

1 THE HONORABLE RONALD B. LEIGHTON

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

10 MAJOR MARGARET WITT,

11 Plaintiff,

12 v.

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

15 Defendants.

Case No. C06-5195-RBL

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PROTECTIVE ORDER
PROHIBITING INTERFERENCE
WITH NON-PARTY WITNESSES BY
DEFENDANTS**

16
17 Pending before the Court is Plaintiff's Motion for Protective Order Prohibiting
18 Interference With Non-Party Witnesses by Defendants. Having considered all argument
19 submitted by the parties and finding good cause, the Court hereby **GRANTS** Plaintiff's motion
20 for a protective order and **HOLDS** that the Department of Defense ("DoD") *Touhy* regulations,
21 specifically 32 C.F.R. §§97.1-.6, DoD Directive 5405.2, and Air Force Instruction (AFI) 51-301,
22 Chapter 9, do not apply to this litigation because the federal government is a party. The Court
23 further **FINDS** that the Defendants' instruction to non-party former and current Air Force
24 employees requiring Air Force consent before non-party former and current Air Force employees
25 may voluntarily speak with counsel for Plaintiff concerning this litigation is contrary to
26 Washington Rules of Professional Conduct 3.4(a).

[PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION
FOR PROTECTIVE ORDER PROHIBITING INTERFERENCE
WITH NON-PARTY WITNESSES BY DEFENDANTS -- Page 1
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AMERICAN CIVIL LIBERTIES UNION
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1 As a remedy, the Court further **ORDERS** the counsel for Defendants to issue a curative
2 instruction in writing to all current unit members of the 446 AES stating as follows:

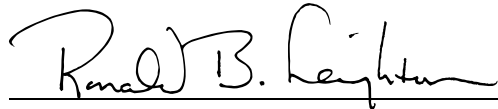
3 “Instruction re: Witt v. Air Force

4 Prior briefings regarding required procedures if contacted by Major Witt’s attorneys in
5 the above lawsuit are no longer applicable. Thus, unit members do not need to report to
6 Public Affairs or to Command if contacted by Plaintiff’s counsel. Unit members do not
7 need permission from DoD personnel to speak with Plaintiff’s counsel in the above case.
8 If you are contacted by Plaintiff’s counsel you may, but are not required to, talk to that
9 person. Public Affairs and or Command would prefer to have a person present when you
10 are interviewed but cannot require prior consent or impose participation or attendance by
11 a government representative.

12 The above written briefing overrides any previous contrary briefing regarding this
13 matter.”

14 **IT IS SO ORDERED.**

15 DATED this 17th day of May, 2010.

16 

17 RONALD B. LEIGHTON
18 UNITED STATES DISTRICT JUDGE

19 Presented By:

20 DATED this 16 day of April, 2010.

21 ACLU OF WASHINGTON FOUNDATION

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