

# EXHIBIT L

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARGARET WITT, Major, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
UNITED STATES DEPARTMENT OF THE )  
AIR FORCE; ROBERT M. GATES, )  
Secretary of Defense; MICHAEL B. )  
DONLEY, Secretary of Department )  
of the Air Force, Colonel; )  
JANETTE L. MOORE-HARBERT, )  
Commander of the 446th )  
Aeromedical Evacuation Squadron, )  
Colonel; McChord AFB, )  
 )  
Defendants. )  
 )

NO. C06-5195-RBL

Deposition of MAJOR GENERAL ERIC W.  
CRABTREE, taken on behalf of Plaintiff, at  
2040 Main Street, Suite 250, Irvine,  
California, commencing at the hour of  
1:12 p.m., ending at 2:31 p.m., on Wednesday,  
March 24, 2010, before MICHELLE  
LOTT-MEYERHOFER, CSR 8226

1           A    Yes.  The results of the board are usually  
2 released in the late fall, December timeframe.  So I was  
3 waiting to find out the results of the board.

4           Q    Okay.  And you stayed at McChord until when?

5           A    I was there until 2007.

6           Q    When did you leave in 2007, if you know?

7           A    I left in -- I went to Denver in the September  
8 timeframe also.

9           Q    Oh, okay.  And you were stationed in Denver for?

10          A    For basically 18 months as the Commander of the  
11 Air Reserve Personnel Center.

12          Q    Where is that?  What base is that?

13          A    It's on a complex that used to be part of Lowry  
14 Air Force Base.  Lowry closed a number of years ago  
15 except for, basically, one building left, which houses  
16 the defense finance and accounting service in the Air  
17 Reserve Personnel Center.

18          Q    And are you on a list for promotion now?

19          A    No.  I just got promoted to major general this  
20 year, just pinned on as of the 2nd of February.

21          Q    Okay.  And do you have any plans of retiring  
22 from the Air Force in the next two or three years or is  
23 it --

24          A    Probably so.  You have to do three years in  
25 grade in order to retire at that rank.  So I will have to

1 A No.

2 Q This might trigger a memory or it might not. Is  
3 it possible that you knew, before the Summer of 2004,  
4 that there is this Major who's on the Promotional  
5 Recruitment Literature for a career in the Air Force  
6 Nursing Corp. that features her photograph? Is that  
7 anything you every knew?

8 A No, not until after the action started.

9 Q So what is the first thing you ever found out  
10 about Major Margaret Witt?

11 MR. DIEDERICH: Objection. Let me just caution  
12 the General to the extent it's a conversation you had  
13 with an attorney about the case. I don't know what the  
14 answer is. I just want to caution him to be careful  
15 about conversations with an attorney. That's all.

16 MR. LOBSENZ: Okay.

17 Q Well, why don't you answer this question yes or  
18 no. Is the very first thing you ever found out about  
19 Major Witt something you learned from an attorney?

20 A No. It was from, actually, headquarters.

21 Q Okay. So what did you find out at that time?

22 A I was told that -- I received notification that  
23 a complaint had been filed through the chief of staff of  
24 the Air Force's Office alleging that Major Witt was  
25 involved with a woman in the Spokane area. And I was

1 directed to do an investigation to find out if the  
2 allegations were true.

3 Q Who is it that directed you to do an  
4 investigation?

5 A It was a letter from the Air Force Reserve  
6 Command Headquarters.

7 Q Air Force Reserve Command is in Robins?

8 A Yes, Robins Air Force Base.

9 Q So it's the Commander of Air Force Base Robins  
10 that's sending you this directive?

11 A It actually -- I'm thinking it came through the  
12 Judge Advocate's Office there.

13 Q So is there a name? Who is actually giving the  
14 order?

15 A I don't know. If I had a copy of the letter, I  
16 could tell you. But I don't know exactly who it was at  
17 that time.

18 Q But it's someone at Robins?

19 A Yes.

20 Q Who is, at that time, Commander of Air Force  
21 Reserve?

22 A Yes.

23 Q So if we just figured out who the Commander was  
24 of Air Force Reserve in the Summer of 2004, that would be  
25 the person probably?

1 MR. DIEDERICH: Objection. Form.

2 BY MR. LOBSENZ:

3 Q Is that right?

4 A I believe so, yes. That would have been General  
5 Sherrard, S-h-e-r-r-a-r-d.

6 Q And this comes to you in the form of a written  
7 order?

8 A Yes, a letter from them telling me that there  
9 have been allegations and that I need to do an  
10 investigation.

11 Q Have you seen that letter in the last year or  
12 two?

13 A No, I haven't.

14 Q A copy.

15 Have you been asked to look for it?

16 A I don't have any of the files on the case. I  
17 left them at McChord Air Force Base when I left. So I  
18 did look to see if I had anything related to it, but I  
19 don't.

20 Q And this would be General Sherrard; is that  
21 right?

22 A Right.

23 Q General Sherrard, do you know where he got his  
24 orders from?

25 A It would have come as a notification from the

1 BY MR. LOBSENZ:

2 Q Okay. I'm going to use this date which you  
3 signed on, May 18, 2004, for a moment as kind of a  
4 dividing line and first ask you questions about up until  
5 May 18, 2004. At least as of that date, had you ever  
6 heard anyone make any negative comments about Major Witt?

7 A No, I hadn't.

8 Q Had you ever heard, up until that date, anyone  
9 complain about her?

10 A No.

11 Q Had you ever heard anyone praise her prior to  
12 that?

13 A No, I can't say.

14 Q Had you ever heard anyone, prior to May 18,  
15 2004, say they suspected she was a lesbian?

16 A No.

17 Q Had you heard anyone say, prior to that date,  
18 that they either assumed or believed she was a lesbian?

19 A No.

20 Q So now I will jump back to you were telling me  
21 you got orders from General Sherrard to conduct a  
22 fact-finding investigation; is that right?

23 A Yes.

24 Q And those orders came to you solely in the form  
25 of this written order?

1 Q Does this trigger any memory of the process you  
2 went through when you received orders from General  
3 Sherrard?

4 MR. DIEDERICH: Objection to form.

5 THE WITNESS: My recollection would be, in a  
6 case like this, when I was notified, the Judge Advocate's  
7 Office at McChord would prepare a letter to him saying we  
8 have been directed to do this investigation. And he  
9 would sign this authorizing letter and provide that as  
10 part of the case materials to the Judge Advocate's  
11 Office.

12 BY MR. LOBSENZ:

13 Q Why would the Commander of the 4th Air Force  
14 need to authorize this if it had already been directed by  
15 General Sherrard?

16 MR. DIEDERICH: Objection to form.

17 THE WITNESS: My understanding is he is -- the  
18 4th Air Force Commander has court-martial convening  
19 authority for the Wing. And, therefore, in case the  
20 action should lead to any court-martialing actions, he  
21 has to authorize the investigation and be aware of it as  
22 the convening authority.

23 BY MR. LOBSENZ:

24 Q Okay. Am I understanding correctly then,  
25 because there's a possibility that it might go



1 court-martial, it has to go through the person with the  
2 convening authority for court-martial?

3 A That's my understanding.

4 Q And so you get number two, Exhibit No. 2 from  
5 General Duignan. Does that tell you anything at all  
6 about whether he makes some decision about whether it's  
7 going to proceed on the court-martial track or not?

8 MR. DIEDERICH: Objection to form.

9 THE WITNESS: No.

10 BY MR. LOBSENZ:

11 Q So it still could? At least as of July 7th,  
12 2004, it still could have led to a court-martial?

13 A Yes.

14 MR. DIEDERICH: Objection to firm.

15 BY MR. LOBSENZ:

16 Q Okay. When General Duignan says "I have  
17 reviewed your request for authorization," is that because  
18 what was prepared by the Judge Advocate General went to  
19 him under your signature?

