

**IN THE 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.

PLAINTIFF'S REQUESTS FOR PRODUCTION

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff Jim A. Turner requests that Defendants produce all responsive Documents requested herein at the offices of undersigned counsel as soon as practicable and, in any event, within thirty (30) days of the service of these Requests.

INSTRUCTIONS

1. These requests require the production of all responsive Documents within the sole or joint possession, custody, or control of any Defendants, including, without limitation, any such Documents that lie within the possession, custody, or control of any agents, agencies, departments, attorneys, employees, consultants, investigators, representatives, or other persons or entities acting for, or otherwise subject to the control of, any Defendants.

2. These requests are continuing in nature and require prompt supplemental responses for any and all responsive Documents that come into any Defendant's sole or joint possession, custody, or control after the service of any initial responses hereto.

3. Each of these requests requires a separate answer. For each Document,

indicate the Request to which it responds.

4. Pursuant to Rule 34(b), all responsive Documents are required to be produced either (a) as they are kept in the usual course of business (together with copies of any file labels or binder covers for the files or binders in which they are maintained) or (b) organized and labelled to correspond with the categories of the Requests to which they respond.

5. For any responsive Document or portion thereof that is either redacted or withheld, in whole or in part, on the basis of any assertion of privilege or other asserted exemption from discovery, identify (a) the title or identity of the Document; (b) the date of the Document; (c) the type or nature of the Document; (d) the identity, title or responsibilities, and relationship to Defendants of all persons who either prepared or received the Document; (e) the type and nature of the privilege or exemption asserted; and (f) the contents or subject matter of the Document, with sufficient detail to explain the basis for the privilege or exemption asserted (*see Fed. R. Civ. P. 26(b)(5)*). For any such responsive Document or portion thereof that may not properly be redacted or withheld in its entirety, produce each and every portion thereof to which the claimed privilege or exemption does not apply and specify, on the face of each such page or portion, the fact and reason for the redaction or withholding.

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6. Wherever possible or necessary to render a given Request more inclusive than it otherwise might be, the singular should be construed to include the plural, and vice versa, the disjunctive should be construed to include the conjunctive, and vice versa; any verb tense should be construed to include other tenses; and any reference to one gender should be construed to include the other.

DEFINITIONS

7. "Defendant" means any and all named defendants in this action, both individually and jointly.

8. "Document" is used in the broadest sense permissible under Federal Rule

34 to encompass and mean

product of any method of recording information, whether by writing or otherwise, including without

limitation:

any written, electronic, or computerized files, data, or software;
memoranda; correspondence; communications; reports; summaries;
studies; analyses; evaluations; notes or notebooks; indices; logs; books,
booklets, or binders; pamphlets; calendar or diary entries; ledger entries;
press clippings; graphs; tables; charts; drawings; maps; meeting minutes;
photographs; transcripts; audio or video recordings or tapes; facsimile
transmissions; electronic mail messages; naval traffic messages;
administrative decisions, orders, or rulings; and the like.

The term "Document" should be construed to encompass all responsive Documents and related materials of any nature and each and every copy or draft of a Document that is not identical to the original or to any other copy or draft.

9. "Plaintiff" means Mr. Jim A. Turner, the named plaintiff in this action.

10. "Refer to" and "relate to" mean referencing, constituting, representing, defining, depicting, concerning, embodying, reflecting, identifying, stating, mentioning,

addressing, or pertaining to in any way.

REQUEST

Plaintiff hereby requests that Defendants produce each and all of the following:

I . The complete and official administrative record for Plaintiff's Article 15 non-judicial punishment ("NJP") proceeding aboard the USS ANTIETAM on May 3, 1994, and Plaintiff's appeal therefrom.

2. The complete and official administrative record for Plaintiff's administrative separation proceedings, as initiated aboard the USS ANTIETAM on May 3, 1994 (including, without limitation, any pre-hearing notices or charging sheets; the official hearing transcript for the May 22, 1994 hearing; all exhibits submitted by the parties; any post-hearing recommendations or rulings; any letters of deficiency and endorsements thereon; and any other correspondence, submissions, rulings, or Documents that are a part of such administrative record).

3. The complete and official administrative record for Plaintiff's petition of December 20, 1994 to the Bureau for Correction of Naval Records ("BCNR"), which resulted in the BCNR's written opinion of April 9, 1996.

