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THURSDAY, APRIL 18, 1996

Clinton dangles promises to gays

Hints he'll push legal 'marriages'

By Paul Bedard
THE WASHINGTON TIMES

A1

President Clinton is wooing homosexual voters and AIDS activists, who were angered by his handling of their issues earlier in his term, by making new promises to consider expanded civil rights — including same-sex “marriages.”

Capitalizing on a top issue in the community, Marsha Scott, Mr. Clinton's liaison to homosexual activists, is seeking suggestions on what position the president should take on same-sex marriages.

In Boston recently, Miss Scott told a homosexual group, “We [need] to find ways to ensure that those of you in these loving, long-term and committed relationships can enjoy all the same benefits that [heterosexual couples] are entitled to under the law.”

She added that using same-sex marriages may not be the right “vehicle” now but said, “I’m going to argue that we broaden the context and look at the rights that gays and lesbians have ... and where those rights are denied.”

Asked about Miss Scott's little-noticed statements, a senior administration official said homosexual marriage is “not something we intend to espouse.”

The official said that the White House will leave it to states to decide the issue, and that Mr. Clinton wants to do “everything we can to support” traditional marriages between heterosexuals.

GAYS

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But the aide added: “The president is aware that many communities and institutions are considering whether certain basic benefits can be provided outside the context of traditional marriage. The challenge in addressing these issues is to remain sensitive to the traditional values of our communities while preserving the fundamental right to live free from unjustified discrimination.”

Mr. Clinton, said the official, is “personally” opposed to homosexual marriages.

Opponents of Mr. Clinton, however, noted that he also “objected” to late-term partial abortions but vetoed a ban on the procedure.

Conservative and liberal critics of the president complained about the aide's comments, which they said were designed merely to solicit support for the president. Miss Scott did not return a reporter's phone call.

Steve Michael, a third-party presidential candidate supported by ACT UP, the AIDS Coalition to Unleash Power, said “they’re making more empty promises.”

Robert Knight of the conservative Family Research Council said, “The president is between a rock and a hard place, because he knows embracing same-sex marriage would alienate most voters who view him as a moderate.”

The administration is making its case to homosexuals at White House meetings and through aides tapped to energize members of their community, arguing that while Mr. Clinton hasn't fulfilled all his 1992 promises, a Dole administration won't be as helpful.

In an interview with Windows, New England's largest homosexual newspaper, Miss Scott said that in a Dole-Clinton race, “I think you have extremely clear choices.

You are either at the political table with a Clinton administration, or there is not even a door for you to get to the table.”

The White House also has formed a special AIDS task force, which plans a two-day open session next week.

But the White House faces a skeptical audience, many of whom feel the president hasn't fulfilled his long list of promises to them.

For instance, Mr. Michael said his disappointment with Mr. Clinton's failure to start a “Manhattan Project”-style anti-AIDS program or to elevate the AIDS czar to a Cabinet-level post led to his third-party challenge.

“If I can win 1 or 2 or 3 percent of the vote in critical states, we could be the balance of power. If on the day after the election, established gay groups blame us for defeating the president, I will wear that as a badge of honor,” he said.

“Sure there are some problems,” said Susan Leal, an openly homosexual member of the San Francisco Board of Supervisors. But, she added, the administration remains open to homosexuals and it's not clear what approach Senate Majority Leader Bob Dole would take as president.

Elizabeth Birch, executive director of the dominant homosexual-rights group, the Human Rights Campaign, said Mr. Clinton should be supported because he reaches out and is integrating homosexuals into his administration.

“President Clinton sees gay America as whole and contributing citizens,” she said. Her group plans to spend \$2.5 million to help Mr. Clinton's re-election and listed eight major areas in which the president has helped homosexuals.

The Clinton-Gore re-election campaign is confident of homosexual support. “We believe in the end the community will be with us,” said campaign spokesman Joseph Lockhart.

12. ~~What~~ Why do you oppose same-sex marriage? Is there
a chance you could reconsider?
~~remain~~

I ~~am personally~~ opposed to same sex marriage. I believe marriage is an institution for the union of a man and a woman. This has been my long standing position and it is not being reviewed or reconsidered. I also strongly believe that issues relating to gays and lesbians should not be used to tear our communities apart. Even on the most difficult social issues we face, we must work together to find common ground. Every American deserves no less.

Jack-

Here is a revised (and,
I think, better) answer to
question 12.

Steve



Diana
Spousal
improvement

pkbe
54572

12. ~~What~~ Why do you oppose same-sex marriage? Is there a chance you could reconsider?

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5/96

Final answers to The Advocate questionnaire

1. In 1992, you said to gay people "I have a vision and you are part of it." What is that vision in 1996 and how do gays and lesbians figure into it?

I have a vision of American in which every individual is valued and respected. As President, I have sought to promote inclusion and heighten public awareness in order to send a powerful message of equality and acceptance to people everywhere. Increased opportunity makes citizens more productive, building stronger communities and a stronger nation. I believe that we must continue to help people rise as far as their talents and determination can take them in order to make the most out of our great diversity.

2. You have been praised by gays and lesbians as the most "pro-gay" president in history. Yet there is also a profound sense of disappointment in the gay community because the expectations you set in 1992 were so high. What do you say to those gay voters who invested so much emotionally to your candidacy but who have felt let down?

We have truly accomplished a great deal during my Administration. We have also learned a lot about what we can do -- and how to get it done. My Administration has taken more steps than any previous in bringing the gay and lesbian communities to the table. I am proud of my record and it is a record to build on.

I remain dedicated to ending discrimination and to protecting the civil rights of every citizen in our society. I am proud that my Administration has more openly gay and lesbian individuals serving in appointed positions than in any previous Administration, and their impact, both in expertise and in efforts to advocate for the concerns of gay men and lesbians, is significant. We have increased AIDS funding, research, and educational outreach. I am the first President ever to endorse a gay and lesbian civil rights bill, the Employment Non-Discrimination Act. We have also opened the door for qualified gays and lesbians to receive top security clearances. I pledge to you that I will continue striving for greater education and compassion, working not simply to tolerate our differences, but to celebrate them.

3. What is your own personal comfort level with homosexuality? Is it one of tolerance or acceptance or something else?

I believe all Americans should be judged on their merits, not on their orientation. I strive to do this in my personal life. It was one of the most fundamental lessons that my mother taught me from a very early age -- to make decisions about people based on who they are, not what they are.

In public life, I have worked relentlessly to empower people who historically have been discriminated against based on race, class, gender, disability, or sexual orientation. I remain committed to achieving that goal.

Having grown up in a segregated society, I have always felt strongly that everyone who is willing to work hard and play by the rules should be allowed to participate in American life. My belief is that we don't have a person to waste. We should try to protect the rights of all our citizens to live up to the fullest of their capacities.

4. *What gay or lesbian person has had the biggest impact on your life and why?*

This is hard to answer because I know so many individuals, many of whom I brought into my Administration. Bruce Lehman, Roberta Achtenberg, Richard Socarides and Bob Hattoy, to name just a few, have all made valuable contributions. I've worked closely with Congressmen Barney Frank and Gerry Studds, and with Elizabeth Birch, of the Human Rights Campaign. I've had a long friendship with David Mixner, whose advice has meant a great deal to me over the years. In 1978 I was Governor of Arkansas and I hired Dr. Mike Rankin to be the state's mental health director, and he has become a good friend of mine. Today he serves as an outstanding member of my advisory council on HIV/AIDS.

5. *As a strong Baptist, do you have problems reconciling your religion's views on homosexuality with your personal beliefs?*

I have been blessed by having people of strong faith in my life and this faith is a major sustaining force and motivation. It is through my religious beliefs that I have learned compassion, tolerance and inclusion. Through prayer and Bible study I have learned that God's love is extended to all people.

6. *Jimmy Carter recently denounced how some religious and political leaders have embraced strong anti-gay views. And he said it must be made clear "that a platform of 'I hate gay men and women' is not a way to become president of the United States." Do you agree with Carter and do you intend to do anything to counter what he calls "obnoxious attitudes?"*

Yes, I believe that those who promote discrimination on the basis of sexual orientation or any other grounds are gravely mistaken about the values that make our nation strong. I will continue to move my Administration in the direction of compassion, acceptance and understanding.

The recent attempts by extremists in Congress to expel HIV positive servicemembers, regardless of their ability to serve, was a good example of what President Carter is saying. I'm very proud of the coalition my Administration built in our successful repeal effort. This provision was unconstitutional, served no military or public health policy and was just plain wrong. Once people understood this, we were able to have it repealed.

7. *Perhaps your biggest accomplishment in the area of gay rights has been with changes in the federal workplace. Federal departments have written non-discrimination policies. Gays and lesbians are no longer denied security clearances. What do you feel is the long-term impact of these changes?*

These changes are important because they represent another step forward in making sure that all Americans can contribute and that everyone has a seat at the table. It's particularly important to open up the civil service fully, to ensure that the most capable people are not denied the opportunity to serve. These men and women in our government, and their work, will outlast any President.

8. *People still debate what happened with the gays in the military issue. Given a second term, would you revisit this topic? Is there a chance you might issue the executive order you promised in 1992?*

Few issues in recent times have spurred the kind of debate that has occurred since I pledged to change our nation's policy toward homosexuals in the military. I know that this is a sensitive and emotional issue for many people. And, as you know, many of these issues are being actively litigated in the federal courts.

9. *If you had the chance to start over, only this time knowing the extent of the opposition to opening the military's doors to gays and lesbians, how would you approach the issue? What lessons did you learn from the fight?*

It's fair to say that I have thought a lot about this and that there are some things I think I should have done differently. I now believe that we needed to build a broader consensus on this important issue before moving forward. Sometimes change comes best when it is achieved through incremental steps.

10. *Do you believe gays and lesbians face the same kind of obstacles that other minority groups have confronted?*

No two groups, just as no two people, face the same obstacles. Although some are quite similar, the gay and lesbian communities are themselves diverse and encompass members of all minority communities. We all want liberty and freedom. We want the embrace of family and community. We want to make the most of our own lives. That is why I've always said that our great diversity is a source of strength to unite -- not divide -- our country.

11. You have endorsed the Employment Non-Discrimination Act. Why do you feel this legislation is appropriate and necessary. Given a second term, will you actively push the Congress to pass it?

I don't think it's right for employers to discriminate based on sexual orientation. Men and women in 42 states may now be fired from their jobs solely because of their sexual orientation, even though it has no bearing on their job performance. Those who face this kind of job discrimination have no legal recourse, in either our state or federal courts. This is wrong.

The Employment Non-Discrimination Act, for which I announced my support last fall, is designed to protect the rights of all Americans to participate in the job market without fear of unfair discrimination.

12. Why do you oppose same-sex marriage? Is there a chance you could reconsider?

I remain opposed to same sex marriage. I believe marriage is an institution for the union of a man and a woman. This has been my longstanding position and it is not being reviewed or reconsidered. I also strongly believe that issues relating to gays and lesbians should not be used to tear our communities apart. Even on the most difficult social issues we face, we must work together to find common ground. Every American deserves no less.

13. What about the slate of proposed laws to limit marriage between a man and a woman? Should Congress establish a national standard for marriage?

I am opposed to same sex marriage. If Congress enacts legislation, I will review it in light of that position.

14. Are there steps, such as changing the tax code or immigration laws or creating domestic partnership benefits for federal workers, that you believe the federal government should take to help gay couples?

I am aware that many communities and institutions are considering whether certain basic benefits can be provided outside the context of traditional marriage. The challenge in addressing these issues is to remain sensitive to the traditional values of our communities while preserving the fundamental right to live free from unjustified discrimination. In our country's history we have, for good reason, looked first to state and local governments, as well as the private sector, to consider issues like these involving community values and matters of conscience. I believe that these issues continue to be best resolved at this level of civil discourse.

15. An increasing number of gays and lesbians are having children, either biologically or through adoption. Is this trend acceptable to you? Is there anything government should do to encourage or discourage gay child rearing?

This question, with all due respect, misses the point. The most important thing is that children find themselves in loving, healthy and safe environments. State and local officials need to ensure that the best interests of the child are being served. That interest, not the interests of others, is paramount.

16. Some parents object to teaching anything positive about homosexuality in the public schools. At the same time, some troubled teens kill themselves because of confusion over their sexuality. How far should the nation's schools go in discussing homosexuality?

Our nation's educators have made great strides in how to deal with issues which affect our children in these rapidly changing times. Decisions about what is said and what is taught must be left to teachers, local school districts, parents, and students.

I am deeply troubled by the numbers of teen suicides, especially among gay and lesbian youth and of the rise in violence among all youth. Secretary Shalala's conference on gay and lesbian teen suicide brought this discussion to a national level and my Administration is continuing to work to find solutions to these complex problems. I recently met with a large number of people from throughout the country to discuss the issues of drug use and violence among teenagers. These discussions are very important and will continue.

17. You spoke out against the slate of anti-gay initiatives that were popular in past elections yet your administration decided to sit out of the Supreme Court fight on the issue. How can you justify speaking out in one instance and then staying silent later?

I've never stayed silent on this issue. I have continually stated my belief that those who would legalize discrimination on the basis of sexual orientation or any other grounds are gravely mistaken about the values that make our nation strong. The essential right to equality must not be denied by a ballot initiative or otherwise.

18. AIDS continues to be a crisis in America. How has AIDS affected you personally?

My Administration has worked hard to respond aggressively to the this epidemic creates. I'm proud of the fact that despite the enormous pressures of a zero-growth budget we have increased spending for AIDS research, prevention and care by more than 40 percent. We have approved a whole new class of AIDS drugs in record time and made sure that people living with HIV would have the means to pay for them. We have also more than doubled the funding for the Ryan White CARE Act, which brings high-quality medical care to hundreds of thousands of people every year. And we have preserved the Medicaid program, which provides health coverage for almost half of those Americans living with AIDS.

