



lawsuits arising out of the military for which we do not fully support. Unless completely warranted, as we are strong supporters of the preservation of "good order and discipline" in our military. Unfortunately, we feel at this time if the Board does not remedy the long-train of abuses this Airman has suffered under the jurisdiction of the Air Force Reserve Command ("AFRC")—this Airman will have no other choice, but to petition the federal courts for redress.

3. That, the only requirement for acceptance for membership in V'ERPA is a sincere and genuine belief of a prospective member that he/she or a loved one has suffered an "in the line of duty" or "incident to service" injury, illness or injustice arising out of the military that has been denied proper redress under the Uniform Code of Military Justice (UCMJ); or other laws governing the military. In this case, we accepted SrA Lindsey's request to join V'ERPA, as he meets all the above-requirements, and further, he has a firm belief that his injustices at the AFRC are a direct and proximate cause of the "Feres Doctrine" (340 U.S. 135 (1950)).

4. That, I wish to begin my sworn statement by informing the honorable Board that I was granted permission to witness and testify in a previous "AFRC-DES" case in the matter of V'ERPA member, SSgt Leigh E. Wise that took place on or about September 20, 2007, before this Board. In that case, SSgt Wise, as with Airman Lindsey, was willfully and grossly denied lawful

entitlements to “active duty medical hold” in relation to her “in the line of duty” injuries and ailments, as an AFRC member.<sup>1</sup>

5. That, it’s our professional opinion that SrA Lindsey has been virtually “derailed” of his constitutional rights to due process and equal protection under the AF-DES, at the time of this Board.<sup>2</sup> Thus, we hope our Affidavit on behalf of SrA Lindsey will provide the Board with some critical insight, as to the egregiousness of the violations of his rights under the AFRC, and especially, the right to “medical hold continuation orders” as mandated by law. Quite frankly, this Airman has been in “limbo” under the AF-DES, and without any question, the AFRC’s “derailing” his rights to “medical hold orders” has caused more psychological stressors and worsened his physical ailments according to SrA Lindsey; as discussed in his many interactions and discussions with V’ERPA.

6. That, for all the aforementioned reasons – we agreed to process SrA Lindsey’s AF/AFRC-DES matter, as a “case study” for our Military, Veterans and families grassroots efforts, to reform the Feres doctrine and for other “intramilitary” administrative justice reform purposes, as his AFRC-DES matter screams “reform.” That, as the totality of the Lindsey AF-DES Record shows, on

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<sup>1</sup> I feel it is most important and critical, for justice to be served in this case, to reference some of the Board’s findings and conclusions in the “Wise-Matter” in the latter of this Affidavit.

<sup>2</sup> If it pleases the Board, the emphasized term “derailed” is a direct finding by the Wise-Board that applies in this case. As a matter of fact, this is what SSgt Wise’s Board stated in reference to the term “derailed”: “These stressors have exacerbated her medical conditions and impaired her functioning abilities. Were it not for the assistance from at least one organization [“V’ERPA”], her efforts to receive appropriate medical treatment might have well been derailed.”

the morning of September 16, 2004, while on active duty orders, he was involved in an automobile accident on his way to his duty assignment. He immediately reported his accident to his unit commander, at the time, one- Lt. Col. Raeder.

7. That, subsequent to the accident, Lindsey's active duty orders were extended to October 9, 2004. During this period, his unit and the AFRC high officials had twenty-four (24) days to accomplish his "line of duty determination" to ensure his timely diagnosis, referral and treatments for his "incident to service" automobile injuries, but failed to do so.

8. That, SrA Lindsey was placed in a "P-3" status on or about October 13, 2004, and four (4) days after his wrongful release from active duty.

9. That, on January 11, 2005, SrA Lindsey's automobile accident and injuries were finally declared "in the line of duty or ILOD" status by AFRC-Judge Advocate (JA) Lt. Col James C. Caine.<sup>3</sup>

10. That, SrA Lindsey was not even processed by the AF "Medical Evaluation Board or MEB" for his September 16, 2004, automobile accident until May 18, 2005, and he was finally rated "P-4" on or about April 2007.<sup>4</sup>

11. That, on or about December 17, 2007, SrA Lindsey was referred to V'ERPA by his immediate supervisor, TSgt Brewer from the 55<sup>th</sup> CBCS, Robins

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<sup>3</sup> As the undisputed facts show, it took AFRC, via its Judge Advocate, Col James Caine—over three (3) months or ninety-five (95) days to accomplish the "line of duty" and long after SrA Lindsey's wrongful release from active duty. In "Wise" it took this "JA" over 8-months to process her "P-4" ILOD determination.

