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2
3 Honorable Ronald B. Leighton
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7 UNITED STATES DISTRICT COURT
8 WESTERN WASHINGTON
9 AT TACOMA DIVISION

10
11 MAJOR MARGARET WITT,

12 Plaintiff,

13 v.

14 UNITED STATES DEPARTMENT OF THE
15 AIR FORCE; et al.,

16 Defendants.
17
18
19

Case No. C06-5195-RBL

DECLARATION OF SARAH DUNNE IN
SUPPORT OF PLAINTIFF'S REPLY IN
SUPPORT OF MOTION FOR SANCTIONS
DUE TO SPOILIATION OF EVIDENCE

**NOTE ON MOTION CALENDAR:
AUGUST 13, 2010**

ORAL ARGUMENT REQUESTED

20
21 Pursuant to 28 U.S.C. § 1746, I, Sarah Dunne, hereby declare as follows:

22 1. I am counsel for Plaintiff and have personal knowledge of the facts contained in
23 this Declaration.

24 2. Attached hereto as Exhibit A are true and correct copies of excerpts from the
25 deposition of General Eric W. Crabtree, dated March 24, 2010.

26 3. Attached hereto as Exhibit B is a true and correct copy of documents numbered
27 AF026763-768 as produced by Defendants.

28 4. Attached hereto as Exhibit C is a true and correct copy of a memo as produced by
29 Defendants, from Colonel Eric Crabtree to Major Adam Torem and is dated October 1, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2010, I electronically filed this *Declaration of Sarah Dunne in Support of Reply in Support of Motion For Sanctions Due to Spoliation of Evidence* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Peter Phipps

peter.phipps@usdoj.gov

Marion J. Mittet

Jamie.Mittet@usdoj.gov

Bryan R. Diederich

bryan.diederich@usdoj.gov

Stephen J. Buckingham

Stephen.Buckingham@usdoj.gov

Attorneys for Defendants

DATED this 6th day of August, 2010.

AMERICAN CIVIL LIBERTIES UNION OF
WASHINGTON FOUNDATION

By: /s/ Nina Jenkins

Nina Jenkins

Legal Program Assistant

901 Fifth Avenue #630

Seattle, WA 98164

Tel. (206) 624-2184

njenkins@aclu-wa.org

EXHIBIT A

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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

NO. C06-5195-RBL

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

1 have been relatively quick. Normally, those things do
2 not take long.

3 BY MR. LOBSENZ:

4 Q Can you be pretty confident that it was after
5 May 18, 2004?

6 A Yes.

7 MR. DIEDERICH: Objection to form.

8 BY MR. LOBSENZ:

9 Q So sometime between May 18, 2004 and early July,
10 we can narrow it down to that period with relative
11 certainty?

12 A Yes.

13 Q Okay. Were you sent by Air Force Reserve
14 Command the complaint -- I think that's the word you
15 used -- that was sent to General Jumper?

16 A No.

17 Q You weren't. Did you ever see the e-mail
18 complaint that was sent to General Jumper?

19 A Not to my recollection.

20 Q Okay. So you get these orders from General
21 Sherrard. And does he say in his orders to you that he
22 got these from General Jumper or from General Jumper's
23 staff?

24 MR. DIEDERICH: Objection to form.

25 THE WITNESS: Yes. It was made clear that the

1 July 7th, he says in paragraph two: "I have reviewed the
2 evidence."

3 Do you know what evidence he's talking about?

4 A No. I would -- I would assume he was talking
5 about the letter that came designated telling us to do
6 the investigation and the allegations.

7 Q Are you assuming that is this letter the letter
8 that was sent to General Jumper or what letter are you
9 talking about?

10 MR. DIEDERICH: Objection to form.

11 THE WITNESS: I would believe that it was the
12 information coming from General Jumper's office with an
13 outline of the allegations.

14 BY MR. LOBSENZ:

15 Q Okay. So your belief is that he did not see the
16 underlying complaint from whoever complained to General
17 Jumper?