Every case of AIDS affects each of us and the future of our country because we are losing part of the next generation of leaders for our nation. Like many Americans, I have lost close friends and colleagues to AIDS and I keep them in mind as a potent reminder of the task we all face in eradicating this disease.

19. *Some AIDS activists say in one breath that you've done more than either of the two most recent Presidents to fight the disease and then in the next breath they criticize you for not doing enough or speaking out enough. Are both critiques accurate?*

We have done more, but we will not have done enough until there are no more infections, no new cases and no more deaths. Our first priority must be to find a cure for those living with HIV and a vaccine for everyone else. We will continue to invest in research and keep our commitment to providing medical care to those living with HIV and AIDS. My Administration will continue to fight to preserve Medicare and Medicaid and to continue our investment in the Ryan White CARE Act. I have been frustrated by Congress' inability to approve the funds I have requested for the Centers for Disease Control and Prevention, and will continue to work to invest in prevention.

20. *During the White House Conference on AIDS, speaker after speaker called for explicit AIDS education programs in the nation's schools that would be honest about transmission and education. How explicit should public schools be?*

Decisions about what is said and what is taught must be left to local school districts, parents and students. Responsible education can help students protect themselves, while reducing the levels of fear and discrimination.

At the national level, we have done a great deal to support AIDS education. We have increased AIDS prevention funding by more than 20 percent, and have given power to communities through a community planning process that puts the decisions into the hands of local leaders. This past year we released a series of public service announcements that feature young people talking about their lives and their experience. There are strong indications that when young people hear from their peers they are more likely to take that advice to heart and make changes in their behavior.

21. *Congress was stalled for many months on reauthorizing the Ryan White CARE Act. One reason was the debate over a proposal to test newborns for HIV. Is this a provision you can live with? What are your thoughts on mandatory HIV testing?*

I was pleased to be able to sign a five-year reauthorization of the Ryan White CARE Act in May. Throughout those Congressional debates, I reminded the Speaker of the House and Senate Majority Leader of the importance of this program to people living with AIDS and HIV and their families. It was reassuring to see both houses reject the kind of divisive rhetoric adopted by Senator Helms.

We must all work to do whatever we can to reduce the number of infants born with HIV. The Public Health Service guidelines recommend that every pregnant woman be counseled by her doctor on the benefits of testing and, if she tests positive for HIV, that she be treated with AZT. Those guidelines are supported by all of the national medical and public health organization. We should all follow the advice of the experts, which is reflected in the final legislation.

22. *What will a second Clinton term do to fight the war on AIDS?*

First and foremost, we must continue the search for a cure and a vaccine. At the same time, we will continue the search for better treatments for people living with AIDS. No President can guarantee success in science, but we must marshal all of our resources, public and private, towards this effort. We will keep working on prevention efforts. And we must preserve the Medicaid program. I will continue to stand up to efforts to dismantle this program by the Republican majority in Congress. This program is a lifeline of support for millions of Americans, including many people living with AIDS.

23. *Any final thoughts?*

There are, without question, real differences in the life experience and backgrounds of people who make up America, but there is also a rich fabric of shared experience -- of common problems, common hopes and fears, common ground. It is a matter of the utmost importance for our nation that all citizens expand that common ground, focusing more on what unites us than on what divides us. Just as important, our public discourse must help guide us down the path toward greater unity. I want to lead a nation that is coming together, not coming apart.

Questions and Answers

Question: How does this decision impact the litigation involving the government's "Don't Ask, Don't Tell" policy for gays in the military?

Answer: The Court's decision in Romer should have little or no impact on such litigation. In those cases, the government has argued (and courts have held) that the policy bears a rational relationship to the legitimate government interest of creating and maintaining unit cohesion in the armed forces. Nothing in Romer changes that.

Question: Does this decision mean that classifications based on sexual orientation will be entitled to some heightened level of scrutiny?

Answer: No. The Court in Romer applied rational basis scrutiny. Thus, it remains the law that equal protection challenges to classifications based on sexual orientation are subject to rational basis scrutiny -- the lowest level of scrutiny applied in equal protection analysis. Likewise, Romer did not change the way the Court applies the rational basis test -- the classification is valid if it is a rational means of pursuing a legitimate governmental interest.

The Court has seldom invalidated a statute or policy on the basis of rational basis scrutiny. In Romer, however, the Court confronted a provision that it found could not be credibly related to any legitimate governmental interest.

Question: What are the implications of this decision for similar laws in states like Ohio?

Answer: To the extent that other states or localities have enacted bans that exclude gays and lesbians from seeking, on impartial terms, the assistance of the government, Romer calls into question their continued validity.

Question: What are the implications of this decision with respect to the "Defense of Marriage Act" that is presently pending before Congress?

Answer: The decision in Romer should not change or affect the conclusion that the proposed legislation would survive an attack on its constitutionality. Section 2 of the proposed legislation appears to track existing law with regard to the recognition of foreign marriages under the full faith and credit clause. Nothing in Romer addresses, even indirectly, such issues.

Section 3 of the proposed legislation defines "marriage" for the purposes of federal statutes. In litigation challenging this classification as a violation of equal protection, the government

would be required to meet the rational basis test. There is nothing in Romer to suggest that such a classification would not be sustained.

Question: Does the Court's holding in Romer require the states to enact legislation to protect homosexuals?

Answer: No, it does not require government to enact any special legislation to protect the rights of homosexuals or any other group. Rather, it stands for the simple proposition that states may not enact legislation intended to prevent any group of citizens -- not just gays and lesbians -- from seeking assistance from the government and securing the rights that all other citizens have (and probably take for granted).

Question: Does this opinion mean that Bowers is no longer "good law?"

No. Bowers upheld the constitutionality of a criminal sodomy statute. That issue was not before the Court in Romer, and the Court did not modify or discuss Bowers.

Romer v. Evans

- At issue was a state constitutional amendment that rescinded and repealed existing state and local laws offering protection from discrimination on the basis of sexual orientation and prevented the passage of new such measures without a change in the state constitution. The Colorado Supreme Court had ruled that amendment was unconstitutional because it impermissibly infringed the fundamental rights of homosexuals to participate in the political process.

- The opinion of the Court, written by Justice Kennedy and joined by five other members of the Court, declared the amendment to be a violation of the Fourteenth Amendment's Equal Protection Clause. Justice Scalia issued a dissenting opinion, in which the Chief Justice and Justice Thomas joined. While affirming the state court judgment, the Court based its decision on the conclusions that the provision is a violation of the letter and spirit of the equal protection clause and fails to satisfy the requirements of the rational basis test.

- The Court rejected as "implausible" the state's argument that the amendment does nothing more than put gays and lesbians in the same position as all other persons. To the contrary, the Court found that the amendment put "homosexuals . . . in a solitary class with respect to" the "limitless number of transactions and endeavors that constitute ordinary civic life in a free society." As such, the Court found, the amendment imposed a "special disability upon those persons alone."

- The Court concluded that such a disability denies equal protection for two reasons. First, the amendment contravened a central principle of our constitutional guarantee of equal protection -- that the government "must remain open on impartial terms to all who seek its assistance." Thus, a law (like the amendment) that makes it more difficult for one group of people to seek aid from the government "is itself a denial of equal protection of the laws in the most literal sense."

Second, the Court rejected the state's argument that the law bore a rational relationship to a legitimate governmental purpose. Rather the Court concluded that the "breath of the Amendment" was "so far removed from" the justifications offered by the state -- such as preserving resources to fight discrimination against other groups -- that it was unwilling "to credit" the proffered justifications.



U. S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

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NEWS COVERAGE OF THE COLORADO CASE

New York Times, Linda Greenhouse news story:

The decision . . . does not necessarily portend victory for homosexuals in other cases working their way through the legal system, including the constitutional challenge to the current policy on homosexuals in the military or -- much farther down the road -- the question of homosexual marriage. Nor does the ruling provide affirmative rights for gay people; a constitutional shield rather than a sword, it does not require states to offer new civil rights protections. Nonetheless, the decision was a strong statement, coming from a conservative member of a basically conservative court, that prejudice is not a valid justification for a policy that singles out gay people for special burdens it has not placed on others.

Washington Post, Joan Biskupic news story:

The majority opinion was written with a generous tenor toward the legal rights of homosexuals. . . . The majority opinion in the Colorado case and the angry dissent for the minority by Justice Antonin Scalia -- while revealing little about how the court would rule on gay marriages, the military's prohibition on homosexuals and other looming gay rights issues -- now become important entries in that debate.

Wall Street Journal, "What's News" column

The ruling gives new weapons to the gay-rights movement in battles ranging from military service to same-sex marriages, and also protects the antibias laws already in place in nine states and more than 100 cities.

Wall Street Journal, Paul Barrett news story

Justice Kennedy didn't address homosexuals in the military, gay marriages or other related clashes, although some of his statements will strengthen arguments made by Ms. Goldberg (of Lambda) and her allies in their efforts to promote the rights of homosexuals. . . . [Laurence] Tribe, in an interview, warned against "overreading" the Kennedy opinion as laying the groundwork for the Supreme Court to expand gay rights to include serving in the military, or to overturn the 1986 precedent [*Bowers v. Hardwick*]. The military, for example, could argue that its policy against homosexuals is based on the need for cohesion among troops, rather than rank prejudice.

USA Today, Tony Mauro news story

Nearly every recent civil rights movement has been anointed by a favorable Supreme Court ruling. . . . It is too early to say that Monday's Supreme Court ruling in Romer v. Evans will play that role for the nation's gay rights movement. But the court's 6-3 decision to strike down a Colorado state constitutional amendment banning gay-rights laws signals a step forward, both legally and emotionally, for a movement that refuses to go away. . . . The ruling was not everything that gay-rights advocates hoped for. It did not declare that homosexuals are a separate, protected class, as are blacks. And it does not assure that the next wave of gay-rights decisions will be supportive. Government will still be able to make a case that some restrictions on homosexuals -- barring sodomy, same-sex marriages, gays in the military -- serve a "legitimate governmental interest." But the symbolism of the decision was instantly seen by both sides in the debate.

Los Angeles Times, Bettina Boxall news story

The Supreme Court ruling by no means ends the battle over gay rights, nor does it settle court fights over a variety of issues, such as gays in the military. But it does strengthen gay-rights arguments. Over and over Monday, gay advocates described the decision as a historic one with enormous ramifications. . . . The court's finding that the government needs more than disapproval of homosexuals to justify discrimination against them is likely to color the debate on a whole array of contested issues ranging from adoption to custody cases to the existence of gay student groups, gays in the military and same-sex marriage.

Washington Times, Frank Murray news story

The ruling stymies similar initiatives in at least 10 states, but advocates debate its effect beyond that, despite forecasts that it may undermine the right of landlords to factor sexual behavior in rental decisions. "Despite the majestic tone, it's somewhat narrow because it only applies to measures that are this broad and this extreme," [Laurence] Tribe said.

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

May 20, 1996

PRESS BRIEFING
BY MIKE MCCURRY

The Briefing Room

1:15 P.M. EDT

MR. MCCURRY: All right, ladies and gentlemen, this is the White House, this is our daily briefing. This is Monday, all the news has been made.

Mr. Blitzer.

Q What does the Clinton administration think of Iraq's willingness to start selling oil under terms that the U.N. has accepted?

MR. MCCURRY: Well, I have a statement on that matter. Iraq's agreement to implement U.N. Security Council Resolution 986 is long overdue. It represents an important victory in the Security Council's efforts since 1991 to meet the humanitarian needs of the Iraqi people. Iraq's belated decision to implement U.N. Security Council Resolution 986 demonstrates once again they will act in accordance with the requirements established by the Security Council only when the Council stands firm in refusing to negotiate lesser terms. It validates the longstanding view of the United States that there can be no discussion or modification to the overall sanctions regime until Iraq has met fully all of its obligations to the United Nations and makes clear that Iraq's current leadership has been and remains responsible for the suffering of the Iraqi people.

Ambassador Albright has commented a short while ago on the negotiations that led to the agreement that was announced by the Secretary General today. It has long been the United States' view that the people suffering in Iraq at the hands of the Saddam Hussein regime ought to have access to the proceeds from these limited sales and that that revenue stream ought to go to their humanitarian needs, not to rebuild Saddam Hussein's palaces.

Q Are we comfortable with the provisions that were made to safeguard -- I just wondered if we're satisfied with the provisions that may exist to make sure the money goes where it's supposed to go.

MR. MCCURRY: The United States and the United Kingdom both have very strong views on that. As Ambassador Albright said a short while ago, we're satisfied that the proceeds from these sales will be directed to the people who are suffering, particularly the Shiia in the marsh and the Kurds in Northern Iraq.

Q What effect do you think this will have on gas prices and the push to repeal the gas tax?

MR. MCCURRY: I am not in a position to speculate on which market reaction will be. The market has known for some time that these sales have been contemplated, and whether or not any price fluctuations have been absorbed by the market is something that, frankly, only the market knows.

MORE

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Q Does the Clinton administration ever see the day when relations between the U.S. and Iraq can be restored, normalized, as long as Saddam Hussein is in power?

MR. MCCURRY: Well, it has consistently been the view of the United States that Iraq must fully comply with all of the relevant U.N. Security Council resolutions, and it's the belief of our government that if that government does comply with all the resolutions that would be incompatible with Saddam Hussein's continued tenure in office.

Q Mike, on MFN, does the administration, has it sent the formal request to the Hill? Does the time clock start today, or will that come later?

MR. MCCURRY: The President plans to send the formal letter to Congress extending regular trade arrangements with China on June 3rd. Congress would then have 60 days to consider that decision. But within that period, within one month, the current provisions under the Jackson-Vanik Amendment would expire. That's how we got -- some of us got tripped earlier today on whether it was a month or 60 days. In fact, there is a 60-day review but it, for all practical purposes, it needs to be done within 30 days because that's when the provisions expire under the Jackson-Vanik Amendment.

Q Mike, does it require a positive vote from Congress, or if they do nothing just MFN is renewed?

MR. MCCURRY: I think they have to act --

Q To disapprove.

