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TELEVISION PROGRAM TO "CBS NEWS' FACE THE NATION."



## **August 8, 2010 Transcript**

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## TRANSCRIPT

JOHN DICKERSON: Today on FACE THE NATION, two big stories in the news this week.

As the Gulf oil spill crisis finally come to an end and is a national battle over same sex marriage just beginning. The well has been shut off and reports indicate that the oil is disappearing fast. Is it safe to say the Gulf crisis is over? We'll ask retired Admiral Thad Allen, the administration's point man on the oil spill.

Also this week, a federal judge overturned California's ban on same-sex marriages--will the aftershocks of that ruling be felt throughout the rest of the country? We'll talk with David Boies, the attorney who won the California case, and Tony Perkins head of the Family Research Council, a group that opposes same-sex marriage.

Then we'll turn to Dan Balz of the Washington Post and CBS News chief legal correspondent Jan Crawford for some political and legal perspective on the case.

But first, the Gulf oil crisis on FACE THE NATION.

ANNOUNCER: FACE THE NATION with CBS News chief Washington correspondent Bob Schieffer; and now substituting for Bob Schieffer, CBS News political analyst John Dickerson.

JOHN DICKERSON: Good morning, and welcome to FACE THE NATION.

Retired Admiral Thad Allen is in charge of the federal response in the Gulf. Welcome, Admiral.

ADMIRAL THAD ALLEN (USCG, Retired/National Incident Commander): Good morning.

JOHN DICKERSON: We are no longer seeing those pictures of that oil coming out of that well. When will it be done--shut and completely taken care of?

ADMIRAL THAD ALLEN: Well, this last week, as you know, we were able to statically kill the well from the top by putting cement down the pipe casing and we pressure-tested that the last two days, so that's holding. What we need to do know is come in through the bottom and fill, what's called the (INDISTINCT) between the casing and the well bore itself. And we are drilling very close to that right now and that should happen later on this week.

JOHN DICKERSON: And that's the relief well that we've heard so much about--

ADMIRAL THAD ALLEN: That's it.

JOHN DICKERSON: --is the final process. And earlier in the week there was a little bit of confusion. There was a message from BP that maybe the relief well might not nece-- be necessary but it's necessary it's happening. Is that right?

ADMIRAL THAD ALLEN: There was an inference early on that there might be some kind of an option whether we're going to do this or not. That is patently not the case. I've discussed this with Bob Dudley. The relief well will be finished.

JOHN DICKERSON: Now the-- when the relief well is finished and we're no longer seeing those daily images of oil flowing, people in the region are worried that once that problem is taken care of, kind of the concern will disappear and they will be left on their own. What do you say to that?

ADMIRAL THAD ALLEN: We are just moving to a different phase. Obviously, we're delighted there's not going to be a source for the oil but if you're in Barataria Bay or the Chandeleur Islands or Mississippi Sound, or see the oil coming ashore on the beaches of Alabama and Florida, what you need to understand is we're going to keep cleaning it up. We've got a commitment to be there. BP is responsible. We are going to hold them accountable. And I would say this has been the largest environmental response in the history of this nation. And we'll continue until the clean-up is done.

JOHN DICKERSON: And what about your job? How much longer are you going to be on the case?

ADMIRAL THAD ALLEN: Well, I think certain conditions have to be met before we transition. It's going to be key-- one thing is going to be key is Secretary Mavis's report on how to move to a larger recovery program for the Gulf in an organizational structure, and those discussions are going on right now.

JOHN DICKERSON: But whose job will it be if BP isn't holding up its end of the bargain to get on the phone, as you did with Bob Dudley on this question of the relief well going forward? Whose job will it be to make that phone call?

ADMIRAL THAD ALLEN: Well, first of all, on the relief there will always be a federal on scene coordinator to hold BP accountable, but as we move forward there's other work to be done, including the natural resources damage assessment, looking at the larger social economic issues in the region; and I think Secretary Mavis's report on the follow-on structural address a lot-- a lot of things that go well beyond just the spill response itself that I'm responsible for.

JOHN DICKERSON: You have had a lot of conversations with Bob Dudley, the new CEO of BP. Give us your sense, do you trust him to take this going forward and all the responsibility that is still on BP's shoulders?

ADMIRAL THAD ALLEN: Well, you know, I don't hardly have an interview where they don't raise the word trust and BP in the same sentence. And what I tell everybody is that this is more of a requirement to cooperate, collaborate. We all have to be working on the same mission. We have to achieve the effects we're trying to achieve for the American people. And in that regard I think we've been effective and I think the tremendous amount of engineering that was done to control the-- the source of the leak. All of-- all of this had to be brought in from other parts of the world and actually be designed. I think-- I think they've done a pretty good job at that.