18 MR. DIEDERICH: Objection to form.

19 THE WITNESS: I would believe not.

20 BY MR. LOBSENZ:

21 Q Okay. Did you ever, at any time, hear the name
22 of the person who made the complaint to General Jumper?

23 A I did. I know it was a Mr. McChesney.

24 Q And you do not have any recall of ever reading
25 the actual letter or e-mail sent by McChesney to the Air

1 Force?

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

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

5 A Not that I recall.

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

8 A No.

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

12 A No.

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

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

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

21 A Exactly, yes.

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

1 MR. DIEDERICH: Objection to form.

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

4 BY MR. LOBSENZ:

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

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

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

15 MR. DIEDERICH: Objection to form.

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

18 BY MR. LOBSENZ:

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

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

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

1 Who are you concurring with?

2 A The Judge Advocate's Office prepares -- they do
3 a legal review and prepare a letter that's attached to
4 the file saying that they believe the case --

5 MR. DIEDERICH: I don't want you to get into the
6 specific content of what the Judge Advocate General would
7 say to you.

8 THE WITNESS: Okay.

9 BY MR. LOBSENZ:

10 Q I don't want to ask about that either. I'm just
11 looking for the identity of the person that you're
12 concurring with. And that's some person within the Judge
13 Advocate General's office on base at McChord?

14 A That's correct.

15 Q And this, I think, you could answer if there's
16 no -- would that be Gerringer or do you know?

17 A It would be.

18 Q Okay. So when this sentence says: "Forwarded
19 is the legal review of the Commander's recommendation,"
20 who is the "Commander"? What's the identity of the
21 "Commander" in that sentence?

22 A That would be Coronal Walker.

23 Q I see.

24 The court reporter's handed you Exhibit No. 7,
25 which, as you can see, is redacted so that the entire

1 A No, I don't remember discussing it with her.

2 Q Or with Coronal Janette Moore-Harbert, do you
3 remember discussing it with her ever?

4 A No.

5 Q Did she ever come to you and inquire whether she
6 had the authority to retract or countermand Coronal
7 Walker's recommendation?

8 A No, I don't remember ever having that
9 conversation.

10 Q Do you remember getting any communication from
11 Air Force Robins from Reserve Headquarters asking for
12 further information or further consideration of the case?

13 A No, I don't remember any conversations or
14 information.

15 Q Other than Major Witt, have you had any prior
16 experience, while in the Air Force, with any
17 investigations or discharges of any service member on the
18 grounds that they were suspected of being gay or lesbian?

19 A Prior?

20 MR. DIEDERICH: Objection. Before you answer, I
21 just want you to exclude the names, because I think they
22 are probably covered by the privacy act.

23 MR. LOBSENZ: Right now I'm just asking yes or
24 no.

25 MR. DIEDERICH: Okay. That's fair.

1 THE WITNESS: Prior to this case?

2 MR. LOBSENZ: Yes.

3 THE WITNESS: Not prior to this case, no.

4 BY MR. LOBSENZ:

5 Q So this was the first one ever that you'd ever
6 been involved with?

7 A Yes.

8 Q Okay. Since Major Witt, you have been involved
9 in subsequent investigations for discharges of a gay or
10 lesbian service member?

11 A Yes.

12 Q How many?

13 A Two.

14 Q Two more?

15 A Yes.

16 Q I don't want to know names, but were either of
17 those at Air Force Base McChord?

18 A No.

19 Q What base were they at?

20 A The Air Reserve Personnel Center in Denver.

21 Q I don't want to know names, but what would your
22 role have been in each of those?

23 MR. DIEDERICH: Objection to form.

24 THE WITNESS: In those cases, I was their direct
25 commander.

EXHIBIT B

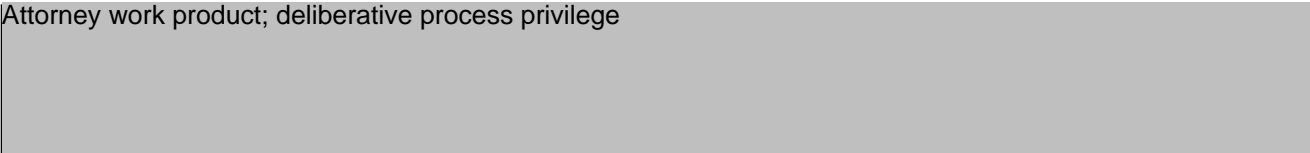
From: Dapper James Lt Col AF/JAA
Sent: Tuesday, July 18, 2006 4:15 PM
To: Ramey Robert Lt Col AF/JAA
Subject: FW: Major Margaret Witt (SENSITIVE)
Attachments: Maj_Witt_Declaration.pdf; ATT613605.txt; Melinda_Declaration.pdf; ATT613606.txt; Heather_Declaration.pdf; ATT613607.txt; Halverson_Declaration.pdf; ATT613608.txt

