

APPENDIX F

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

MAJOR MARGARET WITT,)
)
Plaintiff,)
)
vs.) C065195RBL
)
UNITED STATES DEPARTMENT OF)
THE AIR FORCE; COLONEL MARY L.)
WALKER, Commander 446th)
Aeromedical Evacuation)
Squadron, McChord Air Force)
Base; and JAMES G. ROCHE,)
SECRETARY, DEPARTMENT OF THE)
AIR FORCE,)
)
Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF EDMOND HRIVNAK

APPEARANCES:

FOR THE PLAINTIFF: JAMES E. LOBSENZ
CARNEY, BADLEY, SPELLMAN
701 FIFTH AVENUE, SUITE 3600
SEATTLE, WASHINGTON 98104

FOR THE DEFENDANTS: PETER J. PHIPPS
STEPHEN J. BUCKINGHAM
U.S. DEPARTMENT OF JUSTICE
20 MASSACHUSETTS AVENUE NW
WASHINGTON, DC 20044

MARCH 17, 2010

1 you're talking five years ago.

2 Q So, let's talk about May 2005 when you really left the
3 unit.

4 A Yeah.

5 Q How many gays and lesbians combined?

6 A Well, I didn't keep count.

7 MR. PHIPPS: Objection. Foundation.

8 MR. LOBSENZ: That's okay.

9 A I didn't keep count, but I would guess six to eight gays
10 and lesbians.

11 Q I'm not at this moment anyway, asking you for any names,
12 okay?

13 A Okay.

14 Q But just at this moment what proportion of that six to
15 eight or so, is it evenly divided men and women, do you
16 think it's more one gender than the other, what?

17 A I would say, yeah, more female than male. I mean, we're
18 a medical unit, so there's generally more females than
19 males.

20 Q Okay.

21 A So, just the numbers?

22 Q Okay.

23 A And so I would say six female lesbians, two gay men.

24 Q Are any of the people that you believe are gay or
25 lesbian now presently retired from the Air Force?

APPENDIX G

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MAJOR MARGARET WITT,)
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 Plaintiff,)
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 VS)
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 UNITED STATES DEPARTMENT OF THE)
 AIR FORCE; COLONEL MARY L.)
 WALKER, COMMANDER, 446TH)
 AEROMEDICAL EVACUATION SQUADRON,)
 McCHORD AIR FORCE BASE; and)
 JAMES O. ROCHE, SECRETARY,)
 DEPARTMENT OF THE AIR FORCE,)
)
 Defendants,)

DEPOSITION OF ANTHONY GREENWALD, Ph.D.

May 21, 2010

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1 446th, including colleagues, including commanding
2 officers.

3 And to the extent that that statement applies to my
4 report, I believe that I mentioned later in the report the
5 conditions in the 446th that I was aware of that led me to
6 the conclusion that the conditions were such that my
7 conclusions applied.

8 Q As you sit here today, do you recall what those conditions
9 were?

10 A A few of them.

11 Q Okay. Could you tell me what they are?

12 A The main one was the conditions that have to do with the
13 operation of the "Don't Ask, Don't Tell" policies, in
14 which people may be informally but not explicitly aware
15 that a colleague is homosexual. And by virtue of it not
16 being publicly discussed, people are not aware of the
17 extent to which this knowledge is shared with others.

18 Similarly, the leadership is least likely to be aware
19 of the extent to which this knowledge is shared. And
20 members of the unit are unlikely to volunteer to the
21 leadership their inferences or beliefs.

22 Q A second ago you said someone could be informally aware
23 that someone else is homosexual. What do you mean by
24 "informally aware"?

25 A It's well-known that gays give off all sorts of

1 information suggesting to others that they are homosexual.
2 People differ in their ability to pick this up. But it is
3 very common for people to make inferences that another
4 person is gay without ever knowing that explicitly,
5 without ever being told.

6 There were many indications in the material I saw
7 about the 446th that indicated that this was happening
8 there.

9 (ANSWER READ BACK.)

