

APPENDIX A

5

I, Major General (Ret) Dennis John Laich (203-40-2608), retired from the United States Army in 2006 with more than thirty-five years service. Most of my military career was in the Army Reserve; therefore, I had a parallel career in private business which gave me a unique perspective on military culture, operations, efficiency and effectiveness. In addition to an undergraduate degree, I hold two graduate degrees (MBA and MA in Labor Relations) and completed post graduate studies at the Kennedy School of Government, Harvard University. I am also a graduate of the Army War College, the Army Command and General Staff College and the Army Inspector General Program.

During my military career, I served in a broad range of command and staff assignments, primarily in transportation and military police units and as Inspector General. The last fourteen consecutive years of my thirty-five years service were spent in command assignments at the Colonel, Brigadier General and Major General rank. My last assignment was Commanding General, 94th Regional Readiness Command, Ft. Devens, Massachusetts.


Before engaging the policy of Don't Ask, Don't Tell (DADT) or the specific issue of unit cohesion, morale, good order and discipline, I believe it may be helpful to comment on the context in which these policies and concepts operate. The United States military is an authoritarian, top-down bureaucracy which does not value dissenting opinions that differ from those in positions of authority. The military views most problems (and therefore their solutions) as technical rather than adaptive. In combat, emergencies and many training situations, these technical and authoritarian approaches are of unquestionable value. However, when applied to other types of problems and issues, these same characteristics lead to sub-optimization at best and failure at worst. These characteristics are most dangerous when the institution itself or long-standing policies are thought to be threatened. Then senior leaders, as stewards of the organization, often feel a professional obligation to protect it against attack or criticism.

I have discussed DADT and the concepts of unit cohesion, morale, good order and discipline with a wide range of service members before and after my retirement. There is a general theme in their views with some differences based on age, rank and assignment. The vast majority of young, enlisted service members think DADT is senseless, detracts from military readiness and that the open service of gays and lesbians would have no adverse impact on unit cohesion, morale, good order and discipline. The majority of junior and mid-grade NCOs and company grade officers hold the same view as the young enlisted soldiers with one significant difference: they express frustration that DADT places them in a moral dilemma in that they are, or may be forced to, pursue discharge of a fully qualified, experienced, well-respected member of their formation due to that person's sexual orientation, thereby degrading the combat readiness of the unit. In the alternative, if the leader chooses not to pursue discharge, that individual will be viewed by subordinates and/or peers as a leader who does not

uphold standards; a no-win situation into which we force the young uniformed leaders of America's sons and daughters. Finally, senior NCOs and officers' attitudes toward DADT and its effects on unit cohesion, morale, good order and discipline are shaped by demographics and the fact that they have been inside the authoritarian bureaucracy for a long time. The overwhelming majority acknowledge that there are 66,000 gays and lesbians honorably serving today without any problem and no adverse impact on unit cohesion, morale, good order and discipline. These senior leaders will also state that if DADT is repealed, open service of gays and lesbians will be absorbed into the military as seamlessly as that of African Americans and women. I should note that the conclusions I draw from these conversations and meetings with dozens, if not hundreds, of service members over many years are consistent with the majority of the academic research and recent surveys on these issues.

As to my professional judgment, I agree that repeal of DADT, and the lie of omission it represents, will improve military readiness, strengthen military values and enhance unit cohesion, morale, good order and discipline.

As to the argument that Major Witt's continued service would mean that the Air Force personnel policies would not be uniformly applied across geographical boundaries, this argument is a red herring. The Air Force has the ability to amend its personnel policies to comply with the court's decision; policy is subject to the law. Further, Major Witt is a dedicated, trained, experienced military professional who is a scarce resource to the national defense available to the Air Force. Major Witt should be welcomed by the Air Force when this nation is fighting two wars and all services are strained to fill their ranks.


Dennis J. Laich

MG (Ret), US Army

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

- - -

MAJOR MARGARET WITT, :

Plaintiff, :

vs. : Case No. CO6-5195RBL

UNITED STATES DEPARTMENT :

OF THE AIR FORCE, et al.,

Defendants. :

- - -

Deposition of

MAJOR GENERAL (RETIRED) DENNIS LAICH

a witness herein, called by the Defendant for cross-examination under the applicable Rules of Ohio Civil Court Procedure, taken before me, Heidi L. Funderburk, a Professional Reporter and Notary Public in and for the State of Ohio, pursuant to Notice, at the offices of Jones, Day, on Thursday, June 2, 2010, commencing at approximately 10:07 a.m.

