

# The New York Times

New York: Today, sunny, hot, a few thunderstorms. High 90. Tonight, becoming cooler. Low 60. Tomorrow, some sun, cooler. High 77. Yesterday, high 93, low 72. Details, page C19.

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\$1 beyond the greater New York metropolitan area.

60 CENTS



Jack Manning/The New York Times

## Net for Summer

head-for-the-beach day — and these young people headed for Coney Island — yesterday's heat was not quite a record: 5 degrees short of the peak for a June 19, set last year. Today is expected to be partly sunny and not quite so hot.

## Russia Allows Rebels to Leave With Hostages

### Nearly All the Demands Of Chechens Are Met

By STEVEN ERLANGER

**BUDYONNOVSK, Russia, June 19** — In a severe humiliation for Russia's military and Government, a Chechen commando leader who terrorized this small Russian town and took up to 2,000 hostages was allowed to leave freely today for Chechnya with his fighters and about 150 hostages after nearly all his demands had been met.

After nine hours of intense negotiations, as the people of Budyonovsk waited on street corners in the broiling sun to discover the fate of their loved ones, the Chechen commando leader, Shamil Basayev, and his entourage sped out of the gates of the hospital complex they seized in a daring raid on Wednesday, leaving most of their hostages, finally free, behind them.

Circled by Russian helicopter gunships, the convoy of seven buses and one refrigerator truck for Chechen bodies was thought to be headed for the Vedeno area of Chechnya. Once the fighters are safely behind Chechen lines there, the hostages — plus 13 Russian journalists, 4 legislators and 6 doctors who volunteered to go — are supposed to be set free.

It was a kind of ending, however unsatisfactory, to six days of horror and cruelty for a little town as unsuspecting of terrorism as Oklahoma City, as well-trained Chechen fighters took a desperate gamble to shock the world, rock the Russian Government and get Russian troops to withdraw from Chechnya.

They succeeded in most of their aims after the failure of two military assaults on the hospital, when the Chechens used Russian women as human shields, placing them at the windows and firing their guns from behind them. The Chechen gunmen killed about 120 people, reportedly including 11 hostages.

With the military option foreclosed, the Russian Prime Minister, Viktor S. Chernomyrdin, agreed in an extraordinary series of televised negotiations with Mr. Basayev to stop the fighting in Chechnya, begin serious peace talks with representatives of the Chechen leader, Dzhokhar M. Dudayev, and guarantee safe passage for the fighters. Those

Continued on Page A10, Column 1

## HIGH COURT LETS PARADE IN BOSTON BAR HOMOSEXUALS

### FOCUS IS ON FREE SPEECH

### 9-0 Ruling Says Government Cannot Interfere as Event Is Form of Expression

By LINDA GREENHOUSE

**WASHINGTON, June 19** — The Supreme Court ruled unanimously today that the private sponsors of Boston's St. Patrick's Day parade had a constitutional right to exclude marchers whose message they reject, including those who seek to identify themselves as gay, lesbian, and bisexual Irish-Americans.

Justice David H. Souter said in his opinion for the Court that a parade was a form of expression with which the government may not interfere, even for the "enlightened" purpose of preventing discrimination. "One important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say," he said. [Excerpts, B6.]

The decision overturned a 1994 ruling by the Supreme Judicial Court of Massachusetts, which held that Boston's venerable St. Patrick's Day parade came within the state civil rights law's definition of a "public accommodation." As such, the parade could not discriminate on the basis of "sexual orientation," the state court said.

The parade sponsors, the South Boston Allied War Veterans Council, canceled the event last year, after a lower state court had reached the same conclusion. On St. Patrick's Day this year, the marchers carried black flags rather than green in a protest against the state court decisions. The gay group did not march.

The ruling today will also resolve a similar dispute over the St. Patrick's Day parade in New York, where the sponsoring organization has been permitted under a Federal District Court decision to exclude marchers seeking to identify themselves as homosexuals. [Article, B6.]

Although the Court took no account of other gay rights issues that are or may be soon be before it, the ruling could have some bearing on the inevitable Supreme Court challenge to the Clinton Administration's "don't ask, don't tell" policy on homosexuals in the military. By treating as a form of expression the gay marchers' effort to identify themselves as homosexuals, the decision

Continued on Page B6, Column 1

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## Behind Alien Center Melee, A Corporation of Hoteliers

By JOHN SULLIVAN

James F. Slattery started small, managing a hotel on the edge of Kennedy International Airport. He kept the Riviera hotel filled through a contract with the Federal Government to absorb the overflow from immigration jails, which convinced him that the future of the lodging industry lay not with tourists but with inmates.

In six years, Mr. Slattery and other partners built the fifth largest prison business in the country, as Federal and local governments turned increasingly to private companies to handle the exploding inmate population. Esmor Correctional Services, a publicly traded company based in Melville, L.I., projects earnings of more than \$36 million this year. As the company hired former high-ranking immigration officials for their expertise, it expanded and now runs 10 halfway houses, boot camps and detention centers from Seattle to Brooklyn.

Esmor's newest jail, an Immigra-

tion and Naturalization Service, echo the troubles that have dogged its rapid expansion around the country.