20 A Yes.

21 Q So you ask him for authority to proceed and he  
22 grants that authority?

23 A Yes.

24 MR. LOBSENZ: While we are on the subject then,  
25 I will ask for this last exhibit also on the 7th to be

1 Force?

2 A I don't recall reading it, no.

3 Q General Duignan, did he consult with you before  
4 he authorized the fact-finding inquiry?

5 A Not that I recall.

6 Q He didn't ask your opinion whether you thought  
7 an inquiry should be launched?

8 A No.

9 Q At any time do you recall giving General Duignan  
10 your opinion as to whether or not a fact-finding inquiry  
11 should be started?

12 A No.

13 Q Did you have an opinion as to whether one should  
14 be started?

15 A No. Whenever we get directed to do one of  
16 these, we -- we find an investigating officer and begin  
17 the process without questioning it.

18 Q As I understand it, you're telling me: It  
19 doesn't matter what my opinion was, because I've been  
20 directed to do this?

21 A Exactly, yes.

22 Q Have you ever stopped and dwelt upon the  
23 question of: If you had not been ordered to do it, but  
24 had been allowed the discretion to decide yourself, do  
25 you have any opinion as to what you would have done?

1 MR. DIEDERICH: Objection to form.

2 THE WITNESS: No, I have never really thought  
3 about that.

4 BY MR. LOBSENZ:

5 Q Okay. Did you talk to Coronal Walker before you  
6 made the request of General Duignan?

7 A I don't remember speaking with her about it, no.

8 Q From the time that you got the directive from  
9 General Sherrard to the time you got the memo of July 7th  
10 from General Duignan, can you remember talking to anyone  
11 else in the world other than the Judge Advocate General  
12 and your lawyer and the Judge Advocate Office? Can you  
13 remember talking to anybody else in the world about Major  
14 Witt's case or this investigation?

15 MR. DIEDERICH: Objection to form.

16 THE WITNESS: No, I don't remember talking to  
17 anybody about it.

18 BY MR. LOBSENZ:

19 Q What did you do after you got authority from  
20 General Duignan to proceed?

21 A We appointed Major Torem, and he came in. I had  
22 a briefing with him on basically the type of  
23 investigation being done, which was a commander directed  
24 investigation.

25 Q Could you explain that to me? Bearing in mind

# **EXHIBIT M**



DEPARTMENT OF THE AIR FORCE  
AIR FORCE RESERVE COMMAND

July 7, 2004

MEMORANDUM FOR 446 AWCC

FROM: 4 AF/CC  
895 Baucom Ave SE  
March ARB CA 92518-2266

SUBJECT: Homosexual Conduct Fact-Finding Inquiry

1. I have reviewed your request for authorization to proceed with a fact-finding inquiry of homosexual conduct by Major Margaret Wilt, 446 AES.
2. I have also reviewed the evidence and find the information provided to me, considering its source and surrounding circumstances, supports a reasonable belief that there is a basis for conducting an investigation. Therefore, I authorize this fact-finding inquiry.

  
ROBERT E. DUIGNAN, Maj Gen. USAFR  
Commander

# **EXHIBIT N**

CARNEY  
BADLEY  
SPELLMAN

James E. Lobsenz

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION

700 FIFTH AVENUE, SUITE 5600  
SEATTLE, WA 98104-5017  
FAX (206) 467-8215  
TEL (206) 622-5020  
DIRECT LINE (206) 607-4205

Email: [lobsenz@carneylaw.com](mailto:lobsenz@carneylaw.com)

July 27, 2004

Major Adam Torem  
JAG - 62nd Airway  
Ft. McChord

RECEIVED

JUL 27 2004  
OAH - Olympia

Re: Investigation of Major Witt

SENT IMMEDIATELY BY FAX TO 360-586-6563

Dear Major Torem:

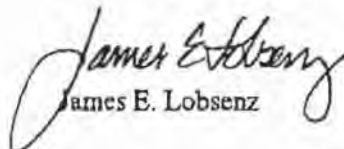
I am writing in response to your phone message which I just received. I have been retained by Major Witt to advise her with respect to your investigation into her conduct. I understand that Major Witt is also entitled to have military defense counsel appointed to advise her as well. On her behalf I am requesting that military counsel be appointed for her. I would like to work with someone with has more familiarity with military law than I do. Although I did once represent an Army soldier in an administrative discharge proceeding, that was over 20 years ago and I have not done one since. It is my understanding that Captain Adrian Ingram will be arriving at Ft. McChord sometime in late August, and will be taking over the area defense duty at that time. However, I would like to have someone appointed to advise Major Witt before that time, if that is at all possible. Please consider this a formal request for such an appointment.

I am requesting that you provide me with information regarding your investigation, the evidence you have gathered, and the nature of the allegations which are under investigation. I can be reached at the address listed above. The quickest way to reach me is by e-mail at [Lobsenz@carneylaw.com](mailto:Lobsenz@carneylaw.com).

Thank you for your assistance.

Sincerely,

CARNEY BADLEY SPELLMAN, P.S.

  
James E. Lobsenz

cc: Client

WTT corr fig274202

TOTAL P.02

AF000153

# **EXHIBIT O**



1 THE HONORABLE RONALD B. LEIGHTON

2  
3  
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6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 MAJOR MARGARET WITT,

11 Plaintiff,

12 v.

13 UNITED STATES DEPARTMENT OF THE  
AIR FORCE, et al.,

14 Defendants.

No. C06-5195 RBL

**PLAINTIFF'S SECOND SET OF  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS AND THINGS TO  
DEFENDANTS**

15  
16 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Major Margaret  
17 Witt submits the following Second Set of Requests for Production of Documents and Things to  
18 Defendants (collectively the "Discovery Requests"), the Department of Air Force, Robert M.  
19 Gates, the Secretary of Defense, Michael B. Donley, the Secretary of the Air Force, and Colonel  
20 Janette Moore-Harbert.

21 **INSTRUCTIONS**

22 1. These Discovery Requests must be answered fully, in writing and under oath, and  
23 the requested documents served on counsel for Plaintiff, within thirty days of service of these  
24



1       **Request for Production No. 5:** Produce all documents and communications sent by or received  
2 by Colonel Mary Walker, from January 1, 2004 to the present, relating to Major Witt's sexual  
3 orientation, sexual conduct, sexual behavior, suspension and/or discharge.

4  
5       **Request for Production No. 6:** Produce all documents and/or communications sent by or  
6 received by Colonel Janette Moore-Harbert, from January 1, 2004 to the present, relating to  
7 Major Witt's sexual orientation, sexual conduct, sexual behavior, suspension and/or discharge.

8  
9       **Request for Production No. 7:** Produce all documents and/or communications sent by or  
10 received by Major Verna Madison, from January 1, 2004 to the present, relating to Major Witt's  
11 sexual orientation, sexual conduct, sexual behavior, suspension and/or discharge.

12  
13       **Request for Production No. 8:** Produce all documents and/or communications sent by or  
14 received by First Sergeant Theron Smith, from January 1, 2004 to the present, relating to Major  
15 Witt's sexual orientation, sexual conduct, sexual behavior, suspension and/or discharge.

16  
17       **Request for Production No. 9:** Produce all documents and/or communications sent by or  
18 received by members of the 446th AES, from 2003 to 2007, relating to the Policy and DOD  
19 Regulations, including but not limited to: the power point, lecture notes and materials that then  
20 First Sergeant Theron Smith presented to members of the 446th AES squadron shortly after  
21 Major Witt's suspension.

