REPORT FROM THE MILITARY LAW PROJECT

Saturday, August 28, 1993

Second Annual International Conference on Transgender Law and Employment Policy

PROJECT DIRECTOR: Sharon Ann Stuart, Attorney, Military Law Project Director, ICTLEP

By Phyllis Frye:

We're now going to begin the Military Law section of our day. Before I introduce Sharon Ann Stuart — I don't know how many of you saw the paper this morning, but it just seems appropriate. John W. Shannon, the Army's Acting Secretary, allegedly shoplifted a woman's blouse and skirt from a P.X. Now, I'm not going to say anything about whether or not this person is a closeted member of our community. If this person is not, I don't really care to be sued. But it is interesting.

Without addressing John W. Shannon specifically, but addressing other people that we know that do get in trouble for shoplifting clothes of the opposite gender, I think that says a lot for the fact that these people are everywhere. They are in high places and they can probably affect our lives very significantly and helpfully if they just come "out" to somebody. How sad it is that they will risk theft, which is a lot like lying. It just implies that you don't have any character at all. They will also risk the embarrassment of getting caught and the penalties of getting caught, rather than go through a line and look at a clerk or not look at a clerk and pay for it. That really is sad. But, it couldn't have happened to a better branch of the service.

I wish to introduce — reintroduce — you've met her before, Sharon Ann Stuart. She is a non-practicing attorney from the State of New York. She is one of our Directors. Last year she presented an excellent report on this subject.

Sharon Ann Stuart, Attorney,
Military Law Project Director, ICTLEP

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By Sharon Ann Stuart:

Thank you Phyllis. If John W. Shannon is listening, the Military Law Project will be happy to help you and advise you on your rights and responsibilities with regard to the Army. This is what we have been doing over the past year. Part of my report will be concerned with a counseling and consultation that the Military Law Project has done in the past year.

My colleague, Jan Morris, has handed out our mission statement on the blue sheet. That will be entered into the record *[see Appendix 4]*. You can read through that, and part my report will concern that mission statement. The new paragraph that has been added that is different from our mission statement adopted last year is paragraph 6. That paragraph reflects the work that we did over the past year that we did not anticipate doing quite so much when we wrote the original mission statement.

And that paragraph reads: "To provide consultation and information to transgendered military personnel confronted with disciplinary and administrative actions by the military and to inform their military and civilian legal counsel regarding gender related issues; to draft and distribute legal do's and don'ts for transgendered military personnel; to inform them of their legal rights and obligation as service members." *[Subsequently revised to include lesbians and gays — see Appendix 4.]*

These are some of the accomplishments of the military law project in the past year. After returning from the conference, the project established a mailing address, a project office and a hot line in Cooperstown, New York. For a while we had a toll free number, and that number was 1-800-824-7122. I want to make it clear that that number has been discontinued. It was not a cost effective number for the project, and we discontinued it sometime in April. Our current phone number is not a toll free number. It is 607-547-4118. That is a 24 hour number on which messages can be left. It is a telephone and also a fax machine. So that is our contact point by telecommunication. Our address remains Military Law Project, P.O. Box 930, Cooperstown, New York 13326. You may, if you wish, put the name Sharon Ann Stuart on the address or that may be left off either way.

One of the important tasks that the project undertook was the drafting of a legal do's and don'ts for transgendered military personnel. As a corresponding document to that, we also drafted a legal do's and don'ts for gay and lesbian military personnel. Those two documents were distributed to various communities and organizations for review and for dissemination to their members. The organization to which I belong and act as an original contact person, Parents and Friends of Lesbians And Gays reviewed and made limited use of the homosexual, or gay and lesbian, version of our do's and don'ts. Both of these documents now require substantial revisions in light of the Clinton initiative and the ensuing policy changes which have been adopted by the Department of Defense regarding the status of gay and lesbian personnel.

Throughout the year, the project collected information about the Clinton initiative, engaged in a dialogue with people about that initiative, and made input as best we could. We watch with great interest as that controversy unfolds. Of course, the fate and the treatment of gay and lesbian personnel in the military is directly and vitally related to the treatment and the policies that affect our people, the transgendered people. As Sharon Kahn has come to realize, I came to realize emphatically during the year that our interests are their interests and vice versa. We are one with them. Although the military chooses to distinguish transgendered people and to proceed against them under separate laws and regulations, the effect, the abuse, and the outcome is the same.

