogation, and my unfamiliarity with the setting further contributed to my stress. Eventually, I was able to provide the details about the event that the AFOSI agents requested, but the memories of the event were still hard to recall specific details that I had not thought about for months. Due to the amount of time that it took me to recall the events, the AFOSI agents believed that I was fabricating a story, but in reality I was only trying to give the most accurate details that I could recall."

i. **Cadet #12**: "On 10 January 2018 I was questioned by AFOSI about the actions of the men's swim team. At the time, I was told that I was a potential witness and possible victim. . . . From the start of my interview with AFOSI agents, my interrogators asked me questions like, "how would your parents feel if you were sent to Leavenworth for 5 years for lying to federal agents?" or words to the effect. I felt threatened and asked if I could have a lawyer. They turned my request down and reminded me that I was a 'victim.' . . . Any responses that were perceived as unclear or deliberately vague were not intentional. The interrogation tactics the AFOSI agents used on me during my interview presented me with stress that affect my ability to recall exact details and respond clearly."

Investigative Misconduct

21. From the time former Cadet Accuser made his complaint, the Air Force Office of Special Investigations, Detachment 808, set out to confirm the allegation, not impartially investigate what actually occurred. Maybe it was due to a prior investigation of the men's and women's swim team that resulted in no punitive action, maybe it was a prior botched investigation of the men's lacrosse team that resulted in negative publicity for USAFA, maybe it came from pressure by commanders or OSI leadership, or maybe it is just how the detachment operates. Whatever the reason, the result is clear: special agents never once stopped to think that maybe the allegation was fabricated or exaggerated; they only sought to corroborate the allegation and never once attempted to find out the truth of what really happened. This is a complete and total abdication of the very core purpose of law enforcement criminal investigation: to find the truth. Investigators don't, or shouldn't, exist to "make a case" or secure a conviction. The sole purpose of investigation ought to be providing evidence to prosecutors to make intelligent criminal charging decisions based upon the truth. That never happened in Colorado Springs, Colorado. This was never about the truth. It was never about justice.

22. Perhaps if the investigators bothered to look at Cadet Accuser's background and motive, they would have seen he was failing out of school and not good enough of a swimmer to compete at the intercollegiate level. He had plenty of motive to fabricate and lie on his way out the door, and that is exactly what he did. Cadet Accuser was already leaving USAFA with his tail between his legs after coming to the brutal realization that he couldn't withstand the rigors of cadet life. He decided to light a torch before he left, and this is where we find ourselves two years later.

23. The following are a representative sample of questions or comments made to cadets while being interrogated by AFOSI:

- a. "Bad things will happen to you, whether they be criminal or administrative. What is it you think the upperclassmen could do to help you?"
- b. "The only people that can help you at this point is us."
- c. "You'll either get kicked out of here or you'll get charged. One way or the other. I'm not trying to threaten you, I'm just being honest."
- d. "The one thing that can get you the most criminal penalty and kicked out of here quicker than that is not telling the truth in here. I'm going to give you a chance to rectify this situation, and if you choose to go the other route, then I'll ask you to write a statement, and we'll be done."
- e. "Probably after we talk to you, the Chief of Staff of the Air Force will probably call down."
- f. "OSI doesn't normally work this stuff. Rare occasion when somebody of a Chief of Staff level, or three-star level, or Secretary of the Air Force level asks them to—then says "why do you think she did that?"
- g. "Stop fucking lying to me. . . . I am tired of your bullshit."
- h. "There's been some allegations about some things going on with the swim team. Everything with the lacrosse team, everything with the Academy is kind of high visibility."
- i. "We don't typically work on this type of thing, but we are working on this because of the visibility I guess."

- j. “How would your parents feel if you were sent to Leavenworth for 5 years for lying to federal agents?”
- k. “Like General Goodwin is trying to reiterate to you guys, if you’re not up front about everything, that’s what’s going to be a career killer.”
- l. “That is why the General talked about core values. Your integrity is at stake.”
- m. “General Goodwin took the time out of her day to come here and talk to you. You’re a smart kid. So...do you think that it’s important? Do you think the superintendent has been briefed?”
- n. “Do you think that the superintendent... Do you think that the commandant... is going to somehow believe that they’re going to give you a gold star because you held true to your teammates? We’re asking you questions for the truth, and you’re not telling me the truth.”
- o. “When the JAG, and the commandant, and the superintendent of the AFA sees that you lied in [your statement], you’re done.”
- p. “When the leadership and the JAG makes that decision on your life and your career and you have to explain to your parents and everyone back at home why you’re back at home, they’ll know.”

24. OSI agents have extensive training on custodial interrogations and rights advisement requirements when interviewing subjects. If anyone needed any proof that OSI pre-determined who was guilty and who was not, they need not look further than who they chose to rights advise and who they did not. Agents certainly advised Cadet Hannigan and Cadet Knutson of their rights under Article 31, UCMJ. There, however, were another twenty-plus cadet athletes, either suspected of being part of the underlying “crime” or accused of committing the crimes of false official statement or obstruction of justice in real time, that were not advised of their rights. The LOR responses are the first opportunity the cadets have to truly speak openly. There, they describe the harsh interrogation treatment they endured.

25. Agents consistently threatened, berated, demeaned, and bullied their witnesses into agreeing with their version of events. Sometimes they were successful; other times the cadets maintained their story steadfast under the pressure. In all situations, the special agents invoked the authority of the chain of command, including but not limited to Brigadier General Goodwin, Lt General Silveria, General Goldfein, and Secretary Wilson, as those interested in the investigation and those who would personally end the young cadet’s career for non-compliance.

