

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING A
JUDGE NO. 02-487

Supreme Court Case No.:
SC03-1171

AMENDED THIRD PRE-HEARING STATEMENT

Judge Gregory P. Holder files this Pre-Hearing Statement,¹ pursuant to the Order of the Judicial Qualifications Commission (“JQC”) Hearing Panel Chairman dated June 18, 2004.

I. BACKGROUND

The JQC filed a Notice of Investigation on April 1, 2003, based on its receipt of copies of documents anonymously submitted to a military reserve officer, Jeffrey John Del Fuoco, in 2002, which he then submitted to the United States Air Force on January 17, 2003. The documents included a paper purportedly plagiarized by Judge Holder submitted to the Air Force’s Air War College (“AWC”) in January 1998.

Based on the unauthenticated copies of documents, the JQC filed its Notice of Formal Charges on July 16, 2003. The Charges included violations of Canons 1, 2, and 5 of the Code of Judicial Conduct. Judge Holder emphatically denied all

¹ Discovery is ongoing. Respondent reserves the right to supplement this Statement following completion of all discovery. Respondent also reserves the right to file any necessary Motions regarding constitutional and dispositive issues following the completion of discovery.

of the charges against him. Judge Holder specifically denies that he violated Cannons 1, 2, or 5 of the Code of Judicial Conduct.

After months of discovery, the documents remain unauthenticated. Indeed, the Air Force officer who graded the AWC papers in the 1997-1998 academic year, Lt. Col. William O. Howe, has given sworn testimony that he could not authenticate the purported Holder Paper (Exhibit A to JQC Notice of Formal Charges “Exhibit A”) as the paper submitted by Judge Holder which received a “satisfactory” grade. Col. Howe has graded thousands of papers on the topic chosen by Judge Holder, and, admitting that it is impossible to authenticate the documents at issue in deposition, he has identified the purported Holder Paper as well as several other AWC papers as being graded by him when actually the exhibits were artificially generated.

Moreover, witnesses have come forward and have given sworn statements that the document attached to the Notice of Formal Charges as Exhibit “A” is not the document that Judge Holder gave these witnesses to review in early 1998. The Air Force, Judge Holder, and each person who was shown or read the actual AWC paper submitted by Judge Holder to the Air Force in 1998 did not retain a copy of that document – be it a hard copy or a computer copy.

II. WITNESSES

FACT WITNESSES

Witnesses who may be called by Respondent, subject to Respondent's Motions In Limine, include:

Lorraine Nasco – Ms. Nasco will testify regarding access to chambers and computers, Judge Holder's drafting and the finalization of the AWC paper submitted by Judge Holder in January 1998.

Sylvia B. Morgan – Ms. Morgan will testify regarding Judge Holder's AWC paper as well as Judge Bananno's unauthorized entry into in Judge Holder's private chambers.

John S. Vento, Esq., Colonel, United States Air Force Reserve ("USAFR") – Col. Vento will testify regarding the AWC paper that Judge Holder submitted to the Air Force and that Mr. Vento reviewed at that time.

James C. Russick, Esq., Lt Col USAFR (Retired) – Lt. Col Russick will testify regarding participation in the AWC seminar with Judge Holder and Col. Perry; Judge Holder's research for the AWC paper; and the AWC paper that Judge Holder submitted to the Air Force and that Mr. Russick reviewed at that time.

Kenneth E. Lawson, Esq., Assistant U.S. Attorney – Mr. Lawson will testify regarding Judge Holder's AWC paper, the Hoard Paper, and disavowal of certain statements by Jeffrey Del Fuoco.

Dennis M. Alvarez, Esq., former Chief Judge of the Thirteenth Judicial District of Florida (Hillsborough County) – Mr. Alvarez will testify regarding courthouse security, complaints of misconduct and corruption by judges and court personnel in the Thirteenth Judicial District of Florida (Hillsborough County), knowledge of investigations into those allegations, Judge Holder's relationship with other judges and Judge Alvarez' relationship with Judge Holder, and Judge Holder's work habits and relationship to the media.

