

October 28, 2019

VIA FEDERAL EXPRESS

Barbara Barrett
Secretary of the Air Force
U.S. Department of the Air Force
1670 Air Force Pentagon
Washington, D.C. 20330-1670

Re: Disenrollment of USAFA AFC Lars Knutson

Dear Secretary Barrett:

I am writing to respectfully request that you reinstate Lars Knutson as a member in good standing of USAFA Wing. I know your time is valuable, so I simply want to present you with an executive summary of why I feel this matter merits your attention and action.

I graduated from West Point in 1989, and I have four kids that have either graduated or are currently attending an Academy. I spent 27 years in the Army, both as a line officer and JAG officer. As a JAG officer, I served as a prosecutor, defense counsel, and military judge. I, however, have never seen such a blatant violation of process and fundamental fairness. I feel strongly about this case, so much so that I and my firm are representing Lars *pro bono*. As set forth below and in the enclosures, this case has been tainted from the beginning because of a false narrative, a rush to judgment, and a predetermined outcome.

In December 2017, USAFA received an unverified report of potential misconduct by the men's swim team. Still reeling from an incident of genuine misconduct with the lacrosse team, USAFA leadership—without any verified evidence—determined that serious misconduct occurred and that harsh punishment for the team was necessary. They then initiated the investigation to prove this pre-determined narrative.

Before the investigation started, a commissioned Air Force officer and swim team grad assistant told the swim team that its annual, unofficial, team-building event—the “Chunker”—would be examined because of a student complaint. He further said that they should figure out

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what they would say about the event.¹ So the team held a few informal meetings to decide what to do, and how to describe the event. They ultimately chose to face the music, and team leadership told everyone on the team to be forthright and tell the truth about the Chunker. Incidentally, this is precisely what we want from future leaders—to act with integrity, even when faced with difficult circumstances.

Meanwhile, Superintendent Silveria had already determined that criminal misconduct had occurred. He wrote senior Air Force leadership that he intended “to take advantage of the momentum . . . [w]hile attention is on the topic” from the investigation of the lacrosse team. What followed was systematic unlawful coercion and manipulation of the investigation and prosecution of AFC Lars Knutson by USAFA leadership, the USAFA legal office, and the Air Force Office of Special Investigation (AFOSI). In the midst and because of this corrupted investigation, Cadet Knutson and men’s swim team captain, Cadet Michael Hannigan, had court martial charges preferred against them. Cadet Knutson and Cadet Hannigan faced the first such court-martial in the history of the Academy.

Below, I have set forth a few examples the ethical and constitutional violations to give you a sense of how this case has been tainted from beginning to end:

- In January 2018, Commandant Brig Gen Goodwin, the Special Court-Martial Convening Authority, personally delivered a lengthy speech to the freshmen team members (and purported victims of the alleged misconduct) at the AFOSI office. Nearly all of those cadets saw this speech as an improper attempt to influence their statements.²
- Immediately after Commandant Goodwin’s speech, AFOSI agents interrogated the freshmen separately for several hours—and, despite threatening many of them with federal criminal prosecution and disenrollment, repeatedly denied them access to counsel.
- When AFOSI couldn’t get a freshman cadet to change his statement in an interrogation, the AFOSI agent confronted him about a secret, homosexual relationship in which he was involved.

¹The cadets thought they perhaps may be in danger of getting demerits for low-level misconduct, but none of them had any idea that they were facing any sort of criminal investigation.

² Brig Gen Goodwin was suddenly removed from office earlier this year. Upon information and belief, among the many allegations that led to her removal was *interference in an investigation and obstruction of justice*.