- - -

DEPOSITION SPECIALISTS, INC.
35 East Gay Street, Suite 300
Columbus, Ohio 43215
(614) 221-4034

B

1 in an advantageous position that has subsequently been
2 proved to be -- by both theory and practice proven to
3 be less than substantiated.

4 Q. When you say theory and practice are you
5 relying on your own results or others for that --

6 A. Oh, no.

7 In theory you have a significant body of
8 knowledge generated by academics that I just identified
9 in my previous testimony that's ongoing and the
10 preponderance of it says that the ideas of open service
11 by gays and lesbians have an adverse impact on
12 discipline, morale and cohesion and good order haven't
13 been substantiated in any of that research in practice.

14 Since 1993, we have seen -- we've seen a number
15 of militaries change their policy with regard to the
16 open service of gays and lesbians. Several of those
17 Britain, Canada, and Australia, that most informed
18 observers of these issues would agree are culturally
19 most analogous to the United States of any countries in
20 the world based on history, language, and tradition,
21 have opened their militaries to open gay service, none
22 of them have seen a deterioration of morale,
23 discipline, good order, or unit cohesion.

24 All of them wrestled around with some of the same
25 arguments that we are today.

1 And all of them have said that it's a non-event.
2 Their move from policies and regulations
3 analogous to what the U.S. military policy with regard
4 to open service is today, they changed, heard the same
5 arguments that are being offered today and have been
6 since 1993, and their experience is that it's a
7 non-event.

8 I hold that opinion as a result of not only
9 personnel discussions that I've had with officers from
10 two of those three countries, but also a seminar or a
11 conference that was held last month in Washington, D.C.
12 sponsored by the Brookings Institute and the Palm
13 Center, of which it was unambiguously confirmed by
14 senior representatives from those countries that their
15 transition from policies analogous to Don't Ask/Don't
16 Tell to open service have been non-events and
17 fundamentally have enhanced readiness in their
18 militaries.

19 I should also add that those are three countries
20 in which we serve and have served as part of coalitions
21 and probably I would think will continue to do so in
22 the future.

23 That's the source of my opinion in that regard.

24 And I think -- I would also point out that the
25 results of that conference were published in the Army

10

1 And since we're talking about the reg itself, the
2 reg even allows for deviation and inconsistencies.

3 Q. I want to clarify my question.

4 I'm not talking about the regs, I'm talking about
5 the statute.

6 A. Okay.

7 Q. So if Congress were to repeal the statute
8 only with respect to Florida do you see any problems
9 associated with unit cohesion and morale that could
10 follow from that geographic based repeal?

11 A. Uhm, this is totally speculation.

12 MS. DUNNE: You can still keep -- you're
13 qualifying.

14 A. Yeah. I mean, this is totally speculation.

15 But, yeah. There could be not only problems, but
16 there could be opportunities and advantages.

17 Q. (By Mr. Phipps) What would the opportunity
18 and advantages be?

19 A. Uhm, that in the State of Florida you would
20 have the benefit of the service of gay or lesbian
21 service members who might not otherwise be inclined to
22 or have the opportunity to serve.

23 Q. Do service members get to pick -- is it your
24 current understanding that service members get to pick
25 which states or location they serve in?

1 A. In the, uhm, National Guard they do, subject
2 to employment.

3 But the fact is that the services make
4 regulations and policies subject to the law.

5 So if Congress passed a law that says in Florida
6 you can do this, my understanding of the relationship
7 between the military and the law is that the military
8 would accommodate the sense of Congress and the law.

9 Q. I think this gets to the points you raised
10 in your final paragraph.

11 You say, quote, "as to the argument that
12 Major Witt's continued service would mean that the Air
13 Force personnel policies would not be uniformly applied
14 across geographical boundaries, this argument is a red
15 herring. The Air Force has the ability to amend its
16 personnel policies to comply with the court's decision;
17 policy is subject to law," quote.

