

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 you know, doubts at a more abstract level but
3 bottom line, you've been opposed to the policy a
4 number of years now?

5 **A Yes.**

6 MR. PHIPPS: Let's mark this
7 as Exhibit 1.

8 (Expert Testimony Report of
9 Mr. Frank was marked as Frank Exhibit
10 No. 1 for identification, as of this
11 date.)

12 BY MR. PHIPPS:

13 Q I ask you to take a look at what's
14 been marked as Exhibit Frank 1. I'm going to
15 assume that you recognize this.

16 **A I do.**

17 Q And what is this?

18 **A The expert testimony report I
19 prepared for this case.**

20 Q Now, sometimes -- I've seen a few
21 expert reports, you know, in my time as a lawyer.
22 Sometimes this report has a separate methodology
23 section where, you know, sometimes people will
24 write out the first thing I do is I calibrate the
25 centrifuge, the next thing I do is measure, and

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1 Frank

2 Sorry.

3 Q This is more than just a summary of
4 polls and history of legislation, right?

5 A Well, it's my expert testimony
6 report for this case which is an as-applied case
7 to Major Witt's lawsuit so it is that too.

8 Q Now, on each of the points you
9 raise, could you imagine another person with a
10 similar academic background and credentials to you
11 disagreeing with some of the points that you've
12 raised in this expert testimony report?

13 A There's always disagreement in a
14 scholarly community. There has been virtually no
15 evidence obtainable undercutting the evidentiary
16 summaries contained in this report showing no
17 empirical basis for gay exclusion rules. So if
18 you're asking me whether there could be a similar
19 report produced that would have the same kind of
20 heft describing evidence showing that openly gay
21 service impairs units, I don't think there could
22 be.

23 As a researcher, you look for all of
24 this information and if you're implying that I'm
25 only including information that buttresses a

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2 Aeromedical Evacuation Squadron?

3 A No, it doesn't appear so.

4 Q Then in the third bullet down on
5 page seven, you make two references in the first
6 and second sentence to research showing. What
7 research are you referencing in that third bullet?

8 A There is research, first of all, in
9 the 1993 Rand study about very substantial
10 differences between opinions as expressed and
11 actual behavior. That research itself also
12 references a wide body of literature about the
13 risks of confusing an opinion poll with a
14 prediction of behavior.

15 There are also studies of foreign
16 militaries which lifted their bans on gays in the
17 military in the face of fierce resistance in which
18 people claim that they would not work effectively
19 or not remain in the military if gay people were
20 allowed to serve openly but the --

21 Q And?

22 A -- but those were not born out.

23 Q And you cite those later in your
24 report not in this section or are they somewhere
25 in this section?

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1 Frank

2 I have written an article
3 summarizing this. I believe it was over ten years
4 ago. And I have summarized some of it in my book
5 and there may be others.

6 Q And so, so I guess if I were to try
7 to summarize my understanding -- it's your
8 deposition so correct me if I'm wrong on this --
9 your points in III, sub part of the exhibit, am I
10 to understand correctly these are really points
11 about overcoming homophobic attitudes?

12 A No.

13 Q No? Okay.

14 A The point to the contrary is that
15 anti-gay attitudes don't need to be overcome in
16 order for people to be able to work effectively
17 together in a common mission.

18 Q Do any of the points that you --
19 okay. But in the military context, in order to
20 work for a common mission, doesn't that implicate
21 certain people's privacy interest in terms of
22 billeting, bunking, items like that?

23 MR. LOBSENZ: I object to the
24 form of the question that it uses the
25 word "interest." You don't mean to

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1 **Frank**

2 Q Do you know if that extends to other
3 behaviors beyond those that increased awareness
4 extends to other behaviors beyond those necessary
5 to complete the task?

6 A I.e., non-task related behaviors?

7 Q Right.

8 A Well, it doesn't.

9 Q Are you aware of research that says
10 it doesn't?

11 A **Yes. For instance, during**
12 **desegregation of the military that took place**
13 **across the 1950s and 1960s, there was considerable**
14 **success in getting blacks and whites to achieve**
15 **task cohesion, in part, by having them engage in**
16 **the same kinds of tasks, i.e., the same behaviors,**
17 **but attitudes and treatment, i.e., behaviors of**
18 **one another outside of the combat setting or the**
19 **military base, often continued to exhibit racism**
20 **and socially non-cohesive behaviors and yet, that**
21 **did not affect the task cohesion or the task**
22 **completion, successful task cohesion.**

23 Q But I guess my question was more to
24 does a high degree of task cohesion -- are you
25 aware of research that indicates that a high

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1 Frank
2 degree of task cohesion is accompanied by a high
3 degree of behavioral awareness of the other
4 members of the group that's not related to
5 behaviors necessary to complete the task?

6 A No. That's why I made the
7 distinction between awareness of task related
8 behavior which is related to high task cohesion
9 and, the distinction between that and the kinds of
10 behaviors that are carried on outside of the
11 military environment directly related to the task,
12 i.e., social factors.

13 Q Okay. Let's go on to IV of your
14 expert report. The first line, this isn't the
15 title line but this is the first line, reads, "The
16 experiences of foreign militaries show that openly
17 gay service works well without disrupting
18 cohesion."

19 A I'm sorry. Where are you?

20 Q Right under the title of IV, the
21 first sentence, "The experience of..."

22 MR. LOBSENZ: The page, my IV,
23 you're meaning 5, V?

24 MR. PHIPPS: No. I'm on page
25 eight.

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1 Frank

2 THE WITNESS: I think I might
3 be at fault. I was looking at V but
4 he did say IV. So if you were looking
5 over my shoulder, that's not right.

6 A Okay. Continue.

7 Q Do you see the quote I'm talking
8 about?

9 A Yes.

10 Q I've got a few questions about this.
11 First of all, you used the phrase "without
12 disrupting cohesion." Do you see that?

13 A Yes.

14 Q Are you talking about a task
15 cohesion or social cohesion or something else?

16 A Primarily task cohesion.

17 Q And then it says "without disrupting
18 cohesion." I mean, are you saying that no unit of
19 any foreign military that permits service of
20 openly gay service members ever experienced
21 reduced cohesion?

22 A In our research, we did not
23 encounter any examples of units whose overall
24 cohesion was impaired because of the presence of
25 known gays.

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1 Frank

2 possibility that cohesion goes up and down which
3 is why you look at the aggregate.

4 Q But I guess I thought were there
5 control groups in these foreign military studies
6 that you're looking?

7 A For the research that I'm referring
8 to here primarily, we consulted over 100 experts
9 and looked at hundreds of pieces of literature and
10 none of them found disruption to overall cohesion.

11 Q But there was no control -- my
12 question is was there a control group? I mean
13 did, for instance, did, did one of these foreign
14 nations say we're going to, we're going to allow
15 the service of open homosexuals in all of these
16 units but we're going to hold this one out --

17 A Right.

18 Q -- for control purposes?

19 My thought is I don't know how you
20 can isolate the increase and associate that with
21 the presence of openly --

22 A First of all, we're not talking
23 about an increase. We're talking about a lack of
24 decrease and that's an important distinction.

25 Secondly, if you look at the overall

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1 Frank
2 universe of climates in which a gay ban was
3 lifted, which range from the 25 foreign militaries
4 to several analogous domestic institutions in the
5 U.S. such as fire and police departments as well
6 as the historical record, and you don't find that
7 any of them showed a decrease in overall cohesion
8 in the time period following the lifting of a ban,
9 then you can have quite a bit of confidence that
10 that step did not impair cohesion.

11 Q But you still wouldn't have a
12 control -- so what you're saying is you can have,
13 in your opinion, you can have quite a bit of
14 confidence even without a formal control group?

15 A Right. You can't always have a
16 control group when you are in the real world.

17 Q And so of these 25 foreign
18 militaries that you reference, are you aware of
19 any of them that created a control group?

20 A No.

21 Q Now, when we talk about foreign
22 militaries, I guess my question is, that lifted a
23 gay ban, is that number approximately 25?

24 A Right, although some of them didn't
25 have an outright gay ban to lift.

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1 Frank

2 very top of the military hierarchy.

3 A Right.

4 Q Do you see that?

5 A Yes.

6 Q And do you have -- is the centrality
7 of leadership in those, the very highest points in
8 the hierarchy affected in any way that you're
9 aware of when the lifting of a gay ban on military
10 service is judicially ordered or comes from a
11 court as opposed to through the intentions of
12 senior military leadership?

13 A Every transition to openly gay
14 service that I'm aware of has come from some -- I
15 should say nearly every, there might be one or
16 two -- has come from a civilian order. So in
17 other words, the military never seems to wake up
18 one day and say we would like to welcome open gays
19 so in that sense, I have nothing to compare it to.

20 Q And when you say civilian order --

21 A Whether it's been a court or a
22 parliamentary decision or a Presidential order.

23 Q Do you notice any difference between
24 those that come from court orders versus
25 Presidential orders versus parliamentary orders

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1 Frank

2 versus democratic civilian process orders?

3 A No, because none of the militaries
4 have had any problems, any overall problems.

5 Q And is that because their senior
6 leadership supported those civilian orders?

7 A Well, again, there's no control
8 group so I can't say it's because of that.

9 What the research showed the people
10 implementing the change from a whole host of
11 research findings was that that would be that
12 strong signals of support from top leadership
13 would be important in making the change smooth and
14 so they all try to show that kind of support. I
15 mean one -- well, you only asked about, about
16 changes in gay policies so I'll stop there.

17 Q I guess on all these bullets, none
18 of these, none of these foreign military -- I mean
19 obviously none of these foreign military examples
20 or studies involved Margaret Witt or the 446th or
21 medical evacuation squad.

22 I know you reference her in some of
23 these bullets, but she wasn't a part of the
24 foreign military nor was the 446 part of the
25 foreign military? That's a pretty basic question.

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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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