JOHN DICKERSON: So, you think that they are-- it's a question of trust but then there's also the question of competence. And you-- in your dealings with them you feel like they've been on the case. You haven't had to keep making these phone calls to get them back in line.

ADMIRAL THAD ALLEN: Well, as far as controlling the source of the well, industry owns the means of production, and we brought a science team in there led by Secretary Chu. There's been tremendous oversight with every step of the way. We've consulted with other members of the industry, oil production industry. We're looking for independent validation by academicians

and so forth. So, it's more of-- it's more of an issue of how you bring everybody together to create a unity of effort but keep focusing on the effects you're trying to achieve.

JOHN DICKERSON: One of the things the officials at BP have also said is that while they won't go back to this well itself, they might tap that reservoir, which has a lot of money inside of it for them. Is that appropriate for them to be thinking about that?

ADMIRAL THAD ALLEN: Well, frankly, that's a policy issue between BP and the Department of Interior. I'm focusing on the response right now and that's something I would leave to them.

JOHN DICKERSON: Okay. So, that-- a policy issue. What about a safety issue? Is it safe to go into that area again based on what you've seen over the last several months?

ADMIRAL THAD ALLEN: Well, I think moving forward we need to talk about response framework for the Gulf. And as you know, there's a consortium of-- several oil companies have come together to talk about how might they put together response framework that uses some of the technology that were successfully employed in this one.

One of the challenges is the way they produce oil in the Gulf of Mexico is with wells that are on the bottom, with all the controls that are down there, including the blow-out preventer. And the oil is all moved through pipelines.

Some of the technology, including floating production platforms, shuttle tankers, and these vertical risers that are floating in the water actually are technologies from the North Sea and off of Angola. And I think moving forward we have to-- we're going to have to develop a process that allows those technologies to be available if they're needed.

JOHN DICKERSON: Also moving forward, have there been any-- what lessons do you think have been learned for the next time there's a big disaster like this?

ADMIRAL THAD ALLEN: Well, I think if we look back and use this change of phase as a retrospective, I think there're some very positive things that have been done but some things where we've had to adjust to things we did not expect to encounter. One of those were all the vessels of opportunity, at one point nearly seven thousand. And how do you employ those, the command and control, the tracking? That actually led us to be able to improve our air surveillance to be able to cue them better. And that actually was the result of an agreement we made with the first Air Force-- the Tyndall Air Force Base to take control of the air space and coordinate all the air movements. So, a lot of lessons learned moving forward but a lot of this stuff has never been done before.

JOHN DICKERSON: If you had to give BP a final grade on their performance, what would you-- what would you say?

ADMIRAL THAD ALLEN: At the wellhead, I think they've done very well. What they are not good at and that has not been part of their corporate competency or capacity in the past is one-on-one transactions with individual citizens. And I think that's where the biggest gap of performance has been and where the most improvement needs to take place.

JOHN DICKERSON: Okay. Admiral Thad Allen, thanks so much for being with us.

ADMIRAL THAD ALLEN: Thank you.

JOHN DICKERSON: And we'll be back in one minute.

(ANNOUNCEMENTS)

JOHN DICKERSON: Joining us now to discuss the California ruling on same-sex marriage from San Francisco, David Boies, one of the lead attorneys for the plaintiffs; and Tony Perkins, the head of the Family Research Council. He is in Wichita Falls, Texas.

Mister Boies, I want to start with you. After the judge ruled in your favor, he put a stay on marriages going forward. I want to know with-- with so much legal fighting ahead on this issue, why should marriages be reinstated immediately?

DAVID BOIES (Counsel, American Foundation for Equal Rights): I think the issue is not whether they ought to be reinstated immediately but whether you ought to have marriage equality. I think that courts can differ in terms of whether this goes into effect immediately or after an appeal. I think the critical issue here is that what you have is a district court finding after a full trial. Everybody had an opportunity to be heard.

A (sic) opinion that demonstrates that there are simply no basis whatsoever to continue discrimination against gay and lesbian citizens who want to marry.

JOHN DICKERSON: Tony Perkins, you said this ruling, this decision left you speechless. What's your reaction going to be now?

TONY PERKINS (President, Family Research Council): Well, the-- this is not without political parallel. I mean you go back to the 1970s and abortion was nowhere near the political issue that it is today when the court interjected itself in 1973 to this issue. And-- and this issue is not going to go away. I think what you have is one judge who thinks he knows, and a district level judge, and-- and an openly homosexual judge at that who says he knows better than not only seven million voters in the state of California but voters in thirty states across the nation that have passed marriage amendment. This is far from over.