18 This strikes me as largely a legal conclusion
19 that you're giving.

20 Are you relying on something other than your
21 knowledge of working with the law for this?

22 A. Uhm, my -- my knowledge in working of the
23 law, which is limited, I'm not a lawyer, not licensed
24 to practice law, and also my knowledge of, uhm,
25 military policies and practices.

12

1 Q. Well, on the point that the Air Force has
2 the ability to amend its personnel policies to comply
3 with the court's decisions, when you say "ability" you
4 mean the legal ability to do so; is that right?

5 MS. DUNNE: Objection:
6 Mischaracterizing his testimony.

7 But go ahead and answer.

8 BY MR. PHIPPS:

9 Q. Okay. I'm not asking what it means.

10 A. Yeah.

11 It has the legal ability and the mandate to,
12 uhm -- uhm, identify what its policies are going to be
13 subject to the law.

14 Q. Subject to the court's decision?

15 A. That's the interpretation of the law.

16 Q. What if there are multiple court decisions,
17 some of which they --

18 A. Then jurisdiction has to be established.

19 Q. I guess my thought is this: This conclusion
20 that you're reaching seems to me to be contingent on
21 several legal realities being the case; is that right
22 or not?

23 A. I don't know. I'm not a lawyer.

24 Q. Okay. I'm just trying to see is there any
25 part of this conclusion that is based on anything other

13

1 than a legal analysis or legal conclusions?

2 MS. DUNNE: Objection: Asked and
3 answered.

4 Go ahead. I'm sorry.

5 THE WITNESS: That's fine.

6 A. The fundamental conclusion here is that if
7 Congress and/or the courts -- if Congress passes a law
8 and the courts interpret that law to mean a certain
9 thing and the military is subject to or affected by
10 that law they will comply with that law.

11 As a way to comply with the law organizationally
12 they will write regulations and policies that they are
13 entitled and required to write, but they will be
14 subject to the law.

15 Q. But that law, do you think that that law
16 would be uniform in its application across every
17 geographical boundary if different courts reach
18 different results?

19 A. By definition it would not.

20 The scenario that you just laid out, you answered
21 your own question.

22 Q. Okay. That's why we have depositions, you
23 say something, I ask you questions about what you say,
24 you clarify, or we ask more hypotheticals.

25 14 - - -

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,)
)
 Plaintiff,)
)
 v.)
)
 UNITED STATES DEPARTMENT OF)
 THE AIR FORCE, et al.,)
)
 Defendants.)
 _____)

COPY

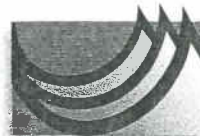
No. C06-5195 RBL

DEPOSITION OF COLONEL MARY L. WALKER

* * *

January 8, 2010
1120 N.W. Couch
Portland, Oregon

Cheryl L. Vorhees, CSR, RPR
Court Reporter



Schmitt & Lehmann, Inc.
COURT REPORTERS
www.slreporting.com

121 SW Morrison St., Suite 850
Portland, OR 97204
(503) 223-4040
slinc@qwestoffice.net

16
400 Columbia, Suite 140
Vancouver, WA 98660
(360) 695-5554
Fax (360) 695-1737

101

1 inquiry into the alleged homosexual conduct?
 2 MR. PHIPPS: Objection. Foundation.
 3 Improper lay opinion, and calls for a legal
 4 conclusion.
 5 Q (By Mr. Lobsenz) I have Attachment 11 here,
 6 it's going be the next thing I show you. If you'd
 7 like to see it right now, I can get it out right now,
 8 but all I'm asking right now is this word "shall" in
 9 there, "Commanders shall refer to these guidelines,"
 10 and I'm asking whether you agree with me that 2.33
 11 leaves you, the unit commander, no discretion but that
 12 you must go look at Attachment 11 and follow it when
 13 deciding whether to initiate an inquiry.
 14 MR. PHIPPS: Objection.
 15 THE WITNESS: Yes.
 16 MR. PHIPPS: I want to renew my three
 17 objections.
 18 Q (By Mr. Lobsenz) And now I'll ask the court
 19 reporter to mark Attachment 11.
 20 (Exhibit No. 8 was marked for identification.)
 21 Q (By Mr. Lobsenz) You've now been handed
 22 Attachment 11, which is a three-page document. Same
 23 as before, I'm not going to ask you to read every
 24 single word of this but if you want to or want time to
 25 read any part of it, just stop me and say I want time