1 **Request for Production No. 10:** Produce all communications sent by or received by members  
2 of the 446th AES, from 2003 to 2007, relating to gay or lesbian unit members.

3  
4 **Request for Production No. 11:** Produce all non-privileged communications sent by or  
5 received by members of the 446th AES, from 2003 to the present, relating to this litigation.

6  
7 **Request for Production No. 12:** Produce all documents (dating from January 1, 2004 to the  
8 present) relating to any effect or lack of effect on combat effectiveness caused by, resulting from,  
9 associated with, or accompanying, the presence in the United States Armed Forces of gay or  
10 lesbian service members.

11  
12 **Request for Production No. 13:** Produce all documents (dating from January 1, 2004 to the  
13 present) relating to any effect or lack of effect on combat effectiveness caused by, resulting from,  
14 associated with or accompanying, the presence in the United States Armed Forces of service  
15 members who engage in, may engage in, or have engaged in sexual conduct with another person  
16 who is of the same sex.

17  
18 **Request for Production No. 14:** Produce all documents (dating from January 1, 2004 to the  
19 present) relating to any effect or lack of effect on unit cohesion caused by, resulting from,  
20 associated with, or accompanying, the presence in the United States Armed Forces of gay or  
21 lesbian service members.

# **EXHIBIT P**

SARAH DUNNE  
LEGAL DIRECTOR

NANCY TALNER  
STAFF ATTORNEY

ROSE SPIDELL  
STAFF ATTORNEY  
FLOYD AND DELORES JONES  
FAMILY FELLOW

SHER KUNG  
PERKINS COIE FELLOW

LINDSEY SOFFES  
ROPES & GRAY FELLOW



May 11, 2010

Via E-mail

Bryan R. Diederich  
Peter J. Phipps  
Stephen J. Buckingham  
Civil Division, Federal Programs Branch  
U.S. Department of Justice  
20 Massachusetts Ave., N.W.  
Washington, D.C. 20001

AMERICAN CIVIL  
LIBERTIES UNION  
OF WASHINGTON  
FOUNDATION  
705 2ND AVENUE, 3RD FL.  
SEATTLE, WA 98104  
T/206.624.2184  
F/206.624.2190  
WWW.ACLU-WA.ORG

JESSE WING  
BOARD PRESIDENT

KATHLEEN TAYLOR  
EXECUTIVE DIRECTOR

Re: *Witt v. U.S. Air Force et al.*, No. C06-5195 (W.D. Wash.)

Dear Bryan and Steve,

Thank you for the productive phone conference yesterday concerning Defendants' Objections and Responses to Plaintiff's Second Set of Requests for Production of Documents and Things. I am writing to confirm our understanding of the agreements we reached yesterday relating to certain outstanding discovery matters.

*Requests Nos. 1-8, 10 and 11*

First, we asked about Defendants' ongoing efforts to respond to Requests for Production Nos. 1-8, 10 and 11. Our understanding is that you tasked an Information Technology (IT) group at Joint Base Lewis-McChord to run a search on the local server for the 446th AES for responsive documents, that some documents were found, and that DOJ will have an opportunity to review those documents and produce any responsive documents in the next week. We further understand that you have tasked an IT group located at a separate military base that has access to the 446th AES server at a different level to re-run similar searches to identify responsive documents. The target date for completion of this search is the end of this week with any responsive documents being produced shortly thereafter on a rolling basis. Finally, you also mentioned that because you suspect that reservists may not use their military email accounts regularly due to the infrequency of being on base, DOJ has tasked a JAG officer to call and speak with members directly to ask about their use of private email accounts. If members confirm that they do in fact use other services such as gmail or yahoo, the JAG officer will ask them to run a search with specific key terms in order to identify responsive documents. All responsive, non-privileged documents will be produced on a rolling basis, but no later than June 7.

Second, we asked whether Defendants, key decision makers (such as Generals Jumper, Dguinan or Sherrard), and 446th unit members with relevant knowledge

about Major Witt's suspension and discharge were asked to retain any files or documents concerning Major Witt's suspension and discharge via a litigation hold, either in writing or by oral instruction. Our understanding from you is that the Air Force has never given such an instruction either orally or in writing to Defendants, key decision makers, and 446th unit members with relevant knowledge about Major Witt's suspension and discharge. Thus, no litigation holds were put in place to prevent the destruction of documents that may have been relevant to Major Witt's suspension or discharge.

Based on your representation that DOJ is conducting a search for documents responsive to Requests Nos 1-8, 10 and 11 and will produce any remaining responsive documents on or before June 7, coupled with the absence of litigation holds, Plaintiff will not file a motion to compel with respect to these particular Requests because such a motion has no purpose if there are no documents remaining, either because they were destroyed or because they do not exist. Instead, Plaintiff may seek remedial relief relating to spoliation of evidence from the Court at a later date.

**Request Nos. 25 and 31**

We also discussed Request for Production No. 25 and you confirmed that Defendants have produced all responsive, non-privileged documents subject to any supplemental production pursuant to Rule 26(e). With respect to Request for Production No. 31, Defendants initially objected to the request for "all public statements made by the Defendants" concerning "U.S. Armed Forces personnel and sexual orientation or sexual conduct between two people of the same sex" on the basis that the materials are equally available to both parties because the documents were at some point in the public domain (either via a speech presented in a public forum or available on the Internet). To confirm whether Plaintiff has all responsive documents, I agreed that Plaintiff's counsel will search for any documents responsive to Request No. 31 available over the internet and produce the same; DOJ will contact the Department of Defense press office to confirm whether any responsive documents other than the ones produced by Plaintiff exist and if so, Defendants will produce those additional responsive documents.

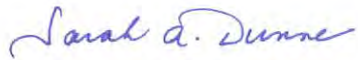
**Request Nos. 33-36**

With respect to Requests for Production Nos. 33-36, we understand that your client is unwilling to agree to a protective order, and objects to the production of members' personnel files, in whole or in part, based on the Privacy Act. Parties agree that Plaintiff will file a motion to compel on the above document requests, and will redact members' names in order to maintain privacy.

Letter to DOJ  
May 11, 2010  
Page 3

Please contact me if any of the above representations is inaccurate, or if you have any questions about the contents of the letter.

Sincerely,

A handwritten signature in blue ink that reads "Sarah A. Dunne". The signature is written in a cursive style.

Sarah A. Dunne  
Legal Director

cc: James Lobsenz



# EXHIBIT Q



**U.S. Department of Justice**  
Civil Division, Federal Programs Branch

**By U.S. Mail**  
P.O. Box 883, Rm. 7330  
Washington, DC 20530

**By Courier**  
20 Massachusetts Ave NW, Rm. 7330  
Washington, DC 20001

Bryan R. Diederich  
Trial Attorney  
Tel.: (202) 305-0198  
Fax: (202) 616-8470  
bryan.diederich@usdoj.gov

May 12, 2010

**By First Class Mail & Electronic Mail**

Sarah Dunne, Esq.  
ACLU OF WASHINGTON FOUNDATION  
705 Second Avenue, 3rd Floor  
Seattle, Washington 98104

*Received*

**MAY 17 2010**

**ACLU of Washington**

**Re: *Witt v. United States Dept. of the Air Force, et al.*, No. C06-5195 (W.D. Wash)**

Dear Ms. Dunne,

I write in response to your letter of May 11, 2010 regarding our telephone conference of May 10, 2010. Your letter seems correct to me in all aspects save one. As I explained in our phone conversation yesterday, we believe that one reason that we have not identified much responsive e-mail is that unit members may not use their military e-mail accounts because of the limited time that they are on base. We are having a JAG member call current members of the unit identified in your interrogatory responses as being likely to have discoverable information to ask whether they use their military accounts at all. To the extent that they say that they do use their military accounts, we are asking them to search those accounts directly to insure that nothing is missed by server searches. We have not asked them to search their private e-mail accounts; those accounts are not in the possession, custody or control of the military.