MR. MCCURRY: They have to pass a joint resolution of disapproval.

Q And then he can veto?

MR. MCCURRY: If they don't, then the decision stands.

Q So does that mean that in the future, because Jackson-Vanik will expire, there won't be any more annual MFN renewal debates?

MR. MCCURRY: Looking to the ever-able and capable David Johnson who always has answers to questions like that on the tip of his tongue, and he says, don't speculate. We'll have to check.

Q Will Senator Dole's imminent departure from the Senate jeopardize MFN?

MR. MCCURRY: It's difficult to assess. Senator Dole is supportive of the President's position, as you know, and as he stated in his speech recently. We have pledged to work with him to achieve approval of the President's decision. I'm sure that he will continue to be an influential voice in the debate on policy towards Asia and policy towards China in particular, and the President will welcome his continued support.

Q Was China officially informed, or did we inform China with the speech today?

MR. MCCURRY: That's kind of a State Department question. Do you know whether we -- it has been part of our dialogue with China that the President's intentions on extending regular trading arrangements -- that was known to the Chinese. Whether or not we have formally communicated that via our embassy in Beijing is something I can check on, or you might want to call over to State and see if they know.

Q Last week, after Bob Dole announced his withdrawal from the Senate you said that -- the White House said that it is hoped that the next month would lead to maybe some breakthroughs on some of the stalemated issues. Can you give us a sense of what kind of discussions are going on between the White House and the Hill, whether the President has gotten involved personally on any level and kind of where we are?

MR. MCCURRY: The President has had some conversations related to the subject we were just addressing, which is Most Favored Nation status for China. He remains available to talk about balancing the budget or reforming welfare as we know it, or achieving passage of the Kassebaum-Kennedy health care bill that would expand health care coverage, or raising the minimum wage -- all things that we believe there is bipartisan consensus in the Congress to do and to do now.

We have regular contacts back and forth through our Legislative Affairs shop to get a better sense of what the Senate and the House schedules will be and what measures they are taking up and, of course, we are available at a moment's notice to address those matters.

Q That's kind of passive. Is the White House taking any kind of proactive -- did the President, following his first conversation with Senator Dole, call him back and say, okay, let's go for it?

MR. MCCURRY: Not to my knowledge. He has not had a subsequent conversation. He would be willing to if it looked like there was any reason to believe that that would be fruitful. As I indicated before, coming off the President's discussion with Senator Dole, the President's belief is it would be possible to pass the Kassebaum-Kennedy health care bill and to raise the minimum wage and to do that rather expeditiously. But, ultimately, that's going to be a question of timing decided by the Republican leaders in the Congress.

Q What's your understanding of what Gerry Adams has said about some nonviolent steps or agreeing to consider --

Q What?

MR. MCCURRY: Anything new today, or is this in general?

Q There's been a statement today that the IRA would agree to consider nonviolent something or other, and I couldn't make heads or tails --

MR. MCCURRY: I'll have to check on that. There have been discussions back and forth. We remain in contact with the parties. A lot of discussion back and forth following Prime Minister Major's article which appeared last week in the Irish Times. It continues to be our belief that Sinn Fein ought to press the IRA for an immediate resumption of the cease-fire, and it continues to be our belief that the June 10th all-party talks are a valuable opportunity for the parties to address the concerns that they have as they attempt to bring the conflict to a permanent end. And that is, suffice to say, something we communicated regularly to the parties.

Q As far as you know, Gerry Adams hasn't directly communicated this to the administration, whatever his statement is today?

MR. MCCURRY: Let us check on if there's something -- that's something I hadn't heard about today.

Q This is a foreign policy week around here. Can we expect any new initiatives or new themes on foreign policy, or are his speeches this week basically restatements of existing policy?

MR. MCCURRY: Well, the President will, in his graduation remarks to the Coast Guard Academy, make a broad defense of the need for American leadership in this world and the continued case for America's engagement around the globe in places where U.S. diplomacy can make a difference. He'll have some new formulations, if not necessarily new initiatives that will be in the speech. But I can do more on that for you tomorrow.

Q Does the President believe the notion that the need for American leadership around the globe is under assault?

MR. MCCURRY: He believes, Brit, that there is a debate within our Congress on pulling back from some of America's historic engagement around this world. There are calls for retrenchment, for pulling back from some of the standard means by which the United States advances its economic and security interests in the world. And the President strongly and firmly rejects those calls for isolationism.

Q From which quarter in the Congress does he perceive these coming? Not the majority --

MR. MCCURRY: Well, not from the -- I would not say from the Republican majority. By and large, on questions of the importance of U.S. engagement in this world, Senator Dole, certainly, and President Clinton are very much of like mind that there needs to be active U.S. engagement as we advance our economic, security, political, and geopolitical interests.

Q Mike, there has been some criticism that the level of the defense budget is not enough to cover the two mid-sized conflicts which have been part of American doctrine for some time. Did President Clinton say anything about that?

MR. MCCURRY: Well, we have strong views on the defense authorization bill that is moving its way through Congress. It has been debated in the House recently. We believe that the budget that we presented in our FY'97 request is sufficient to protect America's interests in this world to deal with the contingencies that the Pentagon has planned for -- all part of its bottom-up review and looking forward in what we perceive to be the threats that will arise for the balance of this century.

It is a prudent budget. It puts investments in technologies in weapon system that we believe our going to be an important part of meeting our security needs for the balance of this century, and it does not spend a lot of money up front for technologies that might not prove useful when threats emerge into the next century.

So we have strong views on the bill. We have communicated them in the course of the House debate, and we look forward to seeing if we can get some of these concerns addressed as the bill moves forward.

Q I just wondered, since he's going to answer the criticisms of those who feel that we need to retrench, would he also be answering the criticisms in this speech of those who feel that we've already had a de facto retrenchment by limitations on spending for defense?

MR. MCCURRY: Some of those concerns he will address, and there will be a vigorous debate in the Congress this week on measures like national ballistic missile defense. I expect you will

hear the President address those matters often because he is determined to make a strong case for the defense budget that we submitted.

Q Mike, previous to Senator Dole's speech on Cuba yesterday, does the White House feel they were in sync, Dole and Bill Clinton, on what to do about the -- previous to the speech?

MR. MCCURRY: We still are awaiting some type of clarification of what the Senator meant in his speech. It's not clear whether he was calling for armed invasion of Cuba, or whether he was supporting the Helms-Burton approach to isolating Cuba. We'll just have to wait --

Q What do you suspect, Michael? (Laughter.)

MR. MCCURRY: I suspect it was a good, red-meat speech to an audience in Florida, and that a lot of that hadn't been thought through. (Laughter.)

Q The U.S. Supreme Court this morning ruled that in the Colorado -- case that you can't single out one group of people, gays, and remove them from equal protection under the law. I'm wondering if that decision might change where Clinton stands now and his willingness to sign the defense of marriage act.

MR. MCCURRY: The President believes the day's decision was appropriate. The Colorado law denied a group of citizens the right to participate effectively in the political process in Colorado, and the President believes that's bad public policy. It's also inconsistent with our common values and principles that make our nation strong, and it does not change his view on that other particular piece of legislation.

Q What is, exactly, his view of that piece of legislation which you've never --

MR. MCCURRY: We haven't changed our current posture. We are analyzing that legislation.

Q But he doesn't have --

MR. MCCURRY: And it hasn't passed yet.

Q -- a view on it yet?

MR. MCCURRY: We have not expressed a view on that legislation.

Q Can I follow up on that?

MR. MCCURRY: Yes.

Q Can we stay on that subject for a second? How does that square with the President's opposition then to same-sex marriage?

MR. MCCURRY: That's a different issue. That's an issue that goes to the President's personal beliefs about marriage and what marriage should be as an institution in our family life. This is a very particular opinion by the Court which our legal counsel is still looking at that addresses the rights of individual groups of Americans to have redress in our political system.

Q Well, I understand that, but this group of Americans has decided that they have the right to have a same-sex marriage. I mean, I don't understand how then the President --

MR. MCCURRY: The issue before the Court in the decision today was what rights they have in Colorado to have access to the legislative process, and that was what the Court looked at and examined and ruled on, as you can see from the majority opinion.

Q Mike, from the point of view of the President personally, is he disturbed that his, as an anticrime President, that his top strategist was giving advice, strategic advice, to a fugitive rapist? And has he said anything about that to Dick Morris?

MR. MCCURRY: You're referring to the -- there is a case in Connecticut where Mr. Morris has been -- was retained by the defense attorney to provide expert testimony as to venue and whether or not prejudicial publicity had made the venue at hand less than equitable for the defendant. That is a case that goes back, has been well publicized throughout most of last year, and the President was aware of his work in the past on that case.

Q And he is not disturbed by it?

MR. MCCURRY: The President was aware that he had worked on this case. The President is confident that Mr. Morris is working full-time for him now.

Q But, Mike, is the President -- he was aware prior to it, and agreed that he could continue to do it?

MR. MCCURRY: He was aware -- we were aware at the time that this matter became public in the course of a lot of publicity around the case in Connecticut last year. That's how I think we became aware that he had been retained by the defense attorney. We were aware of it, and to my knowledge, the President didn't express an opinion about it.

Q He's not worried about guilt by association?

MR. MCCURRY: We're always worried that people will make inaccurate and intemperate accusations, and we just hope that the truth of the situation becomes clear.

Q The President's view is that he's no longer involved in the case and that the matter is closed, is that right?

MR. MCCURRY: I'll have to check. To my knowledge, he is not actively working on the case now. He did, essentially, a poll -- I'll have to check and see when, I'm not sure I know exactly when it was conducted, but it was in response to the choice of the venue.

Q But, Mike, he testified in court in March, and what I'm trying to get is some sense of whether the President is in any way disturbed by that fact, or whether he said anything to Mr. Morris about it.

MR. MCCURRY: The President expects him to work full-time as a consultant to his campaign, and we were aware of his work on this case.

Q Did he expect to be working full-time in March?

MR. MCCURRY: He was asked to go back and testify pursuant to the poll he had taken.

Q How does that square with full-time?

MR. MCCURRY: I'll check with -- it was apparently a one-day appearance in court.

Q Michael, isn't a change of venue for defense in defense cases part of what he does? Isn't that his business? It's not just this case, he's had several others where he helps defendants in very serious violent crimes?

MR. MCCURRY: This is -- one of his lines of business is to provide venue recommendations. He worked for the Attorney General of Mississippi, too, I believe, in getting venue recommendations on the case that they've got relating to tobacco claims under Medicare. So he does this type of work.

Q Does the President feel that he may continue to carry out this line of business while working for the President?

MR. MCCURRY: Our understanding and his representations to us is that he's not pursuing that type of work during the course of the election year.

Q His activities are suspended pending the election, is that right?

MR. MCCURRY: What?

Q It's the White House's understanding is that such activities are suspended pending the election?

MR. MCCURRY: It's our understanding that he's not pursuing that type of client. What I need for you to do is to go back and talk to Joe Lockhart over at the campaign; they've been dealing with this issue over the last couple of days, and I think they've got a statement from Mr. Morris that's available and some other background information.

Q Did the President or anybody in the White House specifically go to Morris and say knock it off until after the election?

MR. MCCURRY: It was made clear to Mr. Morris that we needed his services devoted to the President's reelection campaign during the course of the year. But I don't believe it was an issue because I believe that's what Mr. Morris volunteered to do.

Q But was it put that delicately -- you know, we need your help, so please refrain from working -- or, did they say, don't take these controversial cases?

MR. MCCURRY: I don't know, I wasn't a participant in the conversation.

Q Getting back to the defense of marriage act just for a second, you said the President will continue to act on his personal beliefs. Is he going to do that even though the Supreme Court ruled that you can't separate gay people out and deny them equal protection?

MR. MCCURRY: Our counsel is looking at the case to see if that's, in fact, what the court ruled. There will be different interpretations of the court's opinion, and I'll rely on the one that's provided to me by the legal counsel.

Q Is he going to rely on a legal opinion then, or an interpretation of the Supreme Court, or his personal beliefs?

MR. MCCURRY: As we very often do, we will rely on the judgment of the White House legal counsel as they look at an opinion of the court.

Q Anything more on the Admiral Boorda case, and is there a search underway now for a new CNO? Has that started?

MR. MCCURRY: There are discussions underway about replacement for Admiral Boorda. Secretary Perry indicated that would be a recommendation coming to the President in a matter of days as opposed to weeks. And the President will review the recommendation when it comes.

Q That hasn't happened yet?

MR. MCCURRY: Has not happened yet to my knowledge.

Q Also on that, following his visit with the family over the weekend and perhaps talks with other people, has the President been able to make any sense of what happened?

MR. MCCURRY: I think the President has thought about it a lot, but I think that is best kept private.

Q What is your understanding of what his role is going to be tomorrow at the service?

MR. MCCURRY: He is delivering one of the eulogies -- is that correct? Yes.

Q Does he think that the attacks by James Webb and others had a lot to -- had anything to do with the --

MR. MCCURRY: Helen, there are any number of things that he could think about this, but I think, in respect to Admiral Boorda and to the family, he'd just prefer to keep it private.

Q Could you -- just to clarify the Dick Morrison -- when you say your understanding is that he's not pursuing that type of client, are you making a difference between adding new clients to his roster and finishing work that he already --

MR. MCCURRY: No, I think he had one or two political clients that he was going -- he had previous arrangements with that he was going to pursue this year, but other than that, he was devoting full-time to the campaign. But, again, I ask that you check with Joe Lockhart over at the campaign on that.

Q On this report of the 1994 assassination idea, at least, by -- Yusef, can the White House add anything more? Was it aware that this was actually going on?

MR. MCCURRY: Jill, that's a case they're currently selecting a jury for, and because the case is ongoing I'd prefer not to comment on it.

Q I wanted to ask about land mines. What plans do you have to circumvent the law which the President signed into effect last February prohibiting the use of land mines, calling for a moratorium on land mines in 1999?

MR. MCCURRY: You're referring to the Leahy Amendment.

