



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

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Edelman
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DATE: 11/21/94

TIME: 12:00 p.m.

TO : John Podesta

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FAX NUMBER: 456-2215 TELEPHONE NUMBER _____

6 pages

FROM: Peter Edelman

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COMMENTS: _____

Notes on Peter Edelman career and potential criticisms of his record

I. Brief Biography

Peter Edelman is currently Counselor to the Secretary of Health and Human Services. A native of Minneapolis, Minnesota, he is a magna cum laude graduate of both Harvard College and Harvard Law School. He was Phi Beta Kappa at Harvard College and Treasurer of the Law Review at the Law School. He clerked for Judge Henry Friendly on the U.S. Court of Appeals for the Second Circuit and for Justice Arthur Goldberg on the Supreme Court of the United States (He had been picked to clerk for Justice Felix Frankfurter, who retired before Edelman was slated to begin work.) After serving in the military, Edelman worked as Special Assistant to Assistant Attorney General John W. Douglas in the Civil Division of the U.S. Department of Justice, and went from there to be Legislative Assistant to Senator Robert F. Kennedy, a position he held for the whole time Kennedy was in the Senate. He served as Issues Director in Kennedy's Presidential Campaign in 1968.

Edelman married Marian Wright in July 1968 and, after a travel-study fellowship from the Ford Foundation, helped found the Robert F. Kennedy Memorial as its Associate Director. He served as Vice President for Policy of the University of Massachusetts in the early 1970s, as Director of the N.Y. State Division for Youth in Governor Hugh Carey's Cabinet in the late 1970s, and was a partner in the Washington firm of Foley & Lardner from 1979 to 1982, with time out to be Issues Director for Senator Edward M. Kennedy's Presidential Campaign in 1980. He was selected by TIME Magazine as one of 200 outstanding young leaders in America in 1974. He has been on the faculty at Georgetown University Law Center since 1982, was Associate Dean from 1989 to 1992, and is on leave from that position at present. He was the recipient of a United States-Japan Leadership Program Fellowship in 1985, and was of counsel to the law firm of Keck, Mahin & Cate from 1987 until 1993.

Edelman's litigation experience spans his Justice Department stint in the 1960s, his time at Foley & Lardner in the late 1970s and early 1980s, and his work at Keck, Mahin & Cate, as well as pro bono activity during the 1980s and early 1990s. At Keck in particular he was involved in a number of significant appellate matters and work at pretrial stages in various pieces of litigation. He wrote an important brief in the landmark Texaco-Pennzoil case, briefed and argued an appeal in the Fourth Circuit in an aspect of the Dalkon Shield litigation, and briefed and argued another appeal in the Fourth Circuit in a significant ERISA health insurance preemption case.

Peter Edelman has been a community leader and institutional leader throughout his career. In the District of Columbia he has served as a Trustee of the University of the District of Columbia, and was co-founder of Parents United for the Public Schools, co-founder and later board chair of the Center for Youth Services, and

co-founder and board chair of the Fair Employment Council of Greater Washington. He was board chair of the Center for Community Change and the New World Foundation, and co-chair of Americans for Peace Now, a support group for Israelis working to advance the peace process in the Middle East. He has also served on the boards of numerous other organizations.

Edelman is the author of numerous scholarly and popular articles. His writing spans the fields of constitutional law, poverty, youth, administrative law and trade policy, alternative dispute resolution, and politics. At Georgetown University Law Center he has taught constitutional law, civil procedure, administrative law, and seminars in social welfare law and public interest litigation, and founded a family poverty clinic.

At the Department of Health and Human Services, Edelman's responsibilities have included involvement in the enactment and implementation of major portions of President Clinton's program. He played a significant role in the drafting and development of the President's national service program, has been a important participant in the implementation of Empowerment Zones, and played a large part in the work on the President's crime bill, which is continuing into the implementation phase. He plays a leading role in HHS policymaking on adolescent issues, violence, urban problems, the organization of human service delivery, and substance abuse policy. He serves as drug policy coordinator for the Department, a role that places him in extensive contact with the substance abuse treatment, prevention, and research communities, the Office of National Drug Control Policy, and the Hill.

Marian and Peter Edelman have three sons. Joshua is 25 and is an M.A. student at the Stanford University School of Education. He intends to pursue a career in secondary education. Jonah, 24, is a doctoral student at Oxford University where he is a Rhodes Scholar. His dissertation is in political theory. Ezra, 20, is a Yale University junior who is studying in Spain during the fall of 1994.

II. Potential Critiques of Edelman's Record

1. The Washington Times (Nov. 14, 1994) attacked Edelman editorially for his views on racist speech on college campuses. Edelman wrote a column in the Legal Times in 1989 and 1990. His column of May 15, 1989 occasioned the editorial attack. It was written during a period when there had been racial incidents on many campuses and relatively little response from higher education leaders and others. The main emphasis of the piece was a call for stronger leadership and more public discussion as "the best antidote to ugly speech." However, it also said that established principles of constitutional law under existing Supreme Court decisions would permit sanctions against offensive speech under certain limited circumstances, and it suggested that such rules "at

least as a symbolic measure, might do some good." Not even Justice Hugo Black believed that speech is protected under all circumstances. For example, libel laws are an exception to protected speech, and have been throughout American history. Not every utterance that comes from a person's mouth or pen is automatically protected under our constitutional system. Thus the bottom line of the piece in both tone and substance was in its final paragraph. It reiterated that "the best way to stop" the ugly speech "is leadership and healthy public debate," and then added that, in view of existing case law, the question whether it is always and necessarily protected constitutionally "deserves a second look."

2. Paul Craig Roberts published a column in the Washington Times on November 17 or 18 attacking Edelman for a thesis he has advanced in various articles, the most lengthy being one in the Hastings Law Journal in 1985, arguing that the Constitution could be interpreted to guarantee a minimum survival income. Roberts' attack was essentially that this proves Edelman would be an activist judge who will make law from the bench. Edelman's suggestion was not only limited and careful, but made more for the purpose of dramatizing the need for a societal response to poverty than with any aim to stimulate a judicial response. He explored the possibility, based on an analysis of history and constitutional theory, that a court might find a constitutional right to a minimum income, which he suggested should be set at a level well below the poverty line in order not to interfere with incentives and requirements to work that might be added by legislation. He coupled his suggestion with a strong affirmation and argument that the major responsibility within the public sector to take action against poverty is legislative, because the solutions are much more complicated than the provision of income, and extend to jobs, schools, housing, health care, services, and so on. He said explicitly that all of that is far beyond the competence of courts to order and oversee. Indeed, his point was that a limited judicial statement might stimulate a stronger legislative and public response. In terms of the constitutional theory involved, he pointed to support that can be inferred from a line of Supreme Court cases and, more broadly, from political philosophers whose thinking influenced the constitutional drafting process. His main point, however, was not that the Supreme Court would actually adopt the point any time soon. It was, explicitly, to stimulate discussion and debate that would in turn have an effect in current political decision-making.

3. Edelman's Legal Times columns in 1989 and 1990 are occasionally irreverent, and are critical of both Republicans and Democrats on issues ranging from education to campaign finance to poverty. Some are simply analyses of cases on their way to the Supreme Court, and were written mainly for the purpose of helping readers decode what was going on in the cases being discussed. One which seems to have piqued some interest among current critical readers is an

affectionate obituary for Justice Arthur Goldberg, in which Edelman admires Goldberg's commitment to finding just results in individual cases. If that is the basis for someone's inference that Edelman would make law from the bench, it is not only just that -- an inference -- from an admiring statement about Justice Goldberg, but also is directly contradicted by strong statements about the importance of precedent in at least two of the other columns. A theme which emerges in two of the pieces is the role that procedural devices like the burden of proof necessarily play in helping to decide substantive questions which are difficult and unclear. Read as a body, the columns reveal a moderate progressive politics and value structure that has been thoughtfully informed by the lessons of the past thirty-plus years. Edelman believes strongly that private activity, especially activity at the community level, is essential if there is to be progress in solving America's problems, but argues that there should be a role for public policy as well. And of course the judicial philosophy is narrower yet, importantly and appropriately constrained by the Constitution, by precedent, by procedural frameworks, by the limits of judicial competence, and by the role of lower court judges in the federal system. Virtually all of these points are reflected in the columns when taken as a body of work.

4. Edelman wrote a few articles on juvenile justice in the late 1970s and early 1980s which some may scrutinize, but they all make the point that violent juvenile offenders need to be dealt with much more stringently than has been the case traditionally in the juvenile system. They do argue that youth who are not a threat to the community can be worked with in the community, and they argue that young people who are placed in the custody of the juvenile system often do not receive the educational and other services they need to have the best chance of making it and committing more crimes. The position they take emphasizes strongly the need to protect the community as an integral part of a balanced law enforcement policy. Edelman's service as youth commissioner of New York State might also possibly be the subject of comment, but juvenile corrections professionals will attest to the fact that his tenure in the position was a time of constructive change in the agency that was not only important in itself, but also placed New York in a position of national leadership.

5. A piece that might evoke comment is a critique of Justice Scalia, written for a conference on Justice Scalia's jurisprudence. It expresses disagreement with him on some points, but its overall tone is respectful and reasonable, and it is complimentary to him in certain respects.

6. A final area that might be the basis of comment is Edelman's membership on various foundation boards. He has been a member of the board of the New World Foundation, the Foundation for Child Development, and the Public Welfare Foundation. All of these give money to grass-roots organizations which deliver services that are

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not supported fully by government. All of the grantees receive money from multiple sources, and many do get public funding, United Way funding, community foundation funding, and so on. The spirit of all three foundations is consistent with the view that government should not play an unduly large role in assisting people.