

1           3.     I joined the Air Force as a reservist right out of nursing school in 1989. I  
 2 was initially stationed at McChord Air Force Base in 1994, and then I was transferred to  
 3 March Air Force Base in California. I was transferred back to McChord in 1996 and  
 4 there I met Major Witt for the first time. I am a Flight Nurse. Approximately two months  
 5 ago I was also made Chief of StanEval for the 446<sup>th</sup>. My duties include instructing and  
 6 evaluating all nurses within the 446<sup>th</sup>.

7           4.     In the performance of my duties, I worked regularly work with Major Witt.  
 8 She was my supervisor when she was in charge of physical fitness. In my opinion she is a  
 9 very fine flight nurse and a very good supervisor.

10           5.     I have always known Major Witt to be highly professional, skilled and  
 11 disciplined. I have the utmost trust and confidence in her abilities as a member of the  
 12 U.S. Air Force and am honored to serve with her as a member of the 446<sup>th</sup> AES. I believe  
 13 my opinion of her is shared by the other members of the unit. Major Witt is a highly  
 14 valuable, well-liked and well-respected member of the 446<sup>th</sup>.

15           6.     Based on my personal observations of Major Witt I can say with  
 16 confidence that her presence in the Air Force greatly enhances her Unit's combat  
 17 efficiency and readiness.

18           7.     I have routinely witnessed Major Witt interact with her superiors,  
 19 subordinates and peers. I believe that Major Witt sustains strong working relationships  
 20 with and has the respect of all of the members of our Unit, regardless of rank. In my  
 21 experience, Major Witt performs her supervisory duties successfully and professionally.

DECLARATION OF MAJOR  
 VINCE ODA - 2

\_\_\_\_\_  
 CARNEY  
 BADLEY  
 SPELLMAN

LAW OFFICES  
 A PROFESSIONAL SERVICE CORPORATION  
 700 FIFTH AVENUE, #5800  
 SEATTLE, WA 98104-5017  
 FAX (206) 467-8215  
 TEL (206) 622-8020

1 Major Witt's strong relationships help maintain an effective chain of command in our  
2 Unit.

3 8. About five months after Major Witt stopped participating in duty at  
4 McChord Air Force Base, I attended a convention of the Association of Operating Nurses  
5 in New Orleans, Louisiana. While I was there, I went by the booth of an Air Force  
6 Reserve recruiter. I saw the recruiter was using a recruitment poster with Major Witt's  
7 photo on it. I thought it was pretty strange that at the same time the Air Force was  
8 processing Major Witt for an administrative discharge, they were still using her photo in  
9 their recruitment posters.

10 9. I do not believe that Major Witt's presence in the U.S. Air Force or,  
11 specifically, in our Unit would jeopardize recruiting efforts. On the contrary, I believe  
12 that Major Witt was selected to appear on various U.S. Air Force recruiting posters,  
13 brochures and other materials because she exemplifies the qualities that the U.S. Air  
14 Force seeks in recruits. I also personally believe that Major Witt exemplifies the qualities  
15 that makes one a good and valuable member of the U.S. Air Force.

16 10. In all the time that I have known Major Witt and served with her, I have  
17 never seen or heard of anyone in the armed forces expressing any problem with her. I  
18 have never heard anyone complain about her. I have never heard anyone say that they  
19 wished she was not a member of their unit. I have never heard of any incident where she  
20 caused a discipline or morale problem.  
21

DECLARATION OF MAJOR  
VINCE ODA - 3

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
700 FIFTH AVENUE, #5800  
SEATTLE, WA 98104-5017  
FAX (206) 467-8215  
TEL (206) 622-8020

WIT004 sldc b3104202 4/10/06

AF000955

1           11. The 446<sup>th</sup> was never given any official explanation as to why Major Witt  
2 was no longer reporting for reserve duty. We were simply told "Major Witt will no  
3 longer be with us." Unofficially I heard through the rumor mill that she was being  
4 separated from the service because she was a lesbian.

5           12. Major Witt never discussed her sexuality with me. She never told me that  
6 she was a lesbian, and I never asked. I didn't care. I have long assumed that she is a  
7 lesbian. Assuming that she is a lesbian, I can say without reservation that this fact makes  
8 absolutely no difference to me. Furthermore, in my opinion it makes no difference to  
9 anyone else in the 446<sup>th</sup> either. In my opinion, if command were to announce that she was  
10 lesbian and that she was remaining in the service, her continued presence in the Air Force  
11 would not have any negative impact upon her unit morale, discipline, or combat  
12 readiness, and no negative impact whatsoever upon me. It would still be my strong desire  
13 to have her remain in the service and to continue to work with her.

14           13. I believe that the removal of Major Witt from the 446<sup>th</sup> has had a negative  
15 effect on unit morale. Everyone in the unit that I have talked to about it believes that it is  
16 grossly unfair, and hopes that she will be allowed to return to the unit as soon as possible.

17           14. Not only is it grossly unfair to her, it is also harmful to the Air Force and  
18 the public in general. We currently have huge shortage of qualified flight nurses in the  
19 Air Force. It makes no sense for the Air Force to discharge Major Witt, one of the very  
20 best flight nurses the Air Force has, at a time when the Air Force desperately needs  
21 qualified flight nurses.

DECLARATION OF MAJOR  
VINCE ODA -4

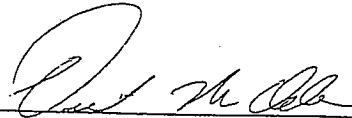
CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
700 FIFTH AVENUE, #5800  
SEATTLE, WA 98104-5017  
FAX (206) 467-8215  
TEL (206) 622-8020

AF000956

1           15.    In sum, I firmly believe that discharging Major Witt from the U.S. Air  
2 Force would be detrimental. Moreover, I believe that our Unit's morale, cohesion and  
3 good order would be severely jeopardized if Major Witt is discharged.

4           DATED this 10 day of April, 2006.

5  
6 

7           \_\_\_\_\_  
8 Vincent Oda, Major, United States Air Force  
9 Reserve  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

DECLARATION OF MAJOR  
VINCE ODA - 5

\_\_\_\_\_  
CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
700 FIFTH AVENUE, #5800  
SEATTLE, WA 98104-5017  
FAX (206) 467-8215  
TEL (206) 622-8020

HEADQUARTERS, AIR FORCE RESERVE COMMAND  
ROBINS AIR FORCE BASE, GEORGIA

DECLARATION RE: ADMINISTRATIVE DISCHARGE BOARD FOR  
MAJOR MARGARET H. WITT

I, THOMAS M. HANSEN, do hereby declare under penalty of perjury under the laws of the United States of America, that the following facts are true and correct:

1. I am over 18 years of age and I have personal knowledge of the facts set forth in this declaration.
2. I am a Major in the United States Air Force Reserve. I have been in the Air Force for 12 years. I am assigned to the 446<sup>th</sup> Aeromedical Evacuation Squadron. I have been a member of the 446<sup>th</sup> for 12 years.
3. I know Major Margaret H. Witt very well. I worked with her for about 10 years. I traveled with her on training flights and overnight missions. I also traveled to and from Air Force Base McChord with her, for weekend reserve duty.
4. I consider Major Witt a very skilled and highly valuable member of the Air Force, and of the 446<sup>th</sup> AES. She is also a talented leader. To the best of my knowledge, everyone in the 446<sup>th</sup> AES respects her and considers her a tremendous resource.
5. I was shocked and surprised when I learned that she was being processed for an administrative discharge. I understand that the reason offered for her discharge is that she engaged in homosexual conduct.

1

SEP 26, 2006 13:39

206 607 4334

page 2

AF000958

6. During all the years that I worked with Major Witt, I never gave the question of whether she was homosexual or heterosexual any thought. It was simply a non-issue to me. It is completely irrelevant to me. I don't care one way or the other. What I care about is whether someone can do their job. Since I don't care about a person's sexual orientation, I never thought anything at all about Major Witt's sexual orientation.

7. I have discussed the topic of Major Witt's administrative separation with other members of the 446<sup>th</sup> AES, and they shared my confusion as to why she was being separated, and how the matter came up. No one that I knew of in the 446<sup>th</sup> had had any problem with her. It is our understanding that the matter was referred to the 446<sup>th</sup> Commander from someone outside the 446<sup>th</sup>, and apparently from someone outside Air Force Base McChord.

8. From my perspective, since the military has a "Don't Ask, Don't Tell," policy when it comes to homosexuality, it is difficult to understand why Major Witt has been separated from the unit and is being processed for discharge. To my knowledge she never told anyone what her sexual orientation was. To my knowledge no one in the unit asked her, and so far as I am aware, no one in the unit cares.

9. During all the time that I traveled with Major Witt, she never told me anything about her personal life, and I never asked her anything about it. At all times she has been strictly professional, and kept her private life to herself. Therefore, I personally see it as unfair that she should be discharged for something that is irrelevant and that has absolutely no effect on her exceptionally high level of professional service to her country.

10. In July of this year I served as the Rater and completed an Officer Performance Report for Major Witt. A copy of that OPR is attached to this declaration. This OPR includes the period of time leading up to her separation from the unit in November of 2004.

11. Major Witt is very highly regarded within the 446<sup>th</sup>. As stated in my comments in that OPR, she was selected by the Commander to be Chief of Standards and Evaluation "due to her extensive knowledge of mission flying regulations and her ability to manage and motivate squadron members to their highest level."

12. I understand that the Air Force regulations requiring discharge of service members who engage in homosexual conduct are based on the assumption that the presence of a known homosexual within a unit will cause morale or discipline problems within that unit. But that rationale has no application in this case. It seems absurd to contend that she has to be discharged when to my knowledge everyone in the unit recognizes that her presence in the unit is good for unit morale.