102

1 to read it. Okay?
 2 A Okay.
 3 Q What I'd first like to direct your attention
 4 to is 11.1. That first page there, A11.1, it's
 5 entitled "Responsibility." Would you agree with me
 6 that this first sentence, let me read it, "Only the
 7 member's commander is authorized to initiate
 8 fact-finding inquiries involving homosexual conduct."
 9 It goes on after that, and if you feel that the rest
 10 of that is important to my question, you let me know.
 11 But I would like to ask you now, do you agree with me
 12 that the only person who could initiate fact-finding
 13 inquiries into homosexual conduct in this case was
 14 you?
 15 MR. PHIPPS: Objection. Foundation.
 16 THE WITNESS: I agree.
 17 MR. PHIPPS: Calls for a legal conclusion and
 18 improper lay opinion.
 19 Q (By Mr. Lobsenz) And you didn't initiate this
 20 fact-finding inquiry, did you?
 21 A No, I did not.
 22 Q And you didn't appoint Major Torem, did you?
 23 A No, I did not.
 24 Q So, I don't know if you can remember or not,
 25 but in the period around October 20th or shortly

103

1 thereafter when you're reviewing this regulation and
 2 all these provisions we've just gone over and the
 3 attachment, does it cross your mind that the wrong
 4 person initiated this inquiry?
 5 A No, it never did.
 6 Q Did it bother you that nobody asked you for
 7 authority to initiate this inquiry?
 8 A No, it didn't.
 9 Q Okay. Now, there's two more sentences in
 10 that A11.1.1. I wasn't going ask you about the second
 11 sentence but I'll read it. It says, "A commander may
 12 initiate a fact-finding inquiry only when he or she
 13 received credible information that there's a basis for
 14 discharge." And then I was going to ask you about
 15 this next sentence. "Commanders are responsible for
 16 ensuring that inquiries are conducted properly and
 17 that no abuse of authority occurs."
 18 Would you tell me what that last sentence
 19 means to you? What are you responsible for doing
 20 there?
 21 A It says --
 22 MR. PHIPPS: Objection. Foundation. Calls
 23 for a legal conclusion, improper lay opinion.
 24 THE WITNESS: It says that commanders are
 25 responsible for ensuring that inquiries are conducted

104

1 properly and that no abuse of authority occurs.
 2 Q (By Mr. Lobsenz) So what does that mean to
 3 you?
 4 MR. PHIPPS: Renew my objections.
 5 THE WITNESS: You know, I'm not sure of -- I
 6 don't have a response to that.
 7 Q (By Mr. Lobsenz) Okay. You don't know what
 8 it means?
 9 A No.
 10 Q Now I'm going ask you about a sentence in the
 11 next subparagraph, 11.1.2. I'll read the first
 12 sentence. It says, "A fact-finding inquiry may be
 13 conducted by the commander personally or by a person
 14 he or she appoints."
 15 The first question I have is, did you ever
 16 consider conducting this inquiry personally yourself?
 17 A No.
 18 Q All right. I don't promise it but I don't
 19 think I'm going to ask any more questions about the
 20 regulation, at least for a while. But I am now going
 21 to go back and try to focus on that meeting of
 22 July 24, 2004, when Major Torem came to see you. And
 23 you've already told me what you can remember about it
 24 but now I'm going to sort of see whether I spark any
 25 additional recollections by asking some sharper

17

APPENDIX C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,
Plaintiff,

vs

FILE NO.
C06-5195 RBL

UNITED STATES DEPARTMENT OF THE
AIR FORCE; DONALD H. RUMSFELD,
Secretary of Defense; MICHAEL W.
WYNNE, Secretary of the Department
of Air Force; and COLONEL MARY L.
WALKER, Commander, 446th
Aeromedical Evacuation Squadron,
McChord AFB,

Defendants.

_____ /

DEPOSITION OF
LIEUTENANT GENERAL CHARLES EDWIN STENNER, JR.

Monday, May 17, 2010

8:50 a.m.

