

OFFICE OF SPECIAL COUNSEL COMPLAINT STATEMENT OF FACTS

The Air Force Institute of Technology (“AFIT”) committed prohibited personnel practices against Kenneth Schultz, Ph.D. The AFIT made multiple false accusations against Dr. Schultz and further violated his Constitutional rights by punishing him for things they knew he did not do. The facts demonstrate that the Department Committee¹ violated AFIT regulations in evaluating Dr. Schultz’s tenure application by appointing an unqualified external reviewer and by the inappropriate consideration given to false charges of misconduct.

The tenure review of Dr. Schultz had eight steps. First (1) the Tenure Package is prepared including letters from external peers. The second step is (2) the vote of the Department Committee. The Department Committee vote is the most important part of the process as they are supposed to be familiar with the applicant’s field and have responsibility for setting academic standards and for determining if the candidate meets those standards. The Tenure Package then goes to (3) the Department Head and (4) the School Committee. Dr. Schultz’s package was then sent to (5) the Review Committee before returning to (6) the School Committee. The last steps are official review by (7) the Dean and (8) the Provost. For a timeline of events see Tab 1.

In violation of AFIT regulations, the Department Committee vote was taken without allowing Dr. Schultz to respond to the false charges made against him. When Dr. Schultz disclosed the improper conduct, the AFIT retaliated by performing an improper review, denying him tenure, and causing him to lose his job. When Dr. Schultz objected to the AFIT’s illegal denial of his tenure, the AFIT retaliated against Dr. Schultz by accusing him of two violations of Equal Opportunity regulations; one accusation was false and the other was protected free speech.

The tenure standards the Department Committee is required to follow are clearly stated in the AFIT regulations² and were clearly disregarded. The appropriate AFIT guidelines state “the quality and impact of the candidate’s contributions ... should dominate the evaluation.” (Tab 3, p1) Dr. Schultz is widely recognized for his contributions in his field. His work has been very influential and has inspired new directions of inquiry. He has been a principle, invited and funded speaker at academic conferences in the US, Europe, and Asia. We have attached 14 letters from experts in the field, all senior academics, who unanimously agree that Dr. Schultz meets or exceeds the qualifications of other AFIT tenured, faculty in his department. Tenure

¹ The “Department Committee” is the Department of Operational Sciences Promotion and Tenure Committee.

² The written standards for AFIT tenure decisions are stated in the AFIT Graduate School of Engineering and Management Standing Rules for Promotion and Tenure (the “Standing Rules” or SR), which describe the application process and provide candidate rights to due process. Standing Rules, Tab 2. The Standing Rules are supplemented by the Department Guidelines for Promotion and Tenure (“Guidelines”) which provide the academic standards for tenure in each Department. Tab 3.

³ Multiple prominent scholars in the field of Operations Management have attested to Dr. Schultz’s qualifications. Tab 4

standards and the academic opinions regarding the contributions of Dr. Schultz are presented at Tab A.

In violation of Merit Systems principles, Dr. Schultz's qualifications for tenure were ignored while the Department Committee focused on false accusations of misconduct. Violation of procedures resulted in an unqualified external reviewer, Dr. David R. King, being appointed to write one of Dr. Schultz's academic reviews. The procedures were again violated when Dr. Schultz was denied the right to comment on potential reviewers. Worse yet, the illegal reviewer accused Dr. Schultz of falsifying his C.V. Those false accusations were taken seriously by the Department Committee without allowing Dr. Schultz to respond to the false accusations before the Department Committee vote was taken or the Department Head letter was written. The false accusations of misconduct dominated the Department Committee's consideration and the Department Committee Report states the "item of biggest concern to some of the faculty" were the false accusations. See Tab B for further information on prohibited personal practices committed by the Department Committee.

When Dr. Schultz reported the Department Committee's misconduct and requested a review, the Review Committee performed an improper review and denied his tenure. The Review Committee refused to consider Dr. King's lack of qualifications to be an external reviewer, thereby denying Dr. Schultz due process. The Review Committee ignored critical statements in the Department Committee's Report yet still admitted the Department Committee's bias from the consideration of false accusations of misconduct against Dr. Schultz. The Review Committee improperly determined the bias was not instrumental by relying on the unqualified opinion of people who were not peers in his discipline (the School Committee) and by ignoring available qualified external peer reports. In order to secure the denial of tenure, and to limit exposure of AFIT's failure to conduct a proper review, the Review Committee refused to seek any additional unbiased qualified peer reviews from anyone outside the school. The Review Committee's refusal to seriously consider the review and refusal to obtain external, qualified and unbiased opinion, clearly demonstrates their desire to whitewash the review. The illegal actions of the Review Committee, are detailed at Tab C.

The AFIT illegal conduct has caused Dr. Schultz severe financial hardship and psychological stress. Before Dr. Schultz's tenure application was unlawfully denied, he declined a tenured position at Clemson to continue to work on research projects with the USAF (Schultz Affidavit 2). The AFIT's illegal actions against Dr. Schultz have tarnished his reputation so as to prevent him from obtaining a suitable appointment with another University. (See Schultz Affidavit 27.) Dr. Schultz continues to do research on his own, and has published two top-tier journal articles, a book chapter, and has been appointed as guest editor to a top journal since being denied tenure. Nonetheless, the AFIT's illegal actions against Dr. Schultz have resulted in a grave injustice, depriving him of the opportunity to continue teaching. Dr. Schultz would like to return to a secure financial future and the unhindered opportunity to pursue his profession.

