ZIMMERMAN: ANATOMY OF A DEFICIENT PROBABLE CAUSE AFFIDAVIT

Now that the dust has settled from the decision in the Zimmerman/Martin case not to proceed by grand jury by the Florida Special Prosecutor Angela Corey, and the decision to file a single count of second degree murder, I want to address a couple of critical topics in the case. First is the fact that there are serious questions as to the sufficiency of the probable cause affidavit that currently constitutes not just the core, but pretty much the entire basis for the state's case.That will be the subject of the instant post. Second, will be a discussion of the mechanics of Florida's procedure for implementing its "Stand Your Ground" law and a discussion of other pending procedural aspects of the case, and that will be covered in a followup post.

A probable cause affidavit is exactly what it sounds like, a sworn affidavit delineating probable cause in a criminal case – whether it be to search a place, arrest a person or charge a crime. Whatever the particular purpose, the affidavit must delineate the factual basis to support the specific legal action sought to be pursued by the state. And the general principle common to all such affidavits, whether for search, arrest or charging, is that it must "stand on its own" based on "what is within its four corners". In lay terms, that means there must not only be sufficient information to cover all requisite elements necessary for the action, all such support must be actually in the

affidavit – not in some extraneous place or with some extraneous source.

The Zimmerman affidavit is, at least by my analysis, wholly deficient for its purpose intended, i.e. to support the criminal charge under Florida law of second degree murder against Zimmerman.

We will start with a look at what useful, and useable, information is actually contained in the affidavit. Here is a complete copy of the full three page affidavit filed by the State of Florida in the Zimmerman case. Other that captions, signatures and certifications, all pertinent information is contained in twelve text paragraphs on the first two pages. Let's look at them:

Paragraphs 1-3: The first three paragraphs give the names of the two investigators that are serving as the affiants for the affidavit and gives their background experience that qualifies them to do so. The investigators, O'Steen and Gilbreath both appear to be very experienced and appropriate for the task. No problems here.

Paragraph 4: The fourth paragraph details the types of material, evidence and sources the affiants relies on. Pretty standard stuff, again no problems here. (Interesting that the state appears to have a lot of "sworn statements" – even from cops, which is kind of unusual at this stage. Cops rarely give sworn evidence if they don't have to, and prosecutors rarely want to lock them in this early. There may have been an internal affairs type of investigation that explains this, we shall see).

Paragraph 5: The fifth paragraph is the first factually substantive material. It details that Martin was living in the gated community at the time of the event, was returning from the store (with the infamous Skittles) and was unarmed and not engaged in any criminal activity. Then, however, the affidavit blurts out a critical, but completely unexplained and unsupported claim, namely that Zimmerman was "profiling"

Martin. It does NOT allege that any such "profiling" had a racial animus or was, in any sense, illegal or improper. This is important because, while it is a rhetorically charged term, profiling is completely legal, whether for police or average citizens, so long as it not based on an improper invidious animus like race, religion, sex, etc. So, with NO allegation of improper animus here, and there is not, the profiling alleged is completely and unequivocally legal. Further, there is absolutely no specific attribution as to where this allegation came from – did Zimmerman admit it, if not what was the basis for the conclusion by the affiants? We have NO idea whatsoever, it is just a raw conclusory statement of absolutely no value whatsoever in its naked state. In short, there is nothing in Paragraph 5 that does anything to actually provide probable cause for the crime charged.

Paragraph Six: Paragraph six is much like paragraph five, except it details the intro to Zimmerman, where paragraph five did so for Martin. Zimmerman also lived in the gated community. It relates Zimmerman was "driving his vehicle" (we have no idea from where or to here) and "assumed Martin was a criminal". Well that sounds bad right? Well, not really. First off, again, there is absolutely NO way of knowing where this information came from – did it come from Zimmerman? Was it culled from the 911 tape? Did a psychic conjure it up? We don't know. Remember, it is seminal affidavit law that a;; pertinent facts must be supported and attributed "within the four corners of the document". There is also a statement the 911 dispatcher told Zimmerman an officer was "on the way". Again, there is absolutely nothing in Paragraph 6 that does anything to actually provide probable cause for the crime charged.

Paragraph 7: Paragraph seven is yet more of the same. It describes that Zimmerman believed there had been unsolved break-ins in the neighborhood, and "fucking punks" and "assholes" "always get away". Credit where due, we finally have a

specific attribution point for the statements by the affiants, it is specifically stated to be from the recorded 911 call. See, the state and affiants are capable of proper attribution when they want to. Small victory. The problem is, there is *still* NO improper or illegal activity described. None. So far, Zimmerman is judgmental and concerned about his neighborhood, but there is not one scintilla of illegal conduct.

Paragraph 8: The eighth paragraph starts out with a description of a call Martin was on supposedly at the time he was being observed and followed by Zimmerman. But, again, there is not squat for specificity or particularity, the linchpins of a proper affidavit. We are not old who the person on the phone with Martin is, what the exact time of the call, and length of call, was, and we are not told how that information is known. Was that person interviewed by cops? Did she give a sworn statement? Did these investigators talk to her themselves, or was it some other officer and, if so, who? Hearsay, and even double or triple hearsay is acceptable in an affidavit, but the path and facts establishing it must be delineated. Here it is not. Then paragraph 8 goes off the edge, veering into some of the most unattributed and nakedly conclusory statements imaginable. It alleges Martin tried to run home, Zimmerman got out of vehicle and pursued, that Zimmerman thought Martin might commit an immediate crime before cops could arrive and that the 911 dispatcher told Zimmerman to wait for the cops but Zimmerman disregarded the advice. Other than maybe being able to assume the dispatcher advice is on the tape, we have no idea who, what, when, where or how the affiants know their wholly conclusory statements. It is simply unsupported tripe. Oh, and there is STILL no evidence of any criminal activity whatsoever. None.