Q I am.

MR. MCCURRY: The President is encouraged by the decision of the Pentagon to explore alternative technologies to do some R&D on land mines that would make it possible to find other ways to protect American fighting men and women as they're deployed. Now, at the same time, we will be vigorously pursuing an international agreement that would ban all antipersonnel land mines. And we think

we can do that -- we believe we can get that done by the end of this century.

The view of a lot of experts is that the United States is in a stronger position to negotiate a ban on that type of mine in consultation with other governments, and that you might, in fact, lose a little bit of bargaining leverage taking a unilateral step prior to the commencement of an international dialogue. Still, you also would not be in a position to respond the placement or decision by other governments to continue the use of that type of land mine absent any international agreement.

Q Mike, one of the chief producers --

MR. MCCURRY: By the way, the most significant thing about the President's announcement last week is the banning of so-called dumb land mines. Those are the ones that are blowing off the legs of children in Cambodia and Afghanistan and elsewhere. And we have unilaterally renounced the use of those land mines, even though that requires some change of training, logistics and planning on the part of our own Pentagon.

Q Mike, one of the chief producers is China. Will there be some discussion in the future with China about land mines?

MR. MCCURRY: This is an issue that we have had discussions with the People's Republic on in the past, and that will be part of the dialogue that we pursue. The venue for that dialogue is still uncertain, whether it's a conference on disarmament or some others. But the President is going to very vigorously and very aggressively pursue a ban of all types of land mines. We've already implemented the unilateral ban on so-called dumb land mines, and the only ones that we will keep in our arsenal are those necessary with the exception of Korea -- and the training requirements of the Pentagon are those that are self-deactivating.

Q Mike, haven't we already stopped producing dumb mines? That's not a -- that's not since --

MR. MCCURRY: We have stopped producing them, but we had 4 million of them in our inventory -- or more than 4 million in our inventory.

Q And are those going to be what, they're going to be destroyed --

MR. MCCURRY: They are going to be destroyed or deactivated with the two exceptions noted by the President. And that is -- look, that's significant. Those are the ones that lie there hidden underground that are going to pose threats to civilians. The kind that we will keep in our inventory are ones that are designed to in a very short period of time, frankly, in a matter of days, to self-deactivate. And even if there's a dud, it goes dead in a very short period, I think less than three months.

And that is in the interim until we get a complete ban as a way to ensure that the President, as Commander-in-Chief, lives up to his responsibilities to the people we put in harm's way, in addition to doing something about what is obviously the humanitarian concern we feel for civilians who would otherwise face that type of danger.

Q Mike, back on MFN. What's your read on the Hill? Do you face any likelihood that they will be able to override this?

MR. MCCURRY: It's going to be a tough fight. That's why the President is getting started a little bit early in a sense by giving the speech today.

Q Do you feel it's necessary to enlist the support of folks like George Bush, Jim Baker, others that you have used on NAFTA, GATT, and other --

MR. MCCURRY: We'll be looking for -- I don't know that I want to single out anyone in particular, but we will be looking for support from those who understand the importance of our engagement with the People's Republic.

Q But you don't need more than one-third of one House to protect that, right?

MR. MCCURRY: That's correct.

Q Well, you can't really be too worried about that, are you?

MR. MCCURRY: Well, we are worried enough that we are not taking anything for granted.

Q Mike, back to the UN-Iraq deal. Will U.S. companies be allowed to sell food and buy oil from Iraq?

MR. MCCURRY: That is -- once the agreement is reached and the statement issued by the Security Council, individual member nations are going to have to develop their own response to the decision of the Security Council. To my knowledge, we have not addressed that question yet. So that will -- that's one of the details we will have to work out.

Q You mean it's a possibility the United States will be selling products to Iraq?

MR. MCCURRY: Not the United States. The issue is whether U.S. enterprises, private sector interests, would be allowed to participate, and we don't know the answer to that.

Q When and if Senator Dole keeps talking about liberal decisions by Clinton-appointed judges, will you, in light of today's Supreme Court pro-gay rights decision, point to that as an example of Republican-appointed conservative judges making liberal decisions?

MR. MCCURRY: No. Probably not -- I should say, probably not.

Q Mike, just one last thing to clarify on Dick Morris. The President knew of this representation and raised no objections?

MR. MCCURRY: That would be accurate. This has been a case that has very much been in the public's eye, since -- my first knowledge of it came last summer, I believe, when it was first discussed publicly in Connecticut.

Q On same-sex marriage, when do you expect to have a position on the legislation? It doesn't seem to be a particularly complex kind of issue.

MR. MCCURRY: When one is developed and when one is looked at. It's also not clear what the prognosis for the legislation is and what form it will take as it's being considered on the Hill.

Q Senator Hatch left the White House saying he's going to fight you on the Iraqi decision, saying this is only going to strengthen a terrorist regime in Baghdad, a repressive, terrorist regime in Baghdad.

MR. MCCURRY: Well, then, that's a very damaging charge for him to raise against former President Bush. He was the one that was President when this Security Council resolution was adopted by the United Nations, so his quarrel is with President Bush, not with President Clinton.

Q Since then, there has been no change in the U.S. conditions?

MR. MCCURRY: It's long been our view that humanitarian sales as allowed by U.N. Security Council Resolution 986 should proceed for the sake of the Kurds, the marsh Shiia, those who are suffering under Saddam Hussein's regime. And this President, this administration's responsibility was to ensure that we negotiated the proper memorandum of understanding so that the proceeds from those sales would go into the humanitarian efforts, the food, the medicine, the humanitarian relief the people of Iraq need.

THE PRESS: Thank you.

END

1:43 P.M. EDT

#224-05/20

#224-05/20

Clinton dangles promises to gays

Hints he'll push legal 'marriages'

By Paul Bedard
THE WASHINGTON TIMES

A1

President Clinton is wooing homosexual voters and AIDS activists, who were angered by his handling of their issues earlier in his term, by making new promises to consider expanded civil rights — including same-sex "marriages."

Capitalizing on a top issue in the community, Marsha Scott, Mr. Clinton's liaison to homosexual activists, is seeking suggestions on what position the president should take on same-sex marriages.

In Boston recently, Miss Scott told a homosexual group, "We [need] to find ways to ensure that those of you in these loving, long-term and committed relationships can enjoy all the same benefits that [heterosexual couples] are entitled to under the law."

She added that using same-sex marriages may not be the right "vehicle" now but said, "I'm going to argue that we broaden the context and look at the rights that gays and lesbians have ... and where those rights are denied."

Asked about Miss Scott's little-noticed statements, a senior administration official said homosexual marriage is "not something we intend to espouse."

The official said that the White House will leave it to states to decide the issue, and that Mr. Clinton wants to do "everything we can to support" traditional marriages between heterosexuals.

see GAYS, page A8

GAYS

From page A1

But the aide added: "The president is aware that many communities and institutions are considering whether certain basic benefits can be provided outside the context of traditional marriage. The challenge in addressing these issues is to remain sensitive to the traditional values of our communities while preserving the fundamental right to live free from unjustified discrimination."

Mr. Clinton, said the official, is "personally" opposed to homosexual marriages.

Opponents of Mr. Clinton, however, noted that he also "objected" to late-term partial abortions but vetoed a ban on the procedure.

Conservative and liberal critics of the president complained about the aide's comments, which they said were designed merely to solicit support for the president. Miss Scott did not return a reporter's phone call.

Steve Michael, a third-party presidential candidate supported by ACT UP, the AIDS Coalition to Unleash Power, said "they're making more empty promises."

Robert Knight of the conservative Family Research Council said, "The president is between a rock and a hard place, because he knows embracing same-sex marriage would alienate most voters who view him as a moderate."

The administration is making its case to homosexuals at White House meetings and through aides tapped to energize members of their community, arguing that while Mr. Clinton hasn't fulfilled all his 1992 promises, a Dole administration won't be as helpful.

In an interview with Windows, New England's largest homosexual newspaper, Miss Scott said that in a Dole-Clinton race, "I think you have extremely clear choices."

You are either at the political table with a Clinton administration, or there is not even a door for you to get to the table."

The White House also has formed a special AIDS task force, which plans a two-day open session next week.

But the White House faces a skeptical audience, many of whom feel the president hasn't fulfilled his long list of promises to them.

For instance, Mr. Michael said his disappointment with Mr. Clinton's failure to start a "Manhattan Project"-style anti-AIDS program or to elevate the AIDS czar to a Cabinet-level post led to his third-party challenge.

"If I can win 1 or 2 or 3 percent of the vote in critical states, we could be the balance of power. If on the day after the election, established gay groups blame us for defeating the president, I will wear that as a badge of honor," he said.

"Sure there are some problems," said Susan Leal, an openly homosexual member of the San Francisco Board of Supervisors. But, she added, the administration remains open to homosexuals and it's not clear what approach Senate Majority Leader Bob Dole would take as president.

Elizabeth Birch, executive director of the dominant homosexual-rights group, the Human Rights Campaign, said Mr. Clinton should be supported because he reaches out and is integrating homosexuals into his administration.

"President Clinton sees gay America as whole and contributing citizens," she said. Her group plans to spend \$2.5 million to help Mr. Clinton's re-election and listed eight major areas in which the president has helped homosexuals.

The Clinton-Gore re-election campaign is confident of homosexual support. "We believe in the end the community will be with us," said campaign spokesman Joseph Lockhart.

To JQ, S New with

Came up at 7:30 meeting this morning

Not really our message.

KW

THE WHITE HOUSE

WASHINGTON

June 19, 1996

MEMORANDUM FOR JACK QUINN

FROM: STEVE NEUWIRTH

SUBJECT: GAY MARRIAGE

We have been asked to review this proposed SAP for the Defense of Marriage Act:

H.R. 3396 - Defense of Marriage Act

(Barr (R) Georgia and 108 cosponsors)

The President strongly opposes discrimination against any group of Americans, *He including*
~~has been a vocal opponent of discrimination against gay and lesbian individuals, and~~
~~the Administration supported legislation to outlaw such discrimination in the~~
workplace.

NO P

also The President *and he* has long opposed gay marriage, *es* however, believing that the institution of marriage should be reserved for unions between one man and one woman. Therefore, if H.R. 3396 were presented to the President as ordered reported from the House Judiciary Committee, the President would sign the legislation.

* * *

Please let me know if you have any comments.

The legislation recently introduced in Congress would for the first time in our nation's history insert the federal government into matters which have traditionally been left to the states to regulate. As a former governor, the President has serious reservations whenever Congress attempts to legislate in quintessential state issues. The bill also raises serious constitutional issues by attempting to legislate a particular interpretation of the full faith and credit clause of the United States Constitution -- a matter best left to the courts.

While the President has said repeatedly and consistently that he is personally opposed to same sex marriage, this issue is being discussed in many state legislatures and at the local level -- as he believes it should be. Congress has more important things to do than to be in the business of granting marriage licenses.

The institutions of traditional marriage and family face tremendous pressures in today's society. The president believes that we must do everything we can to support these institutions, but this particular legislation does not seem to advance that goal.

George - Steve -

Richard Socacides came up with this
for our thoughts. We'll talk tomorrow.

Sark

E X E C U T I V E O F F I C E O F T H E P R E S I D E

19-Jun-1996 02:50pm

TO: Laura Capps
TO: Stephen R. Neuwirth

FROM: Jeremy D. Benami
 Domestic Policy Council

SUBJECT: SAP on gay marriage bill

Can you take a look at the following draft SAP on the gay marriage bill and let me know what you think.

Thanks.

Steve: does Jack need to see this before it goes out for clearance?

George: do you want to show this to the President/Leon?

June 19, 1996
(House)

H.R. 3396 - Defense of Marriage Act

(Barr (R) Georgia and 108 cosponsors)

The President strongly opposes discrimination against any group of Americans. He has been a vocal opponent of discrimination against gay and lesbian individuals, and the Administration supported legislation to outlaw such discrimination in the workplace.

The President has long opposed gay marriage, however, believes that the institution of marriage should be reserved for unions between one man and one woman. Therefore, if H.R. 3396 were presented to the President as ordered reported from the House Judiciary Committee the President would sign the legislation

* * * * *

1. *In 1992, you said to gay people "I have a vision and you are part of it." What is that vision in 1996 and how do gays and lesbians figure into it?*

I have a vision of American in which every individual is valued and respected. As President, I have sought to promote inclusion and heighten public awareness in order to send a powerful message of equality and acceptance to people everywhere. Increased opportunity makes citizens more productive, building stronger communities and a stronger nation. I believe that we must continue to help people rise as far as their talents and determination can take them in order to make the most out of our great diversity.

2. *You have been praised by gays and lesbians as the most "pro-gay" president in history. Yet there is also a profound sense of disappointment in the gay community because the expectations you set in 1992 were so high. What do you say to those gay voters who invested so much emotionally to your candidacy but who have felt let down?*

We have truly accomplished a great deal during my Administration. We have also learned a lot about what we can do -- and how to get it done. My Administration has taken more steps than any previous in bringing the gay and lesbian communities to the table. I am proud of my record and it is a record to build on.

I remain dedicated to ending discrimination and to protecting the civil rights of every citizen in our society. I am proud that my Administration has more openly gay and lesbian individuals serving in appointed positions than in any previous Administration, and their impact, both in expertise and in efforts to advocate for the concerns of gay men and lesbians, is significant. We have increased AIDS funding, research, and educational outreach. I am the first President ever to endorse a gay and lesbian civil rights bill, the Employment Non-Discrimination Act. We have also opened the door for qualified gays and lesbians to receive top security clearances. I pledge to you that I will continue striving for greater education and compassion, working not simply to tolerate our differences, but to celebrate them.

3. *What is your own personal comfort level with homosexuality? Is it one of tolerance or acceptance or something else?*

I believe all Americans should be judged on their merits, not on their orientation. I strive to do this in my personal life. It was one of the most fundamental lessons that my mother taught me from a very early age -- to make decisions about people based on who they are, not what they are.