I want to acknowledge the help of two people during the year. Jan Morris has been very much of assistance with the legal do's and don'ts drafting. Jan fortunately has agreed to assist in the redrafting work, and I very much appreciate her support and her assistance. And it has been invaluable.

And also the work and assistance of Cissy Conly, a transgendered civilian employee of the Air Force. She was administratively suspended after it became known that she was a cross dresser and had been seen cross

dressed while on temporary duty on a work assignment, but during off duty hours. She appealed that suspension successfully, and it is one of the few success stories to which we can point. And Cissy is still happily working, and productively working I might add, as an Air Force employee. Cissy came and appeared on several programs at gender community events with me and told her story. It is a story of hope and an illustration of what could be accomplished, if the military services, the active duty services would show the same flexibility and the same level of understanding that the civilian employee part of the Air Force showed in dealing ultimately with Sissy's case.

We also began a survey of military personnel in September of 1992. We kicked that off here at the First Transgender Law Conference in terms of a proposal. Then we began to distribute questionnaires at the Southern Comfort gender event at the end of September and early October 1992. That questionnaire was distributed to organizations and at gender community events and over one hundred responses were collected.

This was not a scientifically designed questionnaire. It was designed as a pilot study, as an initial information gathering document. We had the assistance of several people in designing that questionnaire, but it was a pilot study. One of the outcomes of that pilot study was the agreement reached recently with Dr. George Brown, an eminent psychiatrist and a person who has worked with this community. He is virtually the only published scientist or medical person, the only person of that character to have published an article in a recognized medical journal about transsexualism in the Air Force or in the military. He really, I think, must be regarded as the foremost expert in this field.

Dr. Brown has agreed to work with the Military Law Project. Our agreement is essentially this. We will disseminate the questionnaire, an expanded questionnaire, a greatly expanded questionnaire which he has had a hand in redesigning, and collect them. We will do the dissemination of that questionnaire and the collecting of the data. Dr. Brown has agreed to analyze the data and expects to write articles eventually for medical and psychiatric journals. We, of course, will have nothing to say about what Dr. Brown writes. We will have a great deal to say about what data he uses, and it is our hope that we can collect at least 250 responses. In fact that is the condition upon which Dr. Brown has agreed to do the study. We hope to produce over 500 questionnaires or responses and even more than that.

We will work at this for two years if necessary. My personal hope is that we can acquire the 250 in the first year, but we will go on beyond that. This work promises to lay the foundations for the effort that we eventually hope to undertake. This is to go to the Department of Defense, and to the various branches of the Armed Forces and, in particular to their legal and medical establishments, to lay our information and our concerns before them, to show them documented case histories where people have been mistreated and their rights abridged and abused by the military, and to show them how they have thrown away trained and useful people.

During 1992 and the early part of '93, the Military Law Project made contact with eighteen people who were confronted with administrative action, medical discharge or other legal problems related to cross gender behavior in the military. Here are a few examples of those cases.

Master Sergeant [redacted] who figured prominently in our report last year was an Air Force Master Sergeant nearing his twentieth anniversary in the military reached that anniversary. The Air Force had known for some years that he was an active cross dresser, and it was a considerable issue in his command. But he was allowed to retain his position, and his work performance remained high and satisfactory. He suffered from harassment, abuse, from a restriction on his right of free speech, but he made it through his twenty years. His real desire was to stay in the Air Force for a longer period of time.

However, in January of 1993, he attended a gender community event on the east coast. In the course of that event, as [redacted], he appeared on a documentary news cast and was filmed in an interview and in a fashion show. Seven seconds of the fashion show footage was used in a comprehensive report emanating from that gender community event which covered a variety of issues and featured a number of people. However, back

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at his base, other Air Force personnel who had become aware that he was attending that event, as [redacted], videotaped the broadcast. The videotape was given to command and an investigation was initiated by the Air Force investigative service. Investigators came to the base and interviewed Master Sergeant [redacted]'s work associates and command personnel. They compiled a dossier file and, based on the evidence in that, initiated administrative discharge proceedings or essentially involuntary retirement proceedings. Master Sergeant [redacted]'s Air Force career was terminated.