10 Q When you say that gays give off all sorts of information
11 suggesting that they are homosexual, what sorts of
12 information are you talking about?

13 A It's actually a long list, I believe. It includes
14 clothing choices, jewelry choices, hair styles, tone of
15 voice, and behavior in terms of who one affiliates with.
16 There's more than that, but I think those are the main
17 things.

18 Q When you say this is generally known, are you referring to
19 a sort of scientific literature about this, or is this
20 your life experience?

21 A There is scientific literature about this, about
22 perceiving homosexuality. I did not cite any of it in my
23 report. But it does exist.

24 Q Did you review it in connection with your report?

25 A No, I did not. But it was work that I knew about

1 independently and before I undertook to do this report.

2 Q It's true, isn't it, that some people are better at
3 interpreting the information you're discussing than
4 others; is that right?

5 A I would say that's almost certainly true. But I actually
6 don't know of studies explicitly of this. But it's quite
7 likely that the data from existing studies could be
8 analyzed to show that.

9 Q And it's possible that someone could reach an inference
10 and not actually know that someone is gay; right?

11 A Yes. That was my point.

12 Q So when you say that people were informally aware, does it
13 mean that they drew an inference but didn't necessarily
14 know?

15 A I would not use the language that way. If you draw an
16 inference, you do know in the way that I think about this.
17 I think you're making a distinction between assuming the
18 truth of something and knowing on the basis of factual
19 evidence that it is true. But both of those are forms of
20 knowing.

21 Q I don't mean to take this into an epistemological
22 digression. But I think that's where we're headed. Let's
23 back up a second. It's true that someone can reach an
24 inference and be wrong; right?

25 A Correct.

APPENDIX H

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

MAJOR MARGARET WITT,)
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Plaintiff,)
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vs.) C065195RBL
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UNITED STATES DEPARTMENT OF)
THE AIR FORCE; COLONEL MARY L.)
WALKER, Commander 446th)
Aeromedical Evacuation)
Squadron, McChord Air Force)
Base; and JAMES G. ROCHE,)
SECRETARY, DEPARTMENT OF THE)
AIR FORCE,)
)
Defendants.)

DEPOSITION UPON ORAL EXAMINATION OF JILL ROBINSON

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MARCH 16, 2010

1 but I don't -- I haven't seen him since he left.

2 Q Did you ever hear anyone in the unit complain that they
3 were serving with Toni Wilson believed to be a lesbian?

4 A No.

5 Q Did you ever hear anyone complain that they were serving
6 with Bill Barkley, a man assumed to be a gay person?

7 A No.

8 Q No?

9 A Odd behaviors. He was just a quirky guy and but there
10 wasn't...

11 Q Let's see, did you say, did Toni Wilson have a partner?

12 A I did not say. I don't know if she did.

13 Q And Bill Barkley after his break up of his marriage, do
14 you know whether he had a partner or not?

15 A No.

16 Q Now, aside from those three people, Lisa Chisa,
17 Toni Wilson, Bill Barkley, there's some other people who
18 are still in; is that correct?

19 A Yes.

20 Q Who you believe to be gay or lesbian; right?

21 A Correct.

22 Q First of all, just how many in numbers, other people is
23 that group in your mind?

24 A Six.

25 Q Six. Okay. And of those six, how many are gay men and

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how many are women, lesbian women?

A So, I... Five and one.

Q Five which way?

A Five women.

Q Five women. One man. Okay. Are you capable of saying whether you think your belief that these six people are gay and lesbian is shared by others?

A I'm -- Yes, they're shared by some.

Q And without naming their names, but have you had discussions with other people about your suspicions or assumptions that these other people are gay or lesbian?

A No, I've not had that discussion about suspicions.

Q Do you know Stacey Julian, J-U-L-I-A-N?

A Yes.

Q And Stacey is S-T-A-C-E-Y. How long have you known him?