In public life, I have worked relentlessly to empower people who historically have been discriminated against based on race, class, gender, disability, or sexual orientation. I remain committed to achieving that goal.

Having grown up in a segregated society, I have always felt strongly that everyone who is willing to work hard and play by the rules should be allowed to participate in American life. My belief is that we don't have a person to waste. We should try to protect the rights of all our citizens to live up to the fullest of their capacities.

4. *What gay or lesbian person has had the biggest impact on your life and why?*

This is hard to answer because I know so many individuals, many of whom I brought into my Administration. Bruce Lehman, Roberta Achtenberg, Richard Socarides and Bob Hattoy, to name just a few, have all made valuable contributions. I've worked closely with Congressmen Barney Frank and Gerry Studds, and with Elizabeth Birch, of the Human Rights Campaign. I've had a long friendship with David Mixner, whose advice has meant a great deal to me over the years. In 1978 I was Governor of Arkansas and I hired Dr. Mike Rankin to be the state's mental health director, and he has become a good friend of mine. Today he serves as an outstanding member of my advisory council on HIV/AIDS.

5. *As a strong Baptist, do you have problems reconciling your religion's views on homosexuality with your personal beliefs?*

I have been blessed by having people of strong faith in my life and this faith is a major sustaining force and motivation. It is through my religious beliefs that I have learned compassion, tolerance and inclusion. Through prayer and Bible study I have learned that God's love is extended to all people.

6. *Jimmy Carter recently denounced how some religious and political leaders have embraced strong anti-gay views. And he said it must be made clear "that a platform of 'I hate gay men and women' is not a way to become president of the United States." Do you agree with Carter and do you intend to do anything to counter what he calls "obnoxious attitudes?"*

Yes, I believe that those who promote discrimination on the basis of sexual orientation or any other grounds are gravely mistaken about the values that make our nation strong. I will continue to move my Administration in the direction of compassion, acceptance and understanding.

The recent attempts by extremists in Congress to expel HIV positive servicemembers, regardless of their ability to serve, was a good example of what President Carter is saying. I'm very proud of the coalition my Administration built in our successful repeal effort. This provision was unconstitutional, served no military or public health policy and was just plain wrong. Once people understood this, we were able to have it repealed.

7. *Perhaps your biggest accomplishment in the area of gay rights has been with changes in the federal workplace. Federal departments have written non-discrimination policies. Gays and lesbians are no longer denied security clearances. What do you feel is the long-term impact of these changes?*

These changes are important because they represent another step forward in making sure that all Americans can contribute and that everyone has a seat at the table. It's particularly important to open up the civil service fully, to ensure that the most capable people are not denied the opportunity to serve. These men and women in our government, and their work, will outlast any President.

8. *People still debate what happened with the gays in the military issue. Given a second term, would you revisit this topic? Is there a chance you might issue the executive order you promised in 1992?*

Few issues in recent times have spurred the kind of debate that has occurred since I pledged to change our nation's policy toward homosexuals in the military. I know that this is a sensitive and emotional issue for many people. And, as you know, many of these issues are being actively litigated in the federal courts. courts and it is probably best to let those cases run their course.

9. *If you had the chance to start over, only this time knowing the extent of the opposition to opening the military's doors to gays and lesbians, how would you approach the issue? What lessons did you learn from the fight?*

It's fair to say that I have thought a lot about this and that there are some things I think I should have done differently. I now believe that we needed to build a broader consensus on this important issue before moving forward. Sometimes change comes best when it is achieved through incremental steps.

10. *Do you believe gays and lesbians face the same kind of obstacles that other minority groups have confronted?*

No two groups, just as no two people, face the same obstacles. Although some are quite similar, the gay and lesbian communities are themselves diverse and encompass members of all minority communities. We all want liberty and freedom. We want the embrace of family and community. We want to make the most of our own lives. That is why I've always said that our great diversity is a source of strength to unite -- not divide -- our country.

11. *You have endorsed the Employment Non-Discrimination Act. Why do you feel this legislation is appropriate and necessary. Given a second term, will you actively push the Congress to pass it?*

I don't think it's right for employers to discriminate based on sexual orientation. Men and women in 42 states may now be fired from their jobs solely because of their sexual orientation, even though it has no bearing on their job performance. Those who face this kind of job discrimination have no legal recourse, in either our state or federal courts. This is wrong.

The Employment Non-Discrimination Act, for which I announced my support last fall, is designed to protect the rights of all Americans to participate in the job market without fear of unfair discrimination.

12. Why do you oppose same-sex marriage? Is there a chance you could reconsider?

I remain opposed to same sex marriage. I believe marriage is an institution for the union of a man and a woman. This has been my longstanding position and it is not being reviewed or reconsidered. I also strongly believe that issues relating to gays and lesbians should not be used to tear our communities apart. Even on the most difficult social issues we face, we must work together to find common ground. Every American deserves no less.

13. What about the slate of proposed laws to limit marriage between a man and a woman? Should Congress establish a national standard for marriage?

I am opposed to same sex marriage. If Congress enacts legislation, I will review it in light of that position.

14. Are there steps, such as changing the tax code or immigration laws or creating domestic partnership benefits for federal workers, that you believe the federal government should take to help gay couples?

I am aware that many communities and institutions are considering whether certain basic benefits can be provided outside the context of traditional marriage. The challenge in addressing these issues is to remain sensitive to the traditional values of our communities while preserving the fundamental right to live free from unjustified discrimination. In our country's history we have, for good reason, looked first to state and local governments, as well as the private sector, to consider issues like these involving community values and matters of conscience. I believe that these issues continue to be best resolved at this level of civil discourse.

15. An increasing number of gays and lesbians are having children, either biologically or through adoption. Is this trend acceptable to you? Is there anything government should do to encourage or discourage gay child rearing?

This question, with all due respect, misses the point. The most important thing is that children find themselves in loving, healthy and safe environments. State and local officials need to ensure that the best interests of the child are being served. That interest, not the interests of others, is paramount.

16. *Some parents object to teaching anything positive about homosexuality in the public schools. At the same time, some troubled teens kill themselves because of confusion over their sexuality. How far should the nation's schools go in discussing homosexuality?*

Our nation's educators have made great strides in how to deal with issues which affect our children in these rapidly changing times. Decisions about what is said and what is taught must be left to teachers, local school districts, parents, and students.

I am deeply troubled by the numbers of teen suicides, especially among gay and lesbian youth and of the rise in violence among all youth. Secretary Shalala's conference on gay and lesbian teen suicide brought this discussion to a national level and my Administration is continuing to work to find solutions to these complex problems. I recently met with a large number of people from throughout the country to discuss the issues of drug use and violence among teenagers. These discussions are very important and will continue.

17. *You spoke out against the slate of anti-gay initiatives that were popular in past elections yet your administration decided to sit out of the Supreme Court fight on the issue. How can you justify speaking out in one instance and then staying silent later?*

I've never stayed silent on this issue. I have continually stated my belief that those who would legalize discrimination on the basis of sexual orientation or any other grounds are gravely mistaken about the values that make our nation strong. The essential right to equality must not be denied by a ballot initiative or otherwise.

18. *AIDS continues to be a crisis in America. How has AIDS affected you personally?*

My Administration has worked hard to respond aggressively to the this epidemic creates. I'm proud of the fact that despite the enormous pressures of a zero-growth budget we have increased spending for AIDS research, prevention and care by more than 40 percent. We have approved a whole new class of AIDS drugs in record time and made sure that people living with HIV would have the means to pay for them. We have also more than doubled the funding for the Ryan White CARE Act, which brings high-quality medical care to hundreds of thousands of people every year. And we have preserved the Medicaid program, which provides health coverage for almost half of those Americans living with AIDS.

Every case of AIDS affects each of us and the future of our country because we are losing part of the next generation of leaders for our nation. Like many Americans, I have lost close friends and colleagues to AIDS and I keep them in mind as a potent reminder of the task we all face in eradicating this disease.

19. *Some AIDS activists say in one breath that you've done more than either of the two most recent Presidents to fight the disease and then in the next breath they criticize you for not doing enough or speaking out enough. Are both critiques accurate?*

We have done more, but we will not have done enough until there are no more infections, no new cases and no more deaths. Our first priority must be to find a cure for those living with

HIV and a vaccine for everyone else. We will continue to invest in research and keep our commitment to providing medical care to those living with HIV and AIDS. My Administration will continue to fight to preserve Medicare and Medicaid and to continue our investment in the Ryan White CARE Act. I have been frustrated by Congress' inability to approve the funds I have requested for the Centers for Disease Control and Prevention, and will continue to work to invest in prevention.

20. During the White House Conference on AIDS, speaker after speaker called for explicit AIDS education programs in the nation's schools that would be honest about transmission and education. How explicit should public schools be?

Decisions about what is said and what is taught must be left to local school districts, parents and students. Responsible education can help students protect themselves, while reducing the levels of fear and discrimination.

At the national level, we have done a great deal to support AIDS education. We have increased AIDS prevention funding by more than 20 percent, and have given power to communities through a community planning process that puts the decisions into the hands of local leaders. This past year we released a series of public service announcements that feature young people talking about their lives and their experience. There are strong indications that when young people hear from their peers they are more likely to take that advice to heart and make changes in their behavior.

21. Congress was stalled for many months on reauthorizing the Ryan White CARE Act. One reasons was the debate over a proposal to test newborns for HIV. Is this a provision you can live with? What are your thoughts on mandatory HIV testing?

I was pleased to be able to sign a five-year reauthorization of the Ryan White CARE Act in May. Throughout those Congressional debates, I reminded the Speaker of the House and Senate Majority Leader of the importance of this program to people living with AIDS and HIV and their families. It was reassuring to see both houses reject the kind of divisive rhetoric adopted by Senator Helms.

We must all work to do whatever we can to reduce the number of infants born with HIV. The Public Health Service guidelines recommend that every pregnant woman be counseled by her doctor on the benefits of testing and, if she tests positive for HIV, that she be treated with AZT. Those guidelines are supported by all of the national medical and public health organization. We should all follow the advice of the experts, which is reflected in the final legislation.

22. What will a second Clinton term do to fight the war on AIDS?

First and foremost, we must continue the search for a cure and a vaccine. At the same time, we will continue the search for better treatments for people living with AIDS. No President can guarantee success in science, but we must marshall all of our resources, public and

private, towards this effort. We will keep working on prevention efforts. And we must preserve the Medicaid program. I will continue to stand up to efforts to dismantle this program by the Republican majority in Congress. This program is a lifeline of support for millions of Americans, including many people living with AIDS.

23. *Any final thoughts?*

There are, without question, real differences in the life experience and backgrounds of people who make up America, but there is also a rich fabric of shared experience -- of common problems, common hopes and fears, common ground. It is a matter of the utmost importance for our nation that all citizens expand that common ground, focusing more on what unites us than on what divides us. Just as important, our public discourse must help guide us down the path toward greater unity. I want to lead a nation that is coming together, not coming apart.

THE WHITE HOUSE
WASHINGTON

June 19, 1996

MEMORANDUM FOR JACK QUINN

FROM: STEVE NEUWIRTH

SUBJECT: GAY MARRIAGE

We have been asked to review this proposed SAP for the Defense of Marriage Act:

H.R. 3396 - Defense of Marriage Act

(Barr (R) Georgia and 108 cosponsors)

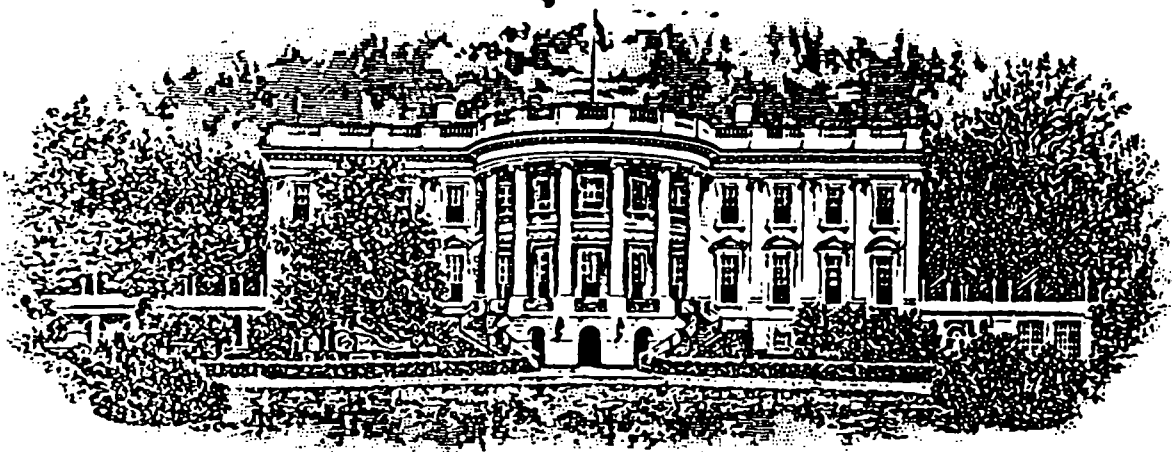
The President strongly opposes discrimination against any group of Americans, *He including*
~~has been a vocal opponent of discrimination against gay and lesbian individuals, and~~
~~the Administration supported legislation to outlaw such discrimination in the~~
~~workplace.~~

NO P *also* The President *and he yes* has long opposed gay marriage, ~~however~~, believing that the institution
of marriage should be reserved for unions between one man and one woman.
Therefore, if H.R. 3396 were presented to the President as ordered reported from the
House Judiciary Committee, the President would sign the legislation.

* * *

Please let me know if you have any comments.