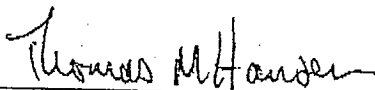
13. As I said in the OPR, Major Witt was "often sought out by squadron members for her depth of knowledge" and her "people management skills are valued by all." In the section for "Overall Assessment" I noted that Major Witt is a dynamic leader "recognized by peers for strong character, leadership skills and knowledge base"; that she is "committed to continuing squadron cohesion and morale"; that she is an "Excellent role model of professional military officership"; that she "sets the standard for professional conduct by junior officers and fellow peers to emulate for career success"; and that she is a "remarkable leader - exceeds expectations, achieves the unexpected and seeks out the

best in other members." I concluded that she has a "passion for excellence" and is an officer of "unquestionable integrity, leadership and professionalism.

14. I cannot understand why the Air Force would want to discharge such an outstanding officer. We are currently fighting a war. We have a great need for flight nurses in Aeromedical Evacuation Squadrons. At this time when we have a shortage of Air Force flight nurses, and are recruiting people to fill those vacancies, it makes no sense to me that Major Witt cannot continue to serve, knowing as we do that she has an outstanding military service record and has served her country well for almost 20 years.

15. To my knowledge, if Major Witt were retained in the Air Force, people in the 446<sup>th</sup> AES would be very happy and would welcome her back with much enthusiasm. I hope the Discharge Board will agree that it makes no sense to discharge her. We need people like Major Witt in the Air Force. If we could only fill all of our vacancies for flight nurses with professionals like Major Witt, that would be of great benefit to the country.

DATED this 22nd day of September 2006.



Major Thomas M. Hansen, USAFR  
446<sup>th</sup> Aeromedical Evacuation Squadron  
McChord Air Force Base, WA

4



Date: 9-22-06

From: Nancy M Royse

Subject: Character Reference for Major Margaret Witt

I am a physical therapist and administrative assistant to the Directors of Student Support Services for Spokane Public Schools. I graduated from the University of Washington in 1970 and I have worked as a physical therapist for 36 years. I have worked in the states of Washington, Oregon and Texas in a variety of work locations including hospitals, private practice, schools and university programs. I have a Masters in Special Education, all but a dissertation for a doctorate in Educational Leadership from Gonzaga University and Administrative Certification from Washington State University. I have been an instructor in physical therapy education programs and have supervised other therapists over the years. I have been involved in providing hundreds of hours of continuing education training especially in the areas of pediatrics and application of brain research information to education and therapy for children with disabilities.

I first met Major Margaret Witt in January of 1970. At that time she was attending Eastern Washington University in the Physical Therapy Master's Program. She was assigned to work with us one day a week for 10 weeks for clinical experience. As her clinical supervisor I was very impressed with her knowledge (especially about medical issues), her genuine concern for the needs of the students she was working with, her expertise in meeting those needs, and her professionalism. After Major Witt graduated from Physical Therapy school I was able to recruit her to work for ESD (Educational Service District) #101 here in Spokane. We did not have any position here in Spokane Schools but I felt strongly that Major Witt's aptitude and skills were particularly suited to working with children with disabilities in a school setting. I was one of the instructors for the ESA (Educational Staff Associate) Course that is required for therapists who want to work in the schools that Major Witt attended. While working for the ESD Major Witt attended continuing education classes offered in our district and when we had a position available she applied and was hired to work for Spokane Public Schools. I have always been very proud of Major Witt's continued dedication to the Air Force as a Flight Nurse in the Reserves. When she was deployed overseas to Oman for the Gulf War she was gone for 7 months. Her absence was a hardship for us here at Spokane Public Schools but we were so very proud and humbled by the services that she was providing for our country. In a way it helped me feel that I was also doing something important for my country by supporting her. When she returned she brought back an American Flag that was flown over Afganistan. That flag has been placed in a case and hangs in our office as a reminder and in honor. The year following her return I was able to go to McCord's Employers Weekend as Major Witt's employer. I was able to travel with her, stay at her parent's house and get the grand tour of the base, and a trip on the C-17. Attending this event helped me to appreciate even more what Major Witt has done for our country.

I am aware that I am writing this character reference because Major Witt faces involuntary discharge for allegedly engaging in homosexual conduct and making statements that she is homosexual. I am very pleased to be able to write this reference. I have known Major Witt for 9 1/2 years. During that time I have only seen her behave professionally and collegially at work and as a caring, supportive friend during our group's social gatherings. While at times she can be witty and funny and even silly she is never inappropriate. She demonstrates a real pride in being part of the Air Force. Her knowledge and skills are so vast and valuable that it saddens me to think that she would not be able to continue to serve her country in the way she knows best. In my opinion Major Witt is a real life hero and she should be allowed to continue to do the fine work she has done in the past.

Contact Information: 509-290-5995.

Respectfully Submitted,

Nancy M. Royse MSPT  
Administrative Assistant  
Student Support Services

24 September 2006

MEMORANDUM FOR REVIEWING AUTHORITIES

FROM: TSgt. Leah Domenica Crawford

SUBJECT: Character Reference for Maj. Margaret Witt

My name is TSgt. Leah D. Crawford; I am an air evacuation technician with the 0446<sup>th</sup> Air Evacuation Squadron at McChord A.F.B. in Washington State. I am the Non-Commissioned Officer in Charge of Training in our Squadron and am also a Flight Instructor as well as a Cardio Pulmonary Resuscitation Instructor. I have been in the U.S.A.F.R. since the 17<sup>th</sup> of July 1995 and have proudly served just over eleven years thus far. My responsibilities and duties with my squadron are as follows: Train new students during a standardized two week ground training program, teaching medical equipment, nursing standards, aircraft safety and systems, aircraft forms, regulations and publications, instruct students during their first few flights on the C-17, to ensure that they are ready for their evaluation check ride. I was deployed 14 March 2003 to 11 December 2003 for Operation Iraqi Freedom and was assigned to Andrews A.F.B. to set up the first Integrated Conus Movement of Patients Expeditionary Squadron. Once back from active duty I registered for the Licensed Practical Nursing program at North Seattle Community College and graduated in August 2005. I am now registered for the Licensed Practical Nurse to Registered Nurse program at Shoreline Community College starting this fall quarter 2006 and will graduate as a Registered Nurse in the fall of 2007.

It is with great pleasure that I introduce Maj. Witt as an officer that I can trust, enjoy working with and know that when working with her as a team, we will represent the U.S.A.F.R. with professionalism and high standards. I have known Maj. Witt for eight years while we both have served in the 0446<sup>th</sup> AES at McChord, and in those eight years she has taught me a great deal in regards to military standards, bearing, and professionalism as well as career enhancement, setting personal goals and being a true team player. Maj. Witt has always displayed a high degree of integrity, responsibility, and ambition. She is definitely a leader rather than a follower. In addition to her excellent scholastic accomplishments, she has proven her leadership ability by flying as Medical Crew Director on numerous missions that I have flown with her on annual tours as well as sorties. She is also a most dependable team player; coming from the active duty side of the house, her knowledge and confidence in regulations, publications and standards resulted in the assurance of a secure and proud air evacuation medical crew each and every time that she flew. Her superb judgment and responsible outlook ensure a logical and practical approach to her endeavors. Maj. Witt is an excellent officer, has a great personality, gets along easy with, and is respected by both the enlisted and officers, and is a major asset to the military that just can not be lost.

I am aware that Maj. Witt prepares for a possible involuntary discharge for allegedly engaging in homosexual conduct and making statements that she is a homosexual. I have never seen any inappropriate conduct by Maj. Witt that would indicate she is a

homosexual, nor have I heard any rumors or heard her make any inappropriate comments about being gay. In conclusion, it is my opinion that Maj. Witt should remain in the military and achieve her goal to retire with honor, integrity and justice.

Contact information:

Leah D. Crawford  
1911 201<sup>st</sup> PL. SW.  
Lynnwood, WA. 98036  
425-775-7130  
206-300-5818

Respectfully Submitted,

Leah D. Crawford, TSgt. USAFR

9/24/06

Memorandum For Reviewing Authorities

From: Deena Harris

Subject: Character Reference for Major Margaret Witt

To help give you a picture of who I am, I will provide you with a brief description. I am a wife, a mother of two, and a physical therapist. I have a bachelor's degree in physical therapy and a masters degree in applied psychology and physical therapy. I have been a physical therapist for eleven years, and have worked with Major Witt for several years now. I am a civilian and have never served in the military, though both my father and my uncle did.

As I said, I have known Major Witt for several years now through our mutual job. We are both physical therapists. Major Witt is also a nurse and a volunteer fire fighter. I have never met a person so dedicated to helping and serving others. During her early employment with us, she was deployed to Oman. Even though she had only worked with us for a short time, she touched everyone she met with her competence, her humor, and her compassion. Everyone she works with (we are talking about a hundred people or so) asked about her constantly. "Is she ok?" "When is she coming home?" etc. Major Witt's response was that she was glad to be there. When she did come home, her first desire was to be deployed again when she learned that her unit was going back. Her first and foremost desire is to serve her country, and this has been the case for as long as I have known her.

Major Witt is an excellent physical therapist, and caring and compassionate individual who always puts herself in a position to help and serve others. Being a civilian, I do not fully understand the honors that Major Witt has received for performing her duties as a flight nurse, but I do know that the military has recognized and honored Major Witt for a job well done, more than once. It seems to me that we need more people like Major Witt in our military, not less. A person who's only desire is to do her job as a flight nurse, and a person who does it with such grace and courage is a priceless asset to our country and to the men and women who serve along side her.

Instead of allowing Major Witt to do what she loves, and to do what she excels at in serving her country, she is now faced with an involuntary discharge from the military for allegedly engaging in a homosexual act. This is a travesty, and a gross injustice. Major Witt is a rare and precious individual who strives to serve her country, please let her do

AF000966

just that. For without people like her, this country would be lost. My children are not old enough to serve in the military and will not be for a long time, but I would be honored and relieved to know that they served along side Major Witt if they could. I know their lives would safe in her hands. Please, allow Major Witt to remain in the military.

Deena Harris  
509-327-2242

Respectfully Submitted,

September 24, 2006

My name is Ingrid Kinder. I am a physical therapist working for Spokane Public Schools. I work with children age 3 to 21 who have physical disabilities, gross motor delays, and those who are too medically fragile to attend school. In the past 20 years I have also worked in acute care, outpatient therapy, geriatrics, and have been a rehabilitation director.