Master Sergeant [redacted] is now [redacted]. [redacted] is employed as a government employee with the Federal Government. Her Air Force career is behind her. In her case, the story has somewhat of a happy ending. She reached retirement and will enjoy the benefits of that retirement. It illustrates the vengeance which the military has towards those who dare to cross gender lines even if they do it off base, off duty and, for all practical purposes, out of the presence of our military personnel.

Not so fortunate was a navy lieutenant stationed in California who late in his career, in his seventeenth year of a naval career, had the urge to cross dress. He went to a motel, having obtained some women's clothing, and wore the women's clothing for a period of time. He did this on two occasions. Feeling disturbed and concerned about his own behavior, he consulted with a naval psychiatrist. The psychiatrist turned him in. Based on those two isolated incidents, he was administratively discharged and unless that discharge is overturned in federal court or by an administrative discharge review board, his retirement benefits essentially are canceled. He will have nothing to show for his seventeen years of honorable and productive service.

The same administrative board that decided he should be discharged had, just the previous week, exonerated an officer who had been charged with date rape by a civilian, who refused to press civilian charges, but advised the military that she had been abused by this officer. After considering the evidence, and I don't know the evidence in the case, the same board decided that that officer merited an excuse. He was essentially was acquitted by this administrative proceeding. There's a great unevenness in military justice sometimes, or so it seems.

Another individual named Karen is an interesting case. Karen was an Army enlisted person serving in Germany. Karen regularly cross dressed in quarters and on liberty. Karen consulted an Army psychiatrist, a woman in Germany. The woman showed great empathy and understanding and commenced to counsel Karen and to care for Karen, and did not advise Command of Karen's behavior.

Karen was reassigned to a base in the United States with about a year to go in her Army enlistment. At the base here in the United States, Karen reported to an Army psychiatrist. At this point, there was nothing in Karen's medical records or file to indicate that she had been counseled or had any contact with cross gender behavior. The second psychiatrist turned Karen in. Karen was processed for administrative discharge. The papers were prepared, but Karen's commander refused to sign them. Karen was in a artillery unit, or combat-ready unit, one of the units that's supposed to be ready to be anywhere on moment's notice.

The evidence we have is that these are the types of units that particularly engage in abusive or harassing behavior of gay and lesbian people or people who are transgendered. That's in fact what happened to Karen. Word of her problem quote "leaked out" unquote, although these matters are supposed to be confidential. She began to experience physical abuse, verbal abuse, being assigned menial jobs, and so on. She was called all sorts of names. Meanwhile her discharge papers laid on the commanding officer's desk. He could have signed them any time, but he chose not to.

After enduring three months of this hell, over Christmas and not being given any leave, she went AWOL, absent without leave. That was in 1986. She is still AWOL from the Army, and her life is hell because of it. She lives in California, and she wishes to separate herself from the Army.

At one point while crossing the U.S.-Mexican border, she was detained by the border authorities and

returned to the Army. This I believe was in 1988. The Army put her on a plane in San Diego to go to the Army base in San Francisco without a chaser or a guard. They simply put her on the plane. When she arrived in the San Francisco area, there was no one there to pick her up. She waited in the airport there for hours accosting several other military personnel to explain her situation but was given no assistance. Eventually she walked into town from the airport. She was penniless and had not even a set of military orders with her. She was unable to find anyone to help her, so she went to the bus station, begged bus fare back to San Diego, and has not seen anything of the Army since.

The military law project has been attempting to refer this person, Karen, to a qualified civilian lawyer who can help to extricate her from this predicament. In effect, she became a non-person. She's on the FBI's list, a long list of wanted military personnel. It is very difficult for her to find significant employment or to obtain education. She lives under an assumed name. You can imagine what this is like.

There are others. There are many others that I could tell you of. There are some extremely sad and tragic cases.

The military has a mission to do. It is an important and necessary mission that we all represent, but the military has not learned to respect the rights of its own members. It defends us all and defends our Constitution, but it continues to violate the very rights that it is established to defend and protect. That's a very sad, sad thing. Thank you.

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