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- After a freshman cadet consistently and honestly answered repetitive questions from AFOSI, the agent mocked him asking if he thought he should get a gold star. The agent invoked the authority of the Commandant and Superintendent, saying why do you think “she 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?” When that threat didn’t work, he said, “When the JAG, and the commandant, and the superintendent of the AFA sees that you lied in [your statement], you’re done.... 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.”
- In another instance, an AFOSI agent attempted to get a freshman cadet to change his testimony, saying it was important because “OSI doesn’t normally work this stuff.” He says they do only on 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 [SECAF] did that?” The investigator also tells the freshman that “probably after we talk to you, the Chief of Staff of the Air Force will probably call down” and asks if the freshman “sees the direct line here” from Chief of Staff.
- Another freshman cadet was accused of lying early on in the AFOSI interview. The agent tells him, “You’re not very good at lying. You’re not very good at deception.” A false official statement carries with it a possible five year sentence, so the freshman asks if he can have a lawyer. The agent tells him he’s merely a witness, so “you don’t get a lawyer.”³
- After another freshman cadet repeatedly told an AFOSI agent his memory of events, the agent indicated that he was lying and said that if he continues to do so, there was “nothing I can do for you,” and somebody else could make the decision about whether he stays at the USAFA.

Despite the aggressive, unethical, and coercive nature of these interrogations, none of the swim team members said that Cadet Knutson suggested, instructed, or implied that they should lie or omit information when interviewed by AFOSI. Faced with this utter lack of evidence, the USAFA legal office refused to abandon their pre-determined narrative, and instead speculated to

³ Notably, an AFOSI agent later asks this cadet “how would your parents feel if you were sent to Leavenworth for 5 years for lying to federal agents?”

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the Superintendent that the team must have simply “orchestrated the lies they should tell.” The Superintendent later re-stated this same spin to the SECAF, CSAF, and others.

With the evidence pointing in the other direction, USAFA leadership, the USAFA legal office, and AFOSI began extraordinary measures to save face. For example:

- AFOSI submitted authorizations to have cadets wear wires and to place secret surveillance and sound equipment in the swim team locker room to gather inculcating evidence.
- After insisting the freshmen team members were victims, USAFA leadership issued most of them letters of counseling or letters of reprimand.
- Thereafter, parents of several of the freshmen cadets complained to USAFA leadership that their children were being treated like criminals, and not like victims. USAFA leadership disregarded their concerns.
- Nonetheless, a few weeks later (and without notifying their counsel or their parents), the USAFA legal office interrogated each of the freshmen team members *a second time*, denied them access to counsel, and threatened them with disenrollment if they did not provide sworn statements implicating Cadet Knutson, Cadet Hannigan, and others.
- For example, when one freshman asked for his attorney, the junior prosecutor told him “you don’t need an attorney.”⁴ Yet, when the cadet continued to answer her questions as he recalled the events, the prosecutor threatened him with words to the effect of “we can move this meeting to the Superintendent’s office,” “I’ll take you to the Superintendent to have you disenrolled,” and “he will sign your disenrollment orders.”⁵ Though he made it clear that he “told OSI the truth,” the junior prosecutor “made it clear that if [he] didn’t change [his] answers, [he] would be punished for it.” She then “provided specific names” and eventually

⁴ Several 4th class cadets were denied counsel when they asked for counsel; even in cases where defense counsel had already been retained or assigned.

⁵ This threat of moving the meeting to the Superintendent’s office was common thread throughout many of the interviews that Defense has conducted for this case.

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wrote—herself—two statements and tried to coerce the cadet to sign them. He refused.⁶

In the end, there was no evidence of a conspiracy to obstruct justice. See Memorandums of Interview, enclosed with this letter. In a tragic irony, the only actions that could have possibly constituted obstruction of justice or conduct unbecoming of an officer were perpetrated by the USAFA legal office, AFOSI, and USAFA leadership.

Only after my firm got involved and conducted an extensive investigation that included interviewing scores of witnesses and analyzing dozens of hours of AFOSI interrogations was the above misconduct uncovered. We exposed an investigation and prosecution that revealed a systematic trampling of constitutional safeguards, professional ethical rules, statutory mandates, Air Force regulations, and fundamental fairness. This investigation was detailed in several court documents, but most prominently in the (1) Defense Motion to Dismiss for Unlawful Command Influence (UCI) and Prosecutorial Misconduct and (2) Defense Motion for Appropriate Relief – Equal Access to Witnesses.⁷ Just a week before our evidentiary hearing on these motions, the Academy dropped all criminal charges against Cadet Knutson.

We fully expected that the conclusion of this tainted investigation to also mark the end of the Academy's efforts to punish Cadet Knutson, and that he would be allowed to graduate. Instead, the bad actors in the tainted investigation—the Superintendent, the Commandant, and the USAFA legal office—were left in charge of determining the administrative disposition for Cadet Knutson. This cannot be justice.