Taken by counsel for the Plaintiff at:

Robins Air Force Base
Warner Robins, Georgia

Stenographically Reported By:
Gaye D. Traynor
Certified Court Reporter-B2209
State of Georgia

19

1 Q Okay. So I'm going to try to ask a bunch of
2 questions then to get at -- because I don't want to know
3 what work product you've been given.

4 What do you know about her career in the Air
5 Force -- the Regular Air Force?

6 A Nothing.

7 Q Okay. What do you know about her career in
8 the Air Force Reserve?

9 A Nothing.

10 Q Okay. Have you, yourself, done any research
11 on Major Margaret Witt?

12 A No.

13 Q Have you interviewed anyone who served with
14 Major Witt about Major Witt?

15 A No.

16 Q Have you questioned anyone who served with
17 Major Witt about Major Witt?

18 A No.

19 Q Have you read any news articles about
20 Major Witt?

21 A No.

22 Q Have you read her person -- any documents from
23 her personnel file?

24 A No.

25 ²⁰ Q Have you ever communicated to Colonel Janette

1 62nd Airlift Wing about this litigation?

2 A No.

3 Q What do you know, if anything, about the 446th
4 unit members and their social interactions with Major Witt
5 since she's been discharged?

6 A Nothing.

7 Q I have to ask these questions.

8 Have you ever served in the 446th AES?

9 A No.

10 Q Have you ever served with the 446th AES?

11 A No.

12 Q Have you ever visited the 446th at joint base
13 Lewis-McChord?

14 A Yes.

15 Q And when was that?

16 A It was last year, 2009. And I can't tell you
17 exactly when.

18 Q Uh-huh. Could you describe the unit culture
19 of the 446th AES?

20 A No.

21 MR. PHIPPS: Objection: Foundation but...

22 BY MS. DUNNE:

23 Q Have you ever served with the 4th Air Force?

24 A No.

25 Q Have you ever served...

1 have in place. And that's -- my opinion is that they need
2 to be that: They need to be applied in that fashion to
3 sustain good order and discipline and unit cohesion.

4 Q If Major Witt were to be reinstated -- let's
5 just assume if she were to be reinstated, do you believe
6 -- are you giving an opinion as to how her reinstatement
7 would affect the Air Force Reserve?

8 MR. PHIPPS: Object as vague and misleading.

9 THE WITNESS: My opinion goes to uniform
10 application of the personnel policies to sustain good
11 order and discipline and unit cohesion.

12 BY MS. DUNNE:

13 Q And that's not my question.

14 My question is, if Major Witt were reinstated,
15 what -- are you -- because I don't want to put words in
16 your mouth -- are you giving any opinion as to whether or
17 not her reinstatement would negatively affect unit morale
18 or cohesion?

19 A No.

20 MR. PHIPPS: Object as vague and misleading.

21 THE WITNESS: No.

22 BY MS. DUNNE:

23 Q When you mentioned the term "unit cohesion" in
24 paragraph D (3), what do you mean by that?

25 A I mean the ability to interoperate,

1 at? Any academic studies that you can -- that you
2 reviewed in forming the opinions that you set forth in
3 Exhibit 2?

4 A No.

5 Q With respect to D (2), your opinion that you
6 gave in paragraph D (2)?

7 MR. PHIPPS: This is Exhibit...

8 A (No response.)

9 BY MS. DUNNE:

10 Q I'm sorry, Exhibit 2, and then I'm
11 specifically looking at paragraph D, subsection 2, pages 3
12 and 4. Besides your experience of 38 years in the
13 military, is there any other research that you've done to
14 support the opinion that you give in paragraph D (2)?

15 A No.

16 Q No. Have you interviewed service members?

17 A No.

18 Q Sir -- okay. There has been testimony in this
19 case that there are several members of the 446th who are
20 gay and lesbian, and other unit members are aware of their
21 sexual orientation.

22 There's also been testimony that the current
23 Commander of the 446th knows of their sexual orientation.
24 And, for example, that Commander disciplined one same-sex
25 couple within the unit for fraternization but did not

1 investigate the couple under "Don't Ask; Don't Tell."
2 This has all taken place since Major Witt's suspension and
3 discharge.