The illegal actions of the AFIT extend beyond the severe injustice done to Dr. Schultz, as serious as that may be, and threaten the viability of fundamental Merit Systems principles. The AFIT's disregard of Dr. Schultz's constitutional rights and disregard of AFIT regulations suggests that the AFIT considers itself to be above the law and not answerable to any greater authority. At this time, only the OSC is in a position to hold the AFIT accountable to the

Constitution, laws and regulations in place to protect Dr. Schultz and others from the abuse of authority, retaliation and arbitrary misconduct committed by the AFIT in this case.

Tab A: FAILURE TO APPLY POSTED STANDARDS FOR TENURE

The AFIT has great leeway in deciding tenure qualifications, however, in order to allow for due process, those qualifications need to be written and those written standards need to be followed. At the AFIT these standards are set forth in the School Standing Rules (Tab 2) and the Department Guidelines (Tab 3). Influenced by unlawful bias and retaliation, the Department Committee, Department Head, School Committee, and Review Committee, based their recommendations against Dr. Schultz's tenure application on the pretext of the number of recently published papers, rather than his career contribution, thereby violating one of the School Standing Rules and the Department Guidelines. An unbiased consideration of career contributions by peer review³ will confirm that Dr. Schultz meets or exceeds the contribution of other tenured faculty members at AFIT in his department. This includes faculty promoted to the rank of Full Professor, both before and after Dr. Schultz's tenure decision, which requires a higher standard of qualification.

Tenure recommendations are required to be made pursuant to the Standing Rules and Guidelines. The Standing Rules set the process and the Guidelines determine the academic standards. (Tab 2, p. 10). The AFIT faculty includes a wide range of academic areas. Because of this wide variety of academic disciplines, the AFIT regulations provide that only "peers," both internal and external, are qualified to determine if the candidate meets the academic standards of tenure in their department (Tab 2 pp. 10, 15, Tab 5, p. 7, last line.) Peers must be persons familiar with a candidate's field of study. *Id.* Internal peers must be other members of the candidate's department while external peers are required to have expertise within the area of specialty of the candidate.⁴ *Id.* p. 26.

The AFIT sets general guidelines in the Standing Rules and each department publishes its own academic promotion standards in the Department Guidelines. The tenure standards for Dr. Schultz's department, the Department of Operational Sciences, ("ENS") are clearly stated on page one of the Department Guidelines:

"While a number of metrics are presented as a guide to evaluation, such measures are never a substitute for the thorough assessment of a candidate's entire career record. Indeed, the quality and impact of the candidate's contributions (to the Department, Institute, USAF, and society) should always *dominate the evaluation.*" (Tab 3. p.1.) [Emphasis added] The requirements "never a substitute", "thorough assessment", and "always dominate" clearly establish that the "entire career record" is the standard that must be used to judge tenure, superseding individual metrics.

Dr. Schultz's career contributions include the organization, promotion, leadership and development of the new research area within the field of Logistics and Operations Management. Dr. Schultz's research and publications have led to the development of Behavioral Operations Management, a new sub-discipline in the field, currently involving over a hundred researchers,

³ Multiple prominent scholars in the field of Operations Management have attested to Dr. Schultz's qualifications. Tab 4

⁴ Dr. Schultz's area is Operations Management, Logistics and Supply Chain Management. His specialty is Behavioral Operations Management.

multiple dedicated presentation tracks, special issues in prominent journals, and a dedicated annual conference.⁵

Contrary to the tenure Guidelines, consideration of Dr. Schultz's career contributions did not "dominate the evaluation" of the Department Committee's consideration of his tenure application. Instead, false accusations of misconduct dominated the Department Committee's evaluation of Dr. Schultz's tenure application. The Department Committee Report shows that no assessment of Dr. Schultz's career contributions was made. (Tab 6)

The AFIT gives very heavy weight to the recommendations of the Department Committee. This is reflected in the Standing Rules insistence that internal peers, members of the same Department, are the only AFIT people qualified to assess academic qualifications. The Review Committee clearly stated that it was not within their purview to comment on the Department Committee's interpretation of academic criteria. (Tab 5) (The Review Committee actions are discussed further in Tab C.) The AFIT will not overturn a recommendation to deny tenure by the Department Committee and will do what is necessary to support that vote, even if that vote was biased by false accusations of misconduct. (See Schultz Affidavit 3.)

After the Department Committee recommendation, all further consideration of Dr. Schultz's tenure included the unqualified external review, and were corrupted by false allegations of academic misconduct. The Department Head Report (Tab 7) was rushed and also biased by the illegal external reviewer and was written without Dr. Schultz being allowed to rebut the charges of misconduct. (See Schultz Affidavit 10) (For other illegal actions of the Department Head see Tab D) Members of the School Committee were not peers according to the SR and were unqualified to make determinations of academic contribution outside their fields. The School Committee discussed the false accusations, the biased report of the Department Committee and denied tenure based on the pretext of the number of *recent* published articles. (Tab 8) The Review Committee, also not being peers and being unqualified to assess academic contribution outside their fields, read and discussed the false accusations, the biased Department Committee Report and based its decision on the unqualified and tainted assessment of the School Committee. (Tab 5) Because the lack of recent papers was the only issue raised by the Department Committee (other than the accusations of misconduct), all further decisions concentrated on that issue as the pretense to justify the previous findings denying tenure.

After the Department Committee's biased recommendation, no effort was made to consider any outside, unbiased peer assessments of Dr. Schultz's career contributions. Given the influence of the false accusations on the Department Committee, the AFIT was required to consider unbiased peer assessment of Dr. Schultz's career contributions to determine if bias had influenced the Department Committee's recommendation. The AFIT had available the remaining, qualified external reviews, which they ignored.⁶ The AFIT had the opportunity to request additional external reviews, which they declined. Instead, and contrary to AFIT

⁵ Dr. Schultz's career accomplishments are confirmed by multiple prominent scholars in the field of Logistics and Operations Management. Tab 4.

