

Article 37, UCMJ states: “No person subject to [the UCMJ] may attempt to coerce or, by any *unauthorized means, influence the action of a court-martial* or any other military tribunal or any member there of, *in reaching the findings* or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.” See also R.C.M. 104. **Further, the mere appearance of unlawful command influence may be “as devastating to the military justice system as the actual manipulation of any given trial.”** *United States v. Allen*, 33 M.J. 209, 212 (C.M.A. 1991).

- a. Actual unlawful influence “occur[s] when there is an improper manipulation of the criminal justice process which negatively affects the fair handling and/or disposition of a case.” *United States v. Boyce*, 76 M.J. 242, 247 (C.A.A.F. 2017).
- b. “The appearance of unlawful command influence will exist where an objective, disinterested observer, fully informed of all the facts and circumstances, would harbor a significant doubt about the fairness of the proceeding. *United States v. Lewis*, 63 M.J. 405, 415 (C.A.A.F. 2006). The appearance of UCI is actionable because “the appearance of unlawful command influence is as devastating to the military justice system as the actual manipulation of any given trial.” *Id.* The objective test for the appearance of unlawful command influence is similar to the tests applied in reviewing questions of implied bias as it regards panel members. *Id.*

The following are clear examples and reasoning for the claims of Unlawful Command Influence by both the Commandant Gen. Goodwin. *Note the Defense Team all three cadets collaborate on all aspect of their Defense and motions, actions and litigation were in collaboration. The defense team for Cadet Knutson developed the UCI and Pros. Misc. brief, and is shared and applied to all three cadets*

Actual Unlawful Command Influence by SPCMCA and Other Commanders

62. The Commandant clearly committed unlawful command influence and used her rank and position to tip the scales of justice against AFC Knutson in at least two specific ways. These violations of Article 37, UCMJ came after she received emails from her direct commander, the Superintendent, to CSAF and SECAF stating: “we 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.” *Attachment 13*. Other email correspondence between the Superintendent and SAF/IG also shows close coordination between AFOSI and USAFA leadership.

63. First, the Commandant committed unlawful command influence on 18 January 18 at the very beginning of this investigation when she personally visited the AFOSI detachment at USAFA to make a speech to a majority of the alleged victims and multiple named witnesses in this case. At the time of her speech, AFOSI and

the Commandant had an allegation from AFC ACCUSER that these freshmen were: 1) the victims of very serious hazing that was sexual in nature (possibly including misconduct qualifying as sexual assault); and that 2) they had been directed or ordered by the upperclassmen on the Swim Team to lie to OSI. The first allegation by AFC ACCUSER has since been completely discredited. There are significant questions as to the veracity of the second allegation and it ignores the fact that by 18 Jan 2018, the upperclassmen had specifically told the entire team to tell the truth and be completely honest in any AFOSI interview.

64. Rather than let AFOSI investigators impartially seek the truth of what happened and treat alleged victims with dignity and respect, the Commandant inserted herself directly into the investigation in a way that subverted the truth and prejudiced AFC Knutson and every other member of the Men's Swim Team. Someone – presumably with the Commandant's full

knowledge and blessing – coordinated an effort to have the commanders of these freshmen swimmers pull them from their normal activities and order them to AFOSI so she could address them before they were questioned. She then made a speech about integrity and truthfulness that was specifically designed to influence the statements of witnesses in this case. Whatever her words, the psychological effect of a general officer visiting AFOSI to speak with these freshmen cannot be understated. The dissonance of her message was striking and remains confusing and troubling to the cadets to this day. These students were thought (falsely) to be the victims of very serious sexual related hazing. Instead of being treated like victims or even normal human beings, the Commandant spoke to them with the intent to “scare” and “intimidate” them.

Attachments 59, 70. The general impression these young freshmen took from this was: “If you lie, I’m kicking you out;” “Fuck your upperclassmen” because they put you in a terrible position, so you should “rat them out;” she “thought we were all guilty;” “you are going to get in trouble” and the “impression was my leadership was very pissed off.” *Attachments 56, 64, 70.* AFOSI investigators then used and specifically referenced the Commandant's presence and statements in their subsequent interviews with these cadets, as discussed below.

65. Second, the Commandant committed unlawful command influence when in January 2019 she met with more than one named, and recently immunized, witness in this case regarding their possible disenrollment from the USAFA. At the time of this meeting, the Commandant knew that there was a court-martial pending against AFC Knutson because she had forwarded the charges to the Superintendent, though her knowledge and intent is irrelevant. As a general officer, she told several probable government witnesses that what happened was hazing and thereby irrefutably tainted their testimony.

66. Additionally, most of the cadets named on the Government's witness list – other than AFC ACCUSER – have received some sort of punishment for their alleged lying to AFOSI or other misconduct. While AFC ACCUSER received preferential treatment,¹⁵ the freshmen swimmers who the Academy has labeled

victims had been through the exact same thing as AFC ACCUSER. Yet rather than pursuing justice, USAFA treated this as a matter of public perception, buying off on AFC 'ACCUSER's story wholesale without question and without even having bothered to conduct an honest investigation. From the start, USAFA leadership and investigators wanted AFC 'ACCUSER's claims to be substantiated, and then relentlessly pushed for those facts throughout the investigation.

67. Meanwhile, the other freshmen and alleged victims were subjected to startling custodial interrogations, where AFOSI agents coerced and bullied them to confirm the narrative they needed told. Then, they were punished for "lying" or "being vague." In many cases, this punishment involved probation, extra work, exponentially more stress in an environment designed to inflict stress, and mandatory counseling sessions with mentors to help them overcome their alleged deficiencies or wrongdoing. Though many of them dispute they ever did anything wrong or lied, some plainly admit they have been accused of lying so many times and been so confused by being simulta#9usly labeled victims and criminals, that they don't even know what truth is anymore. *Attachment 73*. Many of these helpless, young cadets have had their lives and futures turned upside down by the injustices and unfair treatment in this case. One cadet reported having a secret homosexual relationship used as leverage by investigators.

¹⁵ Consider, for instance, AFC ACCUSER was provided a Special Victims' Counsel. The rest of the alleged victims – who also appear entitled to SVCs – were denied their constitutional right to counsel in custodial interrogations.

It is no wonder that in some Defense interviews, cadets were very nearly in tears explaining what had happened and some disclosed serious mental health issues due to their treatment by this process. The unlawful command influence has corrupted this process and the witnesses, the only appropriate remedy is dismissal with prejudice.