

### *Unlawful Command Influence by Superintendent*

62. The Defense is alleging the Superintendent of the USAFA committed actual UCI when he copied his subordinate, the Commandant, on the 3 January 2019 email to SECAF and CSAF, when he made various public statements regarding the investigation, and when he commissioned an independent review of the USAFA Athletic Department during the time dispositions were being made in the cases of the alleged co-conspirators in this case.

63. In his 3 January 2019 email, in which he copied the Commandant, the Superintendent told SECAF and CSAF: “[W]e want to continue to make it clear that we take all hazing serious. While attention is on the topic I would like to take advantage of the momentum. OSI will begin the investigation this week into the team and the coaches.” The result of this email on the Commandants and AFOSI is clear. They jump to action and initiate a series of unlawful acts, as discussed above. The Superintendent had made his displeasure and priority known: stamp out hazing. The subsequent actions of the Commandant and AFOSI agents demonstrate that the Superintendent corrupted the independent decision-making authority of those below him and caused numerous actors to coerce and manipulate the military justice process. The Superintendent’s public comments and independent review have also firmly cemented in the mind of USAFA leadership, active duty members, civilian staff, and cadets exactly where he stands. Action needs to be taken.

### *Apparent Unlawful Command Influence*

64. Even if the Court finds no actual UCI, the entire case is saturated with coercion, manipulation, and a systematic attempt to protect the reputation of USAFA and its leaders. The apparent UCI in this case is significantly worse than in *Boyce*, where the GCMCA who had taken politically unpopular decisions on previous courts-martial was told by CSAF that he either had to resign or be fired days before the GCMCA referred the appellant’s case to court-martial. 76 M.J. at 245-246. In the case against AFC Knutson, the Superintendent sent an email to SECAF and CSAF demonstrating the intent and purpose to make a strong public statement about hazing at the Academy. He has also taken strong public positions in the media and in commissioning an independent consultant review since this allegations were raised by the complaining witness in this case. The Superintendent’s 3 January 2019 email came on the same day that a Congressional complaint was filed by the complaining witness in the case, and within two weeks of the complaining witness’ mother personally emailing and calling the Commandant to assist her son all while discussing the Congressional complaint. Not long after, the Commandant goes at AFOSI to admonish – or in the perception of some, to threaten – the young freshmen cadets prior to their coercive custodial interrogations without counsel. All subsequent unethical and unconscionable actions discussed above, flow from the Superintendent and Commandant’s actions

in actuality and appearance.

65. The serious doubts of fairness in this court-martial are also worse than *Levite*. In *Levite*, the UCI was committed by a Major who showed derogatory information to prospective witnesses and there was perception that the witnesses would have to testify under the glare of their commander. 334 C.M.A. at 336. In AFC Knutson's case, general officers have directly told government witnesses how they interpret facts at issue in the court-martial. General officers have made strong public statements, hid complaints from the parents of the alleged victims, and enabled investigators and Assistant Trial Counsel to break laws and ethical rules. The UCI in this case is even more "pervasive" and "pernicious" as in *Levite*.

66. The pursuit of public validation, is plain to a disinterested, outside observer. It is obvious that the Superintendent and Commandant consider everyone else to expendable, including AFC Knutson, all the other swimmers, and the alleged victims in this case. Commanders (at all levels), lawyers, and investigators in this case are hell-bent on proving they take seriously the dignity and respect of cadets. However, they've treated alleged victims as criminals, appear to have falsified evidence, and made pawns out of young cadets who have: 1) legitimately done nothing wrong or 2) only conducting harmless traditions that their coaches and teammates have done for decades before them. Plain to any outside, objective observer is that the Superintendent, the Commandant, the prosecutor, and AFOSI agent lost sight of justice and the important checks and balances the military system requires. Instead, they have woven a "narrative" where, in pursuit of public validation and the appeasement of command and political pressure, it is permissible to violate Constitutional protections, the U.C.M.J., and the professional ethical rules guarding the truth-seeking function of a court. The Court should not tolerate this court-martial and must dismiss the charges and specifications with prejudice.