⁶ One of the external peer review letters, that of Dr. Aleda Roth, Burlington Industries Distinguished Professor in Supply Chain Management at Clemson University, is available as the last letter in Tab 4. Also, Schultz Affidavit 11.

regulations, the AFIT relied on academics completely outside Dr. Schultz's academic discipline, people who were not his peers and could not properly assess his contributions. The AFIT made no effort to gather any further, qualified, unbiased peer review of Dr. Schultz's career contribution.

As documented by letters from prominent scholars in the field (Tab 4), an unbiased review of Dr. Schultz's career contribution proves that he meets or exceeds the contributions of members of the Department Committee who voted on his tenure. All three of the Department Committee members in Dr. Schultz's area are now Full Professors, two being promoted *after* Dr. Schultz was denied tenure. Since the standards of Full Professor are higher than those of Associate Professor with tenure, an unbiased application of these standards would require the qualifications for an appointment to Full Professor to exceed the accomplishments of Dr. Schultz in order to justify the denial of tenure to Dr. Schultz.

The career contributions of three Full Professors on the Department Tenure Committee clearly do not exceed the career contribution of Dr. Schultz. This is not just Dr. Schultz's opinion, but the opinions of fourteen distinguished scholars, all of whom are published in the field of Logistics, Operations Management and Supply Chain Management. These scholars have assessed and compared the career contributions of Dr. Schultz to those of the appropriate faculty at AFIT, or any comparable group of their choice. These academics are all prominent scholars and include Deans, Chaired Professors or Full Professors at nationally and internationally recognized research institutions including Harvard, MIT, Cambridge University, Michigan State University, The Ohio State University and the University of Wisconsin. Each of these scholars have independently confirmed that the career contributions of Dr. Schultz meet or exceed the accomplishments of the *Full Professors* tenured at AFIT in the same department. A summary of the opinions of these prominent scholars is below in Table 1. The full statements are available in Tab 4.

As confirmed by the assessments of these prominent scholars, Dr. Schultz's career contributions are undoubtedly sufficient to qualify Dr. Schultz for tenure at the AFIT. In violation of AFIT regulations, neither the Department Committee nor the School Committee applied the research performance and career contribution standards required by the Standing Rules and the Guidelines. The Department Committee improperly focused upon unfounded allegations of academic misconduct instead of applying the correct career contribution standard. The School Committee lacked the knowledge in the field to make a determination and instead relied on the biased Department Committee. Together they denied Dr. Schultz's tenure application, using his lack of recent publications as a pretext to justify the decision. *Id.*

A thorough review of Dr. Schultz's academic contributions to the field of Logistics and Operations Management by unbiased and qualified academics (consisting of prominent scholars in the field of Logistics) shows that his career contributions are more than sufficient to qualify him for tenure at the AFIT. Indeed, Dr. Schultz's career contributions substantially exceed those of many of the tenured Logistics Professors at the AFIT. The failure of the Department Committee and School Committee to comply with the Standing Rules and the Guidelines violates AFIT regulations, is an abuse of authority, and constitutes a prohibited personnel practice in violation of 5 U.S.C. 2302(b)(4).

Table 1: Excerpts of Prominent Academic Review of Dr. Schultz's Career Contributions			
Name	Rank	University	Selected Quotes on Career Contribution
Dr. Loch	Dean	Cambridge University	"Dr. Schultz has a much stronger academic record...."
Dr. Croson	Dean, former SES in NSF ⁷	Michigan State	"I conclude that the quality and impact of Dr. Schultz's academic contributions meet or exceed the standards of AFIT"
Dr. Siemsen	Associate Dean	Wisconsin	"Why he would be denied tenure, given his performance in comparison to the performance of his tenure colleagues, is thus incomprehensible to me."
Dr. Katok	Chaired Professor	Texas	"there is no doubt in my mind that Dr. Schultz greatly exceeds this level."
Dr. Bendoly	Associate Dean	Ohio State	"Absent such an unbiased process, I will continue to be concerned regarding the integrity of steps taken in this case."
Dr. Graves	Chaired Professor	MIT	"Dr. Schultz's record is without question as strong as or stronger than those in the comparison set."
Dr. Magazine	Chaired Professor	Cincinnati	"Dr. Schultz is truly a leader in the field of behavioral operations management, possibly number 2 in the country."
Dr. Staats	Full Professor	North Carolina	"Dr. Schultz's record most certainly meets them and, in my opinion, exceeds them."
Dr. Fransoo	Full Prof, former Dean of Research	Eindhoven	"it is very obvious and beyond any doubt that the research contribution and impact of the work of Dr Schultz is substantially stronger than those of the three colleagues referenced above."
Dr. Aloysius	Chaired Professor	Arkansas	"someone with his record should be favorably evaluated for tenure at many institutions at least comparable to AFIT."
Dr. de Koster	Department Chair	Erasmus	"I assume that quality (and impact) of publications was not a criterion in Dr. Schultz's denial of tenure."
Dr. Donohue	Chaired Professor	Minnesota	"... meet if not exceed the standards of receiving tenure at AFIT."
Dr. Buell	Chaired Professor (Assoc)	Harvard	"his quality and impact appear to be in line with those of others who have received tenure in ENS."
Dr. Roth	Chaired Professor, Requested External Reviewer	Clemson	"... Dr. Schultz has clearly surpassed the bar for tenure at peer schools. I, along with many of our colleagues, view him to be a thought leader in behavioral operations; and he is widely recognized for his scholarly contributions;"

⁷ Dr. Croson was an officer in the National Science Foundation, a Senior Executive Service position in the US Government.

Tab B. PROHIBITED PERSONNEL PRACTICES BY THE DEPARTMENT COMMITTEE.