<sup>4</sup> I will reserve further comment at this point for SrA Lindsey to testify to the egregious hardships he faced, as a direct and proximate cause of being unlawfully removed from active duty orders, such as having to seek "private medical care" with no income as his "incident to service" injuries prevented him from working his civilian job.

AFB.<sup>5</sup> Upon my interview and review of SrA Lindsey's claim that he was being denied his lawful entitlements under the AF/AFRC DES statutory process - we agreed. However, it should be noted for the record that we required SrA Lindsey to make one final "good faith" attempt via his AFRC unit to remedy the "medical hold" orders dispute at the lowest level of his chain of command.

12. That, on or about December 23, 2007, and after a complete review of the Lindsey-DES file; we assisted SrA Lindsey in making the aforementioned "final good faith" effort to remedy the "medical hold" orders dilemma with his then-unit commander, Lt. Col. Wright, 55<sup>th</sup> CBCS/CC. Our major concern was SrA Lindsey's assertion that he was denied lawful medical hold orders based upon his commander's position that he [Raeder] did not have to issue orders based upon the erroneous belief that "command discretion" overrode federal law.<sup>6</sup>

13. That, on or about January 7, 2008, in response to the VERPA communication, Lt. Col Wright responded via e-mail and stated "TO WHOM IT

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<sup>5</sup> It is our understanding that TSgt Brewer will be providing the FPEB with a sworn statement in support of the facts and circumstances surrounding SrA Lindsey's claims of wrongful removal from "active duty medical continuation orders" and for other purposes, in the interest of justice.

<sup>6</sup> It is our belief, SrA Lindsey's commander's claim that he denied "active duty continuation orders" to SrA Lindsey based upon "command discretion" is not legally justifiable. In sum, our research of the issue has found that the Second Circuit Court of Appeals has held that "Our holding does not mean that all military personnel decisions are nonjusticiable under the doctrine of intramilitary immunity." (citations omitted)(Of course, the *Feres* doctrine is the number-one 'intramilitary immunity' case law in American jurisprudence as this Board can appreciate). The Court continued: "As we have noted previously, [t]he rule of non-justiciability of discretionary military decisions is not absolute." *Jones*, 166 F.3d at 52. For example, "where the military has failed to follow its own mandatory regulations in a manner substantially prejudicing a service member, we will entertain a suit seeking redress of the prejudice. *Id.* (emphasis added)(citing *Blassingame v. Sec'y of the Navy*, 866 F.2d 556, 559-60 (2d Cir. 1989); *Ornato v. Hoffman*, 546 F.2d 10, 13 (2d Cir. 1976); *Crawford v. Cushman*, 531 F.2d 1114, 1120 (2d Cir. 1976)). The Court concluded "We decline to adopt a categorical rule on the justiciability of intramilitary suits."

*MAY CONCERN: I have received the letter dated 23 December 2007 that was sent to the 55<sup>th</sup> Combat Communications Squadron on behalf of SrA Lindsey.* In essence, no official reply concerning the active duty orders, from Lindsey's unit commander, has been received at the time of this Affidavit and its filing with the Board. Overall, since our December 23, 2007, letter to Lindsey's unit commander—we have also been in direct contact with General Bradley, Commander of the Air Force Reserve Command, and his legal counsel, in an effort to remedy the "retroactive" medical hold orders issue. We were hopeful that SrA Lindsey would have been placed on active duty orders for his appearance before the Board; however, AFRC and his unit failed to act and remedy this primary "mental-stressor" that has relegated Lindsey to an indigent status. Furthermore, if not for the assistance of SSgt Lesly Blackwell, Lindsey's Physical Evaluation Board Point of Contact and 78<sup>th</sup> Medical Group at Robins AFB—SrA Lindsey would have had to pay his own transportation and berthing to attend this Board—even though the laws speak clear to the fact that he should have never been released from his active duty orders, until final exhaustion of the DES process. Actually, it must be raised with the Board that in an 11<sup>th</sup> hour attempt by me, via General Bradley's lawyer to remedy the "medical hold orders" injustice before his departure to the FPEB—was met with deaf ears, so to speak.<sup>7</sup>

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<sup>7</sup> In essence, General Bradley's attorney requested an outline of SrA Lindsey's attempts to remedy the matter at his unit level—and in all actuality the final AFRC high official decision, given to SrA Lindsey last week and at the last moment before his departure to the Board, was for him to go back to his chain of command, even in light of the evidence provided in this affidavit.