JOHN DICKERSON: You mentioned this claim that he's openly homosexual. I'm not sure if that's in fact the case but whether he is or isn't, what basis-- what bearing does that have on the case?

TONY PERKINS: Well, that according to the San Francisco Chronicle that-- that he is openly homosexual, one of two federal judges. And I think, you know, had-- had this guy been a, say, an evangelical preacher in his past, there would have been cries for him to step down from this case. So, I do think it has a bearing on the case.

JOHN DICKERSON (overlapping): But you think it's made his--

TONY PERKINS: But this is not without precedent.

JOHN DICKERSON (overlapping): You think it's made his ruling--

TONY PERKINS: This is not without precedent.

Well, I mean, you look at-- he ignored a lot of the social science in--in his opinion. But in Nebraska in 2005, there was a similar ruling by another federal district level judge. It was overturned in the 8th Circuit unanimously. So there is certainly not only based upon the social empirical data that's out there, but on the legal basis this is a flawed decision. And-- and as I said it's far from over.

JOHN DICKERSON: David Boies, the-- one thing you mentioned that the judge spent a great deal of time on the facts of the case here, what's your response to Mister Perkins?

DAVID BOIES: Right. Well, it's easy to sit around and debate and throw around opinions appear-- appeal to people's fear and prejudice, cite studies that either don't exist or don't say what you say they do. In a court of law you've got to come in and you've got to support those opinions. You've got to stand up under oath and cross-examination. And what we saw at trial is that it's very easy for the people who want to deprive gay and lesbian citizens the right to vote, to make all sorts of statements and campaign literature or in debates where they can't be cross-examined.

But when they come into court and they have to support those opinions and they have to defend those opinions under oath and cross-examination, those opinions just melt away. And that's what happened here. There simply wasn't any evidence. There weren't any of those studies. There weren't any empirical studies. That's just made up. That's junk science.

And it's easy to say that on television. But witness stand is a lonely place to lie. And when you come into court, you can't do that. And that's what we proved. We put fear and prejudice on trial, and fear and prejudice lost.

JOHN DICKERSON: Mister Perkins, I want to ask--

DAVID BOIES (overlapping): --that is absolutely-- that is absolutely not true.

JOHN DICKERSON: Well, let me just ask you, just-- the-- the judge in this case said that the-- the state has to find a harm-- some kind of harm created by same-sex marriage. There has to be empirical evidence. Mister Boies says and the judge says there was no evidence on that case. So what harm-- give us some evidence in terms of the harm that would be created by allowing same-sex marriages.

TONY PERKINS: Well, a lot of the discussion was about the-- the issue of children, how children are impacted by this. This is so relatively new that there is not a conclusive evidence to suggest that children who grow up with two moms or two dads fare as well as children who grow up with a mom and a dad.

Now, we do have an abundance of evidence over the last forty years from the social sciences that show us that public policy that has devalued marriage through law such as no-fault divorce has truly impacted children and that impacted the institution of marriage. And the judge, in his ruling, actually over-- just ignored all of that and said that there is no evidence that any of the policy that's been adopted on no-fault divorce and other liberal-leaning policies have impacted marriage. And I think anybody with-- with a half-a-brain can see that the policies that have been adopted in the last forty years have impacted marriage. And a-- and as a result have impacted the well being of children.

JOHN DICKERSON: Mister Boies, let me ask you a question about the-- where this case goes from here. There is the view among a lot of legal scholars--

DAVID BOIES (overlapping): Let me-- let me-- let me just respond.

JOHN DICKERSON: Quickly, if you could.

DAVID BOIES: Let me just respond to that, okay? Okay, very quickly. Look at. The judge did deal with it. And he pointed out, which is obvious, is that no-fault divorce doesn't have anything to do with issue that's here. The empirical studies that do exist and they're based on what's happened in Canada and Sweden and Spain and other countries and other states where you are able to have marriage equality demonstrates that there is no harm. There are-- there are studies going back for twenty years that's-- that demonstrate this. The problem here is that unlike a court, people don't stick to the facts.

JOHN DICKERSON: Okay, let me ask you on the question of the Supreme Court where this may end up, one day. There is a view that the court doesn't like to get too far out in front of where the law is now. Isn't this a big leap for the Supreme Court to-- to side with you, Mister Boies, in this case?

