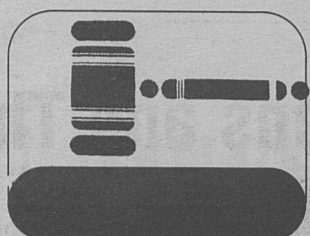


feature

LEGAL BRIEFS

by susan murray
& beth robinson

European High Court Rejects Britain's Ban on Gays in the Military

While federal courts here in the United States continue to hide behind the robotic mantra of "deference to the military" in upholding the ludicrous "Don't Ask, Don't Tell" ban against gays in the military, the highest court in Europe recently issued a watershed opinion striking down Britain's ban on gays and lesbians in its armed forces.

In the cases of *Lustig-Prean & Beckett v. United Kingdom* and *Smith & Grady v. United Kingdom*, the European Court of Human Rights has ruled that discharging gay and lesbian service members who had been "outed" by third parties violated Europe's Convention on Human Rights, a document akin to our Bill of Rights. The Court ruled that Britain had violated the service members' right to privacy not only by discharging them from the military, but by conducting a witch hunt in which the service members were asked incredibly intrusive questions about their private sex lives, (one lesbian in Britain's air force was asked whether she and her partner had a sexual relationship with their teenage foster daughter!)

Like the U.S. government, the British government had argued that it needed to ban gays from its military because "the presence of open or suspected homosexuals in the armed forces would have a substantial and negative effect on morale ... and fighting power." Unlike our Congress and our federal courts, however, the European Court of Human Rights didn't buy Britain's nonsensical rationale.

First, the Court pointed out that there was absolutely no proof or evidence that allowing openly gay people to serve in Britain's military would have any adverse effect whatsoever on morale, fighting power, or military readiness.

Second, the Court proclaimed that even if heterosexual service members have a "pre-disposed bias" against serving with gays, "these negative attitudes cannot, of themselves, be...sufficient justification" for kicking openly gay people out of the military, "any more than similar negative attitudes towards those of a different race" would be sufficient justification for kicking people of color out of the military.

Third, the Court noted that to the extent any problems arise in integrating openly gay and lesbian people into the military, these problems can be dealt with by imposing a strict code of conduct on all personnel, just as was done when women and people of color were integrated into the military.

The Court's ruling is a watershed in many ways. First of all, the decision affects all 41 countries who are members of the Council of Europe -- countries as diverse as Iceland and Turkey. In writing its opinion, the Court referred to the "European consensus" on this issue, stating that only a minority of European countries have a blanket ban on gays in the military, and that in general, European countries are rapidly doing away with discriminatory laws against gay people.

The decision is also important because it marks the first time the European high court has applied the European Convention's prohibition against sexual orientation discrimination in the employment context; in the past, the prohibition had only been applied to overturn sodomy laws.

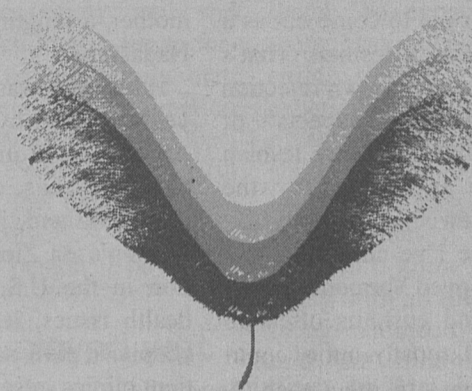
Although this case was limited to the issue of military employment, it is possible that the Court will extend its same rationale in a future case to rule that no government in Europe can discriminate against gays and lesbians in public employment merely because co-workers may be prejudiced.

Here in Vermont, we already have a bill outlawing employment discrimination against gays and lesbians, but unfortunately this law doesn't extend to the federal military; gay and les-

bian service members in our country remain subject to a patently discriminatory policy, based solely on fear and prejudice. ▼

Susan Murray and Beth Robinson are attorneys at Langrock Sperry & Wool in Middlebury, Vermont. This col-

umn features timely information about legal issues of interest to our community. We hope to provide information about important laws and court cases that may affect our rights, as well as practical nuts and bolts advice for protecting ourselves and our families. If you'd like to see us cover a particular topic, write OITM or call us at 388-6356.



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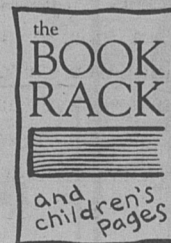
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