- 1. ABUSE OF AUTHORITY.**
- 2. VIOLATION OF REGULATIONS.**
- 3. UNQUALIFIED EXTERNAL REVIEWER.**
- 4. FALSE ACCUSATIONS OF MISCONDUCT.**
- 5. DENIAL OF RIGHT TO RESPOND.**

The Department Committee arbitrarily abused its authority by denying Dr. Schultz's tenure application based upon improper criteria. This abuse of authority includes violation of AFIT regulations on the selection of external reviewers⁸, resulting in the selection of an unqualified reviewer, Dr. David King. In turn, Dr. King made false accusations of misconduct against Dr. Schultz, which the Department Committee improperly considered, instead of basing its recommendation upon Dr. Schultz's career accomplishments. The Department Committee further unlawfully deprived Dr. Schultz of the opportunity to respond to the false accusations before voting on his tenure.

The Department Committee's misconduct constitutes actionable prohibited personnel practices, because the decision to deny Dr. Schultz's tenure application effectively terminated his employment at AFIT. *Kidalov v. Department of the Navy*, 2017 MSPB Lexis, 5, *101. Dr. Schultz joined the AFIT in November 2011, accepting an appointment as an Associate Professor in the Department of Operational Sciences, Tenure Group III. (Tab 9) As a condition of Dr. Schultz's employment, he was required to serve a one-year probationary period. *Id.* The appointment was for three years, and any reappointment not granting permanent academic tenure would be for a specified term, with Dr. Schultz's appointment to terminate upon the expiration of the term. *Id.* In other words, Dr. Schultz was required to apply for and attain tenure prior to the end of his reappointment or his employment would terminate. *Id.*

1. Abuse of authority.

In November 2015, Dr. Schultz submitted his application for tenure to the Department Committee. William Cunningham, Ph.D., chaired the Department Committee. In violation of 5 U.S.C. 2302(b)(4), Dr. Cunningham abused his authority as the committee chair, by directing the Department Committee to conduct the tenure review in violation of the Standing Rules. Specifically, Dr. Cunningham and the Department Committee violated the Standing Rules respecting External Peer Review by selecting an unqualified reviewer, Dr. King, denied Dr. Schultz the right to comment on potential reviewers, failed to inform external reviewers of a significant development in the publication of one of Dr. Schultz's articles, improperly considered false charges of academic misconduct against Dr. Schultz brought by Dr. King, and then voted on Dr. Schultz's tenure application while depriving Dr. Schultz of the opportunity to respond to the charges. Consequently, the Department Committee's recommendation to deny Dr. Schultz's tenure application violated AFIT regulations and was unlawful.

⁸ AFIT tenure policy requires the solicitation of 3 external peer reviews to be considered when the Department Committee discusses and votes for tenure. Procedures for soliciting letters to be considered by the Department Committee vote are specified in the SR, Tab 2.

2. Violation of regulations in selection of external reviewers.

The Department Committee, and Dr. Cunningham in particular, refused to comply with the selection process for external reviewers mandated by the Standing Rules 7.b., 7.b.(3). (Tab 2, pp 25-26) The Standing Rules require a list of nine potential academic reviewers to be prepared, with three of those reviewers to be proposed by the candidate, the Department Committee, and the Department Head each. The Department Committee and Department Head disregarded these regulations and did not prepare their own list. Instead, the Department Committee arbitrarily appointed two academic reviewers. The Review Committee admitted (Tab 5, p 4 para 2, and Schultz Affidavit 4.) that the list of nine potential reviewers was never made available to Dr. Schultz, in violation of the Standing Rules (SR⁹ 7.b, Tab 2, p 26 and Schultz Affidavit 4) Nor did the Department Committee obtain a statement of Dr. King's familiarity with Dr. Schultz's scholarly activities, contrary to SR 7.b(3) (Tab 2, p 26). Dr. King was selected because it was known that he would give a negative review. (Schultz Affidavit 7) When Dr. Cunningham was asked by the Review Committee if the Department Committee had generated the list of 9 potential external reviewers and posted it, he lied to the Review Committee and claimed the list of reviewers had been correctly made and posted. (Tab 5, p. 3, Schultz Affidavit 5.)

3. Selection of an unqualified external reviewer.

The Department Committee selected Dr. David R. King as an external reviewer, even though he was not qualified. Dr. Cunningham and the Department Committee did not conduct a proper review of Dr King's qualifications, and Dr. Schultz was not permitted to challenge Dr. King's lack of qualifications as per regulation and in denial of Dr. Schultz' due process rights. Being unqualified, Dr. King was incapable of performing a proper review, his review was accordingly extremely negative, and he failed to address the Department standards for tenure. Worse yet, Dr. King falsely accused Dr. Schultz of committing academic misconduct. (Schultz Affidavit 9)

Qualifications for external academic reviewers are clearly stated in the Standing Rules.

7.b.1 Academic Reviewers. An academic reviewer is one who possesses a relevant doctoral degree and is ... within an academic department with educational and research activities similar, or superior in stature, to those of the candidate's department. The academic reviewer should hold prominence within the candidate's particular area of specialty The use of reviewers with relatively junior rank or unclear expertise is not appropriate (Tab 2, p. 26).

Dr. King does not "hold prominence within the candidate's particular area or specialty," Moreover, Dr. King, admits in his letter that "this is not my area of expertise." (Tab 5, p 3. Para 10.) While Dr. King does have a master's degree in Logistics, a master's degree does not qualify any one as an academic reviewer. Dr. King does not do research within the area of Logistics nor a related field and he has not performed research in Dr. Schultz's specialty of Behavioral Operations Management. Dr. King does not conduct research in the same field, publish in the same journals, publish in journals in the same field, work on the same types of questions or attend the same conferences.