A Same amount of time I've been in the squadron. I believe he got there before I did, so twenty-three years.

Q So, twenty-three years almost?

A Uh-huh.

Q I want to read you one paragraph, part of one paragraph from the declaration he signed. And then I'm just going to ask you if you agree with his statement.

A Okay.

Q "Our squadron has always had gays and lesbians in it,

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1 and their presence is widely known. But until this
2 decision to seek a discharge against Maj. Witt, it has
3 never been an issue." Would you agree with that?

4 MR. PHIPPS: Objection. Incomplete.

5 A Parts of it.

6 Q Okay. Which parts would you agree with?

7 A Parts that there were assumptions that people know
8 there's gay and lesbians there. Whether everybody knew
9 about it, I don't know if that's correct exactly. You
10 said it with that but...

11 Q His exact words are "and their presence is widely
12 known."

13 A I don't know about the "widely" part.

14 Q And is there some part of it that you don't agree with
15 or you just don't know?

16 A I believe that there are people who believe there are
17 gay and lesbians in our squadron, and but as far as
18 widely disseminated, I, I don't know about that.

19 (Comments off the record.)

20 Q You've had occasion to speak to Col. Moore-Harbert about
21 Maj. Sharon Carlson; correct?

22 A Correct.

23 Q And why, why did you have occasion to speak to the
24 commander about her?

25 A Pandora's Box. An alleged domestic violence dispute

- 1 with her partner, or... Yeah.
- 2 Q How did you first learn about the alleged domestic
3 violence incident?
- 4 A I saw bruises on Candace's arm.
- 5 Q Did then did you ask Candace about that?
- 6 A Yes.
- 7 Q What did she say?
- 8 A Myself and Leslie Pellegrini were in the office and
9 asking her about it, and she stated that she's fine,
10 that she was fine. And bruises were there. And it came
11 back to be centered on Sharon that had caused the
12 bruises. And then from there, I believe what was
13 transpired was there ended up being an exercise that
14 went overseas to Hawaii that the majority of the
15 squadron went on, and then at that point somebody had
16 stated that I had gone in and up-channeled information
17 related to Sharon up the chain of the Air Force. And
18 Sharon approached me about it asking why. And I had no
19 part of up-channeling of any information. So,... There
20 was an accusation made that I had turned her in, I had
21 access to Col. Moore-Harbert's office while she was gone
22 as the commander on this deployment and floated this
23 upward.
- 24 Q So, is this right, Sharon basically approached you,
25 approached you and accused you of outing her?

1 A Yes.

2 Q You said that it began with a discussion I guess
3 somewhere in the building in the office about bruises.
4 At that point, did you know prior to that day that
5 Sharon lived with Candace?

6 A Yes.

7 Q Prior to that day, did you believe Sharon and Candace to
8 be having a relationship?

9 A Yes.

10 Q And I take it that's something Sharon never told you;
11 right? She never said, "I am a lesbian"?

12 A Correct.

13 Q And Candace never said, "I am a lesbian"?

14 A Correct.

15 Q But it's something you believed?

16 A Correct.

17 Q Prior to this day that you saw the bruises on
18 Candace Newberry, did you know anything about how Sharon
19 and Candace had come to be together?

20 A I believe it was started as, I believe -- and this is
21 where I can be wrong, that it was on a deployment
22 overseas.

23 Q That they met?

24 A Yes.

25 Q Had you ever been to their house that they shared?

1 A Yes.

2 Q Had you been to their house prior to there domestic
3 violence incident?

4 A Yes.

5 Q One thing I didn't understand is you mentioned something
6 about an exercise that the whole unit was on, an
7 exercise; is that what you said?

8 A Yes. There was -- I forgot the -- I don't remember the
9 name of it. But it was over in Hawaii. And so
10 Col. Moore-Harbert was over there along with many other
11 people. And there was only a few people in the squadron
12 back here just coming in to do their requirements.