I have worked with Major Margaret Witt (Margie) since 1999 as a physical therapist. We have both worked for Spokane Public Schools, a large school district with a large therapy staff, and for ESD 101, an educational service district serving rural communities. I have greatly enjoyed working with Margie. She is a team player. She has always supervised assistants and aides, and can easily supervise and coordinate several support staff without difficulty. Her subordinates respect her, as she treats them fairly and with respect. She provides appropriate instruction and supervision to allow them to perform their jobs effectively. Her peers value her physical therapy knowledge, her wide medical knowledge base and willingness to help. She has a great sense of humor that can lighten the mood and ease stress in those around her. She carries a heavy caseload and never complains. She always has time to listen and help, others out.

She is able to think outside the box, and does not get flustered doing things she is not experienced with. In our job, working for ESD 101, we had to provide therapy services to rural districts. The therapist goes alone, with no other therapists to bounce ideas off. As physical therapists, we provide gross motor services, but in ESD were also expected to provide fine motor services. These services are normally provided by occupational therapists. Physical therapists are only very minimally trained to provide these services in our schooling, and it is quite difficult to be thrown in, all alone, and have to design fine motor programs for children. Margie had no difficulty learning this on her own, and providing fine motor services to children in these rural places. I worked in school districts that Margie had previously worked in, and many of the staff members had very positive things to say about Margie and consistently stated they enjoyed working with her. Her ability to perform a job with distinction that she is not trained in, to be able to work independently, to be flexible, to be a problem solver, and to think on her feet are skills Margie excels in. I would think these traits would be extremely valuable in the military and in any situation.

Margie and I have also worked together treating homebound medically fragile children. We have had to go into some homes that are filthy, with very challenging family dynamics, working in difficult situations, and she is calm and collected. She can focus on the child even with many extraneous things going on around her. I admire her greatly and feel her demeanor and skills would be invaluable in the military.

I am aware that Major Witt faces involuntary discharge for allegedly engaging in homosexual conduct and making statements that she is a homosexual. In working with her in close proximity in our job for the past seven years, I never saw or heard a thing to

support or suggest that this allegation is true. She has never acknowledged being gay nor has she demonstrated any homosexual behavior. People that we work with are also shocked by the allegations. I have only heard Margie talk of the military in high regard, and that it is her 'essence of being'. She is a soldier. She loves her role in the military, and takes huge pride in being able to serve her country. She has been completely blown away by these allegations. In my opinion, Major Witt is an invaluable asset to her unit, to the military and to the United States of America. We need Major Witt helping our soldiers; her skills are many and irreplaceable.

Respectfully submitted,

Ingrid Kinder PT  
E. 4312 Woodglen Ct  
Mead, WA.99021  
509-466-2098  
509-354-6341 wk



25 September 2006

MEMORANDUM FOR REVIEWING AUTHORITIES

FROM: Kenneth H. Winslow, Major, USAFR, NC

SUBJECT: Character Reference for Maj Margaret Witt

1. I am the acting Flight commander of Operations for the 446<sup>th</sup> AES, McChord AFB, WA. This involves executing all of the necessary policies and procedures for missions flow by this squadron. This involves multiple missions each month to ensure the currency and qualification of over 100 members. I have been on active duty for 10 months this call up. I was assigned to Ramstein AB, Germany as Medical Crew Director (MCD) from December 2005 to April 2006. I flew to the AOR in support of OIF. Then was assigned to Travis AFB, CA from June 2006 through August 2006. Previously I was assigned as MCD to Kandahar AF from November 2003 to March of 2004.
2. I met Major Witt in April of 1996 when she joined the 446<sup>th</sup> AES. I was fortunate to be able to work with her in training and as a flight nurse examiner. Her wealth of knowledge was invaluable to me and members of the squadron. Her nursing skills and previous active duty experience combined to make her one of the best nurses in the unit. Multiple times I was aware that many members would ask to fly with her and to be assigned an active duty tour with Major Witt to gain from her experience. This was not limited to other nurses but also the enlisted ranks. Her reputation as a leader among nurse and enlisted members is second to none. She always did the right thing for her troops. Major Witt could always be counted on by her colleagues and subordinates. She leads by example and her loss to this squadron, wing and the Air Force would be enormous. She has set the standard for officers in this unit.
3. I am aware that Major Witt faces involuntary discharge for allegedly engaging in homosexual conduct and making statements that she is a homosexual. I have never seen any inappropriate conduct by Major Witt that would indicate she is a homosexual. I have never heard her make any inappropriate comments about homosexuality or any reference to her sexuality. In my opinion Major Witt should remain in the military.

4. Kenneth H. Winslow, Major, USAFR, NC  
23231 SE 48<sup>th</sup> ST  
Issaquah, WA 98029  
H-425-392-6956  
C-425-503-7303  
E-mail - flyinrn@peoplepc.com

Respectfully Submitted,  
Kenneth H. Winslow, Major, USAFR, NC

AF000970

MEMORANDUM FOR REVIEWING AUTHORITIES

9/23/06

FROM: Kathy Freeman-Lorentz

SUBJECT: Character Reference for Major Margaret Witt

My name is Kathleen Freeman-Lorentz and I am an employee of Spokane Public Schools in Spokane, Washington. I have been a special education teacher for over 20 years. I received my undergraduate degree and masters degree from Gonzaga University in Spokane, Washington. My current assignment is a teaching position in the program for students in the Homebound program for medically fragile students. I serve students from ages 3 to 21. These students have disabilities and illnesses that prevent them from attending their local public school. Therefore, services such as academic, physical therapy, occupational therapy and speech therapy are brought to them in their homes.

Our homebound team has the privilege of having Major Witt as a part of the team. She is one of the physical therapists that accompanies us on home visits to serve this very high need population. Major Witt brings to the team an essential role. Not only is Major Witt instrumental in providing physical therapy for our students. She also brings with her a wealth of knowledge regarding our students medical conditions. More importantly Major Witt brings to the team a sense of professionalism. She is well liked and respected by team members, students and parents.

I recall a time that Major Witt and I went to the home of a very ill child whose Mother was new to the program and apprehensive about receiving services in her home. I appreciated Major Witt's sensitivity towards this parent as well as her ability to articulate the importance of this youngster receiving services.

This is a very unique program. In addition to serving the student, we are serving the entire family as well. It is one that requires a provider to be professional, knowledgeable, dependable, dedicated and compassionate, all skills that Major Witt demonstrates. I am aware that Major Witt faces involuntary discharge for allegedly engaging in homosexual conduct and making statements that she is a homosexual. I have never witnessed Major Witt demonstrate any inappropriate conduct or make any inappropriate references, jokes or comments in the work place.

It is my hope that you will continue to let Major Witt serve in the military. We need individuals that are as dedicated, knowledgeable and hard working as Major Witt.

If you have further questions please feel free to contact me.

Kathleen Freeman-Lorentz  
215 West 34<sup>th</sup>  
Spokane, Wa 99203  
(509) 747-4374 Home  
(509) 354-6344 Work

Respectfully Submitted,

*Kathleen Freeman-Lorentz*  
Kathleen Freeman-Lorentz

25 September 2006

## MEMORANDUM FOR REVIEWING AUTHORITIES

FROM: *Carolyn Newhouse, Maj*

SUBJECT: Character Reference for Maj Margaret Witt

1. I have been a Flight Nurse in the 446 AES at McChord AFB, WA since 1994. I have been a FN instructor, currently I am the Deputy Chief Nurse. I have been on two deployments in support of Operations Enduring / Iraqi Freedom.
2. I worked side by side with Maj Witt for many years. I have found her to be a professional and knowledgeable Flight Nurse Examiner. She has demonstrated leadership and the Air Force core values. As a Flight Nurse Examiner along with her many years of flying experience, she was always fair and made check rides a learning process. She was always exceptionally prepared for all training events.
3. I am aware that Maj Witt faces involuntary discharge for allegedly engaging in homosexual conduct and making statements that she is a homosexual. I have not witnessed nor heard about any inappropriate conduct by Maj Witt that would indicate she is a homosexual. Until this event, I never heard of any rumors or ever heard her make any inappropriate comments about being a homosexual. I do not feel that Maj Witt should be discharged. She is a dedicated Air Force officer and Flight Nurse. Flight Nursing as a career field is currently undermanned. I hope that you will consider those important assets when making a discharge consideration.
4. If you need any further information regarding this fine officer, please to not hesitate to contact me at [carolyn.newhouse@mcchord.af.mil](mailto:carolyn.newhouse@mcchord.af.mil).

Respectfully Submitted,

*Carolyn Newhouse*

CAROLYN NEWHOUSE, Major, USAFR, NC

September 26, 2006  
MEMORANDUM FOR REVIEWING AUTHORITIES  
FROM: Captain Edmond J. Hrivnak  
SUBJECT: Character Reference for Major Margaret Witt

1. I am a critical care nurse in the Air Force Reserve with over nineteen years of military service. I came up through the ranks and received a direct commission in 1996. I have been on multiple overseas deployments to include Desert Storm and Iraqi Freedom. While assigned to the 446<sup>th</sup> AES I was an instructor flight nurse and served in the operations section from 1996 to 2004. My job entailed the scheduling of missions and medical crews, organizing training flights, exercises, and flight clinical coordination. My last position was to create and develop a tactics program for aeromedical crews flying combat sorties. Combining my military and civilian flying career, I have logged over 3,200 hours on 20 different types of aircraft. During Iraqi Freedom the flight crew I served with flew nearly 200 combat / combat support flight hours and evacuated 800 casualties in direct action of the war effort.
2. I served with Major Witt at the 446<sup>th</sup> AES. She was an instructor flight nurse that was responsible for a portion of my training to upgrade to instructor. She was a professional mentor and leader. My success flying combat missions can be contributed to the training I received from Major Witt. It was a pleasure and honor to serve with her. Since scheduling came through the Operations Section, enlisted personal often thanked me for being assigned to Major Witt's flight crew. During post-mission debriefings, the feedback I received from the crew and aircraft commander was always supportive of Major Witt's performance. It was clear that officers and enlisted alike respected Major Witt and wanted to work with her, as did I. When Major Witt suddenly left the unit without explanation, it degraded the morale of the organization.
3. It has been rumored that Major Witt is facing an involuntary discharge for being a homosexual. I do not act on rumor, but only on fact. These *are* the facts: Major Witt is a highly trained and experienced nurse. She is a professional officer. At no time have I ever heard any complaints about her or her sexual orientation. At no time did she ever discuss her sexual orientation. This country has been at war for five years. The casualty rate continues to grow each month while the Air Force Reserve is only 70% staffed with flight nurses. The nurse corps is stretched thin from the strain of combat operations. It would be a disservice to the taxpayers, but more importantly the wounded, to discharge Major Witt. She needs to be re-instated at the 446<sup>th</sup> AES, so she may do the job she has trained years for. Allow her to do the job that the taxpayers have spent thousands of dollars on; to serve her country saving the lives of our wounded.