Robert H. Bonnano, Esq., former Circuit Judge of the Thirteenth Judicial District of Florida (Hillsborough County) – Mr. Bonnano will testify regarding his and other judges' relationships with Judge Holder, the circumstances regarding his

unauthorized presence in Judge Holder's private chambers, and the courthouse's information systems.

Jeffrey J. Del Fuoco, US Army (Reserve), Assistant U.S. Attorney – Mr. Del Fuoco will testify regarding the circumstances surrounding his receipt of Exhibits A and B, the location of related materials, the disposition of the exhibits from his receipt until forwarding to Jeffrey S. Downing, testimony regarding packet of documents “discovered” in October 2003 and forwarded to Air Force and the JQC, and his employment status at time of these events.

Jeffrey S. Downing, Assistant U.S. Attorney – Mr. Downing will testify regarding the circumstances surrounding receipt of Exhibits A and B, the location of related materials, the disposition of the exhibits from his receipt until forwarding to the Air Force, testimony regarding packet of documents received in October 2003 and forwarded to Air Force and JQC.²

Col. Mary V. Perry, United States Air Force (“USAF”) – Col. Perry will testify regarding the Air War College seminars that she attended with Judge Holder, the AWC paper she wrote and submitted, and persons to whom she may or may not have given copies of her paper.

Col. Dixie Morrow, USAF – Col Morrow will testify regarding the Air War College seminars that she attended, conversations with Judge Holder regarding writing the AWC paper, and practices of AWC students.

Lt. Col. John Odom, USAF – Lt. Col. Odom will testify regarding substantive Air Force matters, including, Air Force Promotion Board proceedings, and Judge Holder's military duties.

Col. John Powers, USAF – Col. Powers will testify regarding his experience as Judge Holder's supervisor, and substantive Air Force matters.

² Subject to Judge Holder's Motion to Exclude and Objections to the Special Counsel's Pre-Trial Statement.

Lt. Col. William O. Howe, Jr., USAF – Lt. Col. Howe will testify regarding the AWC grading process and inability to authenticate Exhibit A and related exhibits and confirmation of certain anomalies in Exhibit A (by deposition, November 20, 2003).

Lt. Col. Charles A. Howard, USAF – Lt. Col. Howard will testify to confirm the attendance of Judge Holder, James C. Russick, and Mary V. Perry in the AWC seminar at MacDill AFB in 1997-98, the AWC grading process, the original of Holder's AWC paper (Exhibit A to the Notice of Formal Changes) the grader's correspondence to Judge Holder, and authentication of Exhibit A.

Maj. Gen. Frank Ragano, US Army – Maj. Gen. Ragano will testify regarding AWC, warnings regarding plagiarism given to AWC students, means to detect plagiarism, and Air Force steps and mechanisms to detect plagiarism.

Detective James Bartoszak, Tampa Police Department ("TPD") - Det. Bartoszak will testify regarding Judge Holder's participation in undercover corruption investigation.

Detective Dolvin "Bill" Todd, TPD – Det. Todd will testify regarding Judge Holder's participation in undercover corruption investigation.

Special Agent Kelly Thomas, Federal Bureau of Investigation - Special Agent Thomas will testify regarding Judge Holder's participation in undercover corruption investigation.

Col. E. David Hoard – Col. Hoard will testify regarding AWC course and paper.

Judge Gregory P. Holder – will testify regarding the allegations in this proceeding and the background and setting of those allegations.

Scott F. Peterka, Florida Department of Law Enforcement – Mr. Peterka will testify regarding the courthouse investigations.

John T. Crow, Ph.D. – Mr. Crow will testify regarding applied linguistics, applied grammar, stylistic elements of writing composition and composition analysis of texts.

Bruce Dekraker – Mr. Dekraker will testify regarding analysis of authenticity of documents, including the purported Holder paper.

Matt Kloskowski – Mr. Kloskowski will testify regarding graphic reproduction and Adobe Photoshop.

Patricia T. Williams and/or Walter Williams – Mr. and/or Mrs. Williams will testify regarding printing and graphic reproduction techniques.

Michael S. Musial – Mr. Musial will testify regarding computer technology, computer backup systems, and record preservation.

David Greetham – Mr. Greetham will testify regarding backup tapes, computers, and computer files.

