

### *Actual Unlawful Command Influence by Investigators*

62. Article 37, UCMJ and *United States v. Barry* make clear that any person subject to the UCMJ may not attempt to coerce or unlawfully manipulate the court-martial process. The evidence shows that AFOSI at all levels – including up to the Inspector General of the Air Force – worked very closely with commanders in this case, including improperly hosting the Commandant on the morning of 18 Jan 2018 before several of the cadet interviews. On that morning, the AFOSI recorded interviews make clear the Special Agents specifically attempted to – and did – coerce numerous witnesses in this case by repeatedly threatening freshmen and specifically referring to commanders all the way up to CSAF and SECAF in their interrogations. In most cases, these young college-aged freshmen were simultaneously told they were “victims,” all while being called liars, treated like criminals, and having their careers dangled over their heads. As discussed above, these freshmen cadets consistently describe their interviews as coercive and suggestive and one has described it as the worst day of his life. Several described it as worse than the alleged hazing that took place at the “Chunker” event.

63. The following is a brief sampling of concerning statements from the recorded interviews:

- a. An OSI investigator tells#9: “Like General Goodwin is trying to reiterate to you guys, if you’re not up front and forward, that’s what’s going to be a career killer.” *Attachment 67*, at 43:28 of file VTS\_01\_1.
- b. An OSI investigator asks Cadet #2 what he thinks the Chief of Staff of the Air Force or the Secretary of the Air Force would recommend for somebody “who wasn’t been truthful in an investigation like this.” *Attachment 40*, 01:37 in file VTS\_01\_2.
- c. An OSI investigator tells Cadet #2 that the upperclassmen on the USAFA swim team put him in a bad position, “because they told [him] to come down here and say certain things” to OSI. The investigator explained that som#9ne who cares about him would not do that— knowing that he might have to spend five years in prison or be kicked out of the Academy. *Id.*, at 02:38 in file VTS\_01\_2.
- d. An OSI investigator says to Cadet #2 that he will “either get kicked out of here or . . . get charged. One way or the other.” He said he was “not trying to threaten [CADET Cadet #2],” but was “just being honest.” *Id.*, at 09:07 in file VTS\_01\_2
- e. An OSI investigator tells Cadet #2: “You don’t have a choice of whether you do [the Chunker] or not.” The investigator reiterates that the Chunker was not consensual. Cadet #2 disagrees, says he could have left and would still have been on the team. States that “[i]t was definitely expressed that if you aren’t comfortable with something, just stop.” *Id.*, at 17:40 in file VTS\_01\_2

- f. An OSI investigator explains to Cadet #2 that there is a federal criminal investigation, and that “probably after we talk to you, the Chief of Staff of the Air Force will probably call down.” *Id.*, at 30:00 in file VTS\_01\_02
- g. An OSI investigator states that “OSI doesn’t normally work this stuff,” and that it is a rare occasion when someone at the Chief of Staff level, or three-star level, or Secretary of the Air Force level asks them to investigate something. He then asks: “Why do you think she did that?” *Id.*, 35:05 in file VTS\_01\_02
- h. An OSI investigator asks Cadet #2 if somebody has threatened to expose his relationship “with somebody here” at the Academy. The investigator asks if that is affecting what Cadet #2 is telling OSI, and he says it is not. *Id.*, at 03:30 in file VTS\_01\_3.
- i. An OSI investigator asks DK what his life would look like if he was kicked out of the USAFA for not being truthful. *DK Interview*, at 07:58 of file VTS\_01\_2
- j. An OSI investigator asks DK what a criminal charge would look like for him, and Cadet DK says it would be “catastrophic.” *Id.*, at 08:45 to 11:15 of file VTS\_01\_2
- k. An OSI investigator tells DK that, if one more word comes out of his mouth that is untruthful, there is “nothing I can do for you,” and somebody else can make the decision about whether he stays at the USAFA. *Id.*, at 13:50 of file VTS\_01\_2

64. The Agents also unlawfully manipulated the military justice system by denying young freshmen their right to counsel, failing to read them their Article 31 rights when they accused them of lying and other misconduct, and then relentlessly conducting what could only be considered custodial interrogations in violation of their statutory and Constitutional rights. For example, when CADET #6 is asked if he can have a lawyer, the OSI investigator says “as a witness, you don’t get a lawyer.” He adds that, “[a]s a witness in the military, you don’t get a lawyer, okay? Because you’re obligated to cooperate with investigations, right?” (*Attachment 22*, 27:28) in file VTS\_01\_1. This tunnel vision of the Commandant and Special Agent results in them also violating Air Force Policy granting them the right to seek counsel. *See generally* AFI 51-201 (8 Dec 17), para 11.11.1.