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Gay Boise Air Force Pilot 'outed' by false accusation

The Air Force found out the Boise airman was gay when he had to defend himself. The Pentagon chief says such cases may justify changing 'Don't Ask, Don't Tell.'

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On April 3, 2003, Air Force Lt. Col. Victor Fehrenbach flew his F-15E toward an Iraqi ambush site about a mile from U.S. Army troops advancing on Baghdad airport.

Fehrenbach faced anti-aircraft fire, surface-to-air missiles and a mechanical problem on his wingman's plane. Still, he destroyed the enemy position and helped clear the way for the Army to take the airport that night. For his heroism, the Notre Dame grad won an Air Medal with a valor device, one of his nine Air Medals.

Five years later, Fehrenbach confronted a crisis in a very different setting. A Boise police detective sat across a conference table questioning him about an alleged crime.

Fehrenbach, stationed at Mountain Home Air Force Base, was in a Catch-22. To clear himself of the claim he'd raped a man, Fehrenbach could tell police his side of the story. But admitting he'd had consensual sex could get him kicked out of the Air Force he loved after 18 years.

Fehrenbach asked Detective Mark Vucinich whether his employer had a right to see his statement. Yes, replied Vucinich.

Fehrenbach then told the detective he had sex with Cameron Shaner on May 12, 2008. He'd met Shaner, 30, on a gay Web site and invited him to his southeast Boise home.

Fehrenbach was soon cleared by police and the Ada County prosecutor's office. The Air Force Office of Special Investigations subsequently found no violation of the Uniform Code of Military Justice. AFOSI concluded that Fehrenbach and Shaner had consensual sex, and that Shaner was an "unreliable source of information."

But the Air Force wasn't done: Fehrenbach's admission he'd had gay sex was a violation of the "Don't Ask, Don't Tell" law.

"Because of the criminal allegation, Victor confirmed the fact he was gay," said Emily Hecht, a lawyer for the Servicemembers Legal Defense Fund. "That's all the Air Force needed. Had his accuser been a woman, he'd have gone back to work with no further issue."

FIGHTING BACK, CHANGING POLICY

Fehrenbach, 40, was notified in September that he would be discharged, costing him a \$46,000 annual pension and the dignity of retiring on his own terms, as his Air Force parents both had. If discharged early, he'll get an \$80,000 lump sum.

At first, he planned to go quietly with an honorable discharge. Shaner, angry that there would be no prosecution, wouldn't go away and was pressing the Air Force for a dishonorable discharge.

But the prospect of President Barack Obama fulfilling a campaign promise to repeal "Don't Ask, Don't Tell," prompted Fehrenbach to fight. In April, a board of five officers recommended an honorable discharge. Fehrenbach's goal was to continue to serve. With two more years, he'd reach 20 years and qualify for full retirement.

In mid-May, Fehrenbach finally revealed to his family that he was gay. A few days later, on May 19, he appeared on "The Rachel Maddow Show" on MSNBC. Since that night, Fehrenbach has become a symbol of injustice for those who condemn the military's expulsion of gay servicemen and women.

Fehrenbach's discharge is pending. Some 13,000 service members have been pushed out under "Don't Ask, Don't Tell," and being outed by an unreliable source with an ax to grind has not been a mitigating factor.

MEETING THE PRESIDENT

Secretary of Defense Robert Gates is voicing misgivings about discharging personnel identified by third parties with questionable motives. Gates has ordered Pentagon lawyers to review ways to apply the 1993 law in "a more humane way."

Fehrenbach's case also caught Obama's eye. On June 29, Fehrenbach attended a White House ceremony for the 40th anniversary of the Stonewall Riots, which marked the beginning of the gay rights movement.

Fehrenbach asked Obama for his help and urged him to repeal "Don't Ask, Don't Tell." Fehrenbach told Maddow that night that Obama said: "We're gonna get this done."

The following day, Gates reiterated the administration's view that Congress should repeal "Don't Ask, Don't Tell."

And he went a step further, suggesting an interim move that could allow people like Fehrenbach to stay in the service: "Do we need to be driven ... to take action on somebody if we get that information from somebody who may have vengeance in mind or blackmail or somebody who has been jilted?"

Gates won't comment on specific cases, including whether he had Fehrenbach in mind, spokeswoman Cynthia Smith said.

Air Force Secretary Michael Donley will make the final call on Fehrenbach's future. Spokeswoman Capt. Christina Hoggatt would not comment on whether Donley was weighing issues raised by Gates.

NO EVIDENCE OF A CRIME

The manner of Fehrenbach's being forced to admit he is gay exemplifies Gates' interest in a nuanced application of the law.

Shaner, the man who put Fehrenbach on the brink, was a Boise State University criminal justice student when he accused Fehrenbach of assaulting him. Shaner served 3½ years in the Army in the 1990s, including time in Bosnia, and was honorably discharged as a private first class.

According to the Veterans Administration, Shaner has a 100 percent service-connected disability. Shaner told the Idaho Statesman he suffers from post-traumatic stress disorder and skeletal injuries. He lives in Arizona.