### III. A PATTERN OF ABUSE ARISING UNDER THE AFRC-DES

14. That, in light of the undisputed fact that AFRC-high officials did not take the necessary steps to ensure SrA Lindsey was in an active duty status prior to his departure for his FPEB; I believe the "Wise-Matter" and its AFRC-abuses must be further incorporated in these proceedings.<sup>8</sup> Thus, we strongly feel the nexus with the VERPA-Wise subject matter and this case should convince the Board to take into consideration the lack of "professional medical care and treatment" surrounding SrA Lindsey's case; so that this Board can render a just and equitable decision on behalf of SrA Lindsey, as it surely did in that of the SSgt Wise FPEB adjudication.

15. That, I have personally been working to reform the Feres doctrine issue for over 14-years, and VERPA's "pinnacle-case study" is that of the SSgt Wise subject matter. Thus, in the wake of the Wise case, I would have believed that the AFRC would have acted with more urgency in this case. Nonetheless, at this time I feel the Board's findings in "Wise" now establishes a bone fide and genuine "pattern of abuse" under the AFRC-DES that goes to the heart of the reasons why, SrA Lindsey was wrongly denied "medical hold orders" under the laws governing the AF-DES, and in keeping with the United States Supreme

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<sup>8</sup> For the record, notwithstanding the pattern of abuse in the Wise case arising from the AFRC's denial of her rights to expedited "active duty medical hold orders" – as in this case, the gravamen of her DES subject matters and placement on the Temporary Disability Retirement List (TDRL) at 100% was predicated upon "incident to service" mental stressors surrounding her "Whistleblower-type grievances" giving rise under the AFRC.

Court's Feres doctrine and its "mandate" or "FDM."<sup>9</sup> As a matter of fact, we urge the Board to consider its findings in "Wise" that states:

"The member has had individual psychotherapy and medication treatment over the course of 15 months and has experienced minimal to no reduction in her anxiety or her ability to tolerate continued stress that is outside of her control."

Clearly, in this case, it was only after V'ERPA's visit with SrA Lindsey to Robins AFB "Life Skills" in or about early January 2008, that he was finally seen for his secondary mental and emotional stressors, that are directly contributed to his accident and added stress surrounding his removal from active duty orders. Unlike the Wise-Matter, wherein we were able to obtain her at least fifteen (15) months of treatment under the AF-mental health system to address her AFRC-injuries and injustices; but in this case, SrA Lindsey's DES-Record to develop his mental health stressors, has only been in progress for less than two (2) months. Unlike the Wise-Matter, in my opinion SrA Lindsey's mental health records have yet to be fully developed for adjudication by the Board and this is the reason why we feel strongly that the "Wise" case is an important "precedent" arising at the AFRC, and in support of our "pattern of abuse" argument in this case. Further, the Board concluded in "Wise":

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<sup>9</sup> When we refer to the Feres doctrine and its "mandate," or "FDM" we are legally arguing that no matter how egregious each and every wrongful act or omission in the Lindsey-DES matter may be; as set forth in this Affidavit—this Airman is barred from filing a civil rights action to remedy the "medical malpractice" issues in this AF-DES matter under the "Feres" exemption to the *Federal Tort Claims Act (FTCA)* of 1946. Thus, the "mandate" as set down by the U.S. Supreme Court is that this Airman's "incident to service" automobile injuries and ailments must be properly adjudicated by this Board—prior to his release from the Air Force.

“Throughout the process the member has been on and off orders. Notwithstanding, the member maintained continuity of care for the past two years with her provider. She traveled to and from her treatment a couple of hours each way not in any status. Fortunately for the member and this service ‘her not in status’ commutes were without incident.”