Dr. King is not from an “academic department with educational and research activities similar ... to those of the candidate's department.” Dr. King has a Ph.D. in Strategic Management. The ENS Department has never hired anybody with a Ph.D. in Strategic Management, nor is that listed as an appropriate for open faculty positions. (Schultz Affidavit 6) At three different schools Dr. King was not in the same department as Dr. Schultz was in (Indiana University), applied to (Iowa State) or would be in (Florida State University.) (*Id*)

Thirteen distinguished scholars, all of whom have published in Dr. Schultz’s field, have expressed an opinion on the qualifications of Dr. King as an external reviewer. Tab 4. These scholars evaluated Dr. King’s qualifications in accordance with the requirements of the Standing Rules (Tab 2, pp. 26, section 7.b.(1)). The evaluation of these scholars is summarized in Table 2 below, listing the scholar’s name, academic rank, affiliation and a quote from scholar’s stated opinion. (Full statements are available in Tab 4.) These scholars unanimously agree that Dr. King does not meet the qualifications for an external reviewer stated in the AFIT regulation.

Table 2: Excerpts from the Expert Opinions on the Qualifications of Dr. King as External Reviewer.			
Name	Rank	University	Selected Quotes on Qualifications of Dr. King
Dr. Loch	Dean	Cambridge University	"(Dr. King) is (1) not an expert in Dr. Schultz’s field and can therefore not easily judge Dr. Schultz’s contribution and (2) has a research record that is significantly weaker than Dr. Schultz’s."
Dr. Croson	Dean, former SES officer of the NSF	Michigan State	"Dr. King does not meet the criteria described in the Standing Rule, either as possessing a relevant doctoral degree, nor as holding prominence within Dr. Schultz’s area of specialty."
Dr. Siemsen	Associate Dean	Wisconsin	"Prof. King works in a different area There are doubts how Prof. King would be able to value the contributions"
Dr. Katok	Chaired Professor	Texas	"Dr. King should not have acted as an external reviewer for Dr. Schultz."
Dr. Bendoly	Associate Dean	Ohio State	"The choice of Dr. King as an external reviewer is therefore somewhat baffling,"
Dr. Graves	Chaired Professor	MIT	"no evidence that would indicate that Dr. King meets the qualification requirement as stated."
Dr. Magazine	Chaired Professor	Cincinnati	"there is no evidence that Dr. King ... has had the opportunity to perform and evaluate the quality of research in the field"
Dr. Staats	Full Professor	North Carolina	"the external reviewer is wholly unqualified."
Dr. Fransoo	Full Professor, former Dean of Research	Eindhoven University of Technology	"I would not consider a degree in strategic management “relevant” ... the research activities of that academic department “similar” (or) this reviewer to hold “prominence” with the area of Operations Management.
Dr. Aloysius	Chaired Professor	Arkansas	"Dr. King’s vitae did not reveal evidence of expertise in operations management,"
Dr. de Koster	Department Chair	Erasmus University	"He does not hold prominence in the broad OM domain, let alone in the BOM subdomain."
Dr. Donohue	Chaired Professor	Minnesota	"... he is clearly not an expert in the field of Operations Management."
Dr. Buell	Chaired Professor	Harvard	"Dr. King is neither a behavioral operations scholar, nor does he hold a tenured graduate faculty position in a department of operations management or operations research."

4. Introduction of bias through the discussion of false charges of misconduct.

Unable to perform an objective external evaluation of Dr. Schultz's career contributions, for which Dr. King was not qualified, Dr. King instead raised false accusations of academic misconduct against Dr. Schultz.

Dr. King's charges of academic misconduct, including the accusation that Dr. Schultz lied on his Curriculum Vitae, were based upon Dr. King's mistaken and negligent interpretation of a typographical error in one of the academic journals to which Dr. Schultz had contributed, and Dr. King failed to conduct any inquiry into the typographical error. (Schultz Affidavit 8, Tab 6, Item 4) Dr. King claimed that Dr. Schultz lied about being a special issue editor because Dr. Schultz's name was omitted from the journal cover (the typographical error). According to the Department Committee Report, this accusation was the "item of biggest concern to some of the faculty." (Tab 6, page 1, para 4.) The error could have been easily resolved by asking Dr. Schultz for clarification or by contacting the co-editor for confirmation. (Tab 10, Schultz Affidavit 8) Dr. King's allegations against Dr. Schultz not only demonstrated Dr. King's incompetence as an external reviewer in Dr. Schultz's area but demonstrates inexcusable negligence to assert such a malicious allegation against Dr. Schultz without having first confirmed the truth of the allegation.

The other accusations against Dr. Schultz contained in the ENS Department findings are frivolous or incorrect. Contrary to the assertions of the Department Committee, while at AFIT Dr. Schultz did publish a Conference Paper and an article, (an Editorial) which has been cited over 120 times and is a significant contribution. (Schultz Affidavit 13, 14) Nonetheless, based upon Dr. King's unqualified external review, the Department Committee created a list of untrue, inconsequential, poorly researched and alleged negative items.¹⁰ (Schultz Affidavit 12 for example) Once the Committee believed Dr. Schultz had lied on his C.V., it became a witch hunt for all potentially negative connotations.

5. Denial of the right to respond to the false charges.

The Department Committee discussed Dr. King's false allegations against Dr. Schultz and immediately proceeded to the vote. (Tab 6) In violation of AFIT regulations, Dr. Schultz was not permitted to respond to the accusations before that vote. (Tab 5, p. 5) In fact, the Department Committee did not even inform Dr. Schultz of the accusation made against him until after the Department Committee had voted to deny his tenure.

