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Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN WASHINGTON
AT TACOMA DIVISION

MAJOR MARGARET WITT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE AIR FORCE; ET AL.,

Defendants.

No. C06-5195 RBL

DECLARATION OF MICHELLE
MCCLUER IN SUPPORT OF REPLY
MEMORANDUM FOR MOTION
FOR SANCTIONS DUE TO
SPOILIATION OF EVIDENCE

**NOTE ON MOTION CALENDAR:
AUGUST 6, 2010**

ORAL ARGUMENT REQUESTED

I, MICHELLE MCCLUER, do hereby declare as follows:

1. I am over the age of 18 years, have personal knowledge of the facts contained in this Declaration and am competent to testify to them.

2. I served on active duty as a judge advocate (“JAG”) in the United States Air Force from 1997 to 2008. I served as a prosecutor, a base defense counsel, and a senior defense counsel in courts-martial throughout the western United States and the Pacific Rim. In 2003, I began a three-year assignment as an appellate counsel, writing briefs and arguing cases before the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces. I spent

1 my final two years on active duty as the Assistant Director of the legal office at Andrews Air
2 Force Base in Maryland, home of Air Force One.

3 3. Since September 2008, I have served as the Executive Director of the National
4 Institute of Military Justice at American University Washington College of Law in Washington,
5 DC. I list my affiliations for background and identification purposes only. I make this
6 declaration in my individual capacity, not as a representative of the Department of Defense or the
7 National Institute of Military Justice (“NIMJ”), nor do I take a position as to the merits of this
8 motion or the pending case as a whole.

9 4. Attached hereto as Exhibit A is a copy of documents numbered AF026763-
10 AF026768, which Plaintiff’s counsel provided to me for review.

11 5. Attached hereto as Exhibit B is a copy of documents numbered AF026769-
12 AF026773, which Plaintiff’s counsel provided to me for review.

13 6. I have reviewed the email strings attached as Exhibits A and B. With the
14 exceptions of General Jumper and Major General John Batbie (AFRC/CV), none of the
15 recipients in the string of the emails are commanders in Major Witt's chain of command. The
16 “AFRC/CV” position is the second-highest position in the Air Force Reserve Command, though
17 he generally does not have command authority to order an investigation. It is, however, possible
18 that an AFRC/CV may have had temporary command authority if he was “on G-series orders.”
19 Other than General Jumper and possibly Major General Batbie, none of the other addressees
20 have authority to order an investigation into allegations of homosexual conduct.

21 7. In general, JAG officers do not have command authority in the U.S. Air Force.
22 JAG officers are advisors, not commanders (with the exception of one JAG position in the Air
23 Force, the Air Force Legal Operations Agency Commander, who has command authority over
24 paralegals and other JAGs). JAG officers cannot give orders to commanders. Accordingly, a
25 JAG officer has no authority to order an inquiry into allegations of homosexual conduct.

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8. The addressees on the email strings containing the "JA" notation are JAGs or civilian attorneys, none of whom have the authority to order an investigation into homosexual acts. The "IG" notation represents individuals who work in various Inspector General offices and can conduct investigations themselves, but they cannot order a commander to do an investigation.

I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on August 5, 2010 in Washington, D.C.