4 Were you made aware of this testimony before
5 you formulated your opinions set forth in Exhibit 2?

6 MR. PHIPPS: Objection: Assumes facts not
7 before the witness as evidence.

8 THE WITNESS: No.

9 BY MS. DUNNE:

10 Q Does this testimony change your opinion
11 concerning the reinstatement of Major Witt at all?

12 MR. PHIPPS: Objection: Misleading,
13 mischaracterization, assumes facts not in evidence.

14 THE WITNESS: My opinion on the appropriate
15 application and the uniform application of personnel
16 policies is -- remains the same.

17 BY MS. DUNNE:

18 Q So how do you reconcile the fact that there's
19 been testimony in this case that the current Commander
20 after Major Witt's discharge has not investigated current
21 unit members known unit-wide to be gay or lesbian under
22 the "Don't Ask; Don't Tell" policy with the uniform
23 application of personnel -- Air Force personnel policies
24 relating to homosexual conduct?

25 MR. PHIPPS: Objection: Assumes facts not in

1 THE WITNESS: I don't know.

2 BY MS. DUNNE:

3 Q Do you know if Canada is a member of NATO?

4 MR. PHIPPS: Same objection.

5 THE WITNESS: I don't know for 100 percent
6 certainty.

7 BY MS. DUNNE:

8 Q I guess I'll ask it this way. Do you know if
9 the United States military performs joint operations with
10 the Canadian military?

11 A Yes, we do.

12 Q Do you know whether or not Canada allow -- the
13 Canadian military allows their service -- allows gay and
14 lesbians to serve openly in their military?

15 A I don't know.

16 Q You don't know? I'm going to ask about the
17 French military. Do you know if the French military
18 allows gays and lesbians to serve openly?

19 A I don't know.

20 Q I'm going to ask about the German military.
21 Do you know whether the German military allows gay and
22 lesbian service members to serve openly?

23 A I don't know.

24 Q I'm going to ask about the United Kingdom. Do
25 you know if the United Kingdom allows gays and lesbian

1 members to serve openly?

2 A I don't know.

3 Q Have you done any research on foreign
4 militaries and their personnel conduct policies with
5 respect to homosexuality?

6 A I've not.

7 Q Has the United States conducted any joint
8 military operations with Canada or the United Kingdom in
9 the last seven years?

10 A Yes, we have.

11 Q Can you give me -- what would those be? And
12 you don't have to name all of them. I'm thinking of two
13 in particular: Wars.

14 A How about OEF and OIF.

15 Q And for the record, could you explain what
16 those acronyms stand for?

17 A OEF is Operation Enduring Freedom and are
18 those contingency operations in Afghanistan.

19 And OIF is Operation Iraqi Freedom, and those
20 are by definition in Iraq.

21 Q When conducting joint military operations,
22 would U.S. service members ever serve side by side with
23 their NATO allied service members --

24 A Yes.

25 Q -- on a particular mission or assignment?

1 A Yes.

2 Q Would you agree -- is it fair to say that most
3 U.S. service members generally treat NATO allied service
4 members with respect and dignity?

5 MR. PHIPPS: Objection: Foundation.

6 THE WITNESS: Yes.

7 BY MS. DUNNE:

8 Q Are you aware of any evidence to suggest that
9 U.S. service members have not treated NATO allied soldiers
10 with respect and dignity solely because a NATO soldier
11 MIGHT be gay or lesbian?

12 A No.

13 Q I was just going to ask this: Have you ever
14 conducted any research on foreign militaries that do have
15 conduct policies that allow homosexuals to serve openly,
16 as to how they carry out the day-to-day logistics, i.e.,
17 living arrangements, showers, dining facilities for their
18 soldiers?

19 A No.

20 MS. DUNNE: I think I appear -- I may just
21 take a five-minute break.

22 MR. PHIPPS: Okay.

23 MS. DUNNE: I'm pretty close to being -- I'm
24 done, I think. Let me just take five minutes.

25 MR. PHIPPS: Let me confer with folks because

APPENDIX D

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARGARET WITT, Major,)
)
Plaintiff,)
)
v.)
)
UNITED STATES DEPARTMENT OF THE)
AIR FORCE; ROBERT M. GATES,)
Secretary of Defense; MICHAEL B.)
DONLEY, Secretary of Department)
of the Air Force, Colonel;)
JANETTE L. MOORE-HARBERT,)
Commander of the 446th)
Aeromedical Evacuation Squadron,)
Colonel; McChord AFB,)
)
Defendants.)
)