In text messages the night they met, Shaner expressed sexual interest in Fehrenbach, admiring photos of Fehrenbach's naked body and calling him "stud." Arriving at Fehrenbach's home, Shaner disrobed and joined him in the hot tub. Observed Boise police detective Vucinich in his report: "It should be noted that (Shaner) could not give me an answer as to why he, himself, had gotten naked."

Boise police did not find evidence of rape, said spokeswoman Lynn Hightower. Chief Deputy Prosecuting Attorney Roger Bourne said the county decided against prosecution.

The Air Force says its investigation cleared Fehrenbach and discredited Shaner.

NOT A CREDIBLE SOURCE

Five days before his encounter with Fehrenbach, Shaner contacted the Air Force Office of Special Investigations at Mountain Home. He was accompanied by an acquaintance who Shaner said had told him gay men were inviting military men to "HIV parties" in an attempt to infect them with the virus, according to the Air Force.

Shaner said he began to investigate the claims, visiting gay bars in Boise at the direction of AFOSI Special Agent Karolyn DeRosier. Shaner said he was sworn in as a confidential informant by DeRosier.

But Linda Card, AFOSI's chief of public affairs, said DeRosier had Shaner swear to the truthfulness of his statement, a standard practice.

"After meeting with Mr. Shaner, AFOSI determined not to use him as a confidential informant," Card wrote in an e-mail. "Special Agent DeRosier NEVER directed or requested him to carry out any actions as a source or informant, nor did any other AFOSI agent."

Summarizing the AFOSI investigative report, Card said: "Mr. Shaner is considered to be an unreliable source of information by AFOSI."

The HIV party case was closed as unsubstantiated.

ACCUSER ALTERS STORY

Shaner called Boise police to report a sexual assault shortly before 3 a.m. May 12, 2008. He said he was an AFOSI informant and went to Fehrenbach's home at DeRosier's request.

Shaner now admits DeRosier did not ask him to see Fehrenbach. Instead, Shaner said he met Fehrenbach via a paid Web site to which both subscribed. Shaner told the Statesman he sought out Fehrenbach thinking he might have information about the investigation.

Fehrenbach is still on duty at Mountain Home as assistant director of operations for the 366th Operations Support Squadron, a job typically held by an officer of his rank. He no longer is on active flight status, a change a spokesman at Mountain Home declined to explain.

The Servicemembers Legal Defense Network advised Fehrenbach not to comment for this story because the Statesman is the first to report the underlying events that prompted his pending discharge. Until now, Fehrenbach has simply said he was outed by a "civilian acquaintance."

Kevin Nix, a spokesman for the Servicemembers Legal Defense Network, has been helping Fehrenbach. "Victor is a great human face that shows the problem that is 'Don't Ask, Don't Tell,'" Nix told Fehrenbach's hometown paper, the Dayton (Ohio) Daily News. "This is happening every day."

With his hero's resume, body-builder's physique, dark eyes set deeply in a shaved head and modest eloquence, Fehrenbach became a sympathetic figure.

He's appeared on Maddow's MSNBC show three times and on CNN and PBS. He's been interviewed by The Associated Press, New York Times and Washington Post. A Fehrenbach page on Facebook has 3,500 fans.

'IT'S NOT JUSTICE'

He told Maddow how crushing it was to see his career ending just weeks before he was preparing to redeploy.

"I was faced with the end of my life as I knew it," he said on May 19. "... The more I thought about it, about how wrong this policy is, I thought that I had to fight. And perhaps, with my unique perspective, I could speak out and help other people in the meantime."

Stories on Fehrenbach have focused on a stellar career: the nine Air Medals; five Commendation Medals; 2,180 hours of flight time, including patrolling Washington, D.C., after 9/11; and 400 hours in combat over Iraq, Afghanistan and Kosovo.

"Yeah, but he got those medals before he was gay," observed comedian Stephen Colbert.

Air Force Times editorialized on Fehrenbach's discharge: "That may be the law. But it's not justice."

The case even made "News of the Weird," which noted the wasted investment in training Fehrenbach, estimated by the pilot at \$25 million.

"Don't Ask, Don't Tell" says discharging personnel known to be gay is necessary to maintain "high morale, good order and discipline, and unit cohesion." Fehrenbach says that's a non-issue.

"I have been going to work every day and doing my duty with absolutely no impact on morale, discipline and good order," he said in his first TV appearance. Among about 4,000 people assigned to Mountain Home, Fehrenbach said, "about 10 people on the entire base even knew about my case up until this very moment."

WAITING FOR A DECISION

Capt. Hoggatt said she could not estimate when a final decision will be made. Fehrenbach has said he expects to be discharged this fall before reform takes place. He hopes to rejoin the service if the law is repealed.

He also seeks to raise hope among those who want gays to be free to serve openly, as they do in 26 countries, including Britain, France, Australia and Israel.

"You coming out has galvanized a lot of people, and it brought a lot of people out of the woodwork," Maddow told Fehrenbach on June 23.

"Absolutely," he replied. "I have literally gotten thousands and thousands of e-mails, letters, phone calls from people I have served with ... I can't even count the number who have said, literally, 'Dude, I'll go to war with you tomorrow.'"

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