Bradley D. Lutz – Mr. Lutz will testify regarding Hillsborough County Courthouse information systems.

Mildred R. Becki Stafford – Ms. Stafford will testify regarding Hillsborough County Courthouse information systems.

William J. Walls – Mr. Walls will testify regarding AWC papers and information and documents received from Jeffrey Del Fuoco.

POSSIBLE REBUTTAL WITNESSES

Lt. Col. Lauren Johnson-Naumann, USAF – Lt. Col. Johnson-Naumann is a possible rebuttal witness.

CHARACTER WITNESSES (Subject to Witness Availability)

Kenneth Ambler, Esq.
Honorable Lamar Battles
Howard L. Donaldson, Colonel (USAF Ret.)
Honorable William Levens
Honorable James S. Moody, Jr.
Timon V. Sullivan, Esq.
Honorable Martha Cook
Robert Williams, Esq.
Clifton C. Curry

EXHIBITS:³

1. Deposition of Lieutenant Colonel Charles A. Howard and Exhibits, (November 19, 2003)
2. Affidavit of Lieutenant Colonel Charles A. Howard (March 11, 2003)
3. Affidavit of Lieutenant Colonel Charles A. Howard (June 9, 2003)
4. Deposition of Lieutenant Colonel William O. Howe, Jr. and Exhibits (November 20, 2003)
5. Affidavit of Lieutenant Colonel William O. Howe, Jr. (March 10, 2003)
6. Affidavit of Lieutenant Colonel William O. Howe, Jr. (August 20, 2003)
7. Deposition of Lorraine Nasco and Exhibits (November 5, 2003)
8. Affidavit of Lorraine Nasco (April 4, 2003)
9. Affidavit of Lorraine Nasco (June 27, 2003)
10. Affidavit of Lorraine Nasco, (August 31, 2003)
11. E-mail of Lorraine Nasco, (April 16, 2003)
12. Deposition of James W. Bartoszak and Exhibits (December 10, 2003)
13. Affidavit of James W. Bartoszak (October 27, 2003)
14. Deposition of Sylvia B. Morgan and Exhibits (December 10, 2003)
15. Affidavit of Sylvia B. Morgan (June 26, 2003)
16. Deposition of Michael S. Musial and Exhibits (December 10, 2003)
17. Affidavit of Michael S. Musial (September 2, 2003)

³ List subject to rulings upon all motions to exclude. By listing item as exhibit, Judge Holder does not waive any objections to the admissibility thereof.

18. Graded Hoard Paper and accompanying Letter
19. Deposition of Dolvin W. Todd, Jr. and Exhibits (December 10, 2003)
20. Affidavit of Dolvin W. Todd, Jr. (August 13, 2003)
21. Deposition of Walter Williams and Exhibits (January 8, 2004)
22. Deposition of Patricia Williams and Exhibits (January 8, 2004)
23. Declaration of Bradley D. Lutz
24. Declaration of Becki Stafford (August 16, 2004)
25. Unsealed Grand Jury Testimony of former Chief Judge F. Dennis Alvarez (August 25, 2000)
26. Unsealed Grand Jury Testimony of former Circuit Judge Robert H. Bonnano (November 15, 2000)
27. Unsealed Grand Jury Testimony of Scott F. Peterka (October 3, 2000)
28. Affidavit of Howard L. Donaldson (June 3, 2003)
29. Affidavit of E. David Hoard (March 6, 2003)
30. Affidavit of Kenneth E. Lawson (November 14, 2003)
31. Affidavit of Lt. Col. Dixie A. Morrow (June 4, 2003)
32. Affidavit of Col. Mary V. Perry (May 28, 2003)
33. Affidavit of Col. Mary V. Perry (November 12, 2003)
34. Affidavit of Lt. Col. James C. Russick (August 5, 2003)
35. Affidavit of John Sebastian Vento (August 5, 2003)
36. Affidavit of James J. Cusak, Esq.