13 Q So, I don't understand. What happened while you were in
14 Hawaii that's related to this?

15 A I wasn't in Hawaii. I was at the squadron.

16 Q Okay.

17 A And so what came back was while I was at the squadron,
18 Sharon was also there, and all doing our own independent
19 things. And then I got a call while I was at home from
20 her stating that information had gotten back to people
21 in Hawaii that I had up-channeled information.

22 Q Oh, I see.

23 A And so, I -- Yeah, I spent a good couple hours talking
24 to Sharon about it, and I don't...

25 Q So, at this point, when most of the unit is in Hawaii,

1 you and Sharon are not in Hawaii?
2 A Correct.
3 Q And when you're saying you spent a couple hours talking
4 to Sharon, is that in person or over the phone?
5 A Over the phone.
6 Q I take it in this conversation Sharon is upset?
7 A Yes.
8 Q Angry at you?
9 A Maybe. Confused. Not understanding why I got
10 information.
11 Q And because you're the executive assistant, you have
12 access to the commander's desk; is that right?
13 A I do not.
14 Q You do not?
15 A I do not.
16 Q But Sharon thought you did?
17 A Correct. Or there was, there was a belief assumed that
18 I did, therefore I was the one that was responsible for
19 the information getting out there, and that I had
20 up-channeled it.
21 Q So, you told Sharon, I take it, "I did not up-channel
22 it. I did not tell Moore-Harbert anything"?
23 A I -- Right. I mean, Col. Moore-Harbert was over there,
24 and I went through the whole explanation of my access,
25 my inability to get access to that information. I don't

1 have access to her office. Don't have access to the
2 information that she thought was forwarded upward.
3 Q So, you told Sharon this?
4 A Correct.
5 Q And what did she say?
6 A I felt as though I lost a friendship.
7 Q Did she say whether she believed you or not when you
8 said, "I didn't do this"?
9 A No, I don't believe that she actually said anything. It
10 was a matter of I was put in a place to convince.
11 Q Then what happened?
12 A I spoke to Col. Moore-Harbert about it when she got
13 back --
14 Q What did --
15 A -- and asked her to explain it to Sharon, that I don't
16 have this information.
17 Q And was she willing to do that?
18 A Yes.
19 Q Did she do that?
20 A I believe she did.
21 Q What makes you say you believe that she spoke to --
22 A -- because I was there when the three of us talked.
23 Q So --
24 A -- And so it was explained in her office that while this
25 allegation was there, that I wasn't the source, that I

1 didn't have access.

2 Q Did Col. Moore-Harbert explain what was the source of

3 her information?

4 A No.

5 Q Did she mention the police report?

6 A The police report was part of what the source was, but I

7 don't recall her actually explaining it to Sharon about

8 the specific police report. I remember the

9 conversations that when reports come through with

10 domestic violence and the police officers arrive at the

11 house and they're military, it still gets crossed over

12 to the military side. So, that I recall is information,

13 and so...

14 Q That information that the police share their reports

15 with the military, was that information, did it come

16 from Col. Moore-Harbert or someone else?

17 A I believe it came from Col. Moore-Harbert.

18 Q In this three-person conversation, did you form an

19 opinion as to whether Sharon was convinced that you were

20 not the person who outed her?

21 A I don't think she'll ever be convinced.

22 Q You don't?

23 A (Non-verbal negative response.)

24 Q So, did it permanently damage the friendship?

25 A Uh-huh.

1 Q Are you, do you think you're friends today?

2 A Passively.

3 Q Apparently that means something different from the way
4 it was before?

5 A We had -- I mean, there was conversations and talks
6 about jobs and stuff and those conversations just, they
7 got short, subsided. I still talk to her, and we still
8 are friendly. I mean, it's -- But it's a pretty big hit
9 to take.

10 Q Yeah. Was there any impact on this incident on your
11 relationship with Candace Newberry?

12 A Candace left the squadron, so...

13 Q Do you know the circumstances of why she left?

14 A Not specifically.

15 Q Unspecifically, do you know?

16 A Unspecifically is Sharon found somebody else and Candace
17 found out. Candace tried to work this out with Sharon,
18 and it was just -- and so Candace left.

