

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA )

v. )

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[REDACTED]

DEFENDANT'S RESPONSE TO GOVERNMENT'S MOTION IN LIMINE

[REDACTED]

[REDACTED], states in response to the Motion in Limine filed by the government, as follows.

1. The government cites Lawrence v. Texas, 539 U. S. 558 (2003) for the proposition that consensual private sexual acts between consenting adults may not be inquired into on cross examination of a male government witness known to have engaged in such conduct with another man. Implicit in the government's position is the presumption that because the Supreme Court has held that such acts may not be criminalized by the state when committed by members of the same sex, they may therefore not be considered "specific instances of . . . conduct of a witness" that is "probative of truthfulness or untruthfulness" under Rule 608 (b) of the Federal Rules of Evidence.

2. Concurring in the court's judgment in Lawrence, Justice Sandra Day O'Connor made the following pertinent observation. "That this law as applied to private, consensual conduct is unconstitutional under the Equal Protection clause does not mean that other laws distinguishing between heterosexuals and homosexuals would similarly fail under rational basis review." 539

U. S. 585. Justice O'Connor concluded that "[a] law branding one class of persons as criminal based solely on the State's moral disapproval of . . . the conduct associated with that class runs contrary to the values of the Constitution . . . ." Id.

3. It is clear that in holding that a state may not criminalize a particular sexual act between consenting members of the same sex while withholding any sanction for the identical act performed by members of the opposite sex, the Supreme Court did not thereby intend to remove homosexual acts from the realm of judicial consideration for all purposes. To say that a state may not discriminately criminalize an act does not render the act legally sacrosanct, and certainly does not preclude a court from finding that in certain circumstances such behavior is probative of the credibility of a particular witness.

4. In this particular case, however, information contained in the government's file suggests that it would not be in the Defendant's interest to seek to impeach the witness in question by eliciting evidence of the encounter referenced in the government's motion. The undersigned does not intend, therefore to cross examine the witness with respect to these incidents so long as his testimony at trial is consistent with previous statements made by the witness.

Respectfully submitted, this the 3<sup>rd</sup> day of [REDACTED].

LOUIS C. ALLEN III  
[REDACTED]

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Suppress Evidence was served on counsel for the government by first class mail or hand delivery, addressed as follows.

[REDACTED]  
Assistant U. S. Attorney  
Post Office Box 1858  
Greensboro, North Carolina 27410

This the 3<sup>rd</sup> day of [REDACTED].

/s/ [REDACTED]  
[REDACTED]  
[REDACTED]