They reflect what can occur when a small company is able to grow quickly in an expanding field with limited oversight, particularly a field that used to be the exclusive province of the Government.

In California, Esmor's first contract with the Federal Government, a \$12.2 million contract to build an immigration jail on an Indian reservation, fell through after Esmor failed to persuade the Indians to allow it. In Seattle, after Esmor opened its immigration detention center, immigrants barricaded

Continued on Page B4, Column 1

## Big Merger to Create Bank Giant in East

In a deal that will create a banking giant from Connecticut to Florida, the First Union Corporation of Charlotte, N.C., plans to buy First Fidelity Bancorp for \$5.4 billion in stock.

The deal, which would create the nation's sixth-largest banking company, is expected to increase the pace of consolidation in the industry.

Indeed the deal for First Fidelity, New Jersey's largest independent bank, could be the first shot in a new battle for Northeast institutions, which have been preoccupied with recovering from their bad real estate loans and have not been actively buying smaller banks.

For New Jersey, the deal ends the independence of the state's largest bank. But the impact on First Fidelity employees and bank customers will be moderate.

Article, page D1.

## Israel's Russians Organize to Win Respect

By CLYDE HABERMAN

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The Irish-American Gay, Lesbian and Bisexual Group of Boston, which was formed for the purpose of marching in the city's St. Patrick's Day parade, participated in the event twice, in 1992 and 1993. Members marched in South Boston during the 1993 parade. Bill Greene/The Boston Globe

## Justices Rule Boston Irish Parade Can Exclude Gay Marchers

Continued From Page A1

at least theoretically could bolster the argument that identifying oneself as a gay service member is a form of expression and thus constitutionally protected.

The recent drama surrounding the parades in Boston and New York has often been depicted as a struggle over the right of gay people to participate on equal terms in civic celebrations. But as the Supreme Court analyzed the case today, the issue was one of free speech, not gay rights as such.

It was crucial to the outcome that the Court analyzed the parade as a private event. The gay marchers had originally sued the city of Boston, arguing that the parade, sponsored by the veterans' group since 1947, was in effect an official function. They lost on that issue in the state courts and did not appeal it to the Supreme Court. Had the Court viewed the parade as a public function, the gay marchers would almost surely have prevailed, because the Court's precedents forbid the government to favor some speakers over others in a public forum.

Justice Souter noted that the Boston organizers made no effort to weed out homosexuals who might have marched as individual participants, instead objecting only to the banner proclaiming the name of the Irish-American Gay, Lesbian and

### A critical point: considering the parade as a private event.

Bisexual Group of Boston. The group, known as GLIB, was formed in 1992 for the purpose of marching in the parade. Its members marched in 1992 and 1993 after going to court in successful challenges to the organizers' denial of their application.

Justice Souter said that just as the parade itself was a form of expression, so was the marchers' banner identifying themselves as gay Irish-Americans. Whatever the precise message of their participation, Justice Souter said, it was at least to "bear witness to the fact that some Irish are gay, lesbian, or bisexual."

"The presence of the organized marchers," he added, "would suggest their view that people of their sexual orientations have as much claim to unqualified social acceptance as heterosexuals and indeed as members of parade units organized around other identifying characteristics."

This finding that the gay marchers' self-identifying presence was also a form of expression was also crucial to the outcome. The group's

lawyer, John Ward, argued before the Court in April that there was no "extrinsic message" entailed in simply marching under a banner with the group's name.

The Court did not analyze this point at length, but rather appeared to accept as a given that the marchers' banner was inherently a form of expression. This portion of the opinion could possibly prove important in the coming months, when the Court will inevitably be asked to address the constitutionality of the Administration's policy on homosexuals in the armed forces.

Because Supreme Court precedent probably forecloses a successful challenge to this policy on the basis of the constitutional right to privacy, which the Court has ruled does not apply to homosexuality, the strongest challenge may be one based on the First Amendment premise that identifying oneself as gay is a form of expression deserving of constitutional protection.

While the decision today in no way foreordains the success of such a challenge, a finding by the Court that identifying oneself as a homosexual is not a form of expression could have raised the hurdle even higher.

Another crucial element in the decision today was the Court's rejection of the Massachusetts courts' finding that the St. Patrick's Day parade was a simple "public accom-

modation," having the status under the state's civil rights law of a hotel or restaurant that must be open to all.

Justice Souter said a parade was inherently a form of expression that seeks to communicate to an audience. To qualify as expression, a parade need not be particularly selective or convey a coherent theme, he said.

The key to the Court's analysis was what Justice Souter called "the general rule of speaker's autonomy." It did not matter whether a speaker's message was "misguided or even hurtful," he said, adding "While the law is free to promote a sort of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government."

In its unanimity, the decision, *Hurley v. Irish-American Gay Group No. 94-749*, was rare for a Court that so often seems to disagree on fundamental constitutional principles, let alone on their application to specific cases. The explanation probably lies in the care Justice Souter took to ground his opinion in basic, noncontroversial First Amendment law. "Our holding today rests not on any particular view about the Council's message but on the Nation's commitment to protect freedom of speech," he said.

# Excerpts From Court Opinion Barring Homosexuals From Boston Parade

By The New York Times

WASHINGTON, June 19 — Following are excerpts from the Supreme Court's opinion today that the privately sponsored St. Patrick's Day parade in Boston has a constitutional right to exclude marchers who seek to identify themselves as gay. Justice David H. Souter wrote the opinion in *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, which was unanimous. There were no separate opinions.

## BY JUSTICE SOUTER, For the Court

The issue in this case is whether Massachusetts may require private citizens who organize a parade to include among the marchers a group imparting a message the organizers do not wish to convey. We hold that such a mandate violates the First Amendment.

March 17 is set aside for two celebrations in South Boston. As early as 1737, some people in Boston observed the feast of the apostle to Ireland, and since 1776 the day has marked the evacuation of royal troops and Loyalists from the city.

The tradition of formal sponsorship by the city came to an end in 1947, however, when Mayor James Michael Curley himself granted authority to organize and conduct the St. Patrick's Day-Evacuation Day Parade to the petitioner South Boston Allied War Veterans Council.

1992 was the year that a number of gay, lesbian, and bisexual descendants of the Irish immigrants joined together with other supporters to form the respondent organization, GLIB, to march in the parade as a way to express pride in their Irish heritage as openly gay, lesbian and bisexual individuals, to demonstrate that there are such men and women among those so descended, and to express their solidarity with like individuals who sought to march in New York's St. Patrick's Day Parade.

If there were no reason for a group of people to march from here to there except to reach a destination, they could make the trip without expressing any message beyond the fact of the march itself. . . . We use the word "parade" to indicate marchers who are making some sort of collective point, not just to each other but to bystanders along the way. . . . Parades are thus a

form of expression, not just motion. . . .

The protected expression that inheres in a parade is not limited to its banners and songs, however, for the Constitution looks beyond written or spoken words as mediums of expression. Noting that "symbolism is a primitive but effective way of communicating ideas," our cases have recognized that the First Amendment shields such acts as saluting a flag (and refusing to do so), wearing an arm band to protest a war, displaying a red flag, and even "marching, walking or parading" in uniforms displaying the swastika. As some of these examples show, a narrow, succinctly articulable message is not a condition of constitutional protection, which if confined to expressions

group that the council has approved to march. Instead, the disagreement goes to the admission of GLIB as its own parade unit carrying its own banner. Since every participating unit affects the message conveyed by the private organizers, the state courts' application of the statute produced an order essentially requiring petitions to alter the expressive content of their parade. Although the state courts spoke of the parade as a place of public accommodation, once the expressive character of both the parade and the marching GLIB contingent is understood, it becomes apparent that the state courts' application of the statute had the effect of declaring the sponsors' speech itself to be the public accommodation. Under this approach any contingent of protected individuals with a message would have the right to participate in petitioners' speech, so that the communication produced by the private organizers would be shaped by all those protected by the law who wished to join in with some expressive demonstration of their own. But this use of the state's power violates the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message.

"Since all speech inherently involves choices of what to say and what to leave unsaid," one important manifestation of the principle of free speech is that one who chooses to speak may also decide "what not to say." . . .

The council clearly decided to exclude a message it did not like from the communication it chose to make, and that is enough to invoke its right as a private speaker to shape its expression by speaking on one subject while remaining silent on another. . . . Whatever the reason, it boils down to the choice of a speaker not to propound a particular point of view, and that choice is presumed to lie beyond the government's own power to control. . . .

The statute is a piece of protective legislation that announces no purpose beyond the object both expressed and apparent in its provisions, which is to prevent any denial of access to (or discriminatory treatment in) public accommodations on proscribed grounds, including sexual orientation. On its face, the object of the law is to insure by statute for gays and lesbians desiring to



The New York Times

Justice David H. Souter wrote yesterday's Supreme Court opinion that the sponsors of Boston's St. Patrick's Day parade have the right to exclude marchers who identify themselves as gay.

*"We use the word 'parade' to indicate marchers who are making some sort of collective point, not just to each other but to bystanders along the way. . . . Parades are thus a form of expression, not just motion."*

Requiring access to a speaker's message would thus be not an end in itself, but a means to produce speakers free of the biases, whose expressive conduct would be at least neutral toward the particular classes, obviating any future need for correction. But if this is indeed the point of applying the state law to expressive conduct, it is a decidedly fatal objective. . . . Our tradition of free speech commands that a speaker who takes to the street corner to express his views in this way should be free from interference by the state based on the content of what he says. . . . The very idea that a noncommercial speech restriction be used to produce thoughts and statements acceptable to some groups or, indeed, all people, grates on the First Amendment, for it amounts to nothing less than a proposal to limit speech in the service of orthodox expression. The speech clause has no more certain antithesis. . . . While the law is free to promote all sorts of conduct in place of harmful behavior, it is not free to interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may strike the government.

Our holding today rests not on any particular view about the council's message but on the nation's commitment to protect freedom of speech. Disapproval of a private speaker's statement does not legitimize use of the Commonwealth's power to compel the speaker to alter the message by including one more acceptable to others.

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