NO. C06-5195-RBL

Deposition of MAJOR GENERAL ERIC W.
CRABTREE, taken on behalf of Plaintiff, at
2040 Main Street, Suite 250, Irvine,
California, commencing at the hour of
1:12 p.m., ending at 2:31 p.m., on Wednesday,
March 24, 2010, before MICHELLE
LOTT-MEYERHOFER, CSR 8226

29

1 A No.

2 Q This might trigger a memory or it might not. Is
3 it possible that you knew, before the Summer of 2004,
4 that there is this Major who's on the Promotional
5 Recruitment Literature for a career in the Air Force
6 Nursing Corp. that features her photograph? Is that
7 anything you every knew?

8 A No, not until after the action started.

9 Q So what is the first thing you ever found out
10 about Major Margaret Witt?

11 MR. DIEDERICH: Objection. Let me just caution
12 the General to the extent it's a conversation you had
13 with an attorney about the case. I don't know what the
14 answer is. I just want to caution him to be careful
15 about conversations with an attorney. That's all.

16 MR. LOBSENZ: Okay.

17 Q Well, why don't you answer this question yes or
18 no. Is the very first thing you ever found out about
19 Major Witt something you learned from an attorney?

20 A No. It was from, actually, headquarters.

21 Q Okay. So what did you find out at that time?

22 A I was told that -- I received notification that
23 a complaint had been filed through the chief of staff of
24 the Air Force's Office alleging that Major Witt was
25 involved with a woman in the Spokane area. And I was

1 directed to do an investigation to find out if the
2 allegations were true.

3 Q Who is it that directed you to do an
4 investigation?

5 A It was a letter from the Air Force Reserve
6 Command Headquarters.

7 Q Air Force Reserve Command is in Robins?

8 A Yes, Robins Air Force Base.

9 Q So it's the Commander of Air Force Base Robins
10 that's sending you this directive?

11 A It actually -- I'm thinking it came through the
12 Judge Advocate's Office there.

13 Q So is there a name? Who is actually giving the
14 order?

15 A I don't know. If I had a copy of the letter, I
16 could tell you. But I don't know exactly who it was at
17 that time.

18 Q But it's someone at Robins?

19 A Yes.

20 Q Who is, at that time, Commander of Air Force
21 Reserve?

22 A Yes.

23 Q So if we just figured out who the Commander was
24 of Air Force Reserve in the Summer of 2004, that would be
25 the person probably?

1 Q Does this trigger any memory of the process you
2 went through when you received orders from General
3 Sherrard?

4 MR. DIEDERICH: Objection to form.

5 THE WITNESS: My recollection would be, in a
6 case like this, when I was notified, the Judge Advocate's
7 Office at McChord would prepare a letter to him saying we
8 have been directed to do this investigation. And he
9 would sign this authorizing letter and provide that as
10 part of the case materials to the Judge Advocate's
11 Office.

12 BY MR. LOBSENZ:

13 Q Why would the Commander of the 4th Air Force
14 need to authorize this if it had already been directed by
15 General Sherrard?

16 MR. DIEDERICH: Objection to form.

17 THE WITNESS: My understanding is he is -- the
18 4th Air Force Commander has court-martial convening
19 authority for the Wing. And, therefore, in case the
20 action should lead to any court-martialing actions, he
21 has to authorize the investigation and be aware of it as
22 the convening authority.

23 BY MR. LOBSENZ:

24 Q Okay. Am I understanding correctly then,
25 because there's a possibility that it might go

1 court-martial, it has to go through the person with the
2 convening authority for court-martial?

3 A That's my understanding.

4 Q And so you get number two, Exhibit No. 2 from
5 General Duignan. Does that tell you anything at all
6 about whether he makes some decision about whether it's
7 going to proceed on the court-martial track or not?

8 MR. DIEDERICH: Objection to form.

9 THE WITNESS: No.

10 BY MR. LOBSENZ:

11 Q So it still could? At least as of July 7th,
12 2004, it still could have led to a court-martial?

13 A Yes.

14 MR. DIEDERICH: Objection to firm.

15 BY MR. LOBSENZ:

16 Q Okay. When General Duignan says "I have
17 reviewed your request for authorization," is that because
18 what was prepared by the Judge Advocate General went to
19 him under your signature?