Unlike the Wise-Matter, in this case, SrA Lindsey has arbitrarily and capriciously been virtually denied all of his lawful entitlements to medical diagnoses, referrals and treatment for the past three (3) years and four (4) months at the time of this Board. Moreover, he has been completely cheated of his active duty pay and entitlements.<sup>10</sup> Notwithstanding the “disruption of good order and discipline” arising once again within the AFRC-DES; the good news for the Air Force to date is that “[fortunately for the member and this service ‘[his] not in status’ commutes were without incident” as this is the “second-case” that VERPA has knowledge of wherein the AFRC has opened the “Air Force” to serious liability under the “FTCA.” As previously argued in Wise, and now in this case, if SrA Lindsey injured a “private citizen(s)” in his “not in [active duty] status commutes” the consequence to the Air Force could have been dire as the general public is not barred from suing the government under the “Feres doctrine.”

16. That, as with Wise—we have found that there is no difference in what is taking place in the SrA Lindsey AF-DES subject matter with regard to the “willful-negligence” and “medical malpractice” related matters giving rise under

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<sup>10</sup> As a matter of fact, to add insult to injury—SrA Lindsey had to borrow over \$200.00 from his family to purchase a new uniform for this FPEB process, (and one-time use), as he has lived in an “indigent” state of financial distress since his unlawful removal from active duty orders on or about October 9, 2004.

the AFRC-DES processes. Nonetheless, I do believe, once SrA Lindsey testifies before the Board and explains the totality of the “stressors” he has suffered surrounding his unlawful removal from “active duty medical hold continuation orders” – this Board will come to a just and proper solution to this second-outrageous AF-DES subject matter, again under the authority of the “AFRC.”

17. As a Feres doctrine subject matter expert and a material witness in this case – on December 17, 2007, when SrA Lindsey contacted us; he was in a state of severe depression, anxiety and physical pain. Now, we hope the Board rules, as we know, that SrA Lindsey’s “in the line of duty” injuries have been long neglected under federal and military laws and based upon the totality of the AF-DES record in this case. In all, we have concluded that the AFRC’s negligent handling of this case is no way to treat any American servicemember injured on active duty in the service of our Country under the “FDM.”

#### IV. CONCLUSION

18. In closing, based upon the above stated matters, the undisputed fact in this AF-DES process is that SrA Lindsey’s federal rights under the law have grossly violated to a serious level, wherein all primary-physical and secondary-mental health related issues in his case have yet to be fully diagnosed, referred and treated at the time of this Board. Henceforth, we hope this honorable Board will take into consideration the justice rendered in the SSgt Wise subject matter, so that this Airman can now, receive the justice he deserves; so that he has the chance to smoothly transition from military to civilian life and

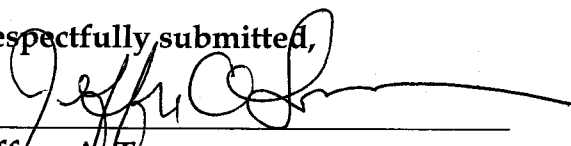
to ensure that all unfitting conditions are fully documented for the "VA" to properly assume jurisdiction over this case under the spirit of the Feres doctrine and its "Mandate."

19. In sum, we believe in the interest of justice that the "FPEB" Commanding General should make contact with "AFRC" –Commanding General Bradley and direct him to resolve SrA Lindsey's "retroactive medical hold" orders subject matter to prevent any further emotional, psychological and financial hardships of this Airman so that he may move on with his life after release from the U.S. Air Force.<sup>11</sup>

**FURTHER, AFFIANT SAYETH NAUGHTH.**

Dated this 25<sup>th</sup> day of February 2008

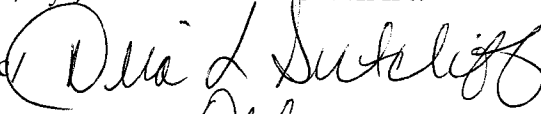
Respectfully submitted,

  
Jeffrey A. Trueman  
Founder, V'ERPA LLC  
P.O. Box 1704 \* McDonough GA 30253  
(404) 788-8574

The foregoing instrument was acknowledged before me on this 25<sup>th</sup> day of February 2008, by JEFFREY A. TRUEMAN.

Notary Public

My commission expires:

  
Oct 21, 2010

DEIA L. SUTCLIFF  
NOTARY PUBLIC  
Houston County  
State of Georgia  
My Comm. Expires Oct. 21, 2010

<sup>11</sup> For example, SSgt Wise continues to suffer unnecessary post-military stressors and hardships during her "TDRL" status, in remedying all AFRC-DES "withholding of favorable personnel actions," such as her entitlement to pay and benefits – as SrA Lindsey is facing at this time.