Only after Dr. Schultz learned of the Department Committee's negative decision was, he told that he had been charged with academic dishonesty. (Schultz Affidavit 9) In response (and within two hours of receiving this information), Dr. Schultz obtained proof from his co-editor that the charges were false. (Schultz Affidavit 9) The Department Committee also falsely claimed that Dr. Schultz had not published any journal articles or proceedings papers while at AFIT. (Schultz Affidavit 12) Although Dr. Schultz provided the proof that the charges of

¹⁰ The Department Committee's list is itself contrary to AFIT regulations, The Department Committee was focused upon matters outside Dr. Schultz's career contributions, and failed to understand the Department Committee's function in testing Dr. Schultz's qualifications for tenure against the criteria specified in AFIT regulations.

academic dishonesty were false, the Department Committee refused to reconvene to allow Dr. Schultz to present this information or otherwise challenge the Department Committee's disregard of AFIT regulations in reaching the decision not to recommend Dr. Schultz's tenure application.

Dr. King's false allegations generated a bias against Dr. Schultz that tainted the entire tenure process, destroying any chance of the fair assessment of his career accomplishments, in violation of the AFIT Guidelines and Standing Rules. This violation of AFIT Guidelines and Standing Rules requires that the AFIT reconvene Dr. Schultz's tenure evaluation, to be conducted in accordance with the requirements of law.

Tab C. REPRISAL FOR PROTECTED DISCLOSURES: IMPROPER REVIEW

- 1. FINDING OF PROCEDURAL ERRORS**
- 2. REFUSAL TO INVESTIGATE REVIEWER QUALIFICATIONS**
- 3. FINDING OF BIAS**
- 4. IMPROPER INVESTIGATION OF BIAS IMPLICATIONS**
- 5. Conclusion**
- 6. Subsequent Events**

The Department Committee and the School Committee recommended Dr. Schultz be denied tenure, disregarding Dr. Schultz's career accomplishments in violation for AFIT regulations. The Department Committee and School Committee's disregard of AFIT regulations constitutes a violation of 5 U.S.C. 2302(b)(8), and is a prohibited personnel practice.

Dr. Schultz was informed multiple times that he could drop his appeals of the tenure decision and was told by the Provost that he should leave as soon as possible. (Schultz Affidavit 15, 17) Instead, Dr. Schultz reported the violations of the Standing Rules and the Guidelines by Department Committee and the School Committee to the Faculty Council. (Tab 11) Dr. Schultz's report of these violations to the Faculty Council are protected disclosures. In violation of 5 U.S.C. 2302(b)(8) and in reprisal for Dr. Schultz's protected disclosures, the AFIT upheld the recommendations of the Department Committee and the School Committee to deny Dr. Schultz's application for tenure. The AFIT upheld the denial of tenure knowing that the Department Committee and the School Committee had unlawfully disregarded AFIT regulations by recommending that Dr. Schultz be denied tenure. The AFIT chose to ratify the illegal conduct of the Department Committee and the School Committee and cause Dr. Schultz's employment be terminated in retaliation for his actions to expose the unlawful conduct of these committees by demanding his rights to a competent external review.¹¹

Pursuant to the Standing Rules, Dr. Schultz had the right to request a formal review of the decision not to recommend him for tenure, in accordance with his right to due process. (Tab 2, p 13, section 4.g.) The AFIT sought to dissuade Dr. Schultz from exercising his due process rights, telling him numerous times that no one had ever requested a Review Committee be convened. (Schultz Affidavit 15) On these occasions, the AFIT emphasized the AFIT's objective to protect and promote the AFIT's academic reputation by concealing any criticism that the AFIT had failed to follow proper procedures. *Id.* Nonetheless, Dr. Schultz requested the Review Committee be formed. (Tab 11) Pursuant to AFIT regulations, the Review Committee is obligated to determine "if there was a procedural error or inadequate consideration in the process of tenure or promotion." (Tab 2) This is essentially a task of comparing the written regulation with the facts. The members of the Review Committee were all well qualified to perform this task fairly and without bias, if they chose to do so.

The Review Committee conducted the review and correctly found that the Department Committee had violated multiple AFIT rules and procedures for tenure, and that the Department Committee's had been improperly influenced and biased by the false accusations.¹² However,

¹¹ Dr. Schultz was subjected to further reprisal when he was falsely charged with having committed EEO violations. *See, infra.*

¹² The report of the Review Committee is provided at Tab 5.

the Review Committee then abdicated the responsibility to perform a fair and unbiased review, failing to properly investigate the use of an unqualified reviewer, to take any action to correct the bias created Dr. King's false accusations, or to properly consider Dr. Schultz's career contributions for tenure as required by regulation. In reprisal against Dr. Schultz for his protected disclosures and for challenging the recommendations to deny his tenure application, the Review Committee refused to act upon admitted violations of AFIT regulations.

1. Findings of Procedural Errors.

The Review Committee identified multiple violations of the Standing Rules by the Department Committee. The Review Committee found that the Standing Rules were violated when Dr. Schultz was denied the opportunity to address the Department Committee's findings (including Dr. King's false allegations) before the Department Committee voted. (Tab 5, p. 5) The Review Committee also admitted that the Department Committee chair, Dr. Cunningham, did not provide the list of proposed reviewers to Dr. Schultz, so that he was denied his due process right to review and comment upon the proposed reviewers, in violation of SR 7.b. *Id.*, p. 3-4. The Review Committee also confirmed that School Committee violated the Standing Rules by failing to provide Dr. Schultz with sufficient time to submit his rebuttal to the Department Committee's findings. *Id.* Despite the findings, the Review Committee took no corrective action.