20 A Yes.

21 Q So you ask him for authority to proceed and he
22 grants that authority?

23 A Yes.

24 MR. LOBSENZ: While we are on the subject then,
25 I will ask for this last exhibit also on the 7th to be

APPENDIX E

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,)	
)	
Plaintiff,)	
)	
v.)	No. C06-5195 RBL
)	
UNITED STATES DEPARTMENT OF THE)	
AIR FORCE, et al,)	
)	
Defendants.)	

DEPOSITION UPON ORAL EXAMINATION OF
COLONEL JANETTE MOORE-HARBERT

TAKEN AT

Carney Badley Spellman
701 Fifth Avenue, Suite 3600
Seattle, WA 98104

FEBRUARY 25, 2010

THURSDAY, 9:00 A.M.

Reported by:
MARIE WHITE, CSR # WH-IT-EM-*29906

COPY

- 1 Q. In your opinion was she respected in her role as Chief
2 of Stan Eval?
- 3 A. Yes, I believe she was.
- 4 Q. Did you ever hear anyone say they didn't want to work
5 with her? Ever?
- 6 A. I don't remember hearing that at all.
- 7 Q. Did you ever hear anyone say that she caused a problem
8 for the unit?
- 9 A. I don't remember hearing that.
- 10 Q. Did you ever remember hearing anyone saying Mayor Witt
11 creates a morale problem?
- 12 A. I don't remember hearing that.
- 13 Q. Do you ever remember anyone saying or suggesting she
14 creates a discipline problem?
- 15 A. I don't remember hearing that.
- 16 Q. So from any source has anyone ever given you
17 information suggesting that she creates a problem for
18 unit morale or discipline?
- 19 A. From a source, no. I don't remember hearing that from
20 anybody.
- 21 Q. Okay. As I understand it, after she got to McChord,
22 there would have been occasions when you would have
23 flown missions with Major Witt, you just don't remember
24 them?
- 25 A. That's correct.

1 favoritism, that you have to do something different.

2 That again makes that an issue of taking a look at
3 morale of the troupes. Because then they are not
4 focused on what they need to be focused on, which is
5 their mission. So yes, I believe that that would be a
6 concern.

7 MR. LOBSENZ: Move to strike as
8 nonresponsive.

9 Q. Now, I didn't ask you whether it would be a concern.

10 You told me it would be a concern. I asked you: What
11 evidence do you have that Major Witt specifically would
12 cause that reaction?

13 A. I have no evidence.

14 Q. Okay. If you have no evidence that she would cause
15 that concern, could you explain to me why this answer
16 was given to Interrogatory No. 39?

17 Interrogatory No. 39 was: Identify every person
18 who holds the opinion that reinstatement of Major Witt
19 within the 446th would likely have a negative impact on
20 unit morale, cohesion or discipline of the 446th.

21 And the Answer given said that they identified
22 you.

23 So if you have no evidence that she would cause
24 those kinds of concerns, why would you answer that you
25 have an opinion that she likely would cause a negative

37

1 impact on the unit morale of 446th?

2 MR. PHIPPS: Objection, completeness.

3 A. Because we have been deploying our people for a lot of
4 years, and I believe putting somebody in a situation
5 that they are uncomfortable in is going to create a
6 distraction.

7 Q. What evidence did you have that anyone in the 446th
8 would be uncomfortable with her presence?

9 A. Again, I don't remember anybody specifically coming up
10 to say that. The reality is is that I would take a
11 look at how it would impact the mission.

12 If I put up volunteer sheets, and Major Witt would
13 be on that sheet, and members did not sign up because
14 they were uncomfortable with that, that could be an
15 indication that I'm not able to support my mission.

16 I mean it's -- the issue is is feasibly could it
17 impair my mission. And that is what I'm concerned
18 about.

19 Q. You just answered it could impair your mission. And
20 you have answered you have no evidence of that. And
21 yet the Air Force has given an opinion, has answered
22 that you are the opinion that likely would have a
23 negative impact.

24 So I am asking you, other than maybe some gut
25 feeling that it might cause a concern, what evidence do

38