Very truly yours,

  
Bryan R. Diederich

cc: James E. Lobsenz, Esq. (via electronic mail)

# **EXHIBIT R**



U.S. Department of Justice

Civil Division

*Via U.S. Mail*                      *Via Special Delivery*  
P.O. Box 883, Rm. 7204    20 Massachusetts Ave. NW  
Washington DC 20044    Washington, DC 20001

---

Stephen J. Buckingham  
Trial Attorney

Telephone:    (202) 514-3330  
Facsimile:    (202) 616-8470  
E-mail:        stephen.buckingham@usdoj.gov

June 11, 2010

***Via FEDERAL EXPRESS &  
Electronic Mail***

Sher Kung, Esq.  
Legal Fellow  
ACLU of Washington Foundation  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
(206) 624-2184

Re:    Witt v. U.S. Air Force, No. C06-5195 (W.D. Wash.) (RBL)

Dear Sher,

Enclosed is defendants' production in response to the Court's Order of June 1, 2010, Granting Plaintiff's Motion to Compel (Dkt. No. 91), and an accompanying privilege log. In accordance with the terms of that order, defendants have marked the enclosed materials as "CONFIDENTIAL." Defendants understand that the use of the enclosed materials will be confined to the terms of the June 1, 2010 protective order.

Included in this production are documents labeled AF027077-AF027161.

Sincerely,

Stephen J. Buckingham

Enclosures



**U.S. Department of Justice**

Civil Division

*Via U.S. Mail*                      *Via Special Delivery*  
P.O. Box 883, Rm. 7204      20 Massachusetts Ave. NW  
Washington DC 20044      Washington, DC 20001

---

Stephen J. Buckingham  
Trial Attorney

Telephone:      (202) 514-3330  
Facsimile:      (202) 616-8470  
E-mail:            stephen.buckingham@usdoj.gov

June 16, 2010

***Via FEDERAL EXPRESS &  
Electronic Mail***

Sher Kung, Esq.  
Legal Fellow  
ACLU of Washington Foundation  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
(206) 624-2184

Re:    Witt v. U.S. Air Force, No. C06-5195 (W.D. Wash.) (RBL)

Dear Sher,

Enclosed is defendants' supplemental production in response to the Court's Order of June 1, 2010, Granting Plaintiff's Motion to Compel (Dkt. No. 91). In accordance with the terms of that order, defendants have marked the enclosed materials as "CONFIDENTIAL." Defendants understand that the use of the enclosed materials will be confined to the terms of the June 1, 2010 protective order.

Included in this production are documents labeled AF027162-AF027163.

Sincerely,

Stephen J. Buckingham

Enclosures



U.S. Department of Justice

Civil Division

*Via U.S. Mail*                      *Via Special Delivery*  
P.O. Box 883, Rm. 7204      20 Massachusetts Ave. NW  
Washington DC 20044      Washington, DC 20001

---

Stephen J. Buckingham  
Trial Attorney

Telephone:      (202) 514-3330  
Facsimile:      (202) 616-8470  
E-mail:              stephen.buckingham@usdoj.gov

June 18, 2010

***Via FEDERAL EXPRESS &  
Electronic Mail***

Sher Kung, Esq.  
Legal Fellow  
ACLU of Washington Foundation  
901 Fifth Avenue, Suite 630  
Seattle, WA 98164  
(206) 624-2184

Re:      Witt v. U.S. Air Force, No. C06-5195 (W.D. Wash.) (RBL)

Dear Sher,

Enclosed is defendants' supplemental production in response to the Court's Order of June 1, 2010, Granting Plaintiff's Motion to Compel (Dkt. No. 91). In accordance with the terms of that order, defendants have marked the enclosed materials as "CONFIDENTIAL." Defendants understand that the use of the enclosed materials will be confined to the terms of the June 1, 2010 protective order.

Included in this production are documents labeled AF027164-AF027170.

Sincerely,

Stephen J. Buckingham

Enclosures

# **EXHIBIT S**



**U.S. Department of Justice**

Civil Division, Federal Programs Branch

**By U.S. Mail**

P.O. Box 883, Rm. 7330  
Washington, DC 20530

**By Courier**

20 Massachusetts Ave NW, Rm. 7330  
Washington, DC 20001

---

Bryan R. Diederich  
Trial Attorney  
Tel.: (202) 305-0198  
Fax: (202) 616-8470  
bryan.diederich@usdoj.gov

June 24, 2010

**By First Class Mail & Electronic Mail**

Sarah Dunne, Esq.  
ACLU OF WASHINGTON FOUNDATION  
705 Second Avenue, 3rd Floor  
Seattle, Washington 98104

**Re: *Witt v. United States Dept. of the Air Force, et al.*, No. C06-5195 (W.D. Wash)**

Dear Ms. Dunne,

I write with respect to our prior communications regarding litigation holds in the above-referenced matter. In our conversation in May, you asked whether the Air Force had issued a formal litigation hold and, consistent with my understanding, I informed you that the Air Force had not. Since you indicated in your last filing with the Court that, because of this, you intended to soon file a motion regarding spoliation, I want to make sure that the record was complete with respect to the steps that the Air Force has taken regarding document retention in this case. Based on information I have received since our last discussion, please be advised of the following.

At the onset of this litigation in April 2006, Air Force counsel requested from both the Air Force Reserve Headquarters and the 446th Air Wing Major Witt's personnel file, the inquiry file, and any other documents concerning Major Witt relevant to her discharge proceedings. Those documents were segregated and held. During the pendency of the appeal in this matter, Air Force counsel also received the record of the board proceedings, which was likewise segregated and held.

After the Ninth Circuit remanded this matter to the District Court, Air Force counsel again searched to gather documents related to the case. In the course of that work, Air Force counsel confirmed that entities and individuals that previously had segregated documents in connection with the case—Air Force Reserve Command, the commander of the 446th Aeromedical Evacuation Squadron, and the Chief of Military Personnel of the 446th Air Wing—had maintained those segregated documents concerning Major Witt. Each of these



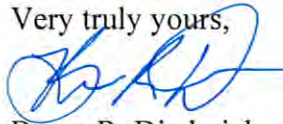
Sarah Dunne, Esq.

June 24, 2010

entities or individuals was verbally reminded at that time to maintain these segregated sets of documents.

Of course, while responding to discovery over the last several months, to the extent that custodians were identified that had responsive documents related to Major Witt, those custodians were instructed to hold the documents until they were collected. I understand that all of the documents described above were either produced to you or logged in the course of discovery in this matter.

While I am unsure whether this information is relevant to the motion you indicated you intend to file, I wanted to make sure you had it for the sake of completeness. Please feel free to contact me if you have any questions.

Very truly yours,  
  
Bryan R. Diederich

Enclosure

cc: James E. Lobsenz, Esq. (via electronic mail)

# **EXHIBIT T**

SARAH DUNNE  
LEGAL DIRECTOR

NANCY TALNER  
STAFF ATTORNEY

ROSE SPIDELL  
STAFF ATTORNEY  
FLOYD AND DELORES JONES  
FAMILY FELLOW

SHER KUNG  
PERKINS COIE FELLOW

LINDSEY SOFFES  
ROPES & GRAY FELLOW



July 2, 2010

Via E-mail

Bryan R. Diederich  
Peter J. Phipps  
Stephen J. Buckingham  
Civil Division, Federal Programs Branch  
U.S. Department of Justice  
20 Massachusetts Ave., N.W.  
Washington, D.C. 20001

AMERICAN CIVIL  
LIBERTIES UNION  
OF WASHINGTON  
FOUNDATION  
705 2ND AVENUE, 3RD FL.  
SEATTLE, WA 98104  
T/206.624.2184  
F/206.624.2190  
WWW.ACLU-WA.ORG

JESSE WING  
BOARD PRESIDENT

KATHLEEN TAYLOR  
EXECUTIVE DIRECTOR

**Re: *Witt v. U.S. Air Force et al.*, No. C06-5195 (W.D. Wash.)**

Dear Bryan and Stephen,

I am writing concerning our telephone conference yesterday about file preservation. The telephone conference was prompted by your June 24 letter, which provided new detail as to the Air Force's preservation efforts relating to discovery in this matter. I appreciated receiving your letter and wanted to make sure I understood fully its contents.