Given their track record, we should not be surprised that they chose to refuse to allow Cadet Knutson to graduate, disenrolled him, and are asking for recoupment of hundreds of thousands of dollars for his education. Their stated rationale: “conspiring to obstruct justice” and nothing else.⁸ I repeat, this cannot be justice.

* * * * *

⁶ Notably, the unsigned statements have never been provided to the Defense and appear to have been permanently destroyed.

⁷ These motions are attached as enclosures to this letter in case you wish to read more. The UCI motion is included without attachments due to its length.

⁸ Notably, when confronted in court with the coercion tactics used to interrogate cadets, the prosecution backed off, telling the military judge, that its position was not that the freshman cadets had lied. See Letter from Richard V. Stephens, attached.

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The Academy's effort to disenroll Cadet Knutson and deprive him of a career as an Air Force officer are defective and invalid for several reasons.

1. Fundamental fairness dictates that tainted evidence gathered via the unlawful command influence and prosecutorial misconduct that permeate this case are insufficient to support disenrollment. Even, here, in the context of administrative action, UCI is "the mortal enemy of military justice." *United States v. Kitts*, 23 M.J. 105, 107 (C.M.A. 1986); *see also United States v. Barry*, 78 M.J. 70, 76 (C.A.A.F. 2018) (finding eradication of UCI "is fundamental to fostering public confidence in the actual and apparent fairness of our system of justice" (quoting *Harvey*, 64 M.J. at 17 (C.A.A.F. 2006)). If the Superintendent has properly delegated authority from the SAF, his authority was invalidated by his improper involvement in the investigation. Beyond just common sense, AFI 36-3501 requires the Superintendent to ensure that "all Academy organizational processes, procedures, and instructions align with Air Force policy guidance [and where] Academy policies or practices deviate from Department of Defense or Air Force policies, the Academy will request a waiver from the appropriate Headquarters Air Force office or agency prior to any implementation of the policy change. (T-1)" Para. 1.2.12.9; *see also* AFI 36-3501, para. 2.3 (requiring immediate notification to Air Force leadership regarding significant incidents). Unlawful command influence and prosecutorial misconduct as described above certainly reflect a significant departure from Air Force processes and procedures, and the Academy did not obtain Department of Air Force approval for such actions as required by AFI 33-360 and AFI 33-360_AFGM 2019-2.

2. Cadet Knutson was criminally charged with hazing and was facing a general court-martial, as referred by the Superintendent. After uncovering the Academy's misconduct, however, the charges were dismissed. Federal law states that a cadet "charged with violating a regulation" regarding hazing "the penalty for which is or may be dismissal from the Academy, requests in writing a trial by a general court-martial, he may not be dismissed for that offense except under sentence of such a court." 10 U.S.C.A. § 9452. Here, because of the dismissal with prejudice, the Academy cannot charge Knutson again. The Academy chose a General Court-Martial. Now, dismissal via disenrollment is nothing more than an attempt to end-run the clear intent of Congress.

3. Ostensibly, Cadet Knutson is being separated under the provision of misconduct. *See* AFI 36-3501, para. 4.4.3. Yet all his DD Form 785 states under "Reasons and Circumstances for Disenrollment" is that "CIC Knutson had received an USAFAI 36-3504 Letter of Notification (LON) for obstruction of justice by interfering with an AFOSI investigation into hazing." Yet, as set forth above, *the investigation found no cognizable evidence of conspiracy to commit obstruction*. In fact, all charges and specifications against Cadet Knutson were dismissed. As of the present, there is not a supporting Art. 15 or letter of reprimand supporting disenrollment. Further, under "Remarks" the DD 785 sets forth Cadet Knutson's Military

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Performance Average as 3.23. And the recommendation for discharge is general, which entails service that “has been honest and faithful.” AFI 36-3501, para. 4.12.2. These facts support graduation and commissioning, not disenrollment.