4. Any and all Documents not responsive to Request Nos. 1-3 above that refer or relate to any of the administrative proceedings described in Request Nos. 1-3 above or that were considered or consulted by the NJP Authority, the NJP Appeal Authority, the Commanding Officer of the USS ANTIETAM, the Administrative Discharge Board, the

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BCNR, or any other officials or representatives of Defendants, in connection with any of the administrative proceedings described in Request Nos. 1-3 above (including, without limitation, any such Documents that were prepared by or at the request of, or that were considered or consulted by, Captain J.L. Frank, Admiral V.E. Clark, Admiral H.C. McKinney, Mr. W. Dean Pfeiffer, Mr. Alan E. Goldsmith, or Deputy Assistant Secretary of the Navy Karen S. Heath).

5. A complete copy of the version of DoD Directive No. 1332.14, including

any and all attachments and enclosures thereto, that Defendants and their designees have applied to Plaintiff (together with any and all summaries thereof or guidelines therefor that were consulted by any officials or representatives of Defendants in the course of, or in connection with, Defendants' administrative proceedings against Plaintiff).

6. Any and all Documents that refer or relate to the manner in which non-criminal investigations of allegations into serious or minor offenses were to be conducted in the Navy or aboard the USS ANTIETAM in 1994.

7. Any and all Documents that refer or relate to the manner in which NJP proceedings generally, and shipboard NJP proceedings in particular, were to be conducted in the Navy or aboard the USS ANTIETAM in 1994 (including, without limitation, any and all Documents that constitute, refer, or relate to the "script" or any other guideline used by Captain Joe Lee Frank "at every NJP proceeding," as referred to in Captain Frank's letter to the Chairman of the BCNR of April 18, 1995).

8. Any and all Documents that refer or relate to the procedures that were in effect at any time between May 1, 1994, and December 31, 1996, for the correction of

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military records, including, without limitation, any and all Documents that refer or relate to the 1989 amendment of 10 U.S.C. § 1552 (*i.e.*, Section 514 of Pub. Law No. 101-189) and Defendants' interpretation thereof (*e.g.*, the Secretary of Defense's subsequent report to Congress on the subject of this amendment, as mandated by Pub. Law No. 104-406, on or about April 1, 1996) and any and all Documents that indicate or explain the circumstances or procedures under which the secretary of a military department or his designee may or must accept or reject the recommendation or opinion of a board for the correction of military records (such as the BCNR).

9. Any and all summaries, reports, or statistics for the time period between May 1, 1994, and December 31, 1996, that indicate (a) the total number of petitions presented to the boards for correction of military records; (b) the total number of such petitions that have

resulted in favorable findings for the petitioner; and (c) the total number of such petitions in which the pertinent Secretary or his designee has rejected the board's findings or recommendation and ruled against the petitioner.

10. Any and all Documents generated on or after January 29, 1993, that refer or relate to Defendants' interpretation or implementation of any draft or final version of 10 U.S.C. § 654, DoD Directive No. 1332.14, or DoD Directive No. 1332.30, including, without limitation, any Defense Department or service branch press releases, memoranda, sununaries, or guidelines that discuss, explain, or describe the rights, duties, or procedures imposed by these provisions and regulations (e.g., the Secretary of Defense's memorandum of July 19, 1993, entitled "Policy on Homosexual Conduct in the Armed Forces" and any contemporaneous press releases).

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1 1. Any and all Documents that refer or relate to Plaintiff, including, without limitation, Plaintiff's complete and official service record book, Plaintiff's form DD-214, Plaintiff's results in connection with the competitive examination for which he sat aboard the USS ANTIETAM in March 1994 (for a possible promotion in rank), and any and all other such Documents in any personnel, benefits, disciplinary, investigative, or other file or log relating to Plaintiff.

12. Any and all Documents that refer or relate to any allegations, investigations, or findings of misconduct on the part of, or any disciplinary, probationary, or legal actions of any kind, whether military or civilian, against, any of the following: (a) Petty Officer John T. King (315-96-4193), (b) Seaman Apprentice Lee J. Poore (SSN REDACTED), (c) Seaman Apprentice Chad M. Maurer (SSN REDACTED), (d) Captain Joe Lee Frank (SSN REDACTED), (e) Executive Officer Michael D. Palatas (SSN REDACTED), or (f) Chief Master-at-Arms Charles M. Clanahan.

13. Any and all Documents (including, without limitation, any notes, recordings, memoranda, or reports of any witness interviews) that refer or relate to any fact-finding inquiry or investigation, whether formal or informal, regarding Plaintiff or any other

member of the crew of the USS ANTIETAM who either served as, or was under consideration to serve as, a witness for the Navy in Plaintiff's NJP or administrative separation proceedings, as described in Request Nos. 1-2 above.