Michelle M. Linda McCluer
Michelle McCluer

1 **CERTIFICATE OF SERVICE**

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

6 Peter Phipps

7 peter.phipps@usdoj.gov

8 Marion J. Mittet

9 Jamie.Mittet@usdoj.gov

10 Bryan R. Diederich

11 bryan.diederich@usdoj.gov

12 Stephen J. Buckingham

13 Stephen.Buckingham@usdoj.gov

14
15 Attorneys for Defendants

16 DATED this 6th day of August, 2010.

17
18 AMERICAN CIVIL LIBERTIES UNION OF
19 WASHINGTON FOUNDATION

20 By: /s/ Nina Jenkins

21 Nina Jenkins

22 Legal Program Assistant

23 901 Fifth Avenue #630

24 Seattle, WA 98164

25 Tel. (206) 624-2184

26 njenkins@aclu-wa.org

EXHIBIT A

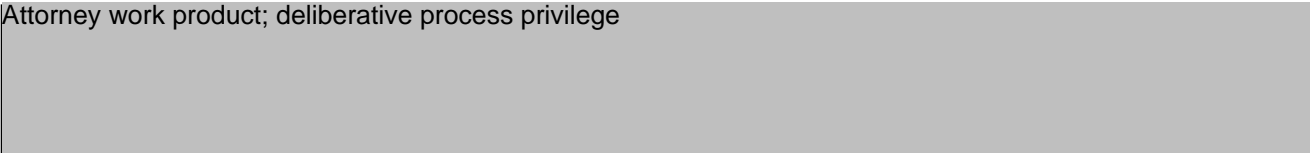
From: Dapper James Lt Col AF/JAA
Sent: Tuesday, July 18, 2006 4:15 PM
To: Ramey Robert Lt Col AF/JAA
Subject: FW: Major Margaret Witt (SENSITIVE)
Attachments: Maj_Witt_Declaration.pdf; ATT613605.txt; Melinda_Declaration.pdf; ATT613606.txt; Heather_Declaration.pdf; ATT613607.txt; Halverson_Declaration.pdf;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



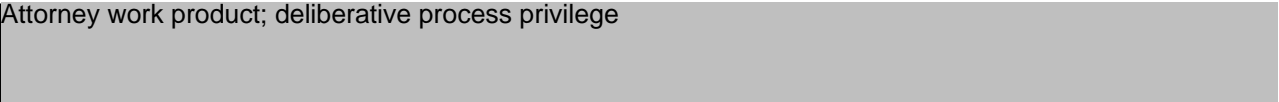
JFD

-----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

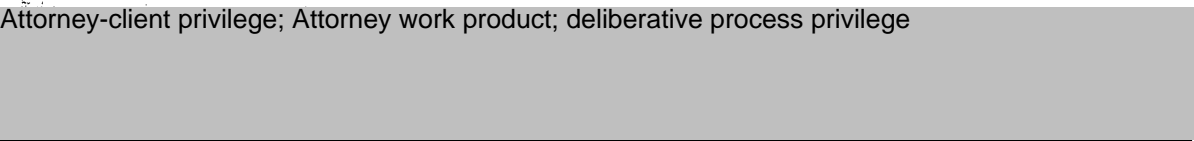


Joe

-----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
patmccchesney@att.net 509 217 5058 (mobile home phone) 509 991 5880 (cell)
775 599 2249 (fax) =====

EXHIBIT B

From: Wilder Harlan G Civ AF/JAA
Sent: Friday, April 14, 2006 8:33 AM
To: Sams Ronald Lt Gen SAF/IG
Cc: Dapper James Lt Col AF/JAA; Rives Jack Maj Gen AF/JA
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

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

VR Gordon Wilder


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@USDOJ.GOV); Bourne Brian LtCol AFRC/JA; Evans Brent Col AFRC/JA
Subject: Major Margaret Witt (SENSITIVE)

Steve,

Attorney work product; deliberative process privilege



JFD

-----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



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

From: Dent Joseph Col AFRC/JA

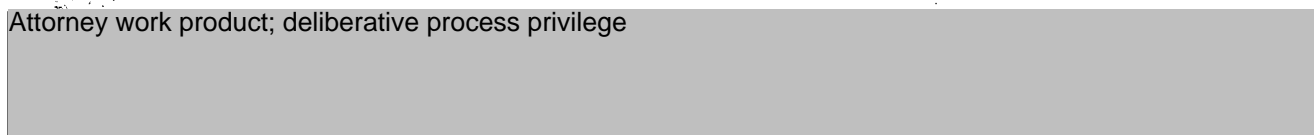
Sent: Thursday, June 17, 2004 9:41 AM

To: Peterson Richard Civ AF/JAA

Subject: Major Margaret Witt (SENSITIVE)

Mr. P,

Attorney work product; deliberative process privilege



AF026770

-----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:

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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 couple's 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.

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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.

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- 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) =====