-----Original Message-----

From: Dent Joseph Col AFRC/JA
Sent: Wednesday, April 12, 2006 9:15 AM
To: Dapper James Lt Col AF/JAA
Subject: Major Margaret Witt (SENSITIVE)

Jim,

Attorney work product; deliberative process privilege



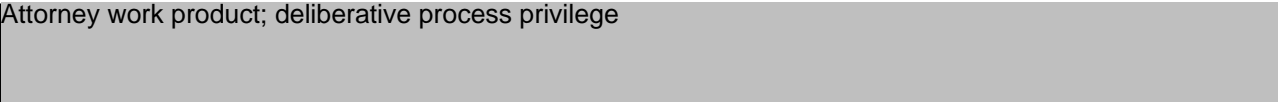
JFD

-----Original Message-----

From: Dent Joseph Col AFRC/JA
Sent: Thursday, June 17, 2004 2:46 PM
To: 'dclark@mcclellanpark.com'
Subject: Major Margaret Witt (SENSITIVE)

Donna,

Attorney work product; deliberative process privilege




JFD

-----Original Message-----

From: Dent Joseph Col AFRC/JA
Sent: Thursday, June 17, 2004 2:41 PM
To: Geringer Stephen R Maj 446 AW/JA; Ballenger Rebecca J Capt 446 AW/JA
Cc: Mark Pope (Mark.Pope@USDOD.GOV); Bourne Brian LtCol AFRC/JA; Evans Brent Col AFRC/JA
Subject: Major Margaret Witt (SENSITIVE)

Steve,

Attorney work product; deliberative process privilege



Attorney work product; deliberative process privilege

JFD

~~Sub~~--Original Message-----

From: Wilder Harlan G Civ AF/JAA

Sent: Thursday, June 17, 2004 11:04 AM

To: Dent Joseph Col AFRC/JA

Cc: Peterson Richard Civ AF/JAA; Holtz Donald Lt. Col AF/JAA

Subject: RE: Major Margaret Witt (SENSITIVE)

Attorney work product; deliberative process privilege

~~Sub~~--Original Message-----

From: Peterson Richard Civ AF/JAA

Sent: Thursday, June 17, 2004 10:19 AM

To: Wilder Harlan G Civ AF/JAA

Subject: FW: Major Margaret Witt (SENSITIVE)

Attorney work product; deliberative process privilege

R P

-----Original Message-----

From: Dent Joseph Col AFRC/JA
Sent: Thursday, June 17, 2004 9:41 AM
To: Peterson Richard Civ AF/JAA
Subject: Major Margaret Witt (SENSITIVE)

Mr. P,

Attorney work product; deliberative process privilege

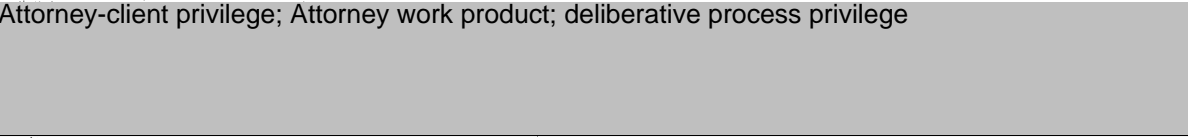


Joe

-----Original Message-----

From: Batbie John J Jr MajGen AFRC/CV
Sent: Thursday, June 17, 2004 12:14 AM
To: Dent Joseph Col AFRC/JA
Cc: Bailey Robert E Col AFRC/IG; Lytle Robert E BGen AFRC/ACV
Subject: FW: Major Margaret Witt (SENSITIVE)

