

EXHIBIT 2

UNITED STATES GOVERNMENT

U.S. CIVIL SERVICE COMMISSION

Memorandum

Subject: Commission's desire to have a discussion on suitability policy relating to homosexuals

Date: January 8, 1965

In Reply Refer To:

From: Kimbell Johnson

INP:HPC:ojn

Your Reference:

To: Warren B. Irons

Last October Chairman Macy issued a memorandum in which he stated his wish to have a Commission meeting concerning the above subject. This meeting has now been scheduled for January 12, 1965. You asked me to submit to you material relating to this subject.

Our policy on homosexuality has gone through a fairly long process of evaluation and refinement. In order to shed light on this process I propose in this memorandum to trace the highlights leading to the development of our present policy on this matter.

1. Policy prior to 1945 -- Homosexuality -- not distinguished from other immoral conduct.

Prior to 1945 we rated some cases related to homosexuality under our general standards on immoral conduct. Homosexual conduct was not then referred to specifically as a type of immoral conduct.

2. Policy statement of November 11, 1945 -- Homosexuals not suitable for Federal employment and debarment is applicable.

Page C2.01.05 of the Organization and Policy Manual, transmitted by Manual Letter 455 of November 11, 1945, read as follows:

Homosexuals are not considered suitable persons for Federal employment. Examples of evidence acceptable as proof by the Commission are court records or convictions for some form of perversion, statement to that effect by the employee to co-workers or to his physician, admittance to a hospital for that reason, admission by the employee to a Commission representative or other reliable source of information. In the absence of proof, such persons must be considered acceptable for Federal employment insofar as suspicion of homosexuality is concerned.

Page C2.04.03 of the same letter stated:

Homosexuals are not considered suitable persons for Federal employment and generally debarment is applicable when proof of homosexuality is present.

3. Statement of Senate Subcommittee in 1950 that homosexuals are unsuitable for Federal employment.

The Senate Subcommittee of the Committee on Expenditures in the Executive Department made a study of the employment of homosexuals in the Federal service. We worked closely with this subcommittee in running down the status of homosexuals who, according to information gathered by the subcommittee, were still employed in the Federal service. In the report of the subcommittee entitled "Employment of Homosexuals and other Sex Perverts in the Government" published December 15, 1950, the following conclusion was stated:

There is no place in the United States Government for persons who violate the laws or the accepted standards of morality, or who otherwise bring disrepute to the Federal service by infamous or scandalous personal conduct. Such persons are not suitable for Government positions and in the case of doubt the American people are entitled to have errors of judgment on the part of their officials, if there must be errors, resolved on the side of caution. It is the opinion of this subcommittee that those who engage in acts of homosexuality and other perverted sex activities are unsuitable for employment in the Federal Government. This conclusion is based upon the fact that persons who indulge in such degraded activity are committing not only illegal and immoral acts, but they also constitute security risks in positions of public trust.

4. Issuance in November 1956 of a Suitability Rating Examiners Handbook -- IN 204, in which guides as to acceptable evidence of homosexuality were established as well as guides for handling cases of persons previously rated ineligible and debarred on homosexual grounds.

In November 1956 we issued for the first time a Suitability Rating Examiners Handbook. In it we revised in part the material which had formerly been in Chapter C2 of the Organization and Policy Manual. Our general guides on homosexuality in the handbook then read as follows:

Homosexuality, sexual perversion, lewdness and lascivious conduct -- A person whose conduct brings reproach or shame to, reflects discredit upon, or disgraces him, is not suitable for Federal employment. Persons about whom there is evidence that they are homosexuals or sexual perverts, or who engaged in lewd or lascivious conduct are not suitable for Federal employment. In acting on such cases, the Commission will consider:

- (1) Arrest records, court records or convictions for some form of homosexuality, perversion or other lewd or lascivious conduct.

- (2) The person's statement or reliable medical evidence that he is a homosexual or that he engages in lewd, lascivious or perverted conduct.
- (3) Credible information from reliable sources concerning an individual's reputation and conduct.

Also in the original version of IN-204 we included general guides concerning the processing of cases involving homosexuality or sexual perversion for which debarment had previously been imposed. These guides are still in the present Suitability Rating Examiners Handbook and read as follows:

In cases involving sexual deviation when the previous decision was ineligibility and debarment for an appropriate period this guide is directly applicable. The previous evidence may be considered in a subsequent case but in and of itself may not form the basis for further adverse action. In such cases a careful and thorough investigation must be made to determine whether complete rehabilitation has been effected. Among acceptable evidence of rehabilitation are:

- (1) Severance of association with persons known or suspected of being sexual deviates;
 - (2) Discontinuing the frequenting of places known to be "hangouts" or residences of sexual deviates;
 - (3) Seeking and obtaining competent medical assistance, and
 - (4) The attitude and reputation of the person since corrective action was taken.
5. Interbureau study of 1960 of rating problems including homosexuality which culminated in a high level panel review of all cases involving immorality, including homosexual conduct, in which removal action is contemplated plus a simplification of the definition of immoral conduct and restatement of the general guides on homosexuality.

In February 1960, you appointed a committee under the Chairmanship of Mr. Oganovic to look into the whole matter of suitability ratings to identify problem areas, and to consider what approaches could be used in solving the various problems raised. Members of the committee were Messrs. Blann, Foley, Meloy and Stahl. Technical advice and staff assistance were provided the Committee by me and Hugh Crowe. One of the problem areas identified and discussed at length by the committee in morals cases was the possible lack of objectivity and presence of bias in instances of persons rating morals cases. The committee recommended that we revise our instructions on rating cases involving

immorality and further recommended that in all morals cases, when removal is contemplated, the cases should be reviewed, prior to final action by a responsible panel of three members at a level no lower than GS-13. These recommendations were approved by you and the Commissioners. The revised instructions as they relate to immoral conduct and homosexuality or sexual perversion were incorporated in a July 1960 revision of the Suitability Rating Examiners Handbook.

They read in part as follows:

1. A responsible panel of three persons of known maturity and good judgment at a level not lower than grade GS-13 will review all cases where
 - a. A question of immorality is involved.... (pages 1 and 2 of IN-204).

And further:

Definition

This section of the handbook concerns itself with immoral conduct as reflected in sexual behavior.

General Guides

Homosexuality and sexual perversion -- Persons about whom there is evidence that they are homosexuals or sexual perverts are not suitable for Federal employment. In acting on such cases, the Commission will consider:

- (1) Arrest records, court records or convictions for some form of homosexuality or sexual perversion.
 - (2) The person's statement or reliable medical evidence that he is a homosexual.
 - (3) Credible information from reliable sources concerning an individual's reputation and conduct relating to homosexuality or sexual perversion (p. 31, IN-204).
6. Revision of instructions in July 1963 to provide clearly that evaluations must be based on homosexual acts as distinguished from homosexual tendencies.

There had been some criticism that