4. At bottom, SAF is the ultimate disapproval authority. AFI 36-3501 states that “[t]he Secretary of the Air Force determines final action and disposition on any disenrollment, resignation, transfer or administrative discharge of an Academy cadet in any case in which the decision authority has not been delegated.” Para. 4.2.2; *see also* DoDI 1322.22, para. 8 (secretaries “[e]nsure appropriate oversight and management of the academies.”). The Superintendent at times is the decision-maker, but only where he has been specifically designated the “decision authority.” AFI 36-3501 certainly contemplates scenarios where the Superintendent is not authority. *See* Para. 1.2.2.4 (“The Secretary of the Air Force determines final action and disposition on any disenrollment, resignation, transfer or administrative discharge of an Academy cadet *in any case in which the decision authority has not been delegated.*” (emphasis added); Para. 4.2.2 (same); Para. 4.2.6.6.2 (stating Superintendent makes recommendations where he “is not the decision authority.”).⁹

5. Even where the Superintendent does have delegated power, he still must follow certain requirements. USAFAI 36-3504 requires that the Superintendent formally “notify the Secretary of the Air Force, through SAF/MR and AFRBA, in writing *before* approving suspension, disenrollment, transfer, and/or discharge in any case identified as being of high sensitivity or having the potential for significant Congressional or public interest.” Para. 4.2.6.6.1 (emphasis added); *see also* AFPD 36-35, para. 2.4.5. This does not appear to have happened properly here. Certainly, the DD Form 765 does not indicate that this has gone through all 3 entities. More importantly, we have no evidence that the unlawful command influence and prosecutorial misconduct (items of significant Congressional or public interest) were communicated to the (1) SAF, (2) SAF/MR, and (3) AFRBA.

6. Significantly, even though the SAF “approves all disenrollments,” the “Principal Deputy Assistant Secretary for Manpower and Reserve Affairs (SAF/MR) makes final decisions on individual disenrollment.” *Compare* AFI 36-3501, para. 4.2.1 *with* para. 4.2.2. Further, paragraph 4.2.3.1 requires SAF/MR to ensure “each recommendation forwarded includes a rationale and a complete case file.” The one line rationale as discussed above on Cadet

⁹ The USAFI 36-3504, para. 3.1.3, declaration that the Superintendent “[s]erves as a disenrollment authority under delegated authority received from the Secretary of the Air Force, through SAF/MR and the Director, Air Force Review Boards Agency (AFRBA)” is without effect. USAFI 36-3504 was propagated “by order of the Superintendent,” and the Superintendent’s authority cannot be expanded by a publication issued by the organization he commands. *See generally*, AFI 33-360.

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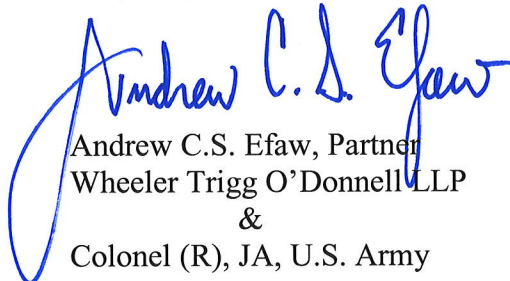
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Knutson's DD 785 is grossly insufficient. Moreover, the SAF/MR is required to notify "the Secretary of the Air Force in writing, and informs the AF/A1, of intentions before taking any disenrollment action that is highly sensitive or has the potential for significant Congressional or public interest." Here, we do not believe these requirements have been met, but more importantly, the SAF/MR has not yet made the "final decision." Thus, even if the Superintendent acted within properly delegated authority, "[d]isenrollment, alone, does not constitute discharge or transfer." AFI 36-3501, p. 52; USAFI 36-3504, p. 33. And you, as the SAF, have the authority to put an end to this miscarriage of justice, for just as authority can be delegated, it can also be withdrawn.

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In closing, I believe that justice requires that Lars Knutson be reinstated in good standing and permitted to serve as an officer in the Air Force. I greatly appreciate you taking the time to review these materials and would be happy to discuss this matter further.

Very truly yours,


Andrew C.S. Efaw, Partner
Wheeler Trigg O'Donnell LLP
&
Colonel (R), JA, U.S. Army

Enclosures: 1. Letter of Recommendation
2. Letter from Richard V. Stevens, Esq.
3. The Motion to Dismiss (without enclosures)
4. Memoranda of Interviews
5. Def. Motion for Appropriate Relief-Equal Access to Witnesses (with enclosures)