Attorney-client privilege; Attorney work product; deliberative process privilege



-----Original Message-----

From: Long Kathleane Civ AFRC/CV
Sent: Wednesday, June 16, 2004 1:46 PM
To: Batbie John J Jr MajGen AFRC/CV
Subject: FW: Major Margaret Witt (SENSITIVE)

-----Original Message-----

From: Apple Steve Col AF/RE [mailto:Steve.Apple@pentagon.af.mil]
Sent: Wednesday, June 16, 2004 10:51 AM

To: Long Kathleane Civ AFRC/CV
Subject: FW: Major Margaret Witt (SENSITIVE)

-----Original Message-----

From: Apple Steve Col AF/RE
Sent: Wednesday, June 16, 2004 10:47 AM
To: Lehr Michael W Col AFRC/CVE
Cc: Rajczak William Brig Gen AF/RE
Subject: FW: Major Margaret Witt (SENSITIVE)

Mike,

This came from Gen Jumper's office. It is a commander issue. IT is also very sensitive

-----Original Message-----

From: Fedder Judy Col AF/CC
Sent: Tuesday, June 15, 2004 3:47 PM
To: Apple Steve Col AF/RE
Subject: FW: Major Margaret Witt

Steve--per our discussion. My response to Mr McChesney, for the Chief, will be that this was forwarded to the right office for appropriate action.

Cheers--

Judy

-----Original Message-----

From: Fedder Judy Col AF/CC On Behalf Of Jumper John Gen AF/CC
Sent: Monday, June 14, 2004 17:18
To: Fedder Judy Col AF/CC
Subject: FW: Major Margaret Witt

-----Original Message-----

From: Pat McChesney [mailto:patmcchesney@att.net]
Sent: Monday, June 14, 2004 17:08
To: Jumper John Gen AF/CC
Subject: Major Margaret Witt

General John Jumper:

On 1 December 2003 my wife, Laurie McChesney, informed me she was leaving me for Major Margaret Witt, USAF Reserve. Laurie and I had been married for nearly 22 years and had three children, ages 13, 19 and 21 together.

My wife's relationship changed dramatically on 31 October 2003 when Major Witt's then six year lesbian partner, Tiffany Jenson, informed Major Witt that she was pregnant. Tiffany and Major Witt had for some time planned to have Tiffany artificially inseminated. My wife and I

were attending a family Halloween party that night. Major Witt called and asked my wife to leave the party. My wife told me her friend Major Witt was despondent, hysterical and suicidal due to the devastating news that Tiffany was pregnant.

Laurie admitted to me and several others in sworn declarations filed in the subsequent divorce proceedings that her friendship with Major Witt became romantic in November 2003. She and Major Witt spent the night together on 31 October 2003, 3 November 2003, 6 November 2003, 8 November 2003 and 31 December 2003 that I am aware of.

I initiated divorce proceedings in an effort to have my wife removed from my home where I was living with my 13 year-old son, Sam McChesney, where my wife continued her adulterous love affair with Major Witt by phone from the home. Laurie told me on several occasions she was going to move in with Major Witt once the divorce was final.

In Laurie's response to the divorce filing, a sworn declaration was submitted by Major Witt on her behalf. In her Declaration Major Witt attempts to paint me as a danger to my son Sam based on my reaction to 1) the devastating news of 1 December 2003 that my wife was a lesbian in love with Major Witt and going to leave me and 2) my reaction two days later on 3 December 2003 when my wife left my home to "get some space" and specifically told me she was NOT going to Major Witt's house. She in fact did go to Major Witt's house, picked her up and the two of them went to another lesbian couples house to spend the night. My wife has specifically told me on her way out of the house she was NOT going to Major Witt's house and told me to call her cell phone if I didn't believe her. Prior to the traumatic news on 1 December, my wife had repeatedly denied to me that her relationship with Major Witt more than just professional. Major Witt and my wife work together daily for the Spokane Public School District.

Major Witt never states in her sworn declaration that her adulterous love affair with my wife and the betrayal of our friendship was the cause of my extreme emotional trauma, the break up of my twenty-two year marriage and my family.

Major Witt also spends considerable time in her declaration portraying herself as the benevolent safe harbor for my son Sam while portraying me as the dangerous unstable unpredictable ill-tempered father.