DAVID BOIES: It-- it really isn't. Remember, unlike abortion, the court is not creating a new legal right. This is a right that has been well recognized for a hundred years in terms of the right of individuals to marry. And all that's at issue here is can the State of California take away that right depending on the sex of your intended partner? And that issue depends exactly on what you said before.

Is there a rational basis for that distinction? Can you prove that it harms heterosexual marriage, children, can you prove it harms anybody? Why do you make these people suffer if it doesn't help anybody? And what we proved at trial is that there simply isn't any basis, no evidence at all, to indicate that this has any harm to anybody. And, indeed, all the evidence is to the contrary. That it makes those relationships more stable. Even the defendant's own witnesses admitted that there was no evidence of harm to heterosexual marriage or to children as a result of gay and lesbian marriage. Even the defendant's own experts admitted that there was great harm to homosexual couples and the children they're raising by depriving them of the stability and love of marriage.

JOHN DICKERSON: Mister Perkins, I want to ask you about the-- the Republican Party. Usually, in cases like this, you hear Republican politicians jump to decry these kinds of rulings. It's been pretty muted so far. Why do you think that is?

TONY PERKINS: Well, there will be a ruling-- there'll be a resolution introduced in Congress this coming week, when the House is pulled back in by Nancy Pelosi. But-- but I want to address, you know, David knows better than this. I mean he's a constitutional lawyer. He knows that the findings of the court over the last hundred years have dealt with traditional marriage--marriage between a man and a woman. And-- and then a whole issue of civil rights that is drawn into this, you know, the court in-- in *Brown v. Board of Education* and the civil rights cases in the fifties and sixties were based upon constitutional amendments on the issue of racial equality which were adopted by the states. That hasn't happened on same-sex marriage. This is an activist decision by a district-level court who is interjecting his view over the view of not only millions of Americans who have voted on this issue, but, literally, the history of the human race. So, this is

far from over and-- and we hope that sanity will reign when it does make its way to the United States Supreme Court.

JOHN DICKERSON: Okay. Tony Perkins, thank you so much. David Boies, thank you for being with us.

TONY PERKINS: Thank you.

JOHN DICKERSON: We'll be back with more on the same-sex marriage debate with our round table.

(ANNOUNCEMENTS)

JOHN DICKERSON: We're back with more on same-sex marriage with Dan Balz of the Washington Post, and our chief legal correspondent Jan Crawford. Jan, I want to start with you. And the question I asked David Boies. This is a big leap for the Supreme Court when it finally gets there, isn't it?

JAN CRAWFORD (CBS News Chief Legal Correspondent): Well, David Boies said it was not. But clearly it is. I mean they are asking the Supreme Court to set aside, essentially, the laws of forty-four states. So that is an enormous stretch. Now, of course, the Supreme Court has taken up issues of gay rights in the past. Justice Kennedy, the key swing vote in 2003, said that states could not criminalize homosexual sex in the privacy of your bedroom. So-- but that is an entirely different matter than saying there's a federal constitutional right to-- to same-sex marriage.

JOHN DICKERSON: In this case, Judge Walker, quoted Anthony Kennedy fifteen times or so. It was a letter to him. Wasn't it? And is that going to work writing directly to Kennedy, basically, trying to use his own words to say hey, you've got to vote with me.

JAN CRAWFORD: No. I mean clearly this decision was written with an eye-on appeal. And it's going to be appealed all the way up to the Supreme Court. The court is so narrowly divided right now in these key social issues, you know, you've got your four liberals, your four conservatives and then that man in the middle, Anthony Kennedy, who is kind of like this, you know, human jump ball. And what they are asking Justice Kennedy to do, in this case, is not only, I mean, he's got to grab the ball, take it down the court, slam it in the basket, and shatter the backboard. I mean this is something that Anthony Kennedy doesn't do. He's a very cautious justice. He doesn't like to get ahead.

Like I said, the same-sex ruling that he wrote in 2003, that struck down laws that criminalized homosexual sex. No one was enforcing these laws. This would change the law of the nation. They would be so far ahead of public opinion and that is why this case was controversial from the beginning. Remember, the traditional gay rights groups did not want David Boies and his conservative counterpart, Ted Olsen, to file this case because they think the Supreme Court is not ready. They wanted to see more states pass laws allowing same-sex marriage and then take it to the court and not put that onus and that pressure on the Supreme Court. And I would not be so confident if I were David Boies.

JOHN DICKERSON: Dan, let's talk about the politics of this. It does seem like from the Republican side, you know, George Bush when a Massachusetts Supreme Court ruled on-- in

favor of same-sex marriage, immediately he came out with a constitutional amendment to ban it. This time pretty quiet from Republicans.