2. Refusal to investigate reviewer qualifications.

The Review Committee was responsible to determine if Dr. King was a qualified external reviewer. (Tab 5) The qualifications for an external reviewer are clearly stated in the Standing Rules, (Tab 2, p. 26, 7.b(1)) The Review Committee abdicated this responsibility, claiming that the Review Committee, not being peers, were not qualified to determine if a reviewer was qualified. (*Id.* p3) Astoundingly, the Review Committee made this assertion knowing that Dr. King himself had already admitted that he was not qualified to review Dr. Schultz, stating in his letter that this was not his area. (*Id.*, p. 3, para 10) Contrary to AFIT regulations, the Review Committee denied Dr. Schultz's due process right to challenge the appointment of external reviewers.

Instead of recognizing that Dr. King had admitted that he was unqualified to review Dr. Schultz, the Review Committee chose to rely on irrelevant factors, stating that Dr. King offered both positive and negative comments and that he had a background in Logistics. *Id.* Dr. Polanka, Chair of the Review Committee, referred to Dr. King's master's degree from AFIT as justification to assert that he was qualified to review Dr. Schultz. (Tab 12). In making these determinations, the Review Committee disregarded that fact that Dr. King's opinions, negative or positive, as well as his work experience and his master's degree are not relevant qualifications for external *academic* review. (Tab 2) It is baffling how the Review Committee could ignore AFIT regulations, declare itself unfit to render judgement, and then state that a master's degree qualified Dr. King as an academic reviewer. All of this in the face of Dr. King's admission that he was not qualified to perform the review. The only reasonable explanation is that the Review Committee was not interested in performing an unbiased review because the Review Committee was retaliating against Dr. Schultz.

The Review Committee had the responsibility to determine whether Dr. King met those qualifications. Being outside Dr. Schultz's academic discipline and therefore unqualified to conduct the review, the Review Committee had the responsibility to find someone who was

qualified. As confirmed by the opinions of scholars provided by Dr. Schultz at Tab 4, qualified scholars are available to conduct an outside review. The Review Committee must have known that qualified external academics were available to conduct a legitimate review of Dr. King's qualifications as an academic reviewer, if the Review Committee had wanted such a review to be conducted. However, the actions of the Review Committee demonstrate that the Review Committee did not want Dr. Schultz's challenge of the denial of his tenure to be successful. The AFIT was more concerned about protecting and promoting the AFIT's academic reputation by concealing any criticism that the AFIT had failed to follow proper tenure procedures. Schultz Affidavit 15. Accordingly, the Review Committee was unwilling to contact outside reviewers as that would have exposed the unlawful acts of the tenure process. In order to protect AFIT's reputation from Dr. Schultz's disclosure of unlawful conduct, the Review Committee denied Dr. Schultz his due process rights and took no action to correct the illegal selection of Dr. King as an external reviewer.

3. Finding of bias

The Review Committee was responsible to determine whether Dr. King's false accusations against Dr. Schultz in the Department Committee hearing created bias. The Review Committee claims not to be able to "confirm or deny whether 'dishonesty' or 'integrity' was a focal point of the Department Committee's deliberations." (Tab 5, p. 5) Further, the Review Committee found that "We acknowledge that the potential for bias existed in this case" (Tab 5, p. 6) and that "We cannot confirm or deny whether a voting member was biased..." (Tab 5, p. 5). These findings required the Review Committee to take or recommend corrective action, yet the Committee chose to do nothing.

In refusing to challenge the bias of the Department Committee, the Review Committee willfully ignored the evidence. The Department Committee Report states clearly that the false accusations against Dr. Schultz were "The item of biggest concern to some of the faculty." (Tab 6, p. 1) Dr. King told the Department Committee that Dr. Schultz had lied on his C.V. and the Department Committee admitted that at least some of the committee members believed that Dr. King's false accusations had merit. Accusations that Dr. Schultz lied about his credentials are, and should be, a serious issue. If true, these allegations SHOULD create a bias in the proceedings. For the Review Committee to claim that these accusations did not create a bias because the accusations turned out to be false is unrealistic.

Since accusations that Dr. Schultz falsified his credentials were made and were deemed credible by some members of the Department Committee, and since these accusations were a prominent part of the Committee findings, it defies credulity that these accusations were not a focal point of the deliberations. Regardless, according to AFIT regulations, these allegations were improper for the Department Committee to consider and should have been addressed independently, following investigation and proceedings wherein Dr. Schultz's rights to due process would be respected.

Nonetheless, in reprisal against Dr. Schultz for his protected disclosures, the Review Committee defied credulity by ignoring the impact of these accusations upon Dr. Schultz's tenure application. The Review Committee incorrectly claims the Department Committee letter "does not appear to make any direct statement regarding the integrity of Dr. Schultz or the honesty of his package." (Tab 5, p. 4.) In making these statements the Review Committee

ignores the Department Committee's allegations that Dr. Schultz "was not one of the editors when the special issue came out in 2006." and "(i) the reference is fabricated, and (ii) Dr. Schultz' name was added to a colleague's published editorial." (Tab 6, pp. 1-2) These defamatory allegations are false and constitute direct accusations regarding Dr. Schultz's integrity. The Review Committee's refusal to acknowledge the impact of these allegations upon the Department Committee's decision and refusal to take corrective action is a willful abandonment of the Review Committee's responsibilities in violation of AFIT regulation.

4. Failure to address implications of bias

After finding bias, the Review Committee needed to determine whether that bias was instrumental in the decision to deny tenure. Regardless of the fact that falsifications of academic qualifications, if true, SHOULD be instrumental in denying tenure, the Review Committee was required to assess Dr. Schultz's qualifications against the criteria of the Department Guidelines. However, not being peers of Dr. Schultz according to the SR, coming from academic disciplines completely foreign to that of Dr. Schultz, the members of the Review Committee are unqualified to make such an assessment. AFIT regulations require the decision on academic qualification of tenure be made by an assessment performed by Dr. Schultz's peers.