SEP 26, 2006 21:30

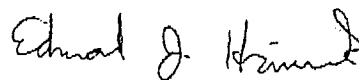
253 841 4974

Page 1

AF000973

4. It is hard for me to comprehend that the Air Force would consider discharging Major Witt when her skills, talent, and officer-ship are desperately needed in the theater of operations. Feel free to contact me if you have any questions or concerns.

Respectfully Submitted,



Edmond J. Hrivnak, Captain, Nurse Corps, USAFR  
17303 Spanaway Loop Rd S. #24  
Spanaway WA. 98387  
H-253-536-2259  
C-253-691-4422

September 25, 2006

MEMORANDUM FOR REVIEWING AUTHORITIES

FROM: Melodie Hayashi-Taisey

SUBJECT: Character Reference for Maj Margaret Witt

My name is Melodie Hayashi-Taisey. I received a Bachelor of Arts in Education from Western Washington University in Bellingham, Washington. I continued my education and received a Masters in Special Education from the University of Washington in Seattle, Washington. I have been in the field of teaching for 20+ years and am currently teaching in the Spokane Public Schools in Spokane, Washington. All of my teaching experience has been working with children with special needs with an emphasis in Early Childhood education. Currently, I am a teacher in the Homebound Program for Medically Fragile Students. The Homebound Program works with children who have special needs who, due to the severity of their medical condition, are unable to attend school. These children, ages 3-21, receive educational, physical, occupational therapy and speech services in their home.

For the past three years I have worked with Maj Margaret Witt in the Student Support Services Department in the Spokane Public Schools. Maj Witt has recently joined the team for the Homebound Program for Medically Fragile Students. Due to the uniqueness of this program, we serve students with an integrated approach, working very closely as a team to serve not only the individual student but the parents and families as well. Maj Witt is a valuable addition to the team with her medical background, knowledge and expertise. Her medical knowledge is not only an asset to other professionals on the team, but also to the families that we work with. The medical community and the extraordinary amounts of technical information often bewilder the families we work with. Maj Witt interacts with parents in a very calm manner. She is a good listener and is sensitive to parents. As the teacher on the team I feel I can go to Maj Witt with any question I may have on any one of my students and she will drop whatever she is doing to discuss a student. I have also attended a class taught by Maj Witt. I remember her being one of my favorite presenters because she was able to present information thoroughly yet with creativity and a sense of humor. Maj Witt has the ability to work effectively with both children and adults.

It is my understanding that Maj Witt faces involuntary discharge for allegedly engaging in homosexual conduct and making statements that she is a homosexual. I have worked with Maj Witt on the professional level and have also been with her in social situations. I have **NEVER** witnessed any sort of inappropriate conduct by Maj Witt that would indicate she is a homosexual. She has never made remarks about sexuality, made any sort of inferences, nor demonstrated any of the slightest behaviors that may indicate her sexual preference. Every situation I have ever been in with Maj Witt over the past three years whether it is in the workplace or in a social situation, she has been nothing but

appropriate, professional, and treated those around her with the utmost respect. Because of this, I would hope that you would reconsider and retain her military status.

Feel free to contact me at (509) 467-7027.

Respectfully Submitted,

Melodie Hayashi-Taisey

26 September 2006

MEMORANDUM FOR REVIEWING AUTHORITIES

FROM: MAJ JUDITH A. KRILL

SUBJECT: Character Reference for Major Margaret Witt

I am Major Judith A. Krill of the 446<sup>th</sup> AES (Aeromedical Evacuation Squadron) located at McChord AFB, WA. I have been a reservist for seventeen years; six years as an army nurse and eleven years as a flight nurse with the 446 AES. I am a flight nurse instructor, certifier-trainer and, for the last three years, the Unit Deployment Officer successfully managing the squadron's nearly 300 deployment taskings with only one shortfall. I have deployed to the Persian Gulf and Andrews AFB, MD. I have also served the squadron as the Infection Control Officer, the Officer-in-Charge of Mission Clinical Coordination and the Assistant Officer-in-Charge of Weight Management.

I met Major Margaret Witt in 1996 when she joined the squadron from active duty. She became the Officer-in-Charge of Weight Management, hence my supervisor. She was an immensely helpful resource for me, then a lieutenant. I had transferred from the Army the previous year and was still learning differences between how the two services operated. She was so knowledgeable, encouraging me to dig into the regs, look at the big picture and focus on developing leadership abilities. She was generous with her time and expertise, a true mentor who gave thoughtful, valued performance reviews. One of the tips she gave me I still use 10 years later. She said every time she flew a mission or attended a weekend drill she would write an appropriate bullet statement and then, while doing her running exercise, she would craft that item into a useable OPR statement. By the time she needed to submit material to her rater, the job was mostly accomplished; a simple but effective tip.

Major Witt readily shared her experiences as a flight nurse. Even when she wasn't in the formal flight nurse instructor role she added valuable training to any flight. She eagerly shared her real world experiences with many of us who at that time had only 'training flight' experience. She displayed the leadership qualities that an officer of the United States Armed Forces should have. She showed Loyalty, Dedication to Duty, Honor, and Service to her fellow soldiers and citizens that she came in contact with in the performance of her duties. She was instrumental in continuing the excellence and skill that has always been the hallmark of this squadron.



I am aware that Major Witt faces involuntary discharge for allegedly engaging in homosexual conduct and making statements that she is a homosexual. I am not informed as to the circumstances of this alleged conduct or statements. In the entire time that I have known Major Witt I have never seen any conduct that would indicate that she was homosexual. I have flown on multiple-day training missions with her, been at parties that she has attended and once was invited to her parents' house for a lunch. I have never seen, observed, known of, or heard of any conduct towards or with members of either sex that would be considered inappropriate of an officer or member of the U.S. armed services. There has never been any allegation, or rumor of anything of this nature that would have affected her ability to perform her duties or just as importantly allow others to work with her.

Major Margaret Witt is an outstanding officer of the United States and has performed her duties with honor and distinction. She has given years of her life in the service of her nation.

Respectfully,  
MAJ. JUDITH A. KRILL  
446<sup>th</sup> AES McChord AFB WA.  
judith.krill@mcchord.af.mil  
jakrill@earthlink.net

MEMORANDUM FOR REVIEWING AUTHORITIES

FROM: MSgt AARON W. MANESS

SUBJECT: Character Reference for Major Margaret Witt

I am MSgt Aaron W. Maness of the 446<sup>th</sup> AES (Aeromedical Evacuation Squadron) located on McChord AFB WA. I, presently serve as the Unit Historian and Assistant to the Orientation/New Comers section of the squadron. I am a qualified Aeromedical Evacuation Crew Member with over 4,000 hours of logged flying time. I have been a member of this squadron for over 23 years. During that time I have served the squadron as an Instructor, Certifier-Trainer, and NCOIC of various sections including but not limited to, Immunizations, Special Equipment, Safety, CPR Training, System Tours, Etc.

I have served this squadron and the United States both on location and deployed. I served honorably and with distinction in both Gulf Conflicts, two tours of duty to Somalia, and stood alert several times at McChord for periods as long as a month. I have deployed domestically to locations such as Andrews AFB Maryland, Scott AFB Illinois, Travis AFB California and Hickam AFB Hawaii. I served with aeromed units in Japan, The Philippines, Hawaii, Germany. I have also stationed at many locations in the Persian Gulf, Egypt, and other points in Europe, Africa, and Asia.

I have known Major Margaret Witt for the entire time that she has been a member of the 446<sup>th</sup> AES. I have known her as an associate, fellow trooper, and colleague. During that time I have learned from her because she was an officer, but much more importantly As an officer. Major Witt always displayed the leadership qualities that an officer of the United States Armed Forces should have and maintain. She showed Loyalty, Dedication to Duty, Honor, and Service to her fellow soldiers and citizens that she came in contact with in the performance of her duties. Her skills as a Flight Nurse were above and beyond the ordinary, and aided the well being and recovery of those entrusted to her care. Major Witt always took care of her troops when in the position of Command. She never left a billeting/lodging desk before ensuring that all the members down to the lowest ranking had been properly assigned quarters, and ensured that transportation etc. was available to ensure that all could obtain food and supplies. This is just one of the many examples of the leadership and officer ship she displayed and performed

As a Trainer Major Witt showed exceptional skills. She had the patience, flexibility, knowledge and skill base, to ensure that those under her direction learned the tools needed to carry out their mission and duties. Her goal was always to instill in her students the need for crewmanship and yet always to emphasize personal responsibility, and need for independence when required. In short she was instrumental in ensuring the fine tradition of excellence and skill that has always been the hallmark of this squadron.

I am aware that Major Witt faces involuntary discharge for allegedly engaging in homosexual conduct and making statements that she is a homosexual. I am not informed as to the circumstances of this alleged conduct or statements. I want to state that in the entire time that I have known Major Witt, I have never seen any conduct that would indicate that she was homosexual. I have never seen, observed, known of, or heard of any conduct towards or with members of either sex that would be considered inappropriate or unbecoming of an Officer or member of the U.S. armed services. There has never been any allegation, or rumor of anything of this nature that would have affected her ability to perform her duties or just as importantly allow others to work with her.