The White House



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

DATE: 5/21

TO: JEFF POWELL

FACSIMILE NUMBER: 514-0539

TELEPHONE NUMBER: 514-2069

FROM: STEVE NEUWIRTH

TELEPHONE NUMBER: 456 7903

PAGES (WITH COVER): 5

COMMENTS: FYI

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**Lambda Legal Defense
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National Headquarters

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212/995-2306 (fax)

**FROM: Evan Wolfson
Director of the Marriage Project
Lambda Legal Defense & Education Fund**

**Michael F. Melcher
Cooperating Attorney¹**

**RE: The Supreme Court's Decision in Romer v.
Evans and Its Implications For H.R. 3396 and S. 1740, the
Proposed Federal Legislation on Marriage and the
Constitution**

DATE: May 21, 1996

The Supreme Court's historic decision in Romer v. Evans, ___ U.S. ___, slip op. no. 94-1039 (May 20, 1996) further highlights the unconstitutionality of proposed federal anti-marriage legislation such as H.R. 3396 and S. 1740.²

Addressing a constitutional initiative pushed by the very same organizations that are behind the federal bills, the Supreme Court stated that such measures, which seek to withdraw legal rights from a targeted group (i.e., gay people) are constitutionally defective on equal protection grounds. The Court resoundingly repudiated measures aimed at making lesbians and gay men second-class citizens, "across the board" restrictions showing no necessary connection between a legitimate government purpose and the classification, and anti-gay animus or disapproval as a basis for government discrimination. Because the proposed federal anti-marriage bills reflect the same animus, the same "across the board" inequality, and the same attempt to create a disfavored class (of lawful marriages), they are unconstitutional.

The Court found that Colorado's Amendment 2 violates the Equal Protection Clause of the U.S. Constitution and is therefore invalid. The Court rejected the state's specious argument that the measure merely put gay men and lesbians in the same position as all other persons and simply divested them of any "special rights".

¹ Associate, Davis Polk & Wardwell.

² For additional analysis of the proposed federal anti-marriage legislation, see Lambda Legal Defense & Education Fund, "Constitutional and Legal Defects in H.R. 3396 and S. 1740, the Proposed Federal Legislation on Marriage and the Constitution" (May 13, 1996) (available from Lambda).

We find nothing special in the protections Amendment 2 withholds [from lesbians and gay men]. These are protections taken for granted by most people either because they already have them or do not need them; these are protections against exclusion from an almost limitless number of transactions and endeavors that constitute ordinary civic life in a free society.

Id. at 9-10. The Court determined that, rather than treating gay people just like everyone else, the state's law in fact placed them "in a solitary class" in both the private and governmental spheres. "The amendment withdraws from homosexuals, but no others, specific legal protection[s]" Id. at 5. It is clear now that the Constitution forbids such discrimination against lesbians and gay men.

Of particular note is the Court's holding that the anti-gay measure bore no rational relation to a legitimate government purpose.³ It made this determination on three independent grounds.

1. Government Cannot Discriminate So As to Create a Disfavored Second-Class of Citizens, or Marriages.

First, the Court determined that Amendment 2 imposed a "broad and undifferentiated disability on a single named group." Id. at 10. Such "[l]aws singling out a certain class of citizens for disfavored legal status or general hardships" cannot survive even minimal equal protection scrutiny. The Court held that such government measures to identify persons "by a single trait" and then deny them protection "across the board" are "unprecedented in our jurisprudence." Id. at 11. Noting that Amendment 2 "classifies homosexuals not to further a proper legislative end but to make them unequal to everyone else," the Court declared that the government "cannot so deem a class of persons a stranger to its laws." Id. at 14.

Likewise, the federal anti-marriage bills for the first time in U.S. history purport to create two classes of marriage — (1) lawful, validly-celebrated marriages the federal government approves of, and (2) gay people's equally lawful, validly-celebrated marriages — and to brand the latter as not marriages, excluding them from all federal recognition, programs, benefits, protections, and consideration, for all purposes. As the Court observed, "discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the constitutional provision." Id. at 12. H.R. 3396's and S.1740's proposed federal caste-system of marriages is radical, unprecedented, and thus, safe to say, "unusual." The anti-gay effort to create two classes of lawful marriages is precisely a "classification of persons undertaken for its own sake," id. at 14, as unconstitutional as Amendment 2.

³ Romer's impact against measures such as the proposed legislation is strengthened by the striking fact that the Supreme Court did not rest its decision on the political participation argument adopted by the Colorado Supreme Court, 854 P.2d 1270 (Colo. 1993), but rather on a direct rejection of government-enforced inequality for gay people.

2. The "Sheer Breadth" of the Enforced Inequality Shows the Absence of a Legitimate Government Purpose.

Second, the Court noted that "even in the ordinary equal protection case calling for the most deferential of standards, we insist on knowing the relation between the classification adopted and the object to be attained." *Id.* at 10. "By requiring that the classification bear a rational relationship to an independent and legitimate legislative end, we ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by the law." *Id.* at 11.

Like Amendment 2, the wholesale exclusion of gay people's lawful marriages from federal recognition and protection "confounds this normal process of judicial review." *Id.* The proposed statutes would, for the first time in U.S. history, purport to declare that as a general matter (and not just for a particular purpose related to a particular program or matter), Congress and every federal agency will not recognize a particular people's marriages -- marriages that are fully, equally, and lawfully valid under applicable state law.⁴ The sheer sweep and flat exclusion of the proposed legislation's "general announcement that [the lawful civil marriages of] gays and lesbians shall not have any particular protections from the law," *id.* at 13, demonstrates its evident lack of a legitimate purpose.

3. Anti-Gay Disapproval, Dislike, Discomfort or "Animus" Does Not Constitute a Legitimate Government Purpose for Legislation.

The proposed federal legislation is truly "from the folks who brought you Amendment 2."⁵ Like Amendment 2, the proposed federal legislation's "sheer breadth is so discontinuous with the reasons offered for it that [it] seems inexplicable by anything but animus toward the class that it affects," i.e., gay men and lesbians, who hope someday to legally marry and interact with the responsibilities and civil status of married couple with other family members, neighbors, employers, creditors, and state, local, and the federal government. *Id.* at 10. The Congressional record to date (notably, the statements by the sponsors and the appalling May 16 House subcommittee hearings), as well as the heat of public controversy, the election-year rhetoric, and, above all, the self-proclaimed campaign by religious-political extremist groups mounting anti-gay, anti-marriage efforts in at least thirty-four states as well as in Congress, all attest to the anti-gay animus behind the federal bill.

As with Amendment 2, the proposed bills would take lawfully married gay men and lesbians, and "by state decree, put [them] in a solitary class with respect to transactions and relations in both the private and government spheres." *Id.* at 5. The Supreme Court has

⁴ The proposed statutes in effect define marriage itself, and thus unconstitutionally usurp state control of domestic relations, while placing lawfully-married couples and others in an untenable situation. See Lambda's May 13, 1996 memo.

⁵ See "Wedded to Intolerance: Extremists Lead Nationwide Assault on the Lives of Lesbian and Gay People," Human Rights Campaign, May 8, 1996 (documenting organized effort behind the anti-marriage backlash legislation proposed in Congress and the states).

now emphatically held that government may not so discriminate, whether today's targets be non-gay or gay.

Given that even higher levels of constitutional scrutiny would apply against these anti-marriage bills,⁶ the clear impact of Romer is to invite the sponsors, every member of Congress, and the President to, in Lincoln's words, "think anew" about the course this legislation would take us down. Even those who do not support equal marriage rights for all Americans should refuse to support unconstitutional legislation that the Supreme Court now tells us will be struck down. Like the Court, members of Congress and the President must show their "commitment to the law's neutrality where the rights of persons are at stake." Id. at 1.

⁶ The proposed legislation would warrant strict scrutiny as a massive, indeed unprecedented, burdening of the fundamental right to marry, the right to travel, and other protected freedoms, as well as triggering at least heightened scrutiny under the equal protection guarantee against sex discrimination. See Lambda's May 13, 1996 memo. Romer itself leaves open the question whether sexual orientation discrimination warrants heightened scrutiny under the equal protection clause.

May 30, 1996

MEMORANDUM TO GEORGE STEPHANOPOULOS

HAROLD ICKES
DON BAER
BARRY TOIV
MICHAEL MCCURRY
MARSHA SCOTT
STEVE NEUWIRTH
JEREMY BEN-AMI

FROM :PAT LEWIS
SUBJECT :THE ADVOCATE

Enclosed are the final responses to The Advocate questionnaire, including the updated response to the same-sex legislation question.

5/96

Final answers to The Advocate questionnaire

1. *In 1992, you said to gay people "I have a vision and you are part of it." What is that vision in 1996 and how do gays and lesbians figure into it?*

I have a vision of American in which every individual is valued and respected. As President, I have sought to promote inclusion and heighten public awareness in order to send a powerful message of equality and acceptance to people everywhere. Increased opportunity makes citizens more productive, building stronger communities and a stronger nation. I believe that we must continue to help people rise as far as their talents and determination can take them in order to make the most out of our great diversity.

2. *You have been praised by gays and lesbians as the most "pro-gay" president in history. Yet there is also a profound sense of disappointment in the gay community because the expectations you set in 1992 were so high. What do you say to those gay voters who invested so much emotionally to your candidacy but who have felt let down?*

We have truly accomplished a great deal during my Administration. We have also learned a lot about what we can do -- and how to get it done. My Administration has taken more steps than any previous in bringing the gay and lesbian communities to the table. I am proud of my record and it is a record to build on.

I remain dedicated to ending discrimination and to protecting the civil rights of every citizen in our society. I am proud that my Administration has more openly gay and lesbian individuals serving in appointed positions than in any previous Administration, and their impact, both in expertise and in efforts to advocate for the concerns of gay men and lesbians, is significant. We have increased AIDS funding, research, and educational outreach. I am the first President ever to endorse a gay and lesbian civil rights bill, the Employment Non-Discrimination Act. We have also opened the door for qualified gays and lesbians to receive top security clearances. I pledge to you that I will continue striving for greater education and compassion, working not simply to tolerate our differences, but to celebrate them.

3. *What is your own personal comfort level with homosexuality? Is it one of tolerance or acceptance or something else?*

I believe all Americans should be judged on their merits, not on their orientation. I strive to do this in my personal life. It was one of the most fundamental lessons that my mother taught me from a very early age -- to make decisions about people based on who they are,

not what they are.

In public life, I have worked relentlessly to empower people who historically have been discriminated against based on race, class, gender, disability, or sexual orientation. I remain committed to achieving that goal.

Having grown up in a segregated society, I have always felt strongly that everyone who is willing to work hard and play by the rules should be allowed to participate in American life. My belief is that we don't have a person to waste. We should try to protect the rights of all our citizens to live up to the fullest of their capacities.

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5. *As a strong Baptist, do you have problems reconciling your religion's views on homosexuality with your personal beliefs?*

I have been blessed by having people of strong faith in my life and this faith is a major sustaining force and motivation. It is through my religious beliefs that I have learned compassion, tolerance and inclusion. Through prayer and Bible study I have learned that God's love is extended to all people.

6. *Jimmy Carter recently denounced how some religious and political leaders have embraced strong anti-gay views. And he said it must be made clear "that a platform of 'I hate gay men and women' is not a way to become president of the United States." Do you agree with Carter and do you intend to do anything to counter what he calls "obnoxious attitudes?"*

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regardless of their ability to serve, was a good example of what President Carter is saying. I'm very proud of the coalition my Administration built in our successful repeal effort. This provision was unconstitutional, served no military or public health policy and was just plain wrong. Once people understood this, we were able to have it repealed.

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Few issues in recent times have spurred the kind of debate that has occurred since I pledged to change our nation's policy toward homosexuals in the military. I know that this is a sensitive and emotional issue for many people. And, as you know, many of these issues are being actively litigated in the federal courts.

9. *If you had the chance to start over, only this time knowing the extent of the opposition to opening the military's doors to gays and lesbians, how would you approach the issue? What lessons did you learn from the fight?*

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11. You have endorsed the Employment Non-Discrimination Act. Why do you feel this legislation is appropriate and necessary. Given a second term, will you actively push the Congress to pass it?

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The Employment Non-Discrimination Act, for which I announced my support last fall, is designed to protect the rights of all Americans to participate in the job market without fear of unfair discrimination.

12. Why do you oppose same-sex marriage? Is there a chance you could reconsider?

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13. What about the slate of proposed laws to limit marriage between a man and a woman? Should Congress establish a national standard for marriage?

I am opposed to same sex marriage. If Congress sends me the Defense of Marriage Act in the form now being considered, I will sign it.

14. Are there steps, such as changing the tax code or immigration laws or creating domestic partnership benefits for federal workers, that you believe the federal government should take to help gay couples?

I am aware that many communities and institutions are considering whether certain basic benefits can be provided outside the context of traditional marriage. The challenge in addressing these issues is to remain sensitive to the traditional values of our communities while preserving the fundamental right to live free from unjustified discrimination. In our country's history we have, for good reason, looked first to state and local governments, as well as the private sector, to consider issues like these involving community values and

matters of conscience. I believe that these issues continue to be best resolved at this level of civil discourse.

15. An increasing number of gays and lesbians are having children, either biologically or through adoption. Is this trend acceptable to you? Is there anything government should do to encourage or discourage gay child rearing?

This question, with all due respect, misses the point. The most important thing is that children find themselves in loving, healthy and safe environments. State and local officials need to ensure that the best interests of the child are being served. That interest, not the interests of others, is paramount.

16. Some parents object to teaching anything positive about homosexuality in the public schools. At the same time, some troubled teens kill themselves because of confusion over their sexuality. How far should the nation's schools go in discussing homosexuality?

Our nation's educators have made great strides in how to deal with issues which affect our children in these rapidly changing times. Decisions about what is said and what is taught must be left to teachers, local school districts, parents, and students.

I am deeply troubled by the numbers of teen suicides, especially among gay and lesbian youth and of the rise in violence among all youth. Secretary Shalala's conference on gay and lesbian teen suicide brought this discussion to a national level and my Administration is continuing to work to find solutions to these complex problems. I recently met with a large number of people from throughout the country to discuss the issues of drug use and violence among teenagers. These discussions are very important and will continue.

17. You spoke out against the slate of anti-gay initiatives that were popular in past elections yet your administration decided to sit out of the Supreme Court fight on the issue. How can you justify speaking out in one instance and then staying silent later?