37. Affidavit of Lieutenant Colonel John Odom
38. Affidavit of Colonel Glenn Spitzer (June 16, 2003)
39. Letter of Colonel Glenn Spitzer (April 19, 2003)
40. Affidavit of Lieutenant Colonel Daryl Trawick
41. Notarized letter of Lieutenant Colonel Kirk Granier (June 6, 2003)
42. Affidavit of Clifton Curry, Esq.
43. Affidavit of Patricia Fields Anderson, Esq. (July 22, 2004)
44. Affidavit of Patricia Fields Anderson, Esq. (August 17, 2003)
45. Affidavit of Sharon Morgan Vollrath, Esq.
46. Affidavit of Jerry Hill
47. Affidavit of M. Blair Payne
48. Affidavit of Major Christine R. Bosau
49. Letter of Major Kenneth C. Ambler to Gen. Thomas J. Fiscus
50. Test Results and Grades from Holder's Air Force Continuing Education Classes: Squadron Officer School, Air Command and Staff College, and Air War College
51. Adobe Photoshop Manual
52. Air Force Awards Bestowed on Gregory P. Holder
53. Attendance Records of Air Force Continuing Education Classes
54. Course Materials from the Air War College
55. Gregory P. Holder's Air Force Active Duty Records

56. Gregory P. Holder's Application for Federal Judgeship
57. Copy of Purported Holder Paper Received from Jeffrey Del Fuoco (Exhibit A to JQC Notice of Formal Changes)
58. Facsimile Transmission of E. David Hoard's AWC Paper to Judge Holder, which was received by Jeffrey Del Fuoco (Exhibit B to JQC Notice of Formal Charges)
59. Commander Directed Investigation, Gregory P. Holder, 16 March 2003 Prepared by Colonel David M. Leta (CDI)
60. Supplemental Report to Commander Directed Investigation, Colonel David M. Leta, 19 April 2003
61. Letter of Reprimand, Colonel Rita Russell to Colonel Gregory P. Holder, 18 April 2003 (with attachments)
62. Document Retrieved from Courthouse Backup Files of Lorraine Nasco, last accessed December 5, 1997 at 3:46 PM
63. Lorraine Nasco's Attendance Records at the Courthouse
64. Computer files on Courthouse computers and back up tapes, and printouts related thereto
65. Judicial Automated Data System Meeting Recap (November 16, 2001)
66. AWC Paper submitted by Lieutenant Colonel Mary V. Perry, April 1998
67. Documents found by Jeffrey Del Fuoco in October 2003, Bates-stamped KELjd 1-171
68. Purported Holder Paper as contained in Bates-stamped KELjd1-171
69. Memo from Jeffrey Del Fuoco to Col. Thomas Jaster, November 2, 2003, regarding origin of KELjd 1-171
70. AWC Paper by Mary V. Perry as contained in KELjd1-171.

71. Deposition of Judge Gregory P. Holder (November 5, 2003)
72. Deposition of Judge Gregory P. Holder (April 29, 2004)
73. Affidavit of Judge Gregory P. Holder (June 25, 2003)
74. Affidavit of John F. Rudy, II
75. FDLE Investigation Report Re Unauthorized Presence In Judge Holder's Chambers
76. Exemplars of Judge Holder's Writing.

Dated: September 1, 2004

Respectfully Submitted,

David B. Weinstein, Esq.
Florida Bar Number 604410
Bales Weinstein
Post Office Box 172179
Tampa, Florida 33672-0179
Telephone No.: (813) 224-9100
Telecopier No.: (813) 224-9109

-and-

Juan P. Morillo
Florida Bar No.: 0135933
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Telecopier: (202) 736-8711
Counsel for Judge Gregory P. Holder

CERTIFICATE OF SERVICE

I certify that on September 1, 2004, a copy of the foregoing has been served by telecopier and by U.S. Mail to: Ms. Brooke Kennerly, Hearing Panel Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303; Honorable John P. Kuder, Chairman of the Hearing Panel, Judicial Building, 190 Governmental Center, Pensacola, FL 32501; John Beranek, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302; Charles P. Pillans, III, Esq., JQC Special Counsel, Bedell Ditmar DeVault Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 32202; and, Thomas C. MacDonald, Jr., JQC General Counsel, 1904 Holly Lane, Tampa, FL 33629.

Attorney