In my opinion Major Margaret Witt is an outstanding officer of the United States and performed her duties with honor and distinction. She has given years of her life in the service of her nation. A large amount of funding has been spent on her training and she has more than paid that back by her service and dedication to duty. Major Margaret Witt should be allowed to remain a member of the United States Armed Services. I look forward to many more years of the opportunity to serve with her.

Respectfully

MSgt Aaron W. Maness  
446<sup>th</sup> AES McChord AFB WA.

Email :

[Aaron.maness@mcchord.af.mil](mailto:Aaron.maness@mcchord.af.mil)  
[ochepek@gmail.af.mil](mailto:ochepek@gmail.af.mil)

25 September 2006

MEMORANDUM FOR REVIEWING AUTHORITIES

FROM: *Jill C Brinks*

SUBJECT: Character Reference for Maj Margaret Witt

1. My name is 2Lt Jill Brinks, I belong to the 446 Aeromedical Evacuation Squadron located at McChord AFB WA. I am currently working as a Flight Nurse however prior to my recent commission I had spent 18 years within the enlisted ranks making the grade of Master Sergeant as a Flight Medic. I have volunteered to participate in the last two conflicts within the Middle East transporting injured citizen warriors for further treatment. I have been chosen to represent the squadron during numerous military exercises throughout my career. The United States Air Force Reserve Command, specifically the members of the 446 AES have ultimately shaped and defined who I am today.
2. I met Maj Margie Witt within the 446 AES while I was still an enlisted medic. It is with great pride and gratitude I have the opportunity to support the very person who ultimately guided me towards seeking a higher level of education in order to further my military and civilian career. Her devotion and pride regarding her role as a Military Flight Nurse transcended all those who worked with her so it was not surprising she was offered the position of a Senior Flight Nurse Examiner. Furthermore, she was the cover for numerous recruiting brochures representing Air Force Nursing. Maj Margie Witt has an innate leadership ability to provide calm in chaos and to prolifically guide the overwhelmed. Providing medical care for patients at 32,000 feet brings its own set of challenges however coupled with the stress of the Middle East conflict her absence as a solid fundamental leader was overwhelming to those she has guided and mentored over the years. In essence we were forced to leave behind the most constructive and supportive leader many of us will ever come to know. I fundamentally believe Maj Margie Witt's absence during the last Middle East conflict was a detriment not only to Air Force but to the soldiers who were unable to fall within her incredible skill set of care.
3. I am fully aware of the alleged charges made against Maj Witt. However, at no time during the last 15 years of knowing her has she ever discussed her personal life while at the squadron. I have heard no rumors, or comments precluding this allegation. When on duty she was overtly devoted; continually seeking the successful career progression of those around her. Squadron members confided in her and trusted her as they should. Maj Witt's position within the squadron was earned with the full support and respect from the AES. Maj Witt has always supported those she has lead; that is and will always be her calling. She was born to become a highly respected leader, mentor and member of the military. Maj Witt must be allowed to fulfill this role within the United States Air Force Reserve Command. Not allowing this to occur will have profound negative consequences on the morale and welfare of the squadron. Major Margie Witt defines honor and integrity; allow her the ability to exude this quality and mentor those who are in line for leadership roles.

4. I may be contacted at any time.

Jill C Brinks

8519 33<sup>rd</sup> Street West

University Place, WA 98466

360.286.9599

Respectfully Submitted,

//signed//

Jill C Brinks, 2Lt

September 28, 2006

HEADQUARTERS, AIR FORCE RESERVE COMMAND  
ROBINS AIR FORCE BASE, GEORGIA

In re MAJOR MARGARET H. WITT,

Respondent.

NO.

OFFER OF PROOF RE WITNESS  
COLONEL JANETTE MOORE-  
HARBERT

Respondent respectfully makes this offer of proof in support Respondent's efforts to contact and secure the testimony of Colonel (select) Janette Moore-Harbert at the administrative discharge board hearing now scheduled for September 28-29, 2006.

1. On March 14, 2006 undersigned counsel spoke with Colonel Moore-Harbert by phone, introduced himself as counsel for respondent, and explained that Major Witt desired to have Colonel Moore-Harbert testify regarding her knowledge of Major Witt and Major Witt's conduct in the performance of her duties.

OFFER OF PROOF RE WITNESS  
COLONEL JANETTE MOORE-  
HARBERT - 1

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020

1           2.       Colonel Moore-Harbert told respondent's counsel that Major Witt did an  
2 excellent job at McChord AFB.

3           3.       She also stated that she had no knowledge of whether Major Witt was  
4 homosexual and no knowledge of any personal relationships that Major Witt ever had  
5 with anyone. She said that at no time had Major Witt ever created any problems for  
6 anyone at McChord AFB.

7           4.       Counsel asked if Colonel Moore-Harbert would be willing to testify for  
8 Major Witt and Colonel Moore-Harbert replied that she thought she could do that, that  
9 she thought she could help Major Witt, but that she would have to get back to counsel.

10          5.       After finishing this phone conversation, counsel sent Colonel Moore-  
11 Harbert an e-mail, and in that e-mail provided Colonel Moore-Harbert with a portion of  
12 the Air Force regulation at issue in this case. Colonel Moore-Harbert responded to that e-  
13 mail, stating simply, "Thank you for the information, and I will be getting back to you  
14 soon."

15          6.       Approximately one month went by and Colonel Moore-Harbert did not  
16 contact respondent's counsel with any final answer as to whether she would agree to  
17 testify for Major Witt.

18          7.       Therefore, roughly one month after the telephone conversation of March  
19 14, 2006, respondent's counsel again contacted Colonel Moore-Harbert by telephone.  
20  
21

---

OFFER OF PROOF RE WITNESS  
COLONEL JANETTE MOORE-  
HARBERT - 2

---

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020

1 Colonel Moore-Harbert advised respondent's counsel that she was sorry but she could not  
2 testify for Major Witt. She did not say why.

3 8. In September of 2006 respondent's counsel attempted to contact Colonel  
4 Moore-Harbert to ask her if she would testify at this administrative discharge hearing, but  
5 counsel was not able to contact her.

6 9. On November 4, 2004, Colonel Moore-Harbert was the officer who  
7 informed Major Witt that Colonel Mary Walker, the squadron commander, had decided to  
8 suspend Major Witt from points and pay. When Colonel Moore-Harbert spoke to Major  
9 Witt on November 4, 2004, she told Major Witt, "I'm sorry, but our hands are tied."

10 10. Major Witt believes that this remark - "our hands are tied" - was a  
11 reference to the fact that orders to suspend Major Witt had come to the 446<sup>th</sup> AES from  
12 outside the unit, and that therefore there was nothing that the unit could do.  
13  
14  
15  
16  
17  
18  
19  
20  
21

OFFER OF PROOF RE WITNESS  
COLONEL JANETTE MOORE-  
HARBERT - 3

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

DATED this 25th day of September, 2006.

CARNEY BADLEY SPELLMAN, P.S.

By /s/ James E. Lobsenz  
James E. Lobsenz

Attorney for Respondent Major Margaret H. Witt

OFFER OF PROOF RE WITNESS  
COLONEL JANETTE MOORE-  
HARBERT - 4

WIT004 Plds- board hi254205 9/29/06

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010

RESPONDENT'S EX 22

AF000986

**Lobsenz, Jim**

---

**From:** Moore-Harbert Janette L Lt Col 446 AES/CC [Janette.Moore-Harbert@mcchord.af.mil]  
**Sent:** Tuesday, March 14, 2006 5:00 PM  
**To:** Lobsenz, Jim  
**Subject:** RE: Contact Information for James Lobsenz, attorney for Major Witt

Thank you for the information and I will be getting back with you soon.

---

**From:** Lobsenz, Jim [mailto:Lobsenz@carneylaw.com]  
**Sent:** Tuesday, March 14, 2006 4:15 PM  
**To:** Moore-Harbert Janette L Lt Col 446 AES/CC  
**Subject:** Contact Information for James Lobsenz, attorney for Major Witt

Dear Colonel Moore-Harbert:

Thanks for speaking with me today. Here's my contact information and my e-mail address.

I have also copied below, for your convenience, the part of AFI 36-3209, that I was interested in asking you about:

2.30.3. A commander is not required to initiate discharge proceedings, a board is not required to recommend discharge, and a discharge authority is not required to approve a discharge for homosexual conduct if the commander, board, or discharge authority determines, by a preponderance of the evidence, that:

2.30.3.1. The member engaged in or attempted to engage in homosexual acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding or terminating military service, and

2.30.3.2. Separation of the member would not be in the best interest of the armed forces.

It is my understanding that you don not think that separation of Major Witt would be in the best interests of the Air Force, but that you want to do some checking before you give me a final answer on that point. I understand you will get back to me on this. Please feel free to contact me at any time, by phone, e-mail, or regular mail.

James E. Lobsenz  
Carney Badley Spellman, P.S.  
701 Fifth Avenue, Suite 3600  
Seattle, WA 98104  
(206) 622-8020

---

This email has been scanned by the MessageLabs Email Security System.  
For more information please visit <http://www.messagelabs.com/email>

---

# BOARD EXHIBITS

## INITIAL INSTRUCTIONS

As Legal Advisor, I assure the Respondent receives a fair, impartial, and orderly hearing. I do not take sides between the parties; I am neutral throughout these proceedings. Therefore, anything I say throughout these proceedings should not be construed as advocating for either the government or the respondent. I rule on the admissibility of evidence, any objections, and any procedural matters arising during the board hearing. My rulings and advice as legal advisor are final and not subject to objection by you. Each of you has the duty to act as an impartial fact finder and you should fully realize that your ultimate findings and recommendations in this case will be of great significance to the Respondent and the Air Force Reserve. You are the decision makers in this case. At the proper time, you will draw conclusions from the facts you find and will make recommendations concerning disposition of this case. These recommendations should be consistent with your findings of fact and should be appropriate to this case. Recommendations should not be made on the theory they are advisory, and may be changed by the convening or higher authority.

