

Scalia's poison pen

By Duncan Hosie

IT SEEMS THESE DAYS as though everyone is speculating about how Justice Anthony M. Kennedy will approach the two same-sex marriage cases before the U.S. Supreme Court. But I haven't heard anyone wondering which side Antonin Scalia will be on. He has made his views on gay relationships painfully clear.

In December, Scalia spoke at Princeton University, where I am a freshman, and I asked him about language he used in past decisions involving gay rights — language that I, as a gay man, found extraordinarily offensive.

In my question, I quoted from two of Scalia's opinions (both of them dissents). One passage came from the case of *Romer vs. Evans*, which involved a Colorado statute banning laws that recognized gay people as a protected class. Scalia wrote: "I had thought that one could consider certain conduct reprehensible — murder, for example, or polygamy, or cruelty to animals — and could exhibit even 'animus' toward such conduct. Surely that is the only sort of 'animus' at issue here: moral disapproval of homosexual conduct."

I asked if he had come to regret that language. He hadn't. In response to my question, he posed two questions of his own: "If we cannot have moral feelings against homosexuality, can we have it against murder? Can we have it against these other things?"

I hadn't really expected Scalia to apologize for his language. He has been remarkably consistent over his judicial career. Still, I had hoped, and continue to hope, that my question might lead Scalia to think about the language he uses in the soon-to-be-decided cases of *U.S. vs. Windsor* and *Hollingsworth vs. Perry*, which will determine the fates, respectively, of the federal Defense of Marriage Act and California's Proposition 8. I know from personal experience that poisonous language like Scalia's can be devastatingly hurtful.

Growing up in Northern California, I struggled to accept the fact that I was gay. I was labeled a "faggot" in middle school too many times to count. I listened to my neighbor explain how California needed Proposition 8 to "protect the children." I heard my grandfather declare that San Francisco's gay community was "just different from the rest of us." Those words hurt, and honestly, they still do. Although I am very close to my parents, I only felt comfortable coming out to them a month



CHARLES REX ARBOGAST Associated Press

STUDENT Duncan Hosie questioned Scalia's language in gay rights cases.

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before putting my question to Scalia.

More than half of LGBT youth report having been verbally assaulted or attacked with anti-gay slurs. For some, it leaves a permanent scar. For others, it proves too much to handle, which is why an appallingly high number of gay teens commit suicide.

I tell myself that verbal assaults are rooted in ignorance. But I still haven't figured out how to reassure myself when the ignorance is emanating from the nation's highest court. In the 2003 case of *Lawrence vs. Texas*, the Supreme Court

overturned a Texas law banning sodomy. Scalia's dissent in the case, joined by Justice Clarence Thomas and then-Chief Justice William H. Rehnquist, embraced the idea that citizens should be able to pass laws banning sexual behavior they find "immoral and unacceptable," including such things as "adult incest, bestiality and obscenity."

I have every confidence that history will judge Scalia harshly, and that one day it will be unacceptable to equate laws against consensual gay sex with laws against incest and bestiality. But I still worry about the impact of his language in the here and now.

In the next couple of months, the court will issue its rulings on Proposition 8 and the Defense of Marriage Act, and we're likely to hear more of his views on the morality of gay relationships. Still, I can't help but hope that this time he will consider how words have the potential to lead people to desperation and self-destruction. Wouldn't it be great if Scalia surprised us this time?

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