19 Q I don't think I asked you but what's the relationship
20 between ranks between Carlson and Newberry?

21 A Enlisted and officer.

22 Q Is it against military policy for an enlisted person
23 serving under an officer to share quarters with them
24 like that?

25 MR. PHIPPS: Objection. Calls for a legal

1 conclusion.

2 A I don't... I lived with an officer. I was enlisted.

3 Q Okay.

4 A Different squadrons. Engaged.

5 Q Uh-huh.

6 A So, --

7 Q -- Different squadrons?

8 A Yes.

9 Q So, one was not directly under the command of the other?

10 A Correct.

11 Q But you were not under the command of the other?

12 A Correct.

13 Q But Candace Newberry was under the command of Carlson or

14 not?

15 A No, no.

16 Q No?

17 A Because Candace had a position within squadron that was

18 enlisted the side that was unrelated to falling under

19 Sharon for flying. Candace was a flyer. She was part

20 of a CCATT team, and she stopped doing that to come into

21 the squadron to do more clerical work.

22 Q In that conversation that the three of you had,

23 Moore-Harbert and you and Carlson, was there any

24 discussion of the fraternization policy of the

25 Air Force?

- 1 A Yes, that she'd be admonished.
- 2 Q Do you know whether Sharon was admonished?
- 3 A I don't know.
- 4 Q In the normal course of -- Well, let me back up. As the
5 executive officer serving under Col. Moore-Harbert, did
6 you have any duties to process paperwork for
7 disciplinary letters like letters of admonishment?
- 8 A No.
- 9 Q Would you ever see those in the normal course of
10 business?
- 11 A No.
- 12 Q So, if I got this right, Col. Moore-Harbert said,
13 "You're going to be admonished," but you don't know
14 whether it happened or not?
- 15 A Correct.
- 16 Q What about Sgt. Newberry, do you know, was anything said
17 about what would happen to her?
- 18 A No.
- 19 Q Do you know whether anything happened to her one way or
20 another?
- 21 A I don't know.
- 22 Q And so what did Col. Moore-Harbert say Carlson was going
23 to be admonished for?
- 24 A Maintaining a house with an enlisted as an officer.
- 25 Q Was there any discussion in that meeting of the three of

1 you about whether or not there would be any action taken
2 for being lesbian?

3 A No, that the action would be taken for the officer and
4 enlisted relationship.

5 Q Did Maj. Carlson express any concern that action might
6 be taken because of her sexual orientation?

7 A No. She voiced concern with me related to the
8 information flow of the impact of that information being
9 out there and what would potentially happen with it.

10 Q But what about to Moore-Harbert?

11 A I don't know.

12 Q No, you don't know?

13 A No.

14 Q After that meeting of the three of you in Col.
15 Moore-Harbert's office, did you ever have any subsequent
16 conversation with Col. Moore-Harbert about that
17 incident?

18 A No, because I wanted closure to move on from it, and my
19 biggest angst was the fact of a friendship.

20 Q After that incident, were there any times you either had
21 conversations with other members of the unit about this
22 incident with Carlson?

23 A Leslie.

24 Q Leslie. Anyone else?

25 A Not that I re... Leslie and Candace because she was

- 1 involved in it.
- 2 Q What was the conversation with Leslie?
- 3 A How do I fix it, what do I do? I mean, I wasn't
- 4 involved with the information flow. There was
- 5 frustration about Sharon, confusion why the aggressive
- 6 behavior happened, the pretense to it, the idea it takes
- 7 two sides, who pushed what, the whole, how did it all
- 8 happen. So,...
- 9 Q So, did you get some information either from Sharon or
- 10 Candace about the actual incident which gave rise to
- 11 these bruises?
- 12 A Candace --
- 13 Q What did Candace say?
- 14 A -- gave the majority of the information, that she had
- 15 e-mails and information that Sharon had met somebody
- 16 else and Candace was unsure what she was going to do and
- 17 so they got in a verbal conflict about it at home. And
- 18 it escalated.
- 19 Q Did Candace describe how she ends up with bruises?
- 20 A Yes. That she, Sharon held her and so that was...
- 21 Whether implications on how, why she was being held,
- 22 there are two sides, and I just know that that's what
- 23 Candace had said.
- 24 Q Did you get the other side?
- 25 A It filtered out that there was fist throwing and