In my opinion, Major Witt's adulterous love affair with my wife and the sworn Declaration she filed which clearly contains half-truths, lies and self-serving statements attempting to separate me from my son is amoral and perjurious. I believe she is a potential predator to other heterosexual women in the armed services and her behavior and statements in her sworn declarations demonstrates her willingness to go extreme measures to get what she wants.

It was only after serious consideration over the last few months that I decided to report the conduct of Major Witt to the Air Force. All of those who have been or are currently on active or reserve duty in the armed forces who know of my circumstances encouraged me to report her conduct. I did not consult with my Godfather, Admiral Jackson D Arnold, USN, Ret. due to his age and the recent death of his wife Muriel.

I am willing to provide additional information if the Air Force decides this warrants further investigation. Tiffany Jenson is also willing to provide further information regarding Major Witt including information regarding an affair Major Witt had with a female teacher while attending junior high school.

I believe Major Witt operates out of McChord Air Force base in Tacoma Washington.

List of attachments (all declarations filed with Spokane Superior Court under penalty of perjury):

- 1) Declaration of Major Witt dated January 14, 2004 (Maj_Witt_Declaration.pdf). See paragraph for Major Witt's description of her relationship with my wife.
- 2) Declaration of Melinda McChesney (Melinda_Declaration.pdf). See page 5 line 7 for the beginning of my wife's description of her relationship with Major Witt.
- 3) Declaration of Heather McGuinness (Heather_Declaration.pdf). See paragraph 5 through 7.
- 4) Declaration of Bridgette Halverson (Halverson_Declaration.pdf). See paragraph 2 through 7.

Please contact me if you require additional information: =====
Pat D McChesney 326 W. 6th Ave. Apt 301 Spokane, WA 99204
patmcchesney@att.net 509 217 5058 (mobile home phone) 509 991 5880 (cell)
775 599 2249 (fax) =====

EXHIBIT C

DEPARTMENT OF THE AIR FORCE

Headquarters 446 Airlift Wing (AFRC)
McChord Air Force Base, Washington 98438-1326

1 Oct 2004

MEMORANDUM FOR MAJOR ADAM TOREM

FROM: 446 AW/CC

SUBJECT: Homosexual Conduct Fact-Finding Inquiry

1. I am in receipt of your interim Report of Inquiry regarding Major Margaret Witt, 446 AES. Because the Spokane County, Washington Superior Court cause number 04-3-00010-4 court file is sealed, I am returning my only copy of court records you included with your interim Report of Inquiry. [REDACTED]

[REDACTED] When you submit your final report, court sealed documents may not be part of, or relied on in, the report.

2. If you have any further questions please contact Capt Jacobsen or Major Stephen Geringer, 446 AW/JA at (253) 982-6587 or DSN 382-6587. Please submit your final report by 20 October 2004.

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

Attachment:

Court Records

EXHIBIT D

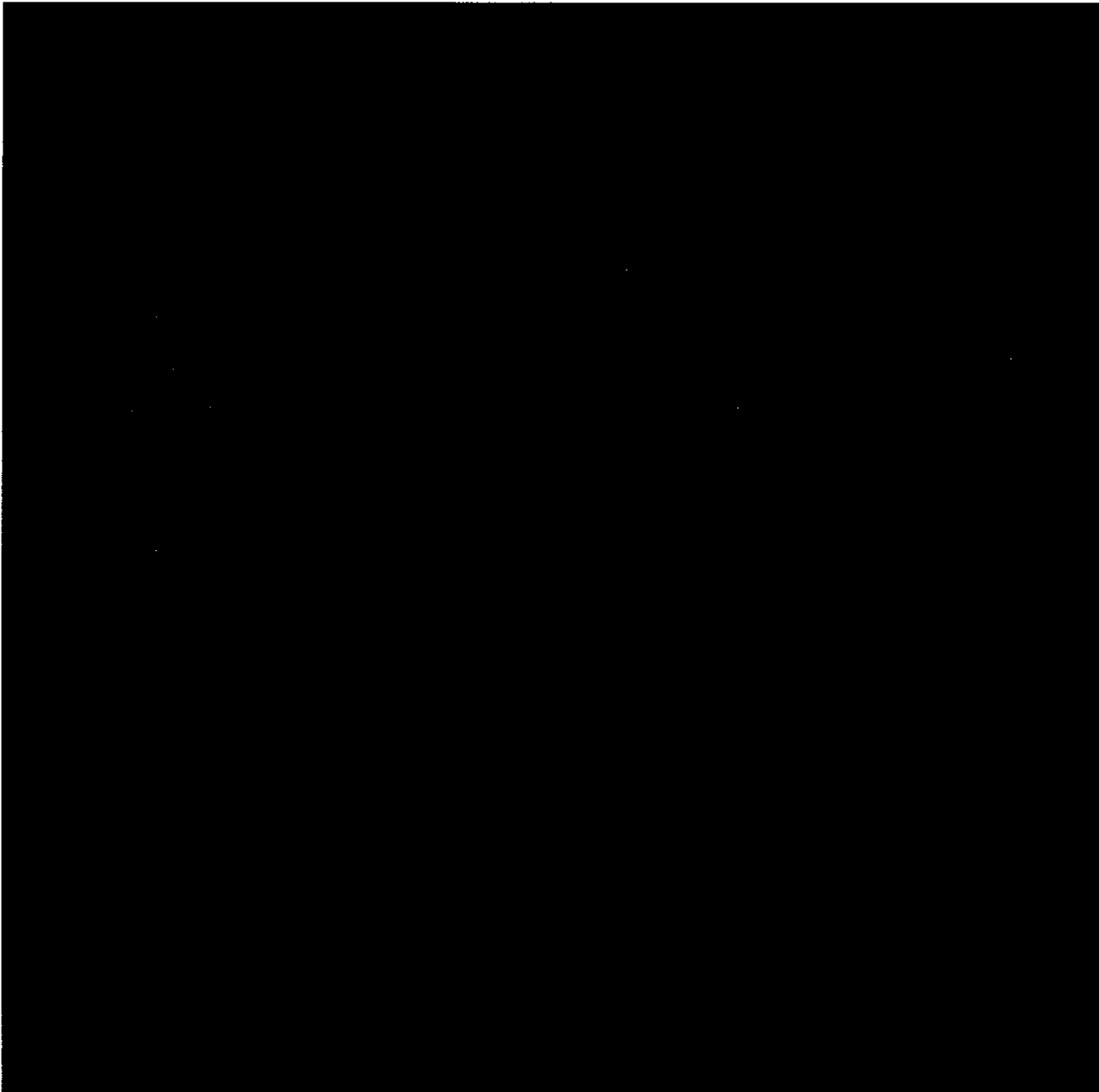
DEPARTMENT OF THE AIR FORCE
Headquarters 446 Airlift Wing (AFRES)
McChord Air Force Base, Washington 98438-1326

MEMORANDUM FOR 446 MSS/DPMAR

8 Dec 2004

FROM: JA

SUBJ: Legal Review of Commander's Recommendation for Administrative Discharge of
Major Margaret H. Witt, SSN [REDACTED]





STEPHEN R. GERINGER, Lt Col, USAFR
Staff Judge Advocate

Attachments:

1. Discharge case file, 6 Nov 04
2. Declaration of Major Torem, 10 Nov 04
3. Denial of Pay and Points Memo, 5 Nov 04
4. Interim Report of Major Torem, 14 Sep 04

EXHIBIT E

SARAH DUNNE
LEGAL DIRECTOR

NANCY TALNER
STAFF ATTORNEY

ROSE SPIDELL
STAFF ATTORNEY
FLOYD AND DELORES JONES
FAMILY FELLOW

SHER KUNG
PERKINS COIE FELLOW

LINDSEY SOFFES
ROPES & GRAY FELLOW



May 11, 2010

Via E-mail

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

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

JESSE WING
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

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

Dear Bryan and Steve,

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

Requests Nos. 1-8, 10 and 11

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

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

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

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

Request Nos. 25 and 31

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

Request Nos. 33-36

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

Letter to DOJ
May 11, 2010
Page 3

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

Sincerely,

A handwritten signature in blue ink that reads "Sarah A. Dunne". The signature is written in a cursive style with a large initial 'S'.

Sarah A. Dunne
Legal Director

cc: James Lobsenz