You must avoid forming any opinion on the eventual findings and recommendations, until this hearing is ended and you enter into your closed session for deliberations. Each of you must be satisfied you can fairly and impartially hear this case and make appropriate findings and recommendations.

The Recorder serves as the government's representative. He/She presents all the evidence available in support of the Statement of Reasons. When he/she is done, the Respondent, with the assistance of counsel, may submit additional evidence. If you believe any other evidence is necessary, the President may request that the Recorder obtain such information. Normally, this is unnecessary because the board can assume all pertinent evidence has been presented. I may need to determine whether such evidence you request is admissible.

Evidence consists of the documents admitted before you and witness testimony. If extraneous matters come to your attention, or if evidence is admitted, but is later excluded, you must disregard that matter and I will instruct you as necessary. At times, I may call for an out-of-board hearing to resolve disputes regarding the admissibility of evidence, requested instructions, or other procedural matters. I will ask you to leave the room and the Recorder, Respondent, Respondent's Counsel and any necessary witnesses will conduct an out-of-board hearing. These sessions are necessary to insure you only receive information which you should consider.

The Recorder and Respondent's Counsel may make opening statements and closing arguments for your consideration. These are not evidence, but you should carefully consider them, since they may assist you in finding facts and making recommendations.

Normally, witnesses are examined first by the party calling the witness. Cross-examination may follow. After both sides have concluded their examinations, you may ask questions. You must exercise caution and good judgment in this area. It is easy to

become overzealous and forget the responsibility of remaining impartial. You must confine your questions to matters bearing on issues properly before the board. It is good to take notes. They are valuable in your deliberations and also avoid unnecessary repetition in questions.

All parties are prohibited from making off-the-record statements concerning the case and should not engage in acrimonious discussions or arguments during these proceedings. Brevity is in the best interest of all concerned, provided your responsibility for obtaining necessary evidence is not compromised.

This board is not bound by formal rules of evidence used in courts-martial. The board does not use the beyond a reasonable doubt standard. The board seeks to find all relevant facts from the best evidence available, and employs a preponderance of the evidence test in making its findings. The board must find the facts according to the weight of all the evidence before the board.

At an earlier pre-board hearing, I ruled on the admissibility of documents presented by both sides. In a moment, both the Recorder and Respondent's Counsel will publish the documents to you. We will take a recess to allow you time to familiarize yourselves with the documents. I caution you not to have any discussions among yourselves, at this time, regarding the exhibits or this case. You will have an opportunity to deliberate later. If any questions arise regarding the exhibits, they may be asked once the hearing is reopened.

## INSTRUCTIONS

Mr. President and voting members. I will now give you instructions to guide you in your deliberations. The function of this board is to ascertain and report the facts found to exist in this matter and to present appropriate recommendations consistent therewith. Your findings should be carefully phrased to include the substance of all material facts you find established by the evidence. To assist you in recording your findings and recommendation, you will be provided a Findings and Recommendation Worksheet that has been admitted as Board Exhibit I. Ultimately, you will address three issues: (1) Whether the Respondent is subject to discharge; (2) If Respondent is subject to discharge, whether discharge is warranted in this case; and (3) If discharge is warranted, what is the appropriate service characterization.

Your findings must be supported by the evidence of record and the logical inferences drawn from them. They must not be supported by any information within your personal knowledge which is not part of the evidence of record. By evidence of record, I mean documents and exhibits admitted into evidence before you and the testimony of witnesses in this hearing.

Base your findings on a preponderance of the evidence. A preponderance of the evidence is that evidence which when fairly considered, produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against opposing evidence. It is not determined by the number of witnesses or documents presented by either side, but by the greater weight of all evidence before the board.

Use your best judgment and common sense in resolving disputed and conflicting evidence. You must consider the probability or improbability of all the evidence, and select only evidence which you consider to be most worthy of belief. You may make reasonable inferences based on the evidence, but you must be convinced each fact set forth in your findings, more likely than not, is true.

Determine the credibility of each witness. The credibility of a witness means the witness's worthiness of belief. In judging the credibility of a witness, you should carefully weigh the testimony, and consider all circumstances under which the witness testified, demeanor, interest in the outcome of the case, friendships and prejudices, the extent he or she is contradicted or corroborated by other evidence, and any circumstances which shed light upon his or her credibility, taking into account your own experience in dealing with people.

Address yourselves to the matters alleged in the Findings and Recommendation Worksheet, which reflect the Statement of Reason for this administrative discharge board. If you find the evidence establishes these matters, and if those matters fully and

Board Exhibit II

accurately reflect your findings in this case, you may recite those matters in announcing your findings. If you determine the Statement of Reason does not fully or accurately reflect your findings, the President should announce what findings the board made, including any modifications to the Statement of Reason and any additional findings. This should be done in clear and precise language, specifying dates, places and events.

In making your findings, you must first determine whether or not the evidence establishes the existence of grounds for discharge. In making this determination, you must look solely to the Respondent's military record during the Respondent's current enlistment. This means you cannot consider matters prior to the current enlistment in determining whether grounds for discharge exist.

Having reached your findings, you must set forth your recommendation. If you find no grounds for discharge exist, you must make a recommendation to retain the Respondent. If you determine grounds for discharge exist, but retention of the Respondent is warranted, the President should make such announcement, including the reasons for the determination. If you determine grounds for discharge exist and the Respondent should be discharged, you must recommend a characterization of discharge. Your recommendation must be appropriate to and consistent with your findings. As I said earlier, a recommendation should not be made on the theory it is merely advisory and may be changed by the convening or higher authority.

If you find that the evidence establishes grounds for discharge for misconduct, state the acts of such misconduct you find actually occurred. Then determine whether the Respondent should be retained or administratively discharged. In making this determination regarding retention or discharge, you are not limited to the Respondent's military record during the current enlistment. You may evaluate and consider the respondent's entire military record to make this decision.

When you have made your findings, you must then make a recommendation appropriate to and consistent with your findings:

First, retention in the service. Such a recommendation is binding on the discharge authority and should be made only after full and deliberate consideration of the effects such a recommendation will have on the Air Force Reserve and the Respondent.

Second, a recommendation of discharge. If you make such a recommendation, you must further recommend the type of discharge to be issued. There are three types of discharges that may be recommended when the board recommends discharge for misconduct. These are an Under Other Than Honorable Conditions Discharge, a General (Under Honorable Conditions) Discharge, and an Honorable Discharge. The board must review and be guided by the criteria for types of discharges that are stated in Attachment 2 of AFI 36-3209. In addition, a recommendation as to the type of discharge to be issued must be determined solely by the Respondent's current enlistment. That is, any misconduct prior to the Respondent's current enlistment cannot be considered for this purpose.

The type of discharge a person receives could affect his or her ability to get a civilian job in the future. A person may not be hired, simply because he or she did not have an honorable discharge.

Separations with service characterization of honorable or under honorable conditions (General) are usually treated the same with respect to benefits administered by the Veterans' Administration (VA) or other federal and state agencies. As a rule, either entitles the veteran to full rights and benefits.

Discharge under other than honorable conditions may deprive a veteran of benefits based on military service. The agency that administers the benefits makes a determination in each case.

Administrative discharge service characterizations are described in paragraphs A.2.2 and A.2.5.4.2 of AFI 36-3209, and you must look there for guidance concerning the various types of service characterizations.

Some of the exhibits contain evidence reflecting that the Respondent has exercised her constitutional right to challenge the Department of Defense policy on homosexuality and the statutory basis for it. The evidence also reflects that the ACLU has provided its counsel and expertise to assist the Respondent with her challenge. You are advised that the Respondent has an absolute right to do as she did, and you may not hold her exercise of that right against her. In addition, the board should not draw any adverse inference against either the Respondent or the Air Force, from the filing of a lawsuit by the Respondent in this matter.

### **RESPONDENT MAKING A STATEMENT UNDER OATH**

The board will not draw any adverse inference from the fact the Respondent has elected to make a statement which is not under oath. An unsworn statement is an authorized means for a Respondent to bring information to the attention of the board, and must be given appropriate consideration. The Respondent cannot be cross-examined by the government or interrogated by board members or myself upon an unsworn statement, but the government may offer evidence to rebut statements of fact contained in it. The weight and significance to be attached to an unsworn statement rests within the sound discretion of each member. You may consider that the statement is not under oath, its inherent probability or improbability, whether it is supported or contradicted by the evidence in the case, as well as any other matter that may have a bearing upon its credibility. In weighing an unsworn statement, you are expected to utilize your common sense and your knowledge of human nature and the ways of the world.



## **GOOD AIRMAN**

To show the probability of her innocence, the Respondent has produced evidence of her good military record and character for honesty and truthfulness. Evidence of the Respondent's character for honesty and truthfulness may be sufficient to cause doubt as to the wrongfulness of her acts. On the other hand, other evidence tending to show the wrongfulness of her acts may outweigh evidence of the Respondent's good character for honesty and truthfulness.

## **VOTING**

Your findings and recommendation must be concurred in by a majority of the voting members. Voting is by secret written ballot beginning with findings. Voting on a recommendation must not commence before your findings are completed.

You must disregard any comment or statement made by me during these proceedings which may seem to indicate an opinion concerning the findings and recommendation to be made in this case. You alone have the independent responsibility for making these determinations.

When the board is in closed session, only the voting members will be present. You may seek my advice when necessary, but the board will be reopened and such further advice will be obtained and recorded in open session, in the presence of the Recorder, Respondent, and Respondent's Counsel. To insure the findings and recommendation are in proper form, you should call me into your closed session after you have arrived at your findings and recommendation. I will ask the Reporter to be present and the proceedings will be recorded verbatim. Other than the instances I just stated, you should consult no one after you enter into your closed session.

