

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JIM A. TURNER,

Plaintiff,

V.

CIVIL ACTION NO.:

**1:97CV01653
(PLF)**

UNITED STATES NAVY, *et al.*,

Defendants.

RULE 56(F) DECLARATION OF ALLAN B. MOORE

Allan B. Moore hereby declares as follows:

1. I am counsel for plaintiff and a member in good standing of the bar of this Court, the bar of the District of Columbia, and the bars of several other courts and jurisdictions. I submit this declaration, pursuant to Rule 56(f) of the Federal Rules of Civil Procedure, in support of plaintiff's request for discovery.

2. On the basis of a careful assessment of plaintiff's allegations and the current record, I believe that, to present his claims fully and responsibly, plaintiff needs discovery for the reasons set forth in Plaintiff's Rule 56(f) Memorandum and for the reasons detailed in Part II of Plaintiff's Counterstatement of Material Facts.

3. In particular, discovery is necessary to determine:

- a. which versions of which regulations were actually applied to plaintiff at each stage of the administrative proceedings in question;
- b. what information was expressly considered by (i) the ANTIETAM's command during the NJP proceeding, (ii)

the administrative discharge board during its proceeding, and (iii) the Board for Correction of Naval

Records during its proceeding,- (i.e., what constitutes the complete and discrete record for each of the three administrative proceedings at issue);

- c. why defendants changed their sworn certification for Volumes III and IV of the current record between November 14, 1997 and November 20, 1997; why they have supplemented the record with "other records regarding Mr. Turner;" and what those "other records" are (*see* November 20, 1997 certification for Volumes III-IV);
- d. what information defendants considered or failed to consider in assessing whether they had "credible information," within the meaning of DoD Directive No. 1332.14, to pursue their charges against plaintiff;
- e. to what extent the ANTIETAM's command suggested, coerced, or unduly influenced the allegations or testimony of Seaman Maurer (or plaintiff's other two accusers) --whether by threats, intimidation, cajoling, or improperly promising favorable treatment (e.g., in the handling of Maurer's request for an early separation from the Navy);
- f. whether the ANTIETAM's command intentionally misrepresented the facts and state of the record to the NJP Appeal Authority, the ADB, or the BCNR (*see, e.g., R.* 1233);
- g. whether defendants or the ANTIETAM's command excluded from the record material evidence that properly should be considered part of the record; and
- h. whether plaintiff has been treated in an evenhanded manner without any discriminatory animus based on the fact that he was alleged to be gay.

4. For these reasons, plaintiff reasonably needs and should be allowed to serve requests for production not exceeding 25 in number. In addition, plaintiff reasonably needs and should be allowed to serve 25 interrogatories and pursue five

depositions, as would be customary in cases (like this one) that have been assigned to the Standard Track.

5. Attachment A hereto is a true and correct copy of defendants' final "Report and Disposition of Offenses" (R. 55-56), as annotated by undersigned counsel to reflect the ADB's rulings on each of the charges and specifications against plaintiff, to the extent that those rulings can be determined from the ADB's oral explanation of its findings at the conclusion of the ADB proceeding (*see* R. 157-60).

6. Attachment B hereto is a true and correct copy of the certification, dated November 14, 1997, for Volumes III and IV of the current record, as received by plaintiff's counsel from defendants' counsel in the mails on November 28 or 29, 1997.

7. Attachment C hereto is a true and correct copy of DoD Directive No. 1332.14 (Mar. 4, 1994), as that directive existed and was in effect on the date of plaintiff's NJP and ADB proceedings. For reasons that are not clear to undersigned counsel, this Directive has not yet been reproduced in the Code of Federal Regulations.

I declare under the penalty of perjury that the foregoing is true and correct.

Allan B. Moore

Executed on: January 15, 1998