In speaking with you yesterday, I asked whether Defendants, key decision-makers, and 446th AES unit members with relevant knowledge about Major Witt's suspension and discharge were instructed, either in writing or orally, to retain all documents including electronically stored information, concerning Major Witt's suspension and discharge at any point between June 2004 and March 2006. You confirmed that the Air Force gave no such instruction.

We further understand that in or around April 2006, Air Force counsel instructed someone at Air Force Reserve Headquarters and someone at the 446th Air Wing to segregate and preserve Major Witt's personnel file, the inquiry file, and documents relating to her discharge proceedings. There is no evidence that Defendants, key decision-makers and 446th AES unit members, with potentially relevant knowledge concerning the application of the Don't Ask Don't Tell policy within the 446th AES or Major Witt and her suspension and discharge, were asked to preserve files about the application of the Don't Ask Don't Tell policy within the 446th AES and their files relating to Major Witt and her suspension and discharge.

We then discussed document preservation after the remand from the Ninth Circuit in May 2008. We understand that in or around May 2008, the Air Force did not instruct Defendants, key decision-makers and 446th AES unit members, with potentially relevant knowledge concerning the application of the Don't Ask Don't Tell policy

July 2, 2010  
Letter to DOJ  
Page 2

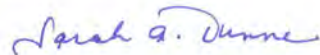
within the 446th AES or Major Witt and her suspension and discharge, to retain files about the application of the Don't Ask Don't Tell policy within the 446th AES and their files about Major Witt and her suspension and discharge. Instead, the Air Force did confirm that entities and Air Force employees that had previously segregated Major Witt's personnel file, the inquiry file, and documents relating to her discharge proceedings were still preserving those specific segregated files.

With the exception of the segregation of Major Witt's personnel file, the inquiry file, and the discharge proceedings (but we note there is a key document missing from her inquiry file), deposition testimony and other documents produced by Defendants through the course of discovery lead Plaintiff's counsel to conclude that either no other preservation instructions were given or files were destroyed. I used Colonel Moore-Harbert's e-mails as an example during our discussion yesterday. Stated differently, if Air Force counsel had instructed Colonel Moore-Harbert to preserve her electronically stored information, for example, she would have done so and we would have received her e-mails concerning Major Witt.

Finally, I understand you do not anticipate any further document production from Defendants barring unforeseen Rule 26(e) supplemental productions and I acknowledged the same regarding Plaintiff's document production.

Please contact me if any of the above representations is inaccurate, or if you have any questions about the contents of this letter.

Sincerely,



Sarah A. Dunne  
Legal Director

cc: James Lobsenz

# **EXHIBIT U**



**U.S. Department of Justice**

Civil Division, Federal Programs Branch

**By U.S. Mail**

P.O. Box 883, Rm. 7330  
Washington, DC 20530

**By Courier**

20 Massachusetts Ave NW, Rm. 7330  
Washington, DC 20001

---

Bryan R. Diederich  
Trial Attorney  
Tel.: (202) 305-0198  
Fax: (202) 616-8470  
bryan.diederich@usdoj.gov

July 9, 2010

**By First Class Mail & Electronic Mail**

Sarah Dunne, Esq.  
ACLU OF WASHINGTON FOUNDATION  
901 Fifth Avenue, Suite 630  
Seattle, Washington 98164

**Re: *Witt v. United States Dept. of the Air Force, et al.*, No. C06-5195 (W.D. Wash)**

Dear Ms. Dunne,

I write in response to your letter of July 2, 2010 regarding our telephone conference of July 1, 2010. Because your letter sometimes uses somewhat different terms than the ones we used in our telephone conversation, I want to make sure that our understandings with respect to document preservation are clear.

In your first paragraph, you state that you asked whether there was an instruction with respect to document preservation between June 2004 and 2006. You then state that I “confirmed that the Air Force gave no such instruction.” This statement does not accurately reflect what I said. In response to that question, I said that I did not know whether such an instruction was given. While I am not aware of evidence that such an instruction was given, I personally cannot confirm that it did not happen.

In your second paragraph, you state that “[t]here is no evidence that Defendants, key decision-makers and 446th AES unit members . . . were asked to preserve files about the application of the Don’t Ask Don’t Tell policy within the 446th AES and their files relating to Major Witt and her suspension and discharge.” What I said in our phone conversation was that I was not aware of any such evidence. Further, I note that you use in your letter the term “key decision-makers,” though I do not think that we used that term in our conversation. During our phone call, you asked specifically about Colonel Moore-Harbert, General Crabtree and Secretary Gates (who, incidentally, was not confirmed as Secretary of Defense until December 2006). I am unsure what you mean otherwise by “key decision-makers.”

In your third paragraph, you seem to have key dates out of order. While the Ninth Circuit panel decision was in May 2008, there was briefing on the question whether the case would be taken up *en banc*. Accordingly, the remand did not occur until the Court of Appeals denied the request for an *en banc* hearing and an appropriate mandate was issued to the district court. That mandate issued on June 10, 2009 (Docket # 49). The steps taken by Air Force after the issuance of the mandate are described in my letter of June 24, 2010.

Finally, in your fourth paragraph, you state that there is a "key document missing" from Major Witt's inquiry file. Since you have not told me what this "key document" is, I cannot respond to your representation. You also state that you have concluded that "either no other preservation instructions were given or files were destroyed." This appears to be your inference, about which I do not comment here.

I do agree that we both represented that neither of us anticipated further document productions in this case barring productions pursuant to Rule 26(e).

Very truly yours,



Bryan R. Diederich

cc: James E. Lobsenz, Esq. (via electronic mail)

# **EXHIBIT V**



SARAH DUNNE  
LEGAL DIRECTOR

NANCY TALNER  
STAFF ATTORNEY

ROSE SPIDELL  
STAFF ATTORNEY  
FLOYD AND DELORES JONES  
FAMILY FELLOW

SHER KUNG  
PERKINS COIE FELLOW

LINDSEY SOFFES  
ROPES & GRAY FELLOW



July 14, 2010

Via E-mail

Bryan R. Diederich  
Peter J. Phipps  
Stephen J. Buckingham  
Civil Division, Federal Programs Branch  
U.S. Department of Justice  
20 Massachusetts Ave., N.W.  
Washington, D.C. 20001

AMERICAN CIVIL  
LIBERTIES UNION  
OF WASHINGTON  
FOUNDATION  
705 2ND AVENUE, 3RD FL.  
SEATTLE, WA 98104  
T/206.624.2184  
F/206.624.2190  
WWW.ACLU-WA.ORG

Re: *Witt v. U.S. Air Force et al.*, No. C06-5195 (W.D. Wash.)

Dear Bryan,

I appreciate our follow up call today regarding your July 9, 2010 letter. I write to reiterate what we discussed today in response to your letter.