## FINDINGS AND RECOMMENDATIONS WORKSHEET

The Board, after considering all the evidence in the case of MAJOR MARGARET WITT, has, in closed session, and by secret written ballot, a majority of the voting members concurring, made the following findings and recommendations:

- The Board finds by a preponderance of the evidence that the Respondent, MAJOR MARGARET WITT:
  - 1.  (Did) ~~(Did not)~~ engage in homosexual acts while a member of the United States Air Force Reserve

**NOTE: IF YOU FIND THAT THE RESPONDENT COMMITTED A HOMOSEXUAL ACT, READ THIS SECTION. DISREGARD IF YOU FIND THAT THE RESPONDENT DID NOT COMMIT A HOMOSEXUAL ACT.** A member found to have committed a homosexual act will be discharged unless the member meets all of the following criteria; you must find all of the following criteria are satisfied to retain the Respondent. The Respondent has the burden, by a preponderance of the evidence, of showing that the following criteria apply. If all of the criteria are not satisfied, then you must recommend discharge. Omit the following if you find the Respondent did not commit a homosexual act.

Having found that the Respondent committed a homosexual act, the Board further finds:

**NOTE:** Mark only those criteria the Board finds to be true:

- ( ) Such conduct is a departure from the member's usual and customary behavior;
- ( ) Such conduct is, under all the circumstances, unlikely to recur;
- ( ) Such conduct was not accomplished by the use of force coercion, or intimidation;
- ( ) Under the particular circumstances of the case, the member's continued presence in the armed forces is consistent with the interests of the armed forces in proper discipline, good order, and morale; and
- ( ) The member does not have a propensity to engage in homosexual acts.

- 2.  (Did) ~~(Did not)~~ make the statement that she is homosexual.

**NOTE: IF YOU FIND THAT THE RESPONDENT MADE A STATEMENT THAT SHE IS HOMOSEXUAL, READ THIS SECTION. DISREGARD IF YOU FIND THAT THE RESPONDENT DID NOT MAKE A STATEMENT THAT SHE IS HOMOSEXUAL.** A member found to have made a statement that she is homosexual will be discharged unless the member meets the following criteria; you must find that the following criteria is satisfied to retain the Respondent. The Respondent has the burden, by a preponderance of the evidence, of showing that the following criteria apply. If the criteria is not satisfied, then you must recommend discharge. Omit the following if you find the Respondent did not make a statement that she is homosexual.

Having found that the Respondent made a statement that she is homosexual, the Board further finds:

- ( ) The member has demonstrated that she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

As a result of its Findings, the Board has determined the Respondent, MAJOR MARGARET WITT ~~(is)~~ ~~(is not)~~ subject to separation from the United States Air Force Reserve under AFI 36-3209, paragraph 2.30.1.1 based on the above finding of homosexual conduct.

As a result of its Findings, the Board has determined the Respondent, MAJOR MARGARET WITT ~~(should)~~ ~~(should not)~~ be separated from the United States Air Force Reserve under AFI 36-3209, based on the above findings of homosexual conduct.

As a result of its Findings, the Board has determined the Respondent, MAJOR MARGARET WITT ~~(is)~~ ~~(is not)~~ subject to separation from the United States Air Force Reserve under AFI 36-3209, paragraph 2.30.1.2 based on the above finding of making a statement that she is homosexual.

As a result of its Findings, the Board has determined the Respondent, MAJOR MARGARET WITT ~~(should)~~ ~~(should not)~~ be separated from the United States Air Force Reserve under AFI 36-3209, based on the above findings of making a statement that she is homosexual.

### RECOMMENDATIONS

Consistent with its Findings, the Board recommends the Respondent, MAJOR MARGARET WITT:

- a. Be retained in the United States Air Force Reserve.

**NOTE:** You may only impose an Under Other Than Honorable Conditions service characterization if you determine that during the current term of service the Respondent attempted, solicited, or committed a homosexual act:

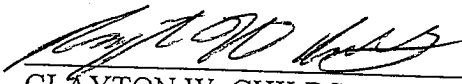
1. By using force, coercion, or intimidation;
2. With a person under 16 years of age;
3. With a subordinate in circumstances that violate customary military superior-subordinate relationships;
4. Openly in public view;
5. For compensation;
6. Aboard a military vessel or aircraft; or
7. In another location subject to military control under aggravating circumstances, noted in the findings, that have an adverse impact on

discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

Absent a finding of any of these factors, you may only either recommend an Honorable service characterization, or a General Under Honorable Conditions) service characterization.

- b. Be separated from the United States Air Force Reserve with (an Honorable discharge) (~~a General discharge~~) (~~an Under Other Than Honorable Conditions discharge~~).

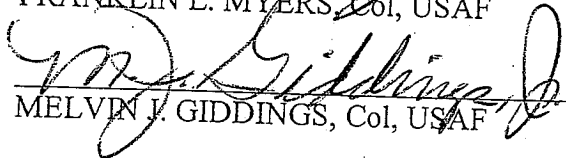
The undersigned certify that a majority of the voting members concur in the above findings and recommendations.

  
CLAYTON W. CHILDS, Col, USAF

29 SEP 06  
Date

  
FRANKLIN L. MYERS, Col, USAF

29 SEP 06  
Date

  
MELVIN J. GIDDINGS, Col, USAF

29 Sept. 2006  
Date

September 28, 2006

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

HEADQUARTERS, AIR FORCE RESERVE COMMAND  
ROBINS AIR FORCE BASE, GEORGIA

In re MAJOR MARGARET H. WITT,  
Respondent.

NO.

RESPONDENT'S MEMORANDUM  
RE IMPROPER INITIATION OF  
FACT FINDING INQUIRY

**I. INTRODUCTION**

Respondent, Major Margaret H. Witt, by and through her attorneys of record, James E. Lobsenz and Captain Kevin Catron, respectfully submit that the fact finding inquiry in this case was illegally initiated, in violation of AFI 36-3209, ¶¶ 1.22, 2.33 and Attachment 11, ¶¶ A11.1, A11.2, A11.3, & A11.6.2. Since the fact finding inquiry should never have been initiated, the fruits of that inquiry should not be considered, and the Board should retain Major Witt in the United States Air Force.

RESPONDENT'S MEMORANDUM RE  
IMPROPER INITIATION OF FACT  
FINDING INQUIRY - 1

WIT004 Plds- board hi234201 9/28/06

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020

1 **II. APPLICABLE REGULATIONS**

2 Air Force Instruction (AFI) 36-3209, entitled *Separation and Retirement Procedures*  
3 *for Air National Guard and Air Force Reserve Members*, sets forth the rules which govern  
4 administrative discharges. In Chapter 1, "*Administrative Separation of ANG and Air Force*  
5 *Reserve Members Not on Extended Active Duty*," ¶ 1.22 provides as follows:

6 **1.22. Unit Commander's (or Equivalent) Responsibilities.** The unit  
7 commander will:

8 1.22.1. Examine and evaluate any information received that indicates  
9 a member should be considered for separation or discharge. . . .

10 1.22.7. *A unit commander who receives information that a service*  
11 *member has engaged in homosexual conduct will follow the*  
12 *guidance in attachment 11 to determine whether an inquiry is*  
13 *warranted, and if so, the type and extent of inquiry to be conducted.*  
14 *If the commander determines a basis for discharge exists (see 2.30*  
15 *and 3.20), he or she must initiate administrative discharge action*  
16 *(unless the conduct warrants trial by court-martial).*

17 (Bold italics added).

18 In Chapter, Section 2B, under the subtitle of "General Instructions," ¶ 2.33 also  
19 expressly refers commanders to Attachment 11 as follows:

20 **2.33. Guidelines for Fact Finding.** *Commanders shall refer to the*  
21 *guidelines for fact finding inquiries into homosexual conduct when*  
*determining whether to initiate an inquiry into the alleged*  
*homosexual conduct (Attachment 11).*

(Bold italics added).

RESPONDENT'S MEMORANDUM RE  
IMPROPER INITIATION OF FACT  
FINDING INQUIRY - 2

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020

1 Attachment 11, "*Guidelines for Fact Finding Inquiries Into Homosexual Conduct*,"  
2 expressly limits the authority to initiate a fact finding inquiry to the service member's  
3 commander:

4 **A11.1. Responsibility:**

5 *A11.1.1. Only the member's commander is authorized to initiate*  
6 *fact-finding inquiries involving homosexual conduct.* A commander  
7 may initiate a fact-finding inquiry only when he or she has received  
8 credible information that there is a basis for discharge. *Commanders*  
*are responsible for ensuring that inquiries are conducted properly*  
*and that no abuse of authority occurs.*

9 *A11.1.2. A fact finding inquiry may be conducted by the*  
10 *commander personally or by a person he or she appoints.* It may  
11 consist of an examination of the information reported or a more  
12 extensive investigation, as necessary.

13 (Bold italics added).

14 In Attachment 11 the *Guidelines* expressly define the term "Commander," and make  
15 it unequivocally clear that the term means the accused member's immediate commander at  
16 the squadron level. Under ¶ **A11.6. Definitions**, the Guidelines provide as follows:

17 *A11.6.2. Commander.* A commissioner officer who occupies a  
18 position of command. *Unless otherwise specified, usually refers to*  
*the commissioned officer who is the member's immediate*  
*commander. This usually is the squadron commander* and includes  
19 squadron section commanders appointed on appropriate orders.

20 (Bold italics added).

21  
RESPONDENT'S MEMORANDUM RE  
IMPROPER INITIATION OF FACT  
FINDING INQUIRY - 3

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020

1 The *Guidelines* limit the authority of the member's immediate commander to initiate  
2 a fact finding inquiry by requiring that such inquiries only be initiated if the commander  
3 possesses credible information:

4 **A11.2. Basis for Conducting Inquiries.** A commander will initiate  
5 an inquiry *only if he or she has credible information* that a basis for  
discharge exists.

6 (Bold italics added). A basis for discharge exists if the member has engaged in a homosexual  
7 act, said that he or she is a homosexual, or has married or attempted to marry a person of the  
8 same sex. Guidelines, Attachment 11, ¶¶ A11.2.1, A11.2.2, & A11.2.3.