1 punching, so that Candace was essentially physically
2 restrained by Sharon by holding her from being not hit,
3 so...

4 Q I'm sorry, you said it was Leslie and Candace were the
5 two people you had conversations with after the meeting
6 with Moore-Harbert?

7 A This was before. This was before.

8 MR. LOBSENZ: Well, now you look like you
9 might want a break.

10 THE WITNESS: I'm exhausted.

11 MR. LOBSENZ: Want to take a little one or go
12 on to other subjects?

13 THE WITNESS: Okay. All right.

14 (Recess in proceedings.)

15 Q After this incident did anyone in the unit, did you ever
16 hear anyone in the unit say they didn't want to work
17 with Sharon Carlson anymore?

18 A No.

19 Q After this incident did you ever hear anyone say, "I
20 don't want to -- I don't like the fact that we have a
21 lesbian in the unit and her name is Sharon Carlson"?

22 A No.

23 Q Okay. Done with that. Now, at some point apparently in
24 the summer of 2009, there was a ceremony for the 50th
25 anniversary of the unit of the 446th; correct?

APPENDIX I

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 OF MAJOR MARGARET WITT
Monday, May 24, 2010
Pages 1 to 136

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1 describing?

2 **A. In terms of what it's -- I don't understand.**

3 Q. The term "Homosexual Act" is defined here. Does
4 that make sense to you in terms of what it's describing?
5 Do you understand that definition?

6 **A. I understand this, yes.**

7 Q. Okay. When I use the words "Homosexual Act," I'm
8 using it as set forth here. So I guess to play back to
9 where we were, prior to entering the Air Force, had you
10 ever engaged in homosexual acts?

11 **A. Yes.**

12 Q. So when you entered the Air Force, did you think
13 of yourself as homosexual or lesbian or anything else
14 like that?

15 MR. LOBSENZ: Object to the form.

16 BY MR. PHIPPS:

17 Q. And what I mean is this: I know that these terms
18 can be sensitive to people, and so I want to use a term
19 that's most appropriate. So maybe what I will say is
20 this: Prior to entering the Air Force, did you think of
21 yourself as homosexual?

22 **A. No.**

23 Q. Did you think of yourself as lesbian?

24 **A. No.**

25 Q. And why was that? Why was that? Was there some

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1 sort of sexual identity that you had other than those
2 two?

3 A. I didn't have a sexual identity. I never wanted
4 to label myself because then you're put in a box. So
5 I'm sorry. I've spent over 20 years not talking about
6 anything like this and being programmed not to talk
7 about anything like this. So I will do my best here.

8 Q. I guess my other point is, had you -- Prior to
9 entering the Air Force, had you engaged in heterosexual
10 sexual activity before entering the Air Force?

11 A. Yes.

12 Q. Okay. And at the time that you first entered the
13 Air Force, did you know what the Air Force's policy was
14 regarding homosexuality and homosexual acts?

15 A. No.

16 Q. When you were applying to work in the Air Force,
17 did you have to answer an entrance questionnaire?

18 A. I did.

19 Q. Do you recall any of the questions on that
20 questionnaire?

21 A. No.

22 Q. Do you recall if any of the questions were about
23 drug use, prior drug use, or anything like that?

24 A. Yes.

25 Q. Were any of the questions about physical

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1 A. Yes.