As we discussed, the term “key decision-makers” in my July 2 letter was used as it has always been used by Plaintiff’s counsel, to include Generals Crabtree, Duignan, Batbie, Bradley and Jumper, Colonel Walker and Moore-Harbert, and Secretary Gates and Donley. In other words, we use “key decision-makers” to represent any individual who has a hand in making decisions impacting Major Witt’s military career. With this clarified understanding, please let me know immediately if you believe you have evidence that the Air Force took any additional preservation efforts other than what you have already outlined in your prior correspondence to me concerning discovery issues.

We also confirmed that Plaintiff’s counsel believes there is a key document missing from Defendants’ production which is the written order that was sent to Crabtree, ordering him to initiate an investigation into Major Witt’s sexual orientation. Additionally, we are missing any documents that Crabtree subsequently forwarded to General Duignan when he sought authorization to proceed. You stated to us that the Government believes the written order to Crabtree may never have existed. You pointed us to documents produced by Defendants numbered AF26763 to 26773, which contain redacted emails between Air Force employees and which you believe is consistent with Crabtree’s testimony. While we appreciate you identifying these documents, as we both realize, Plaintiff’s counsel cannot confirm the contents of these documents because they are redacted. Please produce unredacted copies of documents numbered AF26763 to 26773.

July 14, 2010  
Letter to DOJ  
Page 2

Please contact me if any of the above representations is inaccurate, or if you have any questions about the contents of this letter.

Sincerely,



Sarah A. Dunne  
Legal Director

cc: James Lobsenz

# **EXHIBIT W**



DEPARTMENT OF THE AIR FORCE  
AIR FORCE RESERVE COMMAND

21 June 2010

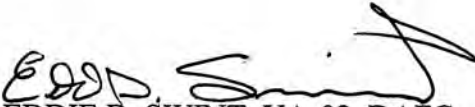
MEMORANDUM FOR MAJOR MARGARET H. WITT

Spokane WA 99203

FROM: HQ AFRC/A1KK  
155 Richard Ray Blvd  
Robins AFB GA 31098-1635

SUBJECT: Correction of Military Order

1. Attached is an AF Form 973 that amends your separation order (RO A-412, dated 12 July 2007). The amended order reflects your service characterization as Honorable Discharge.
2. If you have any questions regarding these changes, I can be contacted at toll free 1-800-223-1884, extension 7-1211 or at commercial number (478) 327-1211.

  
EDDIE D. SWINT, YA-02, DAFC  
Asst Supt, Separation Programs  
Military Personnel Division

Attachments:

1. AF Form 973, Amended Order, 17 June 2010
2. RO A-412, Basic Order, 12 July 2007

cc:

HQ ARPC/DSMM  
HQ AFRC/JAM  
HQ AFRC/JAS  
AF/JA  
446 AES/CC  
446 MSS/DPMSA (Relocation)  
Servicing Reserve Pay Office

**REQUEST AND AUTHORIZATION FOR CHANGE OF ADMINISTRATIVE ORDERS**

*(If more space is required, use reverse, identifying items by number)*

TO: HQ AFRC/A1KK 155 Richard Ray Blvd Robins AFB GA 31098-1635		FROM: HQ AFRC/A1K 155 Richard Ray Blvd Robins AFB GA 31098-1635		TELEPHONE  DSN 497-1211		
THE FOLLOWING ORDER IS: <input checked="" type="checkbox"/> AMENDED AS SHOWN IN ITEM 5 ( <input type="checkbox"/> Rescinded <input type="checkbox"/> Revoked <input type="checkbox"/> Totally <input type="checkbox"/> In Part)						
IDENTIFICATION OF ORDER BEING CHANGED <i>(Issued by this Headquarters unless otherwise stated in item 6.)</i>						
1. BASIC ORDER			2. PREVIOUSLY AMENDED BY			
A. PARA	B. ORDER (Type and Number)	C. DATE	D. TED <input type="checkbox"/> PCS WITH PCA (EDCSA) <input type="checkbox"/> PCS WITHOUT PCA	A. PARA	B. ORDER (Type and Number)	C. DATE
	RO A-412	20070712				
3. RELATING TO (TDY, PCS, Short Tour of AD, etc.)						
Separation						
4. IDENTIFICATION OF INDIVIDUALS TO WHOM CHANGE ACTION PERTAINS						
A. GRADE	B. LAST NAME, FIRST, MIDDLE INITIAL	C. SSAN OR CIVILIAN POSITION TITLE		D. ORGANIZATION		
MAJ	WITT, MARGARET H.			446 AES MCCHORD AFB WA		
5. AMENDMENT <i>(Identify item in order being amended)</i>						
A. ITEM	AS READS	IS AMENDED TO READ				
	Honorable Conditions Discharge	Honorable Discharge				
B. ITEM	IS AMENDED TO <i>(Include) (Delete)</i>					
	.					
6. REMARKS						
7. ACCOUNTING CITATION						
8. DATE	9. ISSUING/APPROVING OFFICIAL <i>(Typed name, grade, and title)</i>		10. SIGNATURE			
20100617	BRIAN A. PACK, SMSgt, USAF Chief, Personnel Utilization Branch, DSN 497-2491					
11. DESIGNATION AND LOCATION OF HEADQUARTERS		12. ORDER <i>(Type and Number)</i>	13. DATE			
DEPARTMENT OF THE AIR FORCE HQ AIR FORCE RESERVE COMMAND (AFRC) ROBINS AIR FORCE BASE GEORGIA 31098-1635		RO A-104	20100617			
		14. TDN FOR THE COMMANDER				
15. DISTRIBUTION		16. SIGNATURE ELEMENT OF ORDERS AUTHENTICATING OFFICIAL				
5-Indiv 1-HQ AFRC/JAM 1-HQ AFRC/JAS 1-AF/JA 1-446 AES/CC 1-446 MSS/DPMSA (Relocation) 1-Servicing Reserve Pay Office		1-ARPC/DSMM				
		EARNEST W. SOWELL Deputy Chief, Personnel Division (Military Personnel) Directorate of Manpower, Personnel and Services				



**AF IMT 973, 19831001, V4**

PREVIOUS EDITION WILL BE USED

DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE RESERVE COMMAND  
155 RICHARD RAY BLVE  
ROBINS AIR FORCE BASE, GEORGIA 31098-1635

RESERVE ORDER  
A-412

12 July 2007

By direction of the President, the Air Force relieves MAJOR MARGARET H. WITT, SSN: [REDACTED] (AFSC X46F3; functional account code: 564000; position control number: 0070632) from assignment 446th Aeromedical Evacuation Squadron, McChord AFB WA and discharges her with an Honorable Conditions Discharge from all appointments in the United States Air Force Reserve effective 1 October 2007. Mailing address: 1022 W. 19th Ave, Spokane WA 99203. Authority: AFI 36-3209, Homosexual Conduct.