14. Any and all Documents that refer or relate to any representations made at any time to Petty Officer John T. King (SSN REDACTED), Seaman Apprentice Lee J. Poore (SSN REDACTED), or Seaman Apprentice Chad M. Maurer (SSN REDACTED), regarding any benefit

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or favorable consideration that any such individual would or might receive in return for the presentation of any allegation or testimony against Plaintiff (including, without limitation, any suggestion of any favorable treatment in the consideration of any transfer request, any application for early termination of Naval service, or any possible investigation or disciplinary action against such individual).

15. Any and all Documents that refer or relate to the release from or termination of service (either aboard the USS ANTIETAM or in the Navy generally) of Petty Officer John T. King (SSN REDACTED), Seaman Apprentice Lee J. Poore (SSN REDACTED), or Seaman Apprentice Chad M. Maurer (SSN REDACTED), including, without limitation, any such naval message traffic, interim or final processing papers, transportation requests or approvals, transfer applications, or "check-out" sheets.

16. Any and all Documents that refer or relate to any of the following actions by Captain Joe Lee Frank:

a. his decision, at any point in time, to investigate Plaintiff for allegations of homosexuality or homosexual

conduct;

b. his decision to institute any form of administrative or disciplinary investigation or proceeding against Plaintiff (including Plaintiff's NJP and administrative

separation proceedings, as described in Request Nos. 1-2 above);

c. his selection and appointment of the three members of the administrative discharge board that convened to hear the Navy's administrative separation case against Plaintiff aboard the USS ANTIETAM in May 1994.

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17. Any and all Documents (including transcripts or audio or video recordings) that refer or relate to Plaintiff's NJP and administrative separation proceedings, as described in Request Nos. 1-2 above (including, without limitation, any and all such Documents that refer or relate to (a) any messages delivered to the crew of the USS ANTIETAM regarding such proceedings or (b) any recordings of witness interviews or statements to or from any witnesses before, during, or after such proceedings).

18. Any and all Documents that refer or relate to any official logbook, calendar, or diary entries of the USS ANTIETAM (e.g., showing activities aboard the ship, the arrivals and departures of crewmembers and visitors, the receipt and transmittal of naval message traffic, and the like) for the period from July 1, 1993, through July 31, 1994, including, specifically, (a) the Captain's Mast Log for May 3, 1994; (b) the Helicopter Control Officer's Log (and any other helicopter manifests or flight logs) for May 3-4, 1994, and May 21-23, 1994; (c) the Quaterdeck and Ship Office Official Leave/Return-from-Leave Log for July 1, 1993, through July 31, 1994; (d) the radio transmission log for naval message traffic for July 1, 1993, through July 31, 1994.

19. Any and all Documents that refer or relate to any naval message traffic issued from or received by the USS ANTIETAM requesting or acting on requests for personnel transfers for the period from April 28, 1994, through July 31, 1994.

20. Any and all Documents that Defendants refer to as "the best evidence" for any allegation or proposition to which they respond, or which they affirmatively assert, in

any paragraph of their Answer in this action.

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2 1. Any and all Documents that refer or relate to the Document attached hereto as Exhibit A (including, without limitation, a complete and unredacted copy of Exhibit A), which Plaintiff understands to be a memorandum dated May 28, 1994, prepared by Lieutenant Commander Eric Geiser.

Respectfully submitted,

Mark H. Lynch

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Erin M. Egan

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Attorneys for Plaintiff
Jim A. Turner

Dated: November 5, 1997

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(ATTACHMENT A)
28 May 1994

.MEMORANDUM

From: OOI

To: 00
via: 01

Subj: NJ APPEAL ICO OS3 TURNER

1. Subject member was taken to NJP for two instances of offering other service members \$50 to let subject member perform oral sex on them. He was found guilty and awarded reduction to paygrade E-4 and forfeitures of \$644.00 per month for two months. He appeals claiming his NJP hearing was unfair.

2. At his hearing, subject member did not make a statement nor did he provide any evidence. on appeal he alleges that this was done on advice of his civilian counsel who wanted to save his evidence for the administrative discharge board. Now on appeal, subject member claims that, as a result of his tactical decision not to submit evidence, his Co did not have the whole story. He requests you overturn the NJP based on this "new evidence". The new evidence in question consists of subject member's general denial of all the charges coupled with allegations that his accuser's are unreliable.

3.

4. In a related matter, subject member's admin board is completed. The board recommended separation and an other than honorable discharge* The ship is currently getting BUPERS authorization to send the member stateside for discharge.

V/R
ERIC
(LCDR ERIC GEISER--CCDG-3 STAFF JUDGE ADVOCATE)