2 Q. They were both officers?

3 A. Yes.

4 Q. Did you ever work for either one of them?

5 A. No, I did not.

6 Q. Did either of them work for you?

7 A. No, they did not.

8 Q. What branch of service were they in?

9 A. Air Force.

10 Q. Did you ever live with either of those persons?

11 A. Yes, I did.

12 Q. Okay. Did you live with both of those persons?

13 A. No, I did not.

14 Q. You lived with one of them?

15 A. That was a statement.

16 Q. Question mark. Did you live with one of them?

17 A. Yes.

18 Q. Have you ever engaged in homosexual acts with any

19 civilian employees or contract employees of the

20 Department of Defense or any branch of military service?

21 A. No.

22 Q. Did you ever tell any member of the 446 Wing that

23 you were gay or lesbian or words to that effect?

24 MR. LOBSENZ: Well, that makes me more

25 inclined to object to the form because of "words to that

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1 effect." Ordinarily, I would never object to the form
2 of a question where the question is, "did you tell."
3 But given this case and the particular issues in this
4 case, I think it might be helpful if you understood that
5 I'm objecting to the form of the question "tell,"
6 particularly if you add "or words to that effect" simply
7 because there are so many ways to communicate things
8 without telling vocally, if you understand me. So with
9 that objection on the record, you go ahead.

10 BY MR. PHIPPS:

11 Q. Do you need clarification on what I mean by
12 "tell?"

13 A. Yes, please.

14 Q. I will say "tell" means verbalize or in writing
15 or other form of direct, expressive communication
16 initiated by you.

17 A. No.

18 Q. Did any members of the 446 Wing ever ask you if
19 you were gay or lesbian or words to those effect?

20 A. Words to those effect?

21 Q. Yeah, just -- yeah. Do you understand that or
22 not?

23 A. Can you give it to me again, please.

24 Q. Sure. Did any members of the 446 AES ever ask
25 you, I can generalize it, about your sexual orientation?

1 **A. Yes.**

2 Q. Do you recall where it was you engaged in
3 homosexual acts with Lori McChesney that day?

4 **A. Yes.**

5 Q. Where was that?

6 **A. At the McChesney property.**

7 Q. And was Lori McChesney married to Pat McChesney
8 to the best of your knowledge on October 31st, 2003?

9 **A. Yes.**

10 Q. Did Lori and Pat have any children that lived
11 with them in October or November of 2003?

12 **A. Yes.**

13 Q. How many children?

14 **A. One.**

15 Q. And who was that?

16 **A. Sam.**

17 Q. And you mentioned approximately did you say -- I
18 don't want to change the time periods on you.

19 Approximately how old was he at that time?

20 **A. 13 or 14 I believe.**

21 Q. Did you -- Did you know when Lori McChesney and
22 Pat McChesney, did there come a point in time when they
23 no longer lived together?

24 **A. Yes.**

25 Q. Do you know roughly when that was?

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1 A. Roughly December or January.

2 Q. That's '03 and then January '04?

3 A. Yes.

4 Q. Between October 31st, 2003, and then December and
5 January of late '03 and early '04, had you engaged in
6 other homosexual acts with Lori McChesney?

7 A. Say that again, please.

8 Q. In between October 31st, 2003, and December of
9 2003, did you engage in homosexual acts with Lori
10 McChesney beyond the one we already talked about in
11 October of 2003?

12 A. Yes.

13 Q. Do you know when Lori and Pat McChesney were
14 officially divorced approximately?

15 A. Approximately December, the following December.

16 Q. Were you still serving in the Reserves when you
17 were engaging in homosexual acts with Lori McChesney?

18 A. Yes.

19 Q. And so you, and I think this is obvious, but you
20 engaged in homosexual acts with Lori McChesney before
21 her divorce with Pat McChesney was finalized?

22 A. It's not something I'm proud of, yes.

23 Q. Did Lori McChesney ever travel with you during
24 weekends when you were serving in the Reserves?

25 A. No.

APPENDIX J

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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

DEPOSITION of NATHANIEL FRANK, Ph.D., an Expert Witness, taken by Defendants at the offices of The ACLU, 125 Broad Street, 18th Floor, New York, New York, on Friday, May 14, 2010, commencing at 10 a.m., before Charleane M. Heading, a Registered Merit Reporter and Notary Public within and for the State of New York.

