


MEMORANDUM TO THE VICE PRESIDENT

FROM:  Marsha Scott  
DATE: May 15, 1996

SUBJECT: Same Sex Marriage

For the last several years gay and lesbian civil rights groups have been litigating in Hawaii the issue of whether under the Hawaii Constitution people of the same sex have an equal protection right to marry. An intermediate decision by the state's highest court dealing with the standard of review in such a case has led many legal scholars to believe that the trial court will eventually rule that there is such a right. The trial of the action will now likely begin in October and a trial court decision would be handed down some time after the election. A final ruling by the Hawaii Supreme Court will likely come in late 1997 or early 1998.

If such a right exists in Hawaii, the thinking goes, under the full faith and credit clause of the US Constitution, civil marriages validly performed in Hawaii would have to be recognized by other states and by the federal government for purposes of granting benefits and the like.

Up until now our friends in the gay community have generally given us a pass on the President's stated personal opposition to gay marriage. Recognizing that this is an issue on which public opinion runs against them, gay leaders, while not happy about the President's opposition, are willing to let the courts be the final arbiter of the rights on this issue.

The new bill in Congress, however, would provide that irrespective of what the courts decide, for purposes of federal law, only marriages between a man and a woman are to be recognized. If state courts held that gay people could marry, the federal government would deny them all the benefits it grants to other married persons (i.e. social security rights, joint tax filings, immigration rights, family and medical leave, etc.) It also exempts from having to recognize other states' legal definitions of marriage. Thus, the gay groups argue, the law is fundamentally unfair, violates notions of equal protection and would, in effect, carve out an exception to the full faith and credit clause as it applies to gay people. They argue this is nothing different than if the federal government decided it was not going to extend benefits to married persons of a certain race.

It was hoped that we could state the President's opposition to same sex marriage and delay discussing the bill until it worked its way through Congress. Michael McCurry, however, when asked

in two recent press briefings whether the President supported the Same Sex Marriage Bill, responded by reiterating the President's position of opposing same sex marriage and then took it another step. He said that the President opposes this because "He believes this is a time when we need to do things to strengthen the American family." This last statement is not the President's position. It is this statement which is now causing great consternation among gays and lesbians as well as the press.

Hearings on this bill were held today by the House Judiciary Committee with Congressman Canady chairing. Barney Frank is the ranking Democrat. Congressman Canady opened the hearings by referring to a letter the Committee received from the Justice Department declaring that "the Department of Justice believes that H.R. 3396 would be sustained as constitutional." This was in response to a request for an Administration official to testify at these hearings. What was supposed to be a routine notification that we would not testify, has been interpreted by the Republicans and our gay and lesbian friends as an embrace of the bill and a definite statement of its' constitutionality.

The President has not spoken publicly on this issue. However, Jack Quinn, George Stephanopoulos and Marsha Scott have all publicly stated the President's opposition to gay marriage. (The language used by Jack is included in this packet.) There is still strong sentiment in the gay and lesbian community for the President to veto this bill if it reaches his desk. However, it appears that the bill is being fast tracked through both Houses. There is also strong indication that it will pass with overwhelming majorities. If it reaches his desk, it is the opinion of the Senior Staff that he must sign it.

You must address this issue with the appointees. Many of them are in long-term, committed relationships and are very conflicted and concerned about what they perceive to be our position. There is no consensus within the gay and lesbian communities over the timing of this national discussion of marriage. However, they are not divided over the issues addressed by the discussion. There is a growing fear among the communities that we are doing a "Sister Souljah" and distancing ourselves from their support and visibility. There are also charges that we are beginning a set of separatist laws at the federal level which some are equating with apartheid.

You have great respect within the gay and lesbian communities. They look to you for a fair and compassionate explanation. The President is being identified with the problem. You are not. Even though there will be no press, your words will be quickly repeated. Governor Romer of Colorado faced a similar situation and I have included the letter which he sent in explanation of his veto. To further help you with language around this sensitive issue, a booklet from the Human Rights Campaign is also included.

Event: APPOINTEES RECEPTION  
Place: Vice Presidential Ceremonial Office, OEOB  
Time: 5:00pm  
Date: May 16, 1996

The Vice President will be meeting in the ceremonial office with 60 gay and lesbian appointees as well as staffers from the Re-elect and the DNC. The event is hosted by the Human Rights Campaign.

This is an historic event. There has never been a meeting in the White House during any Administration, of all the openly gay and lesbian appointees; let alone one hosted by the President or Vice President.

The Vice President will be introduced by Bruce Lehman, Assistant Secretary of Commerce and Commissioner for Patents and Trademarks. Bruce is the highest ranking openly gay official in our administration. Roberta Achtenberg, former Assistant Secretary of HUD will also be in attendance. She is currently a consultant to Secretary Cisneros.

Bruce will speak for approximately 5 minutes. Bruce will acknowledge HRC's sponsorship of the event and Elizabeth Birch, Executive Director.

The Vice President will speak for approximately 5 minutes. At the conclusion he will meet and greet.

There will be no press. Photographs will be informal.

If time is available, Marsha Scott will escort the Vice President from the West Wing Office. She will update him on the same sex marriage bill.

Philip Dufour and Marsha Scott will meet briefly with the Vice President before he enters the reception to go over any other concerns.