As a pretext to justify retaliation against Dr. Schultz, the Review Committee limited their assessment to the reports that agreed with their intended findings. They relied upon internal peers, which they had already found to be biased, and on the assessment of the School Committee, who were also unqualified and tainted by the Department Committee bias (but gave the Review Committee the desired conclusion.)

In making this assessment the Review Committee ignored, discounted or refused to seek qualified, unbiased peer reports. The Review Committee had access to the two, legal, qualified external peer review assessments, both of which recommended tenure be granted. (The letter of Dr. Roth is available at the end of Tab 4) These letters did not support the desired outcome the Review Committee was seeking and were ignored. The Review Committee had the ability and the time to request any number of additional independent peer reviews, as we have done, yet they refused. To do so would have not supported the Review Committee's mission to retaliate against Dr. Schultz, and would have potentially exposed the AFIT to criticism for failing to follow proper tenure procedures. Schultz Affidavit 15.

After determining bias, the Review Committee was obligated to determine if that bias could have affected the outcome. The Standing Rules require that only peers are qualified to make assessments of academic qualifications. Peers are either internal or external. All internal peers had been biased by the unlawful considerations of the Department Committee. The Review Committee had available two, qualified, external reviewers. They chose to ignore these qualified reviewers because they did not confirm the predetermined decision to deny tenure. The Review Committee could also have asked for additional, qualified, external peer reviews. They chose not to ask for outside opinion because it would have exposed the incompetence of the AFIT tenure process. Instead the Review Committee consulted the deliberations of the School Committee, which was tainted by the bias of the Department Committee, whose members were outside Dr. Schultz's field, (in fact outside his entire academic area,) and who were unqualified to render an opinion on Dr. Schultz's contributions to his field.

5. Conclusion

The Review Committee admitted to finding multiple instances of procedural errors. The Review Committee ignored Dr. King's admission that he was not a qualified external reviewer, and denied Dr. Schultz his rights to due process. The Review Committee ignored statements of bias in the Department Committee Report and found only a "potential" of bias from false claims of academic dishonesty that were credited by the Department Committee.

Furthermore, the Review Committee made no effort to secure independent, qualified, unbiased testimony because doing so would have exposed AFIT's unlawful acts to the wider academic community. Instead the Review Committee violated AFIT regulations by ignoring the published standard of career contribution, ignored available qualified external peer review letters, and claimed to rely on unqualified assessments of academic contribution. To justify support of the Department Committee's illegal conduct, the Review Committee selectively asserted that AFIT regulations permit the *metric* of **recent** journal publications as justification to deny tenure, completely ignoring the regulations' overriding *standard* of **career** contribution. **The Review Committee's animosity against Dr. Schultz for disclosing the violations of rules and procedures precluded an honest evaluation of his appeal and motivated the Review Committee to deny his appeal and his rights to due process.**

The Review Committee Report ends by stating "It is not within the purview of this committee to comment on a particular department's interpretation of their P&T criteria." (Tab 5, last sentence.) In fact, the exact opposite is true. It is precisely the purview and the responsibility of the Review Committee to determine whether the Department Committee's interpretation of P&T criteria complied with AFIT regulations, and comment on whether there was compliance, even if though they would require reference to external peers to do so.

6. Subsequent events.

Pursuant to the Standing Rules, the Review Committee submitted its report to the School Committee. Ignoring of the fact that the Review Committee had found procedural error and bias, the School Committee issued its final recommendation to deny Dr. Schultz's tenure application. (Tab 13) In reprisal against Dr. Schultz for reporting the violations of the Standing Rules and Guidelines, the School Committee recommended that Dr. Schultz be denied tenure despite the Review Committee's findings of procedural errors and denial of Dr. Schultz' due process rights by the Review Committee, though the Review Committee's findings exposed the bias and unlawful conduct of the Department Committee. *Id.*

After the School Committee issued its improperly reconsidered recommendation, the Department Committee and the School Committee recommendations to deny Dr. Schultz's tenure application were referred to Dr. Badiru, Dean, for comment and then to Dr. Sritharan, Provost and Vice Chancellor, for decision and Dr. Stewart, Chancellor, who was responsible to review the decision. Dr. Schultz informed Dr. Badiru, Dr. Sritharan and Dr. Stewart of the violations of the Standing Rules and the Guidelines that had corrupted the evaluation of his tenure application by the Department Committee and the School Committee. (Schultz Affidavit 16, 17, and 18.)

Nonetheless, Dr. Sritharan and Dr. Stewart refused to consider this information, and rubber-stamped the recommendations of the Department Committee and School Committee, thereby exhausting Dr. Schultz's tenure application process. (Schultz Affidavit 17, 18.) Dr.

Badiru made his decision before meeting with Dr. Schultz. He indicated that he would follow the advice of AFIT counsel, thereby communicating to Dr. Schultz that he had made his decision before the legal review was complete. (Schultz Affidavit 16.)

While asking for his case to be reviewed, Dr. Schultz also continued to ask that the administration clearly state that the Department Committee was not the appropriate place to discuss accusations of misconduct. Both the Provost and the Chancellor agreed. (Schultz Affidavit 17, 18.) In 2017, the SR were amended to say that candidates should have the opportunity to respond to serious questions about their vita but, if that doesn't happen, continue. (Tab 30, Schultz Affidavit 19.)

To dissuade Dr. Schultz from pursuing his objections to the unlawful denial of his tenure application, Dr. Sritharan repeatedly advised Dr. Schultz to leave the AFIT as soon as he was able. As a direct consequence of the denial of Dr. Schultz's tenure application, his employment with the AFIT was subsequently terminated. As a result, Dr. Schultz has been unable to find employment in his chosen profession as schools are very reluctant to hire someone who has been denied tenure by a school with AFIT's reputation.