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1 Frank

2 A Yes. Right. I wanted to make sure.

3 Q All right. I'm going to go to a VI
4 at the bottom of page ten.

5 If I understand what you're saying,
6 you're saying that women tend to be less concerned
7 about homosexuality than men?

8 A As a generalization, yes.

9 Q Not every woman is less concerned
10 about homosexuality, but every man?

11 A Yes.

12 Q I think I'm missing a step here.
13 From that statement, why does that suggest that
14 Major Witt's presence would not cause disruptions
15 to her unit?

16 A Well, my position has been that
17 discomfort or opposition among service members to
18 someone who may be openly gay does not actually
19 rise to the level of threatening cohesion, but
20 this is to say that even if you're not convinced
21 that, that positive attitudes are not necessary
22 for openly gay service to work effectively, you
23 should realize that among women, that resistance
24 isn't even there.

25 So to the extent that one might

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1 Frank
2 believe that concerns about privacy threaten
3 cohesion, which apparently is the Justice
4 Department's interpretation of Congress' intent,
5 that need not be a concern because women tend to
6 be less concerned about that to begin with.

7 Q And, again, to take a look at your
8 language, the, the verb, the gerund, the gerendum,
9 I'm not sure what this is, but the phrase you use
10 is suggesting of that, see that?

11 So you didn't say something stronger
12 than suggesting that, did you?

13 A No, I said what it says.

14 Q Okay. So all that this is, all that
15 this opinion is, I guess, amounts to a suggestion
16 that her presence would not cause disruption
17 towards you. You aren't saying conclusively it
18 would or wouldn't; you're just saying I've got
19 materials that suggest that?

20 A Well, I can't tell the future.

21 Q In fact, I mean I'm not talking the
22 future. It's really hard to know at one level if
23 she were hypothetically to come back as an openly
24 gay service member, if that would or would not
25 adversely affect unit cohesion, am I right?

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1 Frank

2 A I agree.

3 Q And then finding 10, do you agree or
4 disagree with that finding?

5 A I agree.

6 Q Okay. And then finding 11, do you
7 agree or disagree with that finding?

8 A Agree.

9 Q And then finding 12, do you agree or
10 disagree with that finding?

11 A Agree.

12 Q Okay. Well, let's go to 13. Do you
13 agree or disagree with 13, finding 13?

14 A Disagree.

15 Q Fourteen, do you agree or disagree?

16 A Disagree -- sorry, hold on. I
17 thought maybe I was going too fast and maybe I
18 was.

19 Okay. I'm -- I agree.

20 Q You agree with 14?

21 A Yes.

22 Q And then do you agree or disagree
23 with 15?

24 A Disagree.

25 Q Okay. If you want, I can provide

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1 Frank
2 you an opportunity now to express your reasons for
3 disagreeing with 13 and 15 or if you think it's
4 covered in your report, I'm happy to defer to
5 that. I'll leave it up to you.

6 A Oh, I'll take the opportunity.

7 Q Sure.

8 A When I spoke to the general who was
9 the first head of the military working group that
10 wrote the blueprint for "Don't Ask, Don't Tell"
11 about this finding that claims that --

12 Q It's number 13?

13 A Sorry, 15, that the presence of
14 people who "demonstrate a propensity or intent to
15 engage in homosexual acts would create an
16 unacceptable risk to the high standards of morale,
17 good order and discipline, and unit cohesion that
18 are the essence of military capability," he said
19 he had no idea where that came from and from my
20 more than ten years of research, there has never
21 been any basis whatsoever for a finding like this.

22 So findings number 13 and 15, I
23 think, are a joke. They are a political
24 expression of hostility to homosexuality that are
25 not grounded in any facts.

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