26. Unfortunately, the antics of investigators in this case are not the only, or worst, government misconduct in Cadet Hannigan’s case. The actions of the prosecutor’s office, USAFA/JA, and one prosecutor in particular, permanently and irreparably fouled a situation that was already headed down the wrong path.

Prosecutorial Misconduct

27. Capt Susan Bet-Sayad, USAFA/JA, was detailed as assistant trial counsel by the Staff Judge Advocate in all three cases, including Cadet Hannigan’s. From the beginning of the investigation, she (as well as the Air Force Office of Special Investigations) pre-determined that the complaining witness was fully telling the truth and that Cadet Hannigan must, in fact, be

guilty. She then proceeded to act in a way over much of the next year to discover, or create, evidence upon which Cadet Hannigan could be convicted (note: she had to do this to secure a conviction because there was insufficient *actual evidence* of a crime). In doing so, Capt Bet-Sayad violated numerous rules of professional responsibility found in both the Air Force JAG Corps' code of ethics, as well as the rules of her licensing state, Alabama. Some of those professional rules and norms include, but are not limited to: contacting known represented parties directly and not contacting counsel; interviewing/interrogating represented parties directly and not contacting counsel, creating witness statements and producing those statements for the witness to sign, telling witnesses what needed to be in the statements they actually got to write (including specifically naming Cadet Hannigan as a "ring-leader" when the witness did not organically do so), and not providing exculpatory discovery information to the defense immediately upon learning of its existence and instead holding onto it for over six months.

28. The experience of Cadet #7 is illustrative. On 5 September 2018, he was interviewed by Capt Bet-Sayad and she obtained a sworn statement from him. His defense counsel was not given notice of this interview. Capt Bet-Sayad told him "you don't need a lawyer" and did not read him his Article 31 rights. The meeting was held in the courtroom. If Capt Bet-Sayad did not like an answer that Cadet #7 gave, or he was unsure of or didn't remember something exactly, Capt Bet-Sayad said things to him like "I'll take you to the Superintendent to have you disenrolled, and he will sign your disenrollment orders." Other times she would say, "Oh so you're going to stick with lying?" He made it clear that "I told OSI the truth." However, Capt Bet-Sayad made it clear that if he didn't change his answers, he would be punished for it. She then "provided specific names" and made him provide a definite "yes/no" on details. During the interview, Capt Bet-Sayad wrote two statements for Cadet #7 and he refused to sign them. Capt Bet-Sayad discarded these unsigned statements. On the third statement, Capt Bet-Sayad "had [him] change words" and she was the one who asked him to list the "ringleaders." Notably, the unsigned statements have never been provided to the Defense and appear to have been permanently destroyed.

29. Cadet #7's experience is a representative sample of the prosecutorial misconduct and violation of professional norms experienced by most cadets. First, he was represented by an Area Defense Counsel at the time Capt Bet-Sayad contacted and interrogated him. Second, she did not warn him of his Article 31 rights, even though she accused him of obstructing justice and making a false official statement. Third, she endeavored to create evidence to use against Cadet Hannigan. Fourth, upon Cadet #7's non-compliance with her directive, she stood over his shoulder and made him include certain names (Cadet Hannigan) and details to her satisfaction. Fifth, even though a LOR response from Cadet #7 was signed and submitted in July 2018 and clearly in possession of the government, Capt Bet-Sayad did not provide this exculpatory material to the defense until 6 February 2019.

CONCLUSION

30. Cadet Hannigan should not be administratively disenrolled from USAFA. He has completed all academic, athletic, and military graduation and commissioning requirements. There is insubstantial and insufficient proof that he actually committed the infraction alleged in the LON. The real misconduct in this case lies in the hands of the investigators and prosecutor. Those

individuals abandoned the core principles and ethics of their professions and embarked upon an uncontrolled expedition to manufacture a conviction out of a situation where criminal—or even administrative—liability is inappropriate. Upon the command learning of this misconduct, Lt Gen Silveria did the right thing: dismiss all charges and specifications. It would be a travesty of justice to circumvent the criminal justice system in which Cadet Hannigan surely would have prevailed in order to “get something” out of a broken situation. The right move is to acknowledge the government misconduct, realize that Cadet Hannigan did not do what Cadet Accuser exaggeratedly alleged, and permit Cadet Hannigan to graduate and commission from USAFA.

31. There is uniform consensus that Cadet Hannigan rallied the swim team together and instructed them to tell the truth to AFOSI when things looked out of balance. That is exactly what we want from our officers: when someone realizes the path is off course, direct everyone back into alignment to do the right thing. Please read each and every one of the 121 character letters submitted on behalf of Cadet Hannigan. They describe a young man as an honorable, decent, human being. The Air Force will be better with him than without him. The Air Force would be at a loss if it chooses to not graduate and commission Cadet Hannigan. At the end of the day, the institution needs to make the right decision and get to the right answer, even if it is hard to swallow or embarrassing to do. Cadet Hannigan was wrongly charged and is not guilty of the crimes alleged on his charge sheet or of the misconduct alleged in the LON of disenrollment. This entire process has been a mistake. An honest investigative process and prosecutorial function would have discovered that a long time ago. Cadet Hannigan is truly the victim of this entire ordeal. The Air Force needs to permit his graduation and commissioning and let him—as he undoubtedly—will, fly, fight, and win.

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