FOR THE COMMANDER



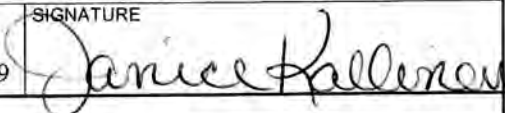
TERESA A. HAMS, Colonel, USAF  
Chief, Military Personnel Division  
Directorate of Personnel

DISTRIBUTION:

5-Indiv  
1-ARPC/DSMM  
1-AFRC/JAM  
1-AFRC/JAS  
1-AFRC/A1BR  
1-446 AES/CC  
1-446 MSS/DPMSA (Relocation)  
1-Servicing Reserve Pay Office

RO A-412

# **EXHIBIT X**

RECORDS TRANSMITTAL / REQUEST				DATE PREPARED 20100628	SUSPENSE DATE
TO Margaret H. Witt				FROM 446 MSS/DPMS 1205 12th St NE Ste 125 Joint Base Lewis-McChord, WA 98438	
NAME (Last, First, Middle Initial) Witt, Margaret H.				GRADE	SSN
<b>SECTION I - REQUESTOR COMPLETES</b>					
<input type="checkbox"/> MEMBER IS ASSIGNED TO A UNIT SERVICED BY YOUR ACTIVITY			<input type="checkbox"/> MEMBER WAS SEPARATED BY YOUR ACTIVITY		
ACTION INDICATED MUST BE TAKEN AND CONFIRMATION FORWARDED AS AN ATTACHMENT TO THE FORM OR AN INTERIM REPLY FURNISHED NOT LATER THAN SUSPENSE DATE SHOWN ABOVE IF INDIVIDUAL HAS BEEN REASSIGNED. FORWARD TO GAINING CBPO AND FURNISH COPY OF YOUR ACTION TO REQUESTOR.					
<input checked="" type="checkbox"/> OTHER STATUS (Specify) Being transmitted to Margaret H. Witt's home address					
BASE LEVEL RECORDS/DOCUMENTS LEGEND: (H = Handcarried) (T = Transmitted) (R = Requested) (N/A = To be used when the record/document does not apply)					
EPR	OPR	TNG RPT	LOE	AF 522 GROUND WPNS TRNG DATA & FIRE ARMS QUALIFICATION	
DATE REPORTING PERIOD BEGAN		DATE REPORTING PERIOD ENDED		AF 538 PERSONNEL CLOTHING AND EQUIPMENT RECORD OR CERTIFICATE IN LIEU OF	
				AF 623 OJT RECORD	
<input type="checkbox"/> REPORT BEING PROCESSED - WILL FORWARD ON				AF 978 TRAFFIC SAFETY EDUCATION RECORD (All personnel)	
<input type="checkbox"/> REPORT NOT REQUIRED - INDIVIDUAL'S INITIALS				DD 1360 MOTOR VEHICLE OPERATOR QUALIFICATIONS & RECORD OF LICENSING, EXAMINATION, AND PERFORMANCE	
TOTAL NUMBER OF REPORTS IN <del>(AFRC)</del>				AF 1566 WAPS TEST VERIFICATION	
AF 10 AMN/OFF UPRG				AF 991 ANCILLARY TRAINING RECORD OR AUTOMATED PRODUCT	
AF 2100 THRU 2190 TREATMENT RECORD (Medical)				AF 899 INDORSED PCS SPECIAL ORDER	
AF 2100 THRU 2190 TREATMENT RECORD (Dental)				AF 63/161 ACTIVE DUTY SERVICE COMMITMENT	
AF 173 RECORD OF RETENTION INTERVIEWS (1st/2nd Term Amn)				(ADSC) STATEMENT OF UNDERSTANDING	
AF 186 INDIVIDUAL RECORD EDUCATION SERVICES PROGRAM				MILITARY PAY RECORDS ENVELOPE	
AF 286 PERSONNEL RELIABILITY CERTIFICATE				FLIGHT RECORDS/EVALUATION FOLDER/FILE	
AF 379 INDIVIDUAL PHYS FITNESS & WEIGHT EVAL RECORD				T	See remarks
RECEIPT AND CERTIFICATION FOR HANDCARRIED RECORDS: I acknowledge receipt of records checked "H" and understand that I am to turn these records over to the appropriate activity upon arrival at my new station, and that I am not authorized to open the sealed envelope in which these records are being transmitted, and that I am responsible for safeguarding these records enroute.					
DATE				SIGNATURE	
REMARKS: 1 - CBPO ADDITIONAL SPACE 2. HAF AND MAJCOM RECORDS REQUEST, TRANSMITTALS, AND REMARKS T = DD Form 256 AF (Margaret Witt) T = AFRC/AIKK, 21 Jun 2010, letter, Subj: Correction of Military Order T = AF IMT 973, ROA=104, 17 Jun 2010					
DATE	TYPED OR PRINTED NAME AND GRADE			TELEPHONE	SIGNATURE
20100628	JANICE G KALLINEN, CMSgt, USAFR Chief, Military Personnel			253-982-9109	
<b>SECTION II - ACTION OFFICER COMPLETES</b>					
TO			FROM		
<input type="checkbox"/> FORM(S) / DOCUMENT(S) IDENTIFIED ABOVE BY "R" ARE ATTACHED.					
<input type="checkbox"/> FORM(S) / DOCUMENT(S) IDENTIFIED ABOVE BY "R" WILL BE FORWARDED TO YOUR OFFICE NO LATER THAN:					
<input type="checkbox"/> FORM(S) / DOCUMENT(S) IDENTIFIED ABOVE BY "R" WERE HANDCARRIED BY MEMBER'S COPY OF AF FORM 330 ATTACHED					
<input type="checkbox"/> FORM(S) / DOCUMENT(S) IDENTIFIED ABOVE ARE NOT AVAILABLE AT THIS OFFICE. SEE REMARKS BELOW					
REMARKS					
DATE	TYPED OR PRINTED NAME AND GRADE			TELEPHONE	SIGNATURE

AF IMT 330, 19900101, V1

PREVIOUS EDITION WILL BE USED



# Honorable Discharge



from the Armed Forces of the United States of America

*This is to certify that*

\_\_\_\_\_  
MARGARET H. WITT,

MAJOR, USAFR

*was Honorably Discharged from the*

## United States Air Force

*on the* 1ST *day of* OCTOBER 2007 *This certificate is awarded*  
*as a testimonial of Honest and Faithful Service*

*with* T. Pelt

WILLIAM T PELSTER, LT COL, USAFR  
446 AW (AFRC) MCCORD AFB WA 98438-1320



DEPARTMENT OF THE AIR FORCE  
AIR FORCE RESERVE COMMAND

21 June 2010


MEMORANDUM FOR MAJOR MARGARET H. WITT

Spokane WA 99203

FROM: HQ AFRC/AIKK  
155 Richard Ray Blvd  
Robins AFB GA 31098-1635

SUBJECT: Correction of Military Order

1. Attached is an AF Form 973 that amends your separation order (RO A-412, dated 12 July 2007). The amended order reflects your service characterization as Honorable Discharge.
2. If you have any questions regarding these changes, I can be contacted at toll free 1-800-223-1884, extension 7-1211 or at commercial number (478) 327-1211.

  
EDDIE D. SWINT, YA-02, DAFC  
Asst Supt, Separation Programs  
Military Personnel Division

Attachments:

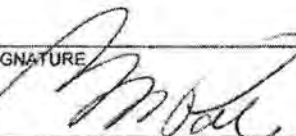

1. AF Form 973, Amended Order, 17 June 2010
2. RO A-412, Basic Order, 12 July 2007

cc:

HQ ARPC/DSMM  
HQ AFRC/JAM  
HQ AFRC/JAS  
AF/JA  
446 AFS/CC  
446 MSS/DPMSA (Relocation)  
Servicing Reserve Pay Office