I've never stayed silent on this issue. I have continually stated my belief that those who would legalize discrimination on the basis of sexual orientation or any other grounds are gravely mistaken about the values that make our nation strong. The essential right to equality must not be denied by a ballot initiative or otherwise.

18. AIDS continues to be a crisis in America. How has AIDS affected you personally?

My Administration has worked hard to respond aggressively to this epidemic. I'm proud of the fact that despite the enormous pressures of a zero-growth budget we have increased spending for AIDS research, prevention and care by more than 40 percent. We have approved a whole new class of AIDS drugs in record time and made sure that people living with HIV would have the means to pay for them. We have also more than doubled the funding for the Ryan

White CARE Act, which brings high-quality medical care to hundreds of thousands of people every year. And we have preserved the Medicaid program, which provides health coverage for almost half of those Americans living with AIDS.

Every case of AIDS affects each of us and the future of our country because we are losing part of the next generation of leaders for our nation. Like many Americans, I have lost close friends and colleagues to AIDS and I keep them in mind as a potent reminder of the task we all face in eradicating this disease.

19. Some AIDS activists say in one breath that you've done more than either of the two most recent Presidents to fight the disease and then in the next breath they criticize you for not doing enough or speaking out enough. Are both critiques accurate?

We have done more, but we will not have done enough until there are no more infections, no new cases and no more deaths. Our first priority must be to find a cure for those living with HIV and a vaccine for everyone else. We will continue to invest in research and keep our commitment to providing medical care to those living with HIV and AIDS. My Administration will continue to fight to preserve Medicare and Medicaid and to continue our investment in the Ryan White CARE Act. I have been frustrated by Congress' inability to approve the funds I have requested for the Centers for Disease Control and Prevention, and will continue to work to invest in prevention.

20. During the White House Conference on AIDS, speaker after speaker called for explicit AIDS education programs in the nation's schools that would be honest about transmission and education. How explicit should public schools be?

Decisions about what is said and what is taught must be left to local school districts, parents and students. Responsible education can help students protect themselves, while reducing the levels of fear and discrimination.

At the national level, we have done a great deal to support AIDS education. We have increased AIDS prevention funding by more than 20 percent, and have given power to communities through a community planning process that puts the decisions into the hands of local leaders. This past year we released a series of public service announcements that feature young people talking about their lives and their experience. There are strong indications that when young people hear from their peers they are more likely to take that advice to heart and make changes in their behavior.

21. Congress was stalled for many months on reauthorizing the Ryan White CARE Act. One reason was the debate over a proposal to test newborns for HIV. Is this a provision you can live with? What are your thoughts on mandatory HIV testing?

I was pleased to be able to sign a five-year reauthorization of the Ryan White CARE Act in

May. Throughout those Congressional debates, I reminded the Speaker of the House and Senate Majority Leader of the importance of this program to people living with AIDS and HIV and their families. It was reassuring to see both houses reject the kind of divisive rhetoric adopted by Senator Helms.

We must all work to do whatever we can to reduce the number of infants born with HIV. The Public Health Service guidelines recommend that every pregnant woman be counseled by her doctor on the benefits of testing and, if she tests positive for HIV, that she be treated with AZT. Those guidelines are supported by all of the national medical and public health organization. We should all follow the advice of the experts, which is reflected in the final legislation.

22. What will a second Clinton term do to fight the war on AIDS?

First and foremost, we must continue the search for a cure and a vaccine. At the same time, we will continue the search for better treatments for people living with AIDS. No President can guarantee success in science, but we must marshall all of our resources, public and private, towards this effort. We will keep working on prevention efforts. And we must preserve the Medicaid program. I will continue to stand up to efforts to dismantle this program by the Republican majority in Congress. This program is a lifeline of support for millions of Americans, including many people living with AIDS.

23. Any final thoughts?

There are, without question, real differences in the life experience and backgrounds of people who make up America, but there is also a rich fabric of shared experience -- of common problems, common hopes and fears, common ground. It is a matter of the utmost importance for our nation that all citizens expand that common ground, focusing more on what unites us than on what divides us. Just as important, our public discourse must help guide us down the path toward greater unity. I want to lead a nation that is coming together, not coming apart.

Stone
send me
of the
Scalia dissent.
Randy
JP

CLOSING ARGUMENT

BY STUART TAYLOR JR.

Twisting and Turning on Gay Rights

The Supreme Court's big gay rights decision on May 20 is at once immensely inspiring and intensely troubling.

The inspiring thing about *Romer v. Evans* is the Court's overdue embrace of simple justice for gay people, through the majority's assertion that states "cannot make them unequal to everyone else" or "deem a class of persons a stranger to its laws."

If the courts build on this foundation with wisdom and restraint, and if the nation receives it with respect, *Romer* may foster social tolerance as well as legal equality. It does not necessarily portend a line of decisions that will run roughshod over the free-association rights of people who are offended by (or simply uncomfortable with) homosexuality, nor will it push *Heather Has Two Mommies* into public school curricula.

The troubling thing about the 6-3 *Romer* decision is that the majestic generalities of Justice Anthony Kennedy's majority opinion are surrounded by such crude, superficial, and evasive legal reasoning—along with slurs tarring the voters of Colorado as bigots—as to lend credence to the dissenters' complaint that this is "an act, not of judicial judgment, but of political will."

The risk is that the glaring flaws in the majority opinion—compounded by the distortions that pervade Justice Antonin Scalia's elegantly vitriolic dissent—might help spur a backlash akin to the one that followed *Roe v. Wade*, an equally weak attempt at judicial reasoning. This could damage the Court's moral authority and even, in the long run, set back the cause of gay rights.

We won't know for a decade or so, until the effects have rippled through our law and culture, whether the good in this decision will eclipse the bad.

The Court seems at least arguably correct in its specific holding that Colorado violated the equal protection clause in adopting Amendment 2, a ballot referendum that would have prohibited the state and its agencies and localities from adopting gay rights laws, and wiped out all existing ones. These include local ordinances in Denver, Aspen, and Boulder that bar discrimination against homosexuals in private employment, housing, and public accommodations, and an executive order that bans employment discrimination by the state itself. Adopted by a 53-47 percent vote in 1992, Amendment 2 would have become part of the state constitution, had it been allowed to take effect.

Justice Kennedy, borrowing from an amicus brief filed by an all-star cast of constitutional scholars—Laurence Tribe, John Hart Ely, Gerald Gunther, the late Philip Kurland, and Kathleen Sullivan—makes a decent start at explaining why Amendment 2 is unconstitutional:

It is at once too narrow and too broad. It identifies persons by a single trait and then denies them protections across the board. The resulting disqualification of a class of persons from the right to seek specific protection from the law is unprecedented in our jurisprudence. . . . A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense.

But Kennedy fails badly in his cursory stab at the challenging task of forcing the ruling into the framework of the Court's constitutional jurisprudence.

He ignores, as though it did not exist, the Court's lamentable 1986 decision, *Bowers v. Hardwick*, permitting states to make it a crime to engage in homosexual conduct. That seems a lot tougher than the types of discrimination sanctioned by

Amendment 2. And while *Hardwick* technically involved only a due process claim, nothing in it suggested that equal protection analysis would have led to a different result.

The *Romer* opinion is also unpersuasive in claiming—with little more than a passing reference to its "sheer breadth"—that Amendment 2 fails traditional "rational basis" scrutiny. Kennedy peremptorily brushes aside the state's claims that it was justified both by the need to protect the free-association rights of landlords and employers who have moral or religious objections to homosexuality, and by the goal of focusing scarce resources on fighting discrimination against other groups, deemed by the voters to be more deserving of protection.

Rather than carefully explaining why these reasonable objectives fall short of supporting the harsh and sweeping impact of Amendment 2 in uniquely blocking gays from seeking equal protection through the ordinary law-making process, Kennedy offers the conclusory assertion that "the amendment seems inexplicable by anything but animus" toward gays, and by "a bare . . . desire to harm a politically unpopular group." In so

gays from getting the sort of affirmative action that is sometimes used to prefer minorities and women over equally or better qualified whites and men.

Nonsense. Amendment 2 would expressly have barred any and all laws and policies "whereby homosexual, lesbian or bisexual orientation, conduct, practices, or relationships shall . . . entitle any person or class of persons to have or claim any minority status, quota preferences, protected status or claim of discrimination" (emphasis added).

Scalia rests his mischaracterization of Amendment 2 on two weak props. The first is an implicit suggestion that all anti-discrimination laws give "special rights" and "preferential treatment" to the protected minorities, in the sense that a black person who is fired for being black has a civil rights remedy unavailable to an ugly person fired for being ugly, or a short person for being short, or a drug addict for using drugs.

But this is tantamount to describing laws against racial discrimination as creating "special rights" for black people. And Scalia's use of such language is especially misleading in a world in which the employment-at-will doctrine is dead—buried (in Colorado) under a web of laws that bar discrimination on the basis of age, military status, marital status, pregnancy, parenthood, custody of a child, political affiliation, and physical or mental disability, not to mention race, creed, color, national origin, and sex. Such protections against discrimination are (in Kennedy's words) "taken for granted by most people either because they already have them or do not need them."

Scalia's second bogus rationale is his claim—based on an ambiguous footnote in the Colorado Supreme Court's 1994 opinion—that, even if Amendment 2 were upheld, "general laws and policies that prohibit arbitrary discrimination" would continue to prohibit discrimination on the basis of homosexual conduct as well.

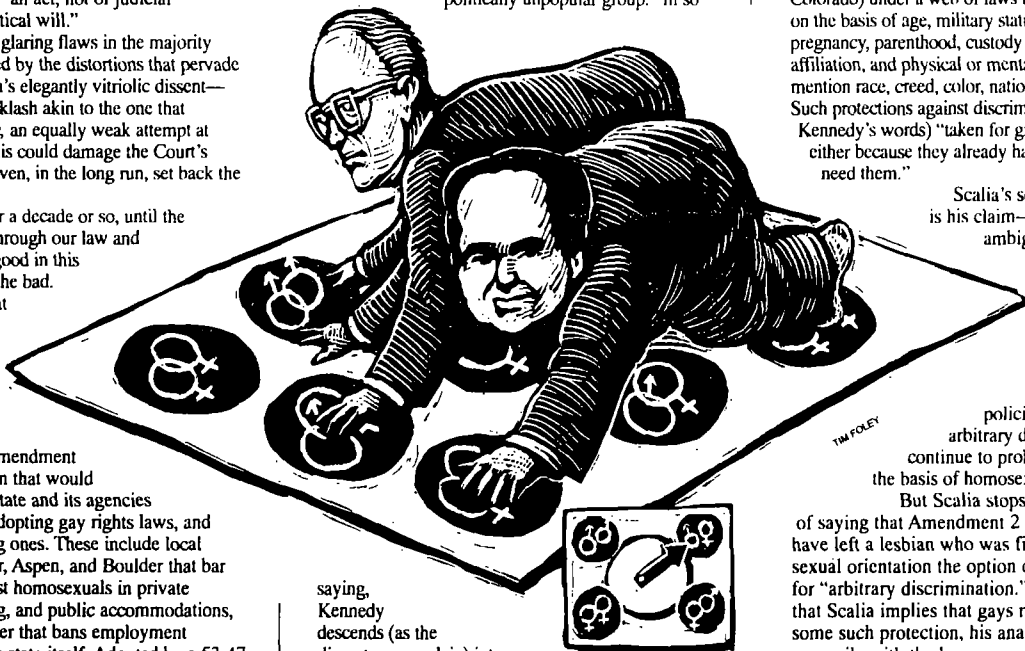
But Scalia stops conspicuously short of saying that Amendment 2 would, for example, have left a lesbian who was fired on account of sexual orientation the option of suing her employer for "arbitrary discrimination." And to the extent that Scalia implies that gays might still have had some such protection, his analysis is hard to reconcile with the language and logic of Amendment 2.

Scalia could very plausibly argue that the Court should not strike down Amendment 2 without first, at least, asking the state supreme court to clarify the amendment's effects on other state laws. Instead, he resorts to bumper-sticker jurisprudence—not to mention the usual overheated fulminations.

Perhaps the best hope for *Romer* is that—as with the far more compelling case of *Brown v. Board of Education*—its flaws in terms of judicial reasoning will be overshadowed in the long run by its value as a symbolic affirmation of simple justice for a group long victimized by discrimination and prejudice.

This may be one of those rare times when the Court should assume the role of moral conscience to the nation. But when it thus puts its credibility and legitimacy on the line, it should try harder to ground its rulings in constitutional language, theory, and precedent, and to persuade, rather than insult, the electorate.

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saying, Kennedy descends (as the dissenters complain) into "insulting" Colorado's voters.

Those who voted for Amendment 2 were not all homophobic bigots. Some no doubt shared the free-association concerns advanced by the state; some worried that proliferation of gay rights laws might equate personal or religious objections to homosexuality with racial bigotry; some feared that such laws might foster cultural trends promoting homosexuality to their children; some wanted to avoid adding homosexuals to the list of groups lining up for affirmative action preferences; some were misled by the bumper-sticker distortion that Amendment 2 would only foreclose "special rights" for gays.

If the majority opinion is bad, the Scalia dissent, joined by Chief Justice William Rehnquist and Justice Clarence Thomas, is ultimately worse.

And while Kennedy does not respond to Scalia's cascade of insults—"terminal silliness," "preposterous," and so on—he must have been tempted to call the dissent "deceptive," or perhaps "disingenuous."

