

File 113  
BRMM

THE WHITE HOUSE  
WASHINGTON

THE PRESIDENT HAS SEEN  
6/3/95

JUN - 5 1995

June 3, 1995

MEMORANDUM TO THE PRESIDENT

FROM:

ABNER MIKVA *ajm*  
CHRIS CERF *cc*

RE:

Forthcoming Testimony on Flag Burning Amendment

Senator Hatch has asked Walter Dellinger to testify before the Judiciary Committee next Tuesday to present the Administration's position on a proposed flag burning amendment. We have attached for your review a decision memo you previously signed on this issue as well as relevant excerpts from your remarks at the "veterans roundtable" last week. As there is some minor tension between the two, we thought it prudent to solicit your views prior to authorizing Walter to proceed.

We have also drafted an outline we propose that Walter follow. We recommend that you authorize testimony along these lines:

Agree

Disagree

Let's Discuss

*I would change only last point as noted. ~~point~~ just a subtle change emphasis—*

## OUTLINE OF PROPOSED TESTIMONY ON FLAG DESECRATION AMENDMENT

- The President has a long and vocal record in support of protecting the Flag from burning and other forms of desecration. His abhorrence of those who would show disrespect to our national symbol is profound and unambiguous.
- As governor, he supported legislation that would have outlawed all intentional desecration of the American Flag.
- Also as governor, he initiated a state-wide "Flag Respect" program designed to encourage a better understanding and appreciation of both the Flag and the Pledge of Allegiance. The program has since been adopted by other states, and the President has received awards from both the Veterans of Foreign Wars and the Vietnam Veterans of America for his support of the program.
- While the President worked hard to craft legislation that would survive Supreme Court review, it now appears that that goal cannot be achieved.
- Nonetheless, he is reluctant to support the proposed Constitutional amendment. There is an enormous difference between Congress enacting legislation to protect the Flag and Congress proposing to amend the Constitution.
- To be clear, our sympathy is with those who believe that the flag is a unique symbol and as such should be protected from physical violation. The fundamental question, however, is whether that desire draws upon considerations of sufficient magnitude to trigger not legislation but the extraordinary process of a constitutional amendment. We are not persuaded that it does.
- The Bill of Rights was ratified in 1792. Since then, the Constitution has been amended only 17 times. And the Bill of Rights itself has never been amended. This sparing resort to the amendment process reflects a long held tradition that the fundamental law should not be freely amended.
- James Madison noted that constitutional amendments ought to be limited to "certain great and extraordinary occasions." He also objected to the use of the amendment process when appeals to passion are likely to be a driving force.
- The proposed Flag Burning amendment <sup>does not meet these standards</sup> ~~would violate both of~~ these principles. While we all do, and should, object in the strongest terms to any form of flag desecration, we should not use this occasion to tinker with the Bill of Rights.

THE WHITE HOUSE

WASHINGTON

March 21, 1995

MR. PRESIDENT:

Attached is a memo from Ab Mikva and Chris Cerf on a constitutional amendment to ban flag burning which Senator Hatch and others are expected to propose.

Ab and Chris recommend that, if asked about this, you reiterate your abhorrence to flag burning and your regret that the problem evidently cannot be solved legislatively, but oppose a constitutional amendment on the ground that the Bill of Rights is too precious to be tinkered with. Your rationale for opposing the amendment would thus not be that reprehensible forms of speech like this still deserve constitutional protection.

Leon concurs with the recommendation to oppose an amendment. George does too, though he points out that your August 16, 1990 letter to a constituent (see p. 2 of the attachment to the memo) might be construed as tacit support for an amendment.

Approve  Disapprove  Discuss

*TJS*  
Todd Stern

THE WHITE HOUSE

WASHINGTON  
March 8, 1995

55:23 11 All: 42

MEMORANDUM FOR THE PRESIDENT

THROUGH: LEON PANETTA

FROM: ABNER J. MIKVA  
CHRISTOPHER D. CERF

SUBJECT: Proposed Flag Burning Amendment

Senator Hatch and others intend to propose a constitutional amendment granting "Congress and the States . . . the power to prohibit the physical desecration of the Flag of the United States of America." Attached are: (1) a brief chronology of relevant events and (2) a collection of your previous statements on the issue.

In 1989, after the Supreme Court struck down a Texas statute that criminalized flag burning, you responded by: (1) expressing your abhorrence of flag burning; (2) sponsoring legislation that banned such conduct (hoping that it would pass constitutional muster); and (3) initiating an award-winning "flag respect" educational program. In 1991, after a second Supreme Court opinion struck down a similar federal statute, the Arkansas state legislature passed a non-binding resolution urging Congress to propose a constitutional amendment. (43 states have now done the same.) We are informed that such a "memorializing resolution" would not have required the governor's signature. Nor, so far as we are aware, have you ever specifically endorsed a constitutional "fix." Indeed, on one occasion, you expressed your disinclination to carve out a "specific exception" to the Bill of Rights.

It did not pass

Discussion

If asked directly about your position, we recommend that you:

- (1) Express your complete abhorrence of flag burning, as reflected by your established record on the issue.
- (2) Note, with regret, that it would appear that the problem is not amenable to a legislative solution.
- (3) But, nonetheless, express your opposition to a constitutional amendment on the grounds that the Bill of Rights, which has survived unchanged for 200 years, is too precious for this kind of tinkering. This position is premised on a reverence for the Constitution and an appreciation for our historical reluctance to resort to the amendment process lightly. It does not, however, depend on "first amendment values," i.e., the view that even reprehensible forms of speech should be protected.

Agree  Disagree  Let's Discuss

EXECUTIVE OFFICE OF THE PRES

26-May-1995 03:28pm

TO: (See Below)  
FROM: Margaret M. Suntum  
Office of the Press Secretary  
SUBJECT: INTERNAL TRANSCRIPT: Remarks at Veterans Roundtable

THE WHITE HOUSE

Office of the Press Secretary

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Internal Transcript

May 26, 1995

REMARKS BY THE PRESIDENT  
IN VETERANS ROUNDTABLE

The Roosevelt Room

1:00 P.M. EDT

THE PRESIDENT: Whoever wants to go first, have at it.

Q Mr. President, the Fleet Reserve Association supports a concept called Medicare -- and this plan would allow the health care financing administration to reimburse the Department of Veterans Affairs for medical services provided to veterans, age 65 and older. I think this was part of your health care plan, something you --

THE PRESIDENT: It was.

Q -- but I'd still like some comments. We as an association feel that it would profit our veterans. It would also be a cheaper way to go, and we'd very much appreciate your remarks on this.

THE PRESIDENT: Well, as you know it was a part of my health care reform package, and I might say just by the way, I still have some hope that before this budget process is finalized, when the Senate and House Republicans look at the

anniversary of the second world war, then we will not have historical revisionism as a way of dealing with contemporary sensitivities. There are other ways to deal with the realities of today without rewriting what happened 50 years ago.

I feel very strongly about it. But I think that the common sense center of American feels this way so strongly that the main advise I have to you is just to make sure that you speak out about it, that you write about it, and we make a clear record of what went wrong here so we don't do it anymore.

Q American Legion -- Mr. President. Yesterday we had the first tangible action up on Capitol Hill on an issue that a lot of the organizations around this table feel strongly about, and that's the constitutional amendment on the flag. Can you tell us a little bit where you stand and how you see the issue?

THE PRESIDENT: Well, first of all, I don't know very much about where it is because I have been overwhelmingly preoccupied with the terrorism legislation and the budget issues in the last few days. And the President also neither signs, nor

Press RETURN to continue, GOLD MENU for options or EXIT to cancel

vetoed proposed constitutional amendments. It's a referral to the states.

I believe -- I disagreed with the Supreme Court decision that said that the statutes weren't legal. I mean, I didn't agree with the decision. And I supported statutory relief. And I had a flag education program that we organized with the veterans groups in Arkansas -- we went into every fifth-grade class in the state just about with a program we put together that we got some national recognition on, didn't we, from the veterans groups, because it was an amazing thing. We had all these veterans in the wake of all that flag burning a few years ago -- flooded our schools and our kids. We found out there were whole classrooms where kids didn't know anything about the flag, how it was supposed to be treated. Some of them didn't even recite the Pledge of Allegiance. Some of them would put their left hand over their heart instead of their right. It was amazing what we found.

So we made something good happen out of something bad. And so I'm very proud of that, and I don't believe that desecration of the flag has to be legal. I think you can make it illegal. Having said that, I have to be honest and tell you that I, as a man who has been the target of a lot of the exercise of the First Amendment -- probably nobody has paid much of a higher price than I have for believing in the First Amendment -- I'm always loathe to see the Constitution amended when it affects the First Amendment, just because I'm always scared how the courts are going to interpret it.

But I personally believe that people ought not to desecrate the flag, and I've done what I could. I thought we had the best response in the country to all that flag-burning, both in the legislation we passed, which has, as you know, been subsequently set aside by the court -- but also in the education we promoted. I have mixed feelings about the constitutional amendment just because it amends the First Amendment, and I've always been for a very broad view of the First Amendment. But it's one fight that I don't have to be involved in one way or the other. (Laughter.) I've got enough to do.

Q Mark Peterson, Stars and Stripes. Later today you're going to be signing the presidential order to establish the Persian Gulf Advisory Committee. Is that going to be independent of the VA-DOD Health and Human Services Joint Task Force, and if so, what exactly that commission going to do that the task force is not doing?

THE PRESIDENT: Well, I will release the -- obviously, later today I will release the executive order on the composition of the committee. But I decided to do this because there were so many continuing questions about whether there had been a truly independent look at what was causing the Persian Gulf illness. And this committee has two Gulf War veterans on it, 12 doctors, scientists, defense experts, and veterans. And I just wanted not only to have our government able to pay for disable veterans with undiagnosed illnesses that we believe were connected to their service, but I wanted the people