9 Finally, 11.3.2. reaffirms the directive that it is only the member's unit commander  
10 that can make the decision whether to initiate a fact-finding inquiry:

11 A11.3.2. *Commanders* shall exercise sound discretion regarding  
12 when credible information exists. *They shall examine the*  
13 *information and decide whether an inquiry is warranted or*  
*whether no action shall be taken.*

14 (Bold italics added).

### 15 **III. STATEMENT OF RELEVANT FACTS**

16 The evidence presented at this administrative hearing shows the following facts to be  
17 undisputed:

18 1. The allegation of homosexual conduct was initially made by a civilian who  
19 brought his allegation to the attention of General John Jumper, then Chief of Staff of the  
20 United States Air Force. General Jumper was not Major Witt's immediate commander and  
21 was not the commander of her squadron.

RESPONDENT'S MEMORANDUM RE  
IMPROPER INITIATION OF FACT  
FINDING INQUIRY - 4

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020



1           2.       General Jumper's staff forwarded the allegation to Colonel Eric Crabtree, the  
2 Commander of the 446<sup>th</sup> Wing. Colonel Crabtree was not Major Witt's immediate  
3 commander and was not her squadron commander.

4           3.       Colonel Crabtree sought advice from General Robert Duignan, the  
5 Commander of the 4<sup>th</sup> Air Force, and General Duignan made a determination that the  
6 allegation against Major Witt was supported by credible information. On July 7, 2004,  
7 General Duignan authorized a fact finding inquiry into the merits of the allegation. General  
8 Duignan communicated his authorization to Colonel Crabtree. General Duignan was not  
9 Major Witt's immediate commander and was not her squadron commander.

10           4.       Upon receipt of General Duignan's orders, on July 7, 2004 Colonel Crabtree  
11 appointed Major Adam Torem to conduct a fact finding inquiry in this case. Major Torem  
12 was not Major Witt's immediate commander and was not her squadron commander.

13           5.       Major Torem conducted an inquiry, traveled to Spokane, Washington,  
14 interviewed witnesses, and returned to McChord AFB.

15           6.       Following his return to McChord AFB, Major Torem met with Colonel Mary  
16 Walker on July 24, 2004, informed her that he had been conducting a fact finding hearing  
17 into an allegation of homosexual conduct brought against one of the officers in Colonel  
18 Walker's squadron, the 446<sup>th</sup> AES. Major Torem informed Colonel Walker that he had been  
19 appointed by Colonel Crabtree, and that he needed to interview Major Witt. This was the  
20 first time Colonel Walker knew that a fact finding inquiry had been initiated. She did not  
21

RESPONDENT'S MEMORANDUM RE  
IMPROPER INITIATION OF FACT  
FINDING INQUIRY - 5

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020

WIT004 Plds- board hi234201 9/28/06

AF001002

1 initiate it. At that time, Colonel Walker was Major Witt's immediate commander and her  
2 squadron commander.

3 7. On July 25, 2004 Major Torem attempted to interview Major Witt. She  
4 exercised her rights not to make any statements in response to the allegation at that time.  
5 Later, through counsel, she communicated that she had no response to make.

6 8. On October 20, 2004, Major Torem completed his fact finding inquiry and  
7 submitted his final report. Major Torem submitted his report to Colonel Crabtree, the Wing  
8 Commander, and not to Colonel Walker, who was Major Witt's immediate commander and  
9 squadron commander.

10 9. On November 5, 2004 Colonel Walker sent a letter to Major Witt, informing  
11 her that she was initiating an administrative separation action under AFI 36-3209, and that  
12 Major Witt was immediately barred from participating in any [ay or point activity pending  
13 resolution of the separation action.

#### 14 **IV. ILLEGALITY OF FACT FINDING INQUIRY**

15 1. It is undisputed that the fact finding hearing was not initiated by Major Witt's  
16 immediate commander. It was instead initiated by General Duignan, who was not even the  
17 commander of her wing. The decision by General Duignan to initiate a fact finding inquiry  
18 violated AFI 36-3209, ¶¶ 1.22.7, 2.33, A11.1.1, A11.2, A11.3.2 and A11.6.2.  
19  
20  
21

RESPONDENT'S MEMORANDUM RE  
IMPROPER INITIATION OF FACT  
FINDING INQUIRY - 6

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020

1           2.       It is undisputed that Major Torem was appointed by Colonel Crabtree to  
2 conduct the fact finding inquiry and to report back to Colonel Crabtree. Because this  
3 appointment was not made by Major Witt's immediate commander, it violated ¶ A11.1.2.

4           3.       It is undisputed that prior to the initiation of a fact finding inquiry, Colonel  
5 Walker made no determination that she had credible information that a basis for discharge  
6 exists. Instead this determination was made by General Robert Duignan, the Commander of  
7 the 4<sup>th</sup> Air Force. This violated ¶ 1.22.7, A11.1.1., A11.2, & A11.3.2.

8           4.       It is undisputed that the allegation was brought forward by General John  
9 Jumper, the Chief of Staff for the Air Force, and was forwarded to McChord AFB by him  
10 for further action. This was abuse of authority. Because the fact finding inquiry was  
11 initiated without her knowledge, Colonel Walker had no opportunity to follow ¶ A11.1.1 and  
12 thus was unable to ensure that no abuse of authority occurred.

13           5.       It is undisputed that Colonel Walker was not consulted before the decision to  
14 initiate a fact finding hearing was made by General Duignan, and thus she had not  
15 opportunity to prevent this abuse of authority, which also violated ¶ A11.1.1.

16           For these reasons stated above, the fact finding inquiry conducted in this case was  
17 illegal, and the inquiry violated the provisions of AFI 36-3209. Because it was illegal, the  
18 report and conclusions of the investigator should never have been presented to either  
19 Colonel Crabtree or Colonel Walker, and the initiation of this administrative separation  
20 action based on that fact finding inquiry is similarly illegal.  
21

---

RESPONDENT'S MEMORANDUM RE  
IMPROPER INITIATION OF FACT  
FINDING INQUIRY - 7

---

**CARNEY  
BADLEY  
SPELLMAN**

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020

1 **V. VIOLATION OF DUE PROCESS**

2 As noted above, AFI 36-3209 was violated in this case in several respects.  
3 Admittedly, not every agency violation of a regulation constitutes a due process violation.  
4 However, when a regulation is designed to protect the interests of the party before the  
5 agency, violation of such a regulation does constitute a due process violation:

6 The Supreme Court has long recognized that a federal agency is obliged to  
7 abide by the regulations it promulgates. [Citations]. An agency's failure to  
8 follow its own regulations "tends to cause unjust discrimination and deny  
9 adequate notice" and consequently may result in a violation of an  
10 individual's constitutional right to due process. [Citations]. *Where a  
prescribed procedure is intended to protect the interests of a party before  
the agency, "even though generous beyond the requirements that bind  
such agency, that procedure must be scrupulously observed."*

11 Sameena, Inc. v. United States Air Force, 147 F.3d 1148, 1153 (9<sup>th</sup> Cir. 1998) (bold italics  
12 added). Accord Lopez v. Fed. Aviation Admin., 318 F.3d 242, 247 (D.C. Cir. 2003).<sup>1</sup>

13 In this case, the regulation's express limitation of the authority to initiate fact  
14 finding inquiries into allegations of homosexual conduct is designed to protect the interest  
15 of Air Force members against abuse of authority and the meddling of commanders  
16 outside the member's immediate unit. Because the regulations are intended to protect  
17 service members like Major Witt, they "must be scrupulously observed." Id. In this case,  
18 they were blatantly violated. Within Major Witt's squadron, everyone was not only  
19

20 <sup>1</sup> "[T]his court has been careful to distinguish between procedural rules benefiting the agency [citation] and  
21 procedural rules benefiting the party otherwise left unprotected by agency rules [citation] . . . These distinctions  
are particularly visible in the employment context, where this court has long recognized that . . . agencies cannot  
'relax or modify' regulations that provide the only safeguard individuals have against unlimited agency  
discretion in hiring and termination."

RESPONDENT'S MEMORANDUM RE  
IMPROPER INITIATION OF FACT  
FINDING INQUIRY - 8

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020

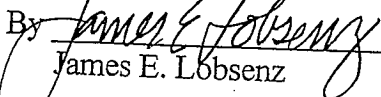
1 satisfied with her conduct, they agreed that her conduct was exemplary, that she was  
2 extremely knowledgeable, very well respected, and that she contributed in a very positive  
3 way to the morale and discipline of the unit. Instead of allowing her own squadron  
4 commander to decide "whether an inquiry is warranted *or whether no action shall be*  
5 *taken,*" as directed by ¶ A11.3.2 (italics added), higher ranking officers outside the  
6 immediate chain of command interfered and made the determinations which the squadron  
7 commander was supposed to make. This violation of regulations intended to protect  
8 Major Witt and her immediate commander from such outside interference not only  
9 violated AFI 36-3209, it also violated the due process clause of the Fifth Amendment.

#### 11 VI. CONCLUSION


12 Fore the reasons stated above, respondent asks this Board to determine that she  
13 should be retained in the United States Air Force Reserve.

14 DATED this 28th day of September, 2006.

15 CARNEY BADLEY SPELLMAN, P.S.

16 By   
17 James E. Lobsenz

18 HQ AF RESERVE COMMAND

19 By   
20 Kevin D. Catron, Captain USAF  
21 Chief, Defense Services

Attorneys for Respondent Major Margaret H. Witt

RESPONDENT'S MEMORANDUM RE  
IMPROPER INITIATION OF FACT  
FINDING INQUIRY - 9

WIT004 Plds- board hi234201 9/28/06

CARNEY  
BADLEY  
SPELLMAN

LAW OFFICES  
A PROFESSIONAL SERVICE CORPORATION  
701 FIFTH AVENUE, #3600  
SEATTLE, WA 98104-7010  
FAX (206) 467-8215  
TEL (206) 622-8020