**REQUEST AND AUTHORIZATION FOR CHANGE OF ADMINISTRATIVE ORDERS**

*(If more space is required, use reverse, identifying items by number)*

TO: HQ AFRC/AIKK 155 Richard Ray Blvd Robins AFB GA 31098-1635		FROM: HQ AFRC/AIKK 155 Richard Ray Blvd Robins AFB GA 31098-1635		TELEPHONE DSN 497-1211		
THE FOLLOWING ORDER IS: <input checked="" type="checkbox"/> AMENDED AS SHOWN IN ITEM 5 ( <input type="checkbox"/> Rescinded <input type="checkbox"/> Revoked <input type="checkbox"/> Totally <input type="checkbox"/> In Part )						
IDENTIFICATION OF ORDER BEING CHANGED <i>(Issued by this Headquarters unless otherwise stated in item 6.)</i>						
1. BASIC ORDER			2. PREVIOUSLY AMENDED BY			
A. PARA RO A-412	B. ORDER (Type and Number)	C. DATE 20070712	D. TED <input type="checkbox"/> PCS WITH PCA (EDCSA) <input type="checkbox"/> PCS WITHOUT PCA	A. PARA	B. ORDER (Type and Number)	C. DATE
3. RELATING TO (TDY, PCS, Short Tour of AD, etc.) Separation						
4. IDENTIFICATION OF INDIVIDUALS TO WHOM CHANGE ACTION PERTAINS						
A. GRADE MAJ	B. LAST NAME, FIRST MIDDLE INITIAL WITT, MARGARET H.	C. SSAN OR CIVILIAN POSITION TITLE	D. ORGANIZATION 446 AES MCCHORD AFB WA			
5. AMENDMENT <i>(Identify item in order being amended)</i>						
A. ITEM	AS READS Honorable Conditions Discharge	IS AMENDED TO READ Honorable Discharge				
B. ITEM	IS AMENDED TO <i>(Include) (Delete)</i>					
E. REMARKS						
7. ACCOUNTING CITATION						
B. DATE 20100617	9. ISSUING/APPROVING OFFICIAL <i>(Typed name, grade, and title)</i> BRIAN A. PACK, SMSgt, USAF Chief, Personnel Utilization Branch, DSN 497-2491		10. SIGNATURE 			
11. DESIGNATION AND LOCATION OF HEADQUARTERS DEPARTMENT OF THE AIR FORCE HQ AIR FORCE RESERVE COMMAND (AFRC) ROBINS AIR FORCE BASE GEORGIA 31098-1635		12. ORDER <i>(Type and Number)</i> RO A-104		13. DATE 20100617		
15. DISTRIBUTION 5-Indiv 1-HQ AFRC/JAM 1-HQ AFRC/JAS 1-AF/JA 1-446 AES/CC 1-446 MSS/DPMSA (Relocation) 1-Servicing Reserve Pay Office		14. TDN FOR THE COMMANDER				
I-ARPC/DSMM		16. SIGNATURE ELEMENT OF ORDERS AUTHENTICATING OFFICIAL  EARNEST W. SOWELL Deputy Chief, Personnel Division (Military Personnel) Directorate of Manpower, Personnel and Services				

AF IMT 973, 19831001, V4

PREVIOUS EDITION WILL BE USED.

# **EXHIBIT Y**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MAJOR MARGARET WITT,

Plaintiff,

v.

NO. C06-5195 RBL

UNITED STATES DEPARTMENT OF  
THE AIR FORCE, et al.,

Defendants.

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DEPOSITION OF MAJOR MARGARET WITT  
Monday, May 24, 2010  
Pages 1 to 136

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Jody K. Pope CCR/RPR  
SNOVER REALTIME REPORTING  
Professional Court Reporters  
522 W. Riverside Avenue, Suite #560  
Spokane, Washington 99210  
(509) 467-0666 Fax (509) 467-3844  
E-mail: [snoverrealtime.net](mailto:snoverrealtime.net)  
LIC. NO. WA 3114 / LIC. NO. ID 939

**SNOVER REALTIME REPORTING  
(509) 467 - 0666**

1 Q. Okay. And do you know the reason that you were  
2 suspended from receiving points in pay from the Air  
3 Force Reserve?

4 A. Yes.

5 Q. What was that reason?

6 A. I was told I was under investigation for  
7 homosexual conduct.

8 Q. Was that the first you had heard that you might  
9 be under investigation for homosexual conduct -- in  
10 November '04?

11 A. No.

12 Q. When did you first hear you might be under  
13 investigation for homosexual conduct?

14 A. July '04.

15 Q. How did you learn that?

16 A. By an Air Force attorney.

17 Q. Do you recall that attorney's name?

18 A. Major Torem.

19 Q. What did he say to you?

20 A. I don't recall specifics.

21 Q. Did he tell you what prompted the investigation?

22 A. Yes.

23 Q. What did he say?

24 A. That someone -- actually that the -- I can't  
25 remember who had been notified that I had had a

1 relationship -- I was living with someone.

2 Q. And did he tell you who had provided that notice?

3 A. Which notice?

4 Q. That -- Well, do you know who received notice --

5 We're talking about what prompted the investigation, and

6 you said that Torem told you that someone had been

7 notified that you were living with someone in a

8 relationship. Do you know who provided that notice that

9 you were living with someone in a relationship?

10 A. Pat McChesney.

11 Q. Did Torem tell you that?

12 A. Yes.

13 Q. Did you previously know before he told you that,

14 that Pat McChesney had provided notice to the Air Force?

15 A. No.

16 Q. Did you, at that time, know what the notice

17 consisted of?

18 A. No.

19 Q. Did you come to learn at some point in time what

20 the notice consisted of?

21 A. Yes.

22 Q. When did you come to learn that?

23 A. I don't remember the date.

24 Q. Was it shortly after July '04? Was it after you

25 were suspended?

# **EXHIBIT Z**



**ORIGINAL**  
Volume I of III  
Transcript

Personal Data  
Privacy Act of 1974  
(5 U.S.C. 552a)

# **RECORD OF BOARD PROCEEDINGS**

**MAJ MARGARET H. WITT**

**FV** [REDACTED]

**28 & 29 SEPTEMBER 2006**

# **EXHIBIT AA**

DEPARTMENT OF THE AIR FORCE  
Headquarters 446 Airlift Wing (AFRC)  
McChord Air Force Base, Washington 98438-1326

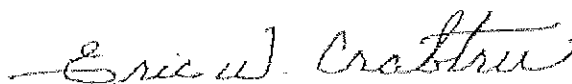
MEMORANDUM FOR MAJOR ADAM TOREM

7 July 2004

FROM: 446 AW/CC

SUBJECT: Homosexual Conduct Fact-Finding Inquiry

1. This letter appoints you to inquire into the allegation that a member of the 446 AW has engaged in homosexual conduct.
2. Report facts, opinions, and recommendations in letter form by 23 July 2004, unless an extension is granted. Ensure facts, opinions, and recommendations made are appropriately characterized. Refer to the Air Force's guidebook on Commander Directed Investigations (CDI) before beginning the investigation.
3. Consult with the Staff Judge Advocate prior to investigation.
4. By copy of this appointing order, members of 446 AW will provide the necessary assistance to help you in executing this tasking. Access to records germane to this investigating and clerical assistance will be provided.



ERIC W. CRABTREE, Colonel, USAFR  
Commander, 446 AW

Attachment:

4 AF/CC memorandum

# **EXHIBIT BB**

DEPARTMENT OF THE AIR FORCE  
446<sup>th</sup> Aeromedical Evacuation Squadron (AFRC)  
McChord Air Force Base, Washington 98438-1326

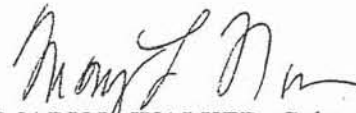
5 Nov 2004

MEMORANDUM FOR Major Margaret H. Witt

FROM: 446<sup>th</sup> AES/CC

SUBJECT: Denial of Participation

This is to notify you that I have initiated administrative separation actions against you under the provisions of AFI 36-3209, due to homosexual conduct. Under the provisions of AFMAN 36-8001, Chapter 1, Table 1.2, Note 3, you may not participate in any pay or point activity pending resolution of separation action.



MARY L. WALKER, Colonel, USAFR, NC  
Commander

1<sup>st</sup> Ind, Major Margaret H. Witt

Memorandum for Commander, 446<sup>th</sup> Aeromedical Evacuation Squadron

I acknowledge receipt and understanding of your memorandum.



MARGARET H. WITT, Major  
USAFR, NC