The dissent descends deep into distortion in asserting that Amendment 2 "prohibits special treatment of homosexuals, and nothing more" and "merely denies them preferential treatment" (emphasis added). This implies that all it would have done is stop

Not by Corned Beef Alone

The Law of Salami, Pastrami, and Chopped Liver

BY EUGENE R. FIDELL

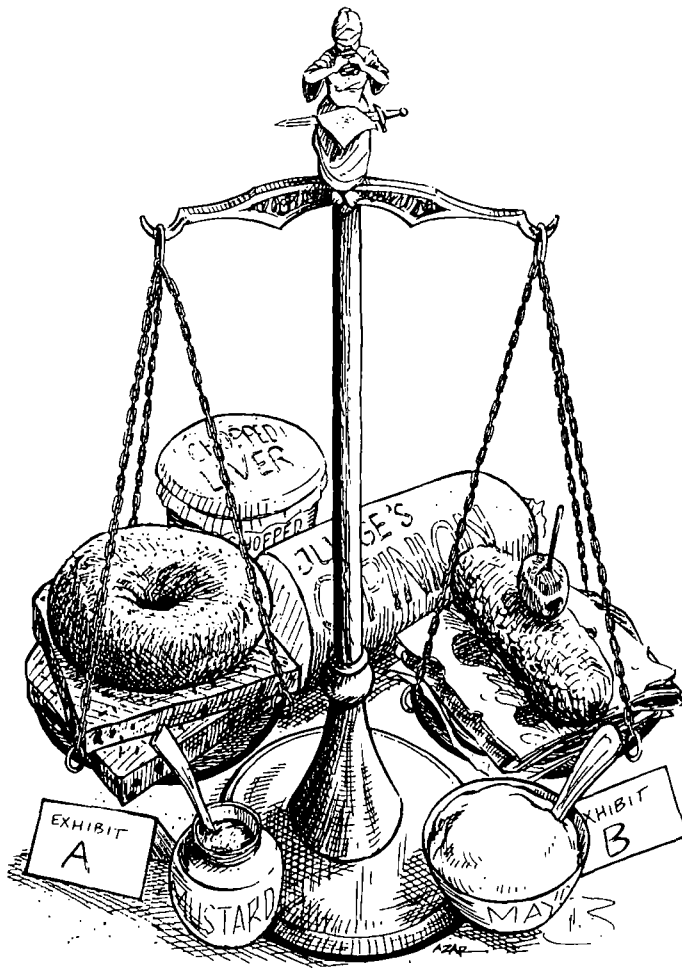
On March 25, the New York Law Journal served up an article by D.C. attorney Eugene Fidell, "Ex-New Yorker ISO CBI/RYE," that generated a lot of attention. So much attention that, as The Washington Post noted on May 13, Fidell, a partner at Feldesman, Tucker, Leifer, Fidell & Bank, has reserved a corner of his desk for "the corned beef papers." Now Legal Times presents Fidell's latest foray, in timeless law review style, sure to satisfy readers' lingering hunger for more on deli food.

No moss growing on the U.S. Court of Appeals for the 2nd Circuit, that's for sure. The ink was hardly dry on a recent article in the *New York Law Journal*¹ when that august tribunal handed down its decision in *National Labor Relations Board v. Katz's Delicatessen of Houston St. Inc.*,² thereby immortalizing in F.3d the injunction already well known to generations of New Yorkers: "Send a salami to your boy in the Army."

Not until I read Judge José Cabranes' scholarly opinion, however, did I realize that this was Katz's contribution to the national defense. This, in turn, has led me to further research on the contribution of deli to American law.

Herewith some food for thought based on that research: Man does not live by corned beef alone. Good as it can be, it needs something to "go" with. One possibility is suggested by the caption in *In re Captain Kishka Inc.*,³ but it turns out that that case has nothing to do with stuffed derma.⁴ Another possibility is the pickle, but pickle cases are rare.⁵

It should come as no surprise that the 2nd Circuit would lead in this field. After all, it paved the way with *NLRB v. Bagel Bakers Council of Greater New York*,⁶ a case that continues to generate controversy. Thus, Judge Alex Kozinski of the 9th Circuit and Professor Eugene Volokh of the University of California at Los Angeles School of Law took the *Bagel Bakers* court to task not so much for having felt the need to define bagels, but for misdefining them as "hard rolls shaped like doughnuts."⁷ This was a *shanda*⁸ since the 2nd Circuit's actual comment was that "bagels . . . may be technically described as hard rolls shaped like



doughnuts, although such a description is like calling a sunset a collection of colors."⁹ As for whether a bagel should be "rather soft" (as Judge Kozinski and Professor Volokh claim)¹⁰ or hard, the circuits appear to be split, with the U.S. Tax Court weighing in on the side of the 2nd Circuit.¹¹

Moving right along, as a foodstuff,¹² pastrami has played a modest but colorful role in jurisprudence. By the 1950s, it was being

sold in so-called farmers' markets along with televisions and baby carriages,¹³ although the 9th Circuit refers as late as the 1960s to a "pastrami stand" that figured in a narcotics case.¹⁴ One case from the New York Court of Special Sessions describes a Hopperesque 1 a.m. meal consisting of a pastrami sandwich and some coffee, in the middle of a drinking bout that lasted from 7 p.m. to 2:33 a.m. the next morning.¹⁵ We

learn from an opinion of the Tax Court that "most people do not pay for a pastrami sandwich with a check or credit card."¹⁶ This came from the taxpayer's brief, but it is probably a proposition of which judicial notice could equally well have been taken.

People apparently feel as strongly about pastrami as the 2nd Circuit and I do about corned beef. They may sneak in a little despite doctor's instructions.¹⁷ Some even steal pastrami, although the New York Supreme Court, Appellate Division, long ago held that sentences of six months' confinement were "grossly excessive for the theft of a piece of pastrami of the value of seventy-five cents, as a first offense."¹⁸ This raises a number of interesting issues, such as whether the sentence would have been appropriate had it been a second offense of stealing pastrami. What if the prior offense had involved tongue? And just how much pastrami could you get for 75 cents in Brooklyn in 1941? Since both Ilax and Tiven were prosecuted, either it was a big piece or they were pretty weak. Or should it have been charged as a conspiracy—the Great Pastrami Heist of 1941?

One spicy California case grew out of a letter to the president of the Brentwood Country Club from one of its members "which expressed particular disapproval of the quality of corned beef and pastrami available to Brentwood diners."¹⁹ The California Court of Appeal held²⁰ that an argument based on the doctrine of unclean hands did not cut the mustard.²¹

If anything, however, pastrami and even corned beef must still take a back seat to another deli specialty when it comes to contributions to the law. Thus we learn that the scales of justice can tip when "there was more than chopped liver in the other pan of the scales,"²² that the fact that a state law does not provide for consideration of the liability of settling joint tortfeasors does not mean that it is chopped liver,²³ and that a particular expert "may not be a Board-Certified forensic toxicologist[,] but neither is he chopped liver."²⁴ As Judge Kozinski wondered in *Stewart v. Lone Star Industries Inc.*,²⁵ "Is all this chopped liver?"

Finally, in case anyone has read this far, my search for a decent bialy²⁶ has begun in earnest. Thus far into the cases, at least, there is nothing to sink your teeth into.²⁷

¹Eugene R. Fidell, *Ex-New Yorker ISO CBI/RYE*, N.Y.L.J., Mar. 25, 1996, at 2.

²No. 95-4063, 1996 U.S. App. LEXIS 6569 (2d Cir. Apr. 4, 1996).

³78 N.Y.2d 708, 581 N.Y.S.2d 548, 562 N.E.2d 873 (1990).

⁴See generally Katz's, *supra* note 2.

⁵See, e.g., *Kaufman v. Katz*, 356 Mich. 354, 360-61, 97 N.W.2d 56, 59 (1959) ("Doctor, from your tests and your examination and consideration of what Mr. Kaufman has testified he put into these pickles, have you formed an opinion as to the cause of the softness of the pickles which you found to be soft, assuming Mr. Kaufman's testimony in this respect to be true?"); see also *Mutual Supply Co. v. United States*, 61 Cust. Ct. 44, 48-49 (1968) (surveying definitions); *Chong Kee Jan Co. v. United States*, 53 Cust. Ct. 70, 75-76 (1964) (summarizing expert testimony); *Mittard Packing Co. v. Isaacs*, 47 Del. 308, 90 A.2d 796 (Del. Super. 1952) (processing methods for dill pickles). Similarly, cases having to do with knishes have been infrequent. E.g., *CFTC v. Wellington Precious Metals Inc.*, 950 F.2d 1525, 1527 (11th Cir. 1992) (noting investment in "Mr. Krish" bakery business "which went bankrupt"); *Bornstein v. Metropolitan Bottling Co.*, 26 N.J.

263, 266, 139 A.2d 404, 406 (1958) (luncheonette); *Sam's Marine Park Enterprises v. Admar Bar & Kitchen Equip. Corp.*, 103 Misc.2d 276, 277, 425 N.Y.S.2d 743, 745 (Civil Ct. 1980) (vending carts).

⁶434 F.2d 884 (2d Cir. 1970).

⁷Alex Kozinski & Eugene Volokh, *Lawsuit, Shmawsuit*, 103 Yale L.J. 463 & n.2 (1993).

⁸I.e., a shame. See *In re Herskowitz*, 166 Bankr. 764 & n.1, 1994 Bankr. LEXIS 686 (Bankr. S.D. Fla. 1994) (Cristol, J.) (Order of Shanda).

⁹434 F.2d at 886 & n.2.

¹⁰*Cf. Kaufman v. Katz*, *supra* note 5 (soft pickles).

¹¹"A bagel is a form of a hard roll or bun made principally from high gluten flour and water, with small amounts of salt and malt added. A bagel is shaped like a doughnut with a hole in the middle." *D & H Bagel Bakery Inc. v. Commissioner*, 14 T.C.M. (CCH) 334, T.C. Memo 1955-100 (1955) (also noting distinction between "bul" (or large) and small bagels).

¹²Rather than as a litigant. See *In re Pastrami*, 106 Bankr. 223 (Bankr. D. Mont. 1989).

¹³See *People v. Shifrin*, 206 Misc. 813, 817, 134 N.Y.S.2d 861, 864 (Nassau Co. Ct. 1954).

¹⁴*Marin v. United States*, 324 F.2d 66, 67 (9th Cir. 1963).

¹⁵*People v. Kovack*, 205 Misc. 275, 278-79, 128 N.Y.S.2d 492, 496 (Spec. Sess. 1954).

¹⁶*Affalo v. Commissioner*, T.C. Memo 1994-596, 1994 Tax Ct. Memo LEXIS 605, 68 T.C.M. (CCH) 1343 (1994).

¹⁷For example, there was this testimony in *Conti v. Topolosky*, No. 74AP-515 (Ohio 10th App. Dist. June 17, 1975) (available on LEXIS): A. The patient did not like what he was getting and went out to get something more tasty.

Q. Do you know what it was?

A. She told me it was some sort of—

MR. WOLSKEL: Objection.

THE COURT: I'm going to overrule the objection.

THE WITNESS: She told me it was a tasty sandwich of some sort—pastrami—I'm not sure.

The Ohio Court of Appeals held:

The only prejudice that could have resulted from evidence of this pastrami sandwich would relate to the proximity of that incident to the first operation or to show that Mr. Conti was an uncooperative patient. As to

the former there was evidence that the patient had an enema the next day prior to undergoing an upper GI series. Therefore, if the pastrami sandwich was in his stomach it was not there the following morning and also because the evidence indicates that Mr. Conti had his stomach drained and received another enema within 24 hours before his first operation.

This truly was a dedicated pastrami fan. See also Joseph Berger, *As Delis Dwindle, Traditions Lose Bite*, N.Y. Times, May 15, 1996, at B1, B8, col. 1 (quoting 64-year-old internist who eats pastrami sandwich every day: "That has kept me alive, even though it should have killed me").

¹⁸*People v. Ilax*, 261 App. Div. 1084, 27 N.Y.S.2d 462 (2d Dept. 1941) (reducing sentence to time served); *People v. Tiven*, 261 App. Div. 1084, 26 N.Y.S.2d 653 (2d Dept. 1941) (same).

¹⁹*Pepper v. Superior Court of Los Angeles County*, 76 Cal. App. 3d 252, 256, 142 Cal. Rptr. 759, 781 (2d Dist. 1977).

²⁰*Id.* at 259-60, 142 Cal. Rptr. at 763-64.

²¹See *Montplaisir v. Leighton*, 875 F.2d 1, 4 (1st Cir. 1989); *United States v. Nocella*, 849

F.2d 33, 38 (1st Cir. 1988) ("constitutional mustard"); *Shakman v. Democratic Organization of Cook County*, 677 F. Supp. 933, 946 (N.D. Ill. 1987); *Duffy v. Quattrocchi*, 576 F. Supp. 336, 341 (D.R.I. 1983); *Blennville v. United States*, 14 Cl. Ct. 440, 447 (1988); *Casalina Corp. v. Commissioner*, 60 T.C. 694, 705 (1973).

²²*Kayes v. Secretary of the Navy*, 853 F.2d 1016, 1026 (1st Cir. 1988).

²³*Michigan DOT v. Thrasher*, 448 Mich. 61, 94, 521 N.W.2d 214, 228 (1994).

²⁴*Milner v. Smithkline Beecham Clinic Laboratories Inc.*, Civil No. 90-4470, 1991 U.S. Dist. LEXIS 3660 (E.D. Pa. 1991).

²⁵1991 U.S. App. LEXIS 16083 (9th Cir. 1991) (Kozinski, J., dissenting).

²⁶See *Ex-New Yorker*, *supra* note 1.

²⁷See, e.g., *Bialy v. United States*, 465 U.S. 1080 (1984); *Bialy v. Stinson*, 617 So.2d 349 (Fla. App. 1993); *Bialy v. State Dept. of Transportation and Development*, 414 So.2d 1273 (La. App.), writ denied, 417 So.2d 367 (La. 1982); *Bialy v. Katz*, 275 So.2d 870 (La. 1973); *Estate of Bialy v. Bank of America*, 185 Cal. App. 2d 634, 8 Cal. Rptr. 663 (4th Dist. 1960); *Bialy v. Witte*, 80 So.2d 297 (Fla. 1952); *Bialy v. Bialy*, 167 Mich. 559, 133 N.W. 496 (1911).