DAN BALZ (Washington Post): Yes. And I think that-- there's a good reason for that. In 2004, the Republicans needed to do everything they could to motivate their base. Their base this year is highly motivated. They don't need to do more to crank up the anger, the energy that's there on the right.

The second, I think, and more important reason, is they have very good issues to deal with in this midterm--the economy, the size and scope of government, debt and deficit. Those are issues that unify their entire coalition and also reach out to independents to introduce in a significant and loud way same-sex marriage would threaten to pull away from that-- pull that coalition apart.

JOHN DICKERSON: Distract. Okay. If it's going to keep the Republicans quiet on this issue, what about the Democrats? How do they handle this?

DAN BALZ: Well, the Democrats are equally conflicted or-- or quiet on this. Because while much of the Democratic base favors same-sex marriage, the truth is most elected officials including President Obama are opposed to it. And so, there is conflict within their base. They don't want to really get into this at this point and stir things up. The President has stayed away from this issue for the most part, as have most other Democrats. So I don't think you're-- going to see Democrats trying to leap to make this into an issue in the fall. Even in-- even in some districts. I think where this will play is in some conservative districts in some red states. Individual Republicans will use it, particularly, through micro-targeting. They will reach to voters not with broad messaging but by direct mail or phone calls things like that.

JOHN DICKERSON (overlapping): That's it. Go on.

JAN CRAWFORD: And-- keep in mind, though, too. I mean, this is the first ruling by one federal judge and it's going to be appealed. This case is going to get to the Supreme Court pretty close to 2012. So, you know whether or not it's an issue in this year's midterm or not it's going to be an issue in the presidential election.

DAN BALZ (overlapping): I think that's right. And I think--

JAN CRAWFORD: And President Obama is going to have to s-- I mean, what does he do?

DAN BALZ: And-- and I think, as you said, the question is public opinion is changing on this, and fairly dramatically over the last four or five years. But it's not at the point where there's majority opinion in a majority of the states in favor of same-sex marriage. The court may end up ruling on this long before public opinion reaches to the conclusion a majority favors same-sex marriage.

JOHN DICKERSON: Jan, I want to ask you about another legal issue. The same-sex case is about the 14th Amendment. There's also been some Republicans talking about the 14th Amendment in another context, in terms of this automatic birthright citizenship in the United States. What's happening on that front?

JAN CRAWFORD: Well, I had about an hour-long talk about this actually on Friday with Senator Lindsey Graham. And this is really kind of one component of what he sees and is pushing is

some broader immigration reform. And it-- he believes that it is a real problem that people are coming to this country illegally, having babies, and then they're automatically U.S. citizens. And then they kind of piggy-back, the parents can piggy-back on those kids to stay here in this country illegally.

He has all these figures. There's been a fifty-three-percent increase in births to foreign people, who've come here to have their babies in the last four years alone. So, this is a way he wants to look at the 14th Amendment and say maybe it's time for us to rethink that. Remember the 14th Amendment which is sacrosanct I think to-- to so many people was passed to give citizenship rights to the freed slaves. Because obviously the Southern States weren't going to be doing that unless the federal government stepped in.

So he's saying it's time to rethink this. When we're really looking at immigration reform as part of a broader package, securing the borders, giving a path to citizenship for the twelve million people who are here legally now, having some kind of worker ID card, and then also stopping this practice where people can come here illegally or not, have children here, and those children be U.S. citizens.

JOHN DICKERSON: Dan, this is an issue, Republicans want to talk about as opposed to the same-sex marriage.

DAN BALZ: Absolutely. I mean I think what you're seeing is that almost all of the elements of the immigration debate that are being discussed now, public opinion tends to be on the side of where the Republicans stand.

The Arizona Immigration Law--there are a lot of Democrats particularly, in the west, who are very unhappy that Justice Department and the President decided to step in on that case, feeling that this was a moment that they didn't want to get into an issue like that that the administration needed to stay focused on the economy.

The 14th Amendment issue is another one. I mean we are a long way away from any serious legislating on immigration reform. It died this year. It will-- it may come back next year, but we're a long way away from that. Nonetheless, this discussion is lively right now. And it is helping the Republicans.

JOHN DICKERSON: Okay. Dan Balz, thanks so much. We're going to have to go, Jan. thanks.

JAN CRAWFORD (overlapping): (INDISTINCT)

JOHN DICKERSON: And we'll be right back.

(ANNOUNCEMENTS)

JOHN DICKERSON: That's all for today. Bob Schieffer will be back next week. I'm John Dickerson. Thanks for watching FACE THE NATION.

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