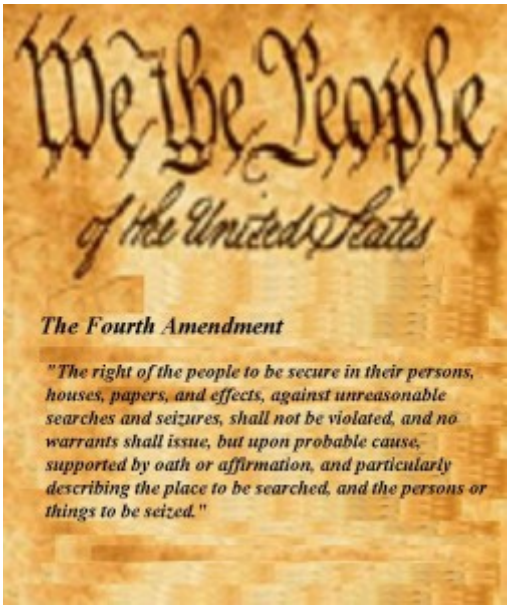
Paragraph 9: Paragraph nine starts the actual meat of the subject confrontation. Let’s look at it sentence by sentence. “Zimmerman confronted Martin and a struggle ensued.” Okay, how do the affiants know this, did it come from Zimmerman’s

statement? Some other unidentified witness? Was there surveillance video? we have no idea. Just another completely unsupported and unattributed statement lobbed out. Even if it were to be taken at face value, it at best relates that Zimmerman confronted Martin, it DOES NOT indicate who started the "struggle". It is an absolutely critical fact, and there is no indication whatsoever given. If Zimmerman is to be charged with acting with a "depraved mind" it is hard to see how that could be if Martin started the actual physical, as opposed to verbal, "struggle". But we do not know who did so, because the affiants did not include that. It is pretty clear there is no eyewitness or other direct evidence on this fact, because the next sentence reads "During this time period witnesses heard numerous call for help and some of these were recorded in 911 calls to police." This is not only not attributed to specific witnesses (whether named or otherwise separately identified), nor is there any indication of how the affiants know it, it is completely harmless information. There is NO way to discern WHO was crying for help or whether both individuals were. The last sentence reads "Trayvon Martin's mother has reviewed the 911 calls and identified the voice calling for help as Trayvon Martin's voice." Which 911 calls? just the one that Zimmerman made? Or was there others? Did the cops eliminate Zimmerman's voice as making any pleas for help through voice print analysis? That is one of the first things that should have been done; seems telling there is no such evidence. Surely the cops recorded Zimmerman. Irrespective, even assuming Martin's mother is correct in her identification, that shows NOTHING as to who initiated the physical portion of the "struggle" or who was doing what to whom in it. In short, somewhat shockingly, there is STILL not one iota of criminal activity, of any kind, on the part of George Zimmerman stated in this affidavit.

Paragraph 10: "Zimmerman shot Martin in the chest." Zimmerman fully admitted it, and admitted it was his gun and turned it over.

Well, that at least establishes a homicide has occurred, as a homicide is defined as the killing of one human by another human. There is, however, STILL nothing establishing how or why this homicide was criminal. Seriously there is nothing in the affidavit to establish criminality, much less a “depraved mind” on the part of Zimmerman.

Paragraphs 11-12: The final two paragraphs of the core affidavit add nothing in the way of criminality. Paragraph eleven establishes Martin died of a gunshot wound and paragraph twelve relates that the cops have other evidence and want a charge of Second Degree Murder. Nothing in these last two paragraphs bolsters criminality whatsoever.



And that, folks, is it. It is completely lacking in requisite and necessary attribution for the extremely few and, really, innocuous facts it does present, and the rest comprises nothing but unsupported and wholly conclusory statements meant to infer criminal activity, but which do not even do a competent job of that.

In short, it is shit. To be honest, this affidavit, within its “four corners” arguably does not even meet the necessary burden of probable cause for Manslaughter under Florida section 782.07, much less the “depraved mind” necessary under Florida’s Second Degree Murder charge under section 782.04(2) as charged in the information. George Zimmerman may have committed a crime, but it is not demonstrated in this

affidavit, and certainly is not as to the crime charged, Second Degree Murder. Charles Blow can praise this thing until the cows come home in the august pages of the New York Times, but it is still a pile of junk.

But the above discussion is all about what is in the affidavit, let's talk about what is *not* in the affidavit as well. The affidavit goes out of its way to spin innocuous and perfectly legal activity into some nebulous vignette of implied criminality, yet self servingly there is not a single fleeting reference to Zimmerman's claim of having acted in self defense. To be sure, in charging a case, a prosecutor is going to frame the facts to support her charge. But that does not mean she can blithely ignore patently exculpatory facts known to her and germane to the interests of justice. Angela Corey's affidavit is thusly not just deficient, but dishonest in a very slimy, even if not unethical way. It is patently offensive in that regard.

The case is also patently overcharged. As stated above, I think it is more than arguable that the probable cause affidavit does not even support manslaughter, but it is not remotely close to supporting second degree murder. This is an embarrassment not only for Angela Corey, but the magistrate who signed off on this bunk. It makes the criminal justice system look horrible.

None of this is to say I think George Zimmerman is innocent of any crime for the incident that led to Trayvon Martin's death, nor is it to say that the state may not possess sufficient evidence to convict Zimmerman of some crime at a trial. In fact, I am highly disturbed by Zimmerman's behavior and Martin's death. All I am saying is, is that while there may be probable cause to charge Zimmerman, it has in no way, shape or form demonstrated by the State of Florida's official legal statement that is supposed to be the foundation for charging Zimmerman. Zimmerman should not be charged, nor sitting in a county detention, based on this document; yet there he is.

There are other developments in the procedural case, involving the trial judge, upcoming bail determination hearing and assertion of the official Stand Your Ground affirmative defense. I will come back in the next day or two to address those items.

WHAT ZIMMERMAN'S CHARGE MEANS (OR DOESN'T)

Well, okay, the press conference by Angela Corey is over. Let us be clear, it was the performance of a politician and, not necessarily that of a grounded and by the book prosecutor. Seriously.

First off, Ms. Corey talked in repeated and continued platitudes and never, at any point, identified what the exact charge she was prosecuting Zimmerman under, nor her basis for doing so.

This is important to me, and the discussion herein at this blog, because 1) we are intelligent and actually care about such specifics, but 2) It is really important in a publicly and hotly contested case such as the Zimmerman shooting homicide of Trayvon Martin.

I stand by everything said in my preliminary post today as to why the path, via information filed and prelim process is not only appropriate, but absolutely smart. That still stands.

The only issue, at this point, is the actual charging of the criminal defendant, in this case George Zimmerman. Here is the SOLE charge filed by Angela Corey against George Zimmerman:

> COUNT 1: IN THE COUNTY OF SEMINOLE, STATE OF FLORIDA, On February 26, 2012,

> GEORGE ZIMMERMAN, did unlawfully and by an act imminently dangerous to another, and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, kill TRAYVON MARTIN, a human being under the age of eighteen, by shooting the said victim, and during the commission of the aforementioned Second Degree Murder, the said GEORGE ZIMMERMAN did carry, display, use, threaten to use or attempt to use or attempt to use a firearm and did actually possess and discharge a firearm and as a result of the discharge, death or great bodily harm was inflicted upon any person, contrary to the provisions of Sections 782.04(2), 775.08(1) and 775.087(2), Florida Statutes.

That would be 2nd degree murder, as charged. Under what actual section of the pertinent Florida statute are we talking? Well, 782.04(2), 775.08(1) and 775.087(2). does that really tell you where and how the state is proceeding? No. Not to my eye, it does not. Take a look, if you can see the specific, definable, path to charge, then you are a better man and lawyer than I. If you can see, maybe, potential, possible, applicability then join the club. But, that is, of course, not the standard.

Here, however, is the manslaughter provision I proffered in the earlier post. I now see legal gadabout Mark Geragos on CNN saying the 2nd degree statute charged may be actually easier to prove up than a manslaughter charge. He is is fucking crazy loopy off his rocker if he really believes that bleating bullshit.

Seriously, I cannot speak as an active criminal prosecutor, but as a defense attorney, bring this on. If my client has to be charged, I would rather he be over charged, especially nebulously and with all the justification defenses available under Florida law, as either described

and/or linked, in the earlier post.

So, to sum up, I would say it is a bit batty to charge the HIGHEST POSSIBLE CHARGE IMAGINABLE, and ONLY THE HIGHEST CHARGE IMAGINABLE, with no lesser included backups. But, hey, what me worry Angela Corey?

Yes, I am perplexed at this. Completely. Let the college of internet knowledge school us on why this is wrong.

WHY FLORIDA IS CHARGING ZIMMERMAN DIRECTLY INSTEAD OF BY GRAND JURY

As you may have heard by now, the Washington Post has broken the news that Florida officials, to wit Special Prosecutor Angela Corey, will charge George Zimmerman in the Trayvon Martin killing. The charging is expected late this afternoon, but could be as late as tomorrow. Here is the key information from the Washington Post report:

> Florida special prosecutor Angela Corey plans to announce as early as Wednesday afternoon that she is charging neighborhood watch volunteer George Zimmerman in the shooting of Trayvon Martin, according to a law enforcement official close to the investigation.
>
> It was not immediately clear what charge

> Zimmerman will face.

Both the AP and CBS News have confirmed that Zimmerman will be charged and the AP is reporting the news conference announcing the charge will be at 6:00 pm EST today. Further, the Miami Herald is reporting there will be one single charge filed in the matter, although they do not report what the charge is.

Now, here is why this is occurring, and it s exactly what I predicted from the moment Special Prosecutor Corey's office let it be known that she, on behalf of the state, would not be availing herself of the grand jury process, an announcement made Monday.

The bottom line is this: a direct information/complaint is a cleaner, and safer, way for Corey to proceed.

The facts are muddled, and the evidence set for the case was compromised, by incompetent investigation by police from the outset. There is, at this point, no question (and, really, there may never have been) any doubt but that Zimmerman had at least at a nominal minimum, an allegeable self defense claim. That does not mean it is valid, but it does mean that it is legally cognizable.

With the screwed up and compromised evidence status, combined with all the public attention and attendant lobbying of law and factual interpretation, it would be brutal for a prosecutor to take the matter to a grand jury. The first thing a good defense lawyer would do upon knowledge of a pending grand jury presentation is salt the prosecutor with every fact and argument humanly imaginable in his client's behalf – in writing – and demand that it be presented to the grand jury along with the state's case. You do that on a high profile case like this with a sloppily worded affirmative defense like Florida's "Stand Your Ground" law, and there is every reason to believe a grand jury would decline.

But, the odds are far different if a prosecutor, in this case Corey, takes the path of filing an direct information and foregoing the grand jury. A direct information, with a duly issued arrest warrant from the court of competent jurisdiction, gives the case the instant imprimatur of legitimacy, and guarantees that it will be determined by an experienced magistrate, and not lay citizens on a grand jury. This is exactly why I argued to Jeff Toobin Monday night that it was a superior path.

Now, a little further depth on what is at play, and for that I will turn to an excellent, and correct, analysis by Reuters on this subject:

> To mix metaphors, Stand Your Ground is no Slam Dunk.
>
> The controversial 2005 Florida law grants immunity to people who use deadly force in self defense. In the days since George Zimmerman shot and killed 17-year old Trayvon Martin, critics and supporters both seem to have assumed that if Zimmerman is charged, he could easily seek and win immunity from prosecution under Stand Your Ground.
>
> But don’t be so sure. Interviews with nearly a dozen veteran defense lawyers who have experience litigating Stand Your Ground cases suggest winning immunity could be quite difficult.
>
> “Judges do not readily grant these (immunity) motions because they know they can pass it on to the jury,” said Carey Haughwout, the public defender for Palm Beach County.
>
> So far, Zimmerman has not charged with any wrongdoing. A special prosecutor, Angela Corey, is still investigating the incendiary case, which carries heavy racial overtones and has stirred a national outcry.
>
> But if charges are filed and Zimmerman

> does choose to seek immunity, he will face challenges at almost every stage, lawyers said.
>
> The first hurdle will be a special evidentiary hearing in front of a judge, where Zimmerman will have the opportunity to argue that he deserves immunity. But to convince the judge, Zimmerman will have to present a "preponderance of evidence" that he acted in self defense, which under the law means he has to show he had "reasonable belief" that such force was necessary. That is a high bar, and difficult to prove, criminal defense attorneys said.
>
> In cases where the facts are in dispute – and even if they don't seem to be – the judge is likely to deny the Stand Your Ground immunity motion, said Ralph Behr, a Florida criminal defense attorney who has filed eight motions for immunity, all of which have been denied. More typically, a judge will choose to have the case go to trial, where the defendant must take his or her chance with a jury, just like other criminal defendants, he said.
>
> "Most judges, I think, are comfortable letting the adverserial system play out before a jury rather than make decisions themselves," said Behr.

Bingo! I literally could not have said it better myself. Hats off to Reuters for some fine analysis. See, filing the charge via information guarantees it gets to a court. The first step is almost certainly (and Florida criminal code is a bit, um, confusing, but seems consistent with the norm) that Zimmerman would be given an initial appearance within 48 hours of his actual physical arrest, and would be set for a preliminary hearing within ten days of the date of his initial appearance (unless he waives said

time limit and requests an extension). The magistrate is going to want no part of being the final arbiter, and will want to pass this on to a jury trial level court. And, as the Reuters analysis explains, things actually favor the case getting to the jury. This is almost surely why the case is proceeding as it is. And, no, it is not, as Think Progress blithely stated, because Angela Corey definitively decided "Stand Your Ground" is inapplicable; it is about making a further court decide that issue as Reuters explained.

One last thing, in addition to the above discussion, it simply is not, and never has been, that the infamous Florida "Stand Your Ground" law is the controlling boogeyman that nearly every commentator has made it out to be. David Kopel, at Volokh Conspiracy, says:

> Media coverage of Florida's self-defense laws in recent weeks has often been very inaccurate. While some persons, particularly from the gun prohibition lobbies, have claimed that the Martin/Zimmerman case shows the danger of Florida's "Stand your ground" law, that law is legally irrelevant to case. So let's take a look at what the Florida laws actually say.

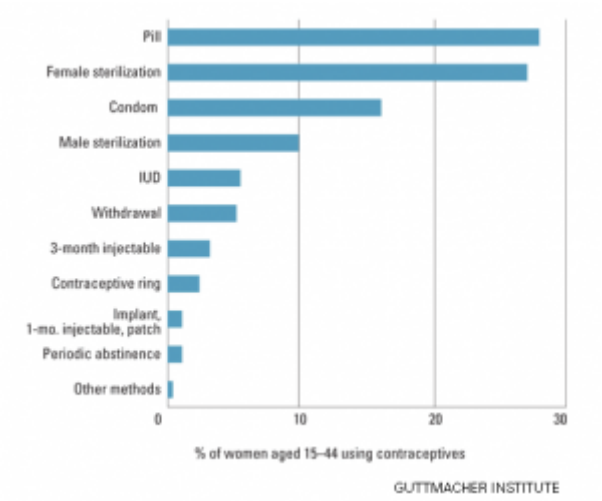
I do not want to expend the space to cover all that David did again here, but do go read his lengthy piece on the full nature of Florida homicide and self defense law, it is very good. While I do not agree with every thing Kopel says it is, on the whole, spot on as to how Zimmerman/Martin is really a normal self defense/justification case. And so it is.

Lastly, a prediction. As related above, it appears there will be a single count charged in Corey's information against Zimmerman. That is certainly not unusual nor distressing in the least if you are experienced in such matters. Actually, it is predictable. I predict that charge will be a single count of manslaughter

under Florida Revised Statute 782.07 and aggravated under subsection (3) because Trayvon Martin was under the age of 18 years old.

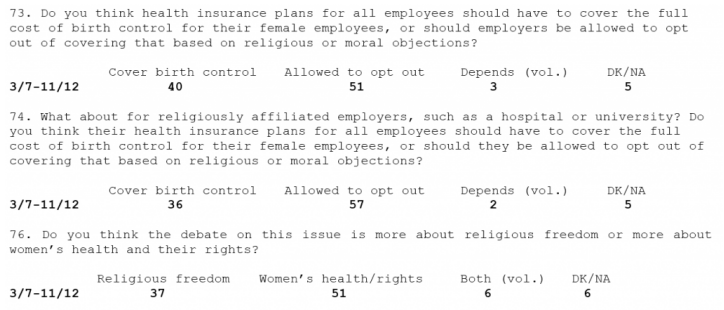
So, that is why we are where we are, and my predictions for where this case is going, and why.

POLL: DO MEN REALIZE BIRTH CONTROL IS RARELY JUST FOR "FEMALE EMPLOYEES"?



Greg Sargent tweeted the results of this CBS/NYT poll, showing that 37% of those polled believe the whole birth control debate is about religious freedom. While Sargent thinks 37% is a small number, given that it means that maybe a quarter of people polled (given that almost 100% of sexually active women have used birth control and most of them have used it because they were sleeping with men) both believe that birth control is a religious issue and have relied on birth control, I find it rather high.

But look at how the questions were asked:



73. Do you think health insurance plans for all employees should have to cover the full cost of birth control for their female employees, or should employers be allowed to opt out of covering that based on religious or moral objections?

	Cover birth control	Allowed to opt out	Depends (vol.)	DK/NA
3/7-11/12	40	51	3	5

74. What about for religiously affiliated employers, such as a hospital or university? Do you think their health insurance plans for all employees should have to cover the full cost of birth control for their female employees, or should they be allowed to opt out of covering that based on religious or moral objections?

	Cover birth control	Allowed to opt out	Depends (vol.)	DK/NA
3/7-11/12	36	57	2	5

76. Do you think the debate on this issue is more about religious freedom or more about women's health and their rights?

	Religious freedom	Women's health/rights	Both (vol.)	DK/NA
3/7-11/12	37	51	6	6

At issue here is not just health insurance providing birth control for female employees. It is also about providing coverage for vasectomies (which accounts for 10% of birth control use). And providing coverage for the female spouses of male employees most of whom, presumably, are using that birth control because they are sleeping with their spouse.

There's a lot of men having sex without babies that this health coverage enables.

And while I'll grant you that the lack of availability of birth control disproportionately affects women (particularly with imperfect enforcement of child support and still pervasive gender roles about nurturing children), this is also about the ability of couples, together, to choose to have families of a size appropriate to their lifestyle and income.

I get that this is about women's ability to choose autonomy. But it's also about men's ability to fuck and fuck and fuck. Somehow that last bit never gets polled.

MI'S 3RD CD: "WEST MICHIGAN VALUES" OF EXCLUSION, OR

AMERICAN VALUES OF EQUALITY AND JUSTICE FOR ALL?

I was disappointed with Steve Pestka's announcement to run for the 3rd CD. While he promised jobs, he also repeated the "West Michigan Values" phrase a top Kent County Dem used when telling me and others to shut up. And he suggested he was running against extremists.

> "I will fight for jobs and for West Michigan values, instead of for extreme political views from either side that lead us nowhere."

Really, "extreme political views"? Is Pestka suggesting that Trevor Thomas, who worked for and was endorsed by MI's moderate former Governor, Jennifer Granholm, is extreme?

Does Pestka think that working in bipartisan fashion to help men and women who have served their country win equal rights is "extreme"? Does he think fighting to help Eric Alva, who lost a leg in the opening hours of the Iraq War, be treated equally by the government is extreme? Here's what Alva says in an endorsement of Trevor today:

> My name is Eric Alva and I was the first American wounded in the war in Iraq. On March 21, 2003, just three hours into the invasion, I triggered a landmine.
>
> I was thrown through the air, landing 15 feet away. As my fellow Marines were cutting away my uniform, I wondered why they weren't removing my right boot. I would learn later that my leg was already gone. I served my country for 13 years as a Marine receiving the Purple Heart for my service.
>
> I met Trevor Thomas while working with a coalition of bipartisan forces to repeal

> the discriminatory *“Don’t Ask, Don’t Tell”* law. Trevor was a key voice and strategist in repealing D.A.D.T. He helped me tell my story on World News Tonight with Diane Sawyer.
>
> Trevor worked tireless on behalf of thousands of members of the military to create a more just and equal world.

The suggestion that someone who has fought for a “more just and equal world” is extreme and the invocation of “West Michigan values” precisely when people try to raise Steve Pestka’s past efforts to roll back women’s autonomy concerns me.

Make a case why you’re the better Democrat to represent the working men and women of Grand Rapids. Explain how you’ll help create jobs.

But I always thought Democrats fought for the American values of equality and justice. Folks keep telling me I haven’t lived in Grand Rapids long enough to know about West Michigan values. But if those values say fighting for equality for women and our service members is extreme, then I prefer good old-fashioned American values.

DID CATHOLICS PAY TO SNIP ROY BLUNT?

I confess, since I wrote this post I've been obsessing about Roy Blunt's balls.

It's not just that I believe every supporter of the Amendment that bears Blunt's name should be willing to tell taxpayers whether they've used birth control to limit the size of their families.

But because I think there's a distinct possibility that Blunt had a bunch of Catholics pay to snip his man-parts so he wouldn't have any more kids.

That, of course, would be precisely what his Amendment claims to want to prevent: forcing people of faith to pay for medical care—birth control—that violates their conscience (or that of their Bishops).

Blunt was born on January 10, 1950. He married Roseann Ray in 1967 (she appears to have been, like him, 17 at the time). Matt, their oldest child, was born in November 1970, the year Blunt graduated from college (though he would immediately get a Masters, perhaps because of the draft). They had a second child, Amy, around 1973. Andrew, their youngest, was born in 1976. Blunt and Roseann were married another 26 years or so after Andrew was born, but never had another child.

In 1972, Blunt had already started public service, working as Greene County Clerk. In 1984, Blunt won election as MO's secretary of state. From 1993 to 1996, Blunt served as President of Southwest Baptist University—his

only significant non-government job. In 1997, as he was turning ~~37~~ 47, he started serving in Congress, until last year when he moved to the Senate. Thus, for almost his entire life, Blunt worked for taxpayers, whether for Greene County, the state of MO, or the federal government. For the majority of Blunt's career, taxpayers have paid for his healthcare. And since his now ex-wife Roseann doesn't get benefits from the foundation she works at, it is likely he provided healthcare for both of them.

If that's right, then for all but 4 years of his professional life, taxpayers of some sort have paid for his healthcare, including—if it was paid for by insurance—whatever means he and his wife of 35 years used to stop having children after Andrew was born. And while Greene County, in the Ozarks, is Bible-belt Protestant, at the state level, almost 20% of the population of MO is Catholic. An even higher percentage is Catholic at the national level. For 60% of his working life, roughly 20% of the people paying his salary and benefits—his "employer" if you will—were Catholic.

Which brings us to snipping Roy Blunt.

There are any number of ways Blunt and his first wife, Roseann, might have stopped having kids at 3: medical complications, abstinence, the pill, condoms, or sterilization. Several of those would violate the letter of Catholic doctrine.

But look what happened when, in 2002, Blunt ditched his high school sweetheart, Roseann, and married his mistress, Altria lobbyist Abigal Perlman. They adopted, an 18-month old Russian boy whose adoption went through in April 2006.

Again, there are multiple possible explanations for their choice to adopt rather than have a biological child together. By the time they married on October 18, 2003, Blunt was 53, the point in a man's life where he starts shooting blanks. Perlman was 41, also the tail end of safe child-bearing age for a woman. It's possible they tried to conceive and failed to do

so immediately, so decided to adopt. It's possible Perlman didn't want to have a pregnancy interrupt her high power lobbying career. It's possible they didn't want to overpopulate the world.

Or, it's possible Blunt got snipped all those years ago when he stopped having biological children with Roseann.

Again, all of this **should** be none of our business. But Blunt made it our business when he insisted that no Catholics should have to pay for birth control that violates the mandate—but not the practice—of their religion.

For over half of his working life, 20% of Blunt's employers were Catholics. And yet he appears to have had no compunctions—no "conscience clause," if you will—about making them pay for his birth control.

Update: Thanks to steve w for correcting my math on Blunt's age when he got to Congress.

MOST BLUNT AMENDMENT SUPPORTERS LIKELY TO HAVE USED BIRTH CONTROL

I confess. I'm contemplating calling all the Senators who voted for the Blunt Amendment yesterday to ask for a statement detailing:

- What the Senators' history of reproductive choice has been, including details on what kinds of birth control

they've used and who paid for it
- Whether the Senators (or their spouses) have used erectile dysfunction drugs, and who paid for it

Mind you, I think such questions are inappropriate. But given that 48 Senators—including 3 Democrats and 4 women—voted yesterday to say that employers should have really intrusive control over their employees' healthcare decisions (including, but in no way limited, to reproductive health), it seems fair to at least inquire whether these men and women have been relying on birth control to plan their families, whether their use of birth control violates their religion's stated doctrine, and whether taxpayers paid for birth control during their child-bearing years.

As you can see from the list below, the vast majority of Senators who voted for the Blunt Amendment are likely to have relied on birth control or sterilization to limit their family size. Just three—Susan Collins, Kay Bailey Hutchison, and Lindsey Graham—have no biological children. And just three—Mike Crapo (5), Chuck Grassley (5), and Orrin Hatch (6)—have more than 4 biological children (McCain and Blunt have more with their adopted kids). Of those likely to have used birth control or sterilization, 22 worked for local, state, or federal government during a roughly calculated "child-bearing" period of their life, meaning taxpayers may have paid for their birth control (though of course their spouses' employers may have provided health care, too). Of those likely to have used more than the rhythm method, 10 are Catholic.

So I'm going to contemplate this over the weekend. But for the moment, consider that the great majority of the Senators who voted to let employers restrict birth control access seem to have families that have been shaped by birth control.

Note the following details are a first draft—please let me know of any inaccuracies.

Lamar Alexander (R-TN): age 72, married 42 years, 4 children, Presbyterian, some federal and state employ during child-bearing years
Kelly Ayotte (R-NH): age 43, married, 2 children, Catholic, state employee during child-bearing years
John Barrasso (R-WY): age 59, 3 children by first marriage, plus one step-child Presbyterian
Roy Blunt (R-MO): age 62, married 35 years, divorced and remarried, 3 children by first marriage plus one adopted child, Southern Baptist, county and state employ during child-bearing years
John Boozman (R-AR): age 62, married, 3 children, Baptist
Scott Brown (R-MA): age 52, married 26 years, 2 children, Christian reform, National Guard during child-bearing years, though with private employ
Richard Burr (R-NC): age 56, married 28 years, 2 children, Methodist
Bob Casey (D-PA): age 52, married 27 years, 4 children, Catholic, state employ during late child-bearing years
Saxby Chambliss (R-GA): age 69, married 46 years, 2 children, Episcopalian
Dan Coats (R-IN): age 69, married, 3 children, Presbyterian, Federal employ during child-bearing years
Tom Coburn (R-OK): age 63, married, 3 children, OB/GYN known to perform sterilizations, Southern Baptist
Thad Cochran (R-MS): age 75, married 47 years, 2 children, Southern Baptist, Federal employ during child-bearing years
Susan Collins (R-ME): age 59, engaged, Catholic, Federal employ during child-bearing years
Bob Corker (R-TN): age 60, married 25 years, 2 children, Presbyterian
John Cornyn (R-TX): age 60, married, 2 children, Church of Christ
Mike Crapo (R-ID): age 60, married 38 years, 5 children, Mormon, state employ during later chlid-bearing years

Jim DeMint (R-SC): age 60, married, 4 children, Presbyterian
Mike Enzi (R-WY): age 68, married 42 years, 3 children, Presbyterian
Lindsey Graham (R-SC): age 56, unmarried, Southern Baptist
Chuck Grassley (R-IA): age 78, married, 5 children, Baptist, state and federal employ during chlid-bearing years
Orrin Hatch (R-UT): age 77, married, 6 kids, Mormon, federal employ during child-bearing years
Dean Heller (R-NV): age 51, married, 4 kids, Mormon, state employ during child-bearing years
John Hoeven (R-ND): age 54, married, 2 children, Catholic
Kay Bailey Hutchison (R-TX): age 68, divorced and remarried, 2 adoptive and 2 step-children, Episcopalian, state employ during child-bearing years
Jim Inhofe (R-OK): age 77, married 53 years, 4 children, Presbyterian, state employ during child-bearing years
Johnny Isakson (R-GA): age 67, married, 3 children, Methodist, state employ during child-bearing years
Mike Johanns (R-NE): age 61, married, 2 children, Catholic
Ron Johnson (R-WI): age 56, married, 3 children, Lutheran
Jon Kyl (R-AZ): age 69, married, 2 children, Presbyterian
Mike Lee (R-UT): age 40, married, 3 children, Mormon, federal employment during child-bearing years
Dick Lugar (R-IN): age 79, married 55 years, 4 children, city employ during child-bearing years
Joe Manchin (D-WV): age 64, married 43 years, 3 children, Catholic, state employ during child-bearing years
John McCain (R-AZ): age 75, divorced, remarried, 3 adoptive and 4 biological children, Baptist, federal employ during entire life
Mitch McConnell (R-KY): age 70, divorced, remarried, 3 children, Baptist, county employ during child-bearing years

Jerry Moran (R-KS): age 57, married, 2 children, Methodist, county and state employ during child-bearing years
Lisa Murkowski (R-AK): age 54, married, 2 children, Catholic
Ben Nelson (D-NE): age 70, married, 4 children, Methodist
Rand Paul (R-KY): age 49, married, 3 children, Presbyterian
Rob Portman (R-OH): age 56, married, 3 children, Methodist, federal employ during child-bearing years
Jim Risch (R-ID): age 69, married 43 years, 3 children, Catholic, state employ during child-bearing years
Pat Roberts (R-KS): age 75, married, 3 children, Methodist, federal employ during child-bearing years
Marco Rubio (R-FL): age 40, married, 4 children, Catholic, state employ during child-bearing years
Jeff Sessions (R-AL): age 65, married, 3 children, Methodist, federal employ during child-bearing years
Richard Shelby (R-AL): age 77, married 52 years, 2 children, Presbyterian, city, state, federal employ during child-bearing years
John Thune (R-SD): age 51, married, 2 children, Evangelical Christian, federal and state employ during child-bearing years
Pat Toomey (R-PA): age 50, married, 3 children, Catholic
David Vitter (R-LA): age 50, married, 4 children, Catholic solicit(ed) prostitutes
Roger Wicker (R-MS): age 60, married, 3 children, Southern Baptist, state employ during child-bearing years

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A VICTORY ON DOMA

FOR KAREN GOLINSKI

Well, while we ponder what will transpire on the mind numbingly restricted “win” for the Perry Plaintiffs in the 9th Circuit, yet another Northern District of California (NDCA) judge has followed in Vaughn Walker’s footsteps and has sent a large and loud message in favor of Constitutional protection of marriage equality. Judge Jeff White has doomed DOMA in the Karen Golinski case!

> These motions compel the Court to determine whether the Defense of Marriage Act (“DOMA”), 1 U.S.C. Section 7, as applied to Ms. Golinski, violates the United States Constitution by refusing to recognize lawful marriages in the application of laws governing benefits for federal employees. Having considered the parties’ papers, relevant legal authority, and the record in this case, the Court HEREBY DENIES BLAG’s motion to dismiss; DENIES as moot BLAG’s motion to strike; GRANTS Ms. Golinski’s motion for summary judgment; and GRANTS the OPM’s motion to dismiss.
>
> ….
>
> Here, having analyzed the factors, the Court holds that the appropriate level of scrutiny to use when reviewing statutory classifications based on sexual orientation is heightened scrutiny. See also In re Levenson, 587 F.3d at 931 (holding that “some form of heightened constitutional scrutiny applies”); Witt, 527 F. 3d at 824-25 (Canby, J., concurring in part and dissenting in part) (“classifications against homosexuals are suspect in the equal protection sense” as gay and lesbian individuals have “experienced a history of purposeful unequal treatment [and] been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of

> their abilities" and "they also exhibit obvious, immutable, or distinguishing characteristics that define them as a discrete group; and they are a minority."). In short, this Court holds that gay men and lesbians are a group deserving of heightened protection against the prejudices and power of an often-antagonistic majority.

The finding of heightened scrutiny because sexual orientation is exactly the proper finding and the further step that Judges Stephen Reinhardt and Michael Hawkins cowardly failed to take in the recent Perry decision. It is the right finding.

Judge Whit goes on in Golinski to knock back all the lame justifications given by H8ters for DOMA, much the same way Walker did at the trial level in Perry. Responsible procreation and child-rearing, nurturing the institution of traditional, opposite-sex marriage, defending traditional notions of morality, preserving scarce government resources….he kills them all. As an extremely nice touch, White also frames his decision against the Constitutionality of DOMA on alternate concurrent inspection as well, fully analyzing and finding against it under a rational basis analysis as well as heightened scrutiny. This dual track type of analysis could have, and should have been done by Reinhardt in Perry, but, for some inexplicable reason, was not.

In concluding, White even gets in a shot at 'Ole Balls & Strikes Roberts:

> As Supreme Court Chief Justice John G. Roberts said during his confirmation hearings: "Judges are like umpires. Umpires don't make the rules, they apply them. … it's [the judge's] job to call balls and strikes, and not to pitch or bat." Confirmation Hearing on the Nomination of John G. Roberts, Jr. to be Chief Justice of the United States:

> Hearing Before the S. Comm. on the Judiciary, 109th Cong. 56 (2005) (statement of John G. Roberts, Jr., Nominee).
>
> In this matter, the Court finds that DOMA, as applied to Ms. Golinski, violates her right to equal protection of the law under the Fifth Amendment to the United States Constitution by, without substantial justification or rational basis, refusing to recognize her lawful marriage to prevent provision of health insurance coverage to her spouse. Accordingly, the Court issues a permanent injunction enjoining defendants, and those acting at their direction or on their behalf, from interfering with the enrollment of Ms. Golinski's wife in her family health benefits plan. The Clerk is directed to enter judgment in favor of Ms. Golinski and against defendants the Office of Personnel Management and its director John Berry as set out herein pursuant to Federal Rule of Civil Procedure 58.

That is a nice day's work Judge Jeffrey White. Well done!

BISHOP LORI TOOK THE PIG RIGHT OUT OF ERIC CANTOR'S MOUTH

Along with the ridiculous visuals, one of the most amazing parts of today's hearing in which a bunch of men explained why birth control was a threat to their First Amendment rights was the statement of Bishop William Lori.

In it, he drew an analogy between birth control and pig flesh.

> For my testimony today, I would like to tell a story. Let's call it, "The Parable of the Kosher Deli."
> Once upon a time, a new law is proposed, so that any business that serves food must serve pork. There is a narrow exception for kosher catering halls attached to synagogues, since they serve mostly members of that synagogue, but kosher delicatessens are still subject to the mandate.
>
> The Orthodox Jewish community—whose members run kosher delis and many other restaurants and grocers besides—expresses its outrage at the new government mandate. And they are joined by others who have no problem eating pork—not just the many Jews who eat pork, but people of all faiths—because these others recognize the threat to the principle of religious liberty. They recognize as well the practical impact of the damage to that principle.
>
> They know that, if the mandate stands, they might be the next ones forced—under threat of severe government sanction—to violate their most deeply held beliefs, especially their unpopular beliefs.
>
> Meanwhile, those who support the mandate

> respond, “But pork is good for you. It is, after all, the other white meat.”
>
> Other supporters add, “So many Jews eat pork, and those who don’t should just get with the times.” Still others say, “Those Orthodox are just trying to impose their beliefs on everyone else.”

But Bishop Lori wasn’t the first person to make that porcine analogy. Eric Cantor made it on February 9.

> President Obama’s HHS regulation violates religious freedom. It is like forcing a kosher deli to sell pork chops. **#NotKosher**

I find it pretty unclean to have a the words of the Jewish politician being voiced by the purported Catholic holy man, like mixing milk and meat.

I mean if Bishop Lori’s parables are just regurgitated Republican talking points—if Bishop Lori’s feigned interfaith concern is just a script borrowed by the his party hosts—then what does that say for Lori’s claim to espouse Catholic dogma more generally?

FOSTER FRIESS, ANACHRONISTIC DUMB ASS

[youtube]MMVzaIMYuTY[/youtube]

Rick Santorum’s sugar daddy Foster Friess (b. 1940) lectured Andrea Mitchell (b. 1946) today about how girls back in his day avoided getting pregnant, as if social norms changed dramatically in the six years that separate them

in age.

> I get such a chuckle when these things come out. Here we have millions of our fellow Americans unemployed, we have jihadist camps being set up in Central, uh, Latin America—which Rick has been warning about—and people seem to be so preoccupied with sex. I think that says something about our culture. We maybe need a massive therapy session so we can concentrate on what the real issues are. And this contraceptive thing, my gosh, it's such inexpensive. Back in my days, they used Bayer aspirin for contraceptives. The gals put it between their knees and it wasn't that costly.

But not only was Friess being a dumb ass, he was being an anachronistic dumb ass.

Back in his day—when he turned 21, **before he got married**—the FDA approved the pill. By the time he turned 25, Griswold v. Connecticut made birth control legal for couples. By the time he turned 30, over a quarter of all Catholic women were using the pill (and two-thirds were using some kind of birth control).

But we don't have to look at actual history to know that Foster Friess is making shit up with his Bayer aspirin.

Foster Friess and his wife only had 4 children. Which suggests the couple found some means, aside from Bayer aspirin, to stop conceiving children.

It's possible his gal did revert to her Bayer aspirin ways after the fourth was delivered. It's possible that the marital troubles Friess' official biographies describe, 16 years into marriage, led he and his wife to stop fucking altogether. It's possible that when Friess became Born Again in 1978, he forswore sex forever.

But there are very few ways for a man to go

through 72 years of life having fathered just 4 kids—particularly one who was married through 50 of those years. And Bayer aspirin between the knees is not usually one of them.

Update: Foster Friess was on Lawrence O'Donnell's show today. When O'Donnell pointed out that he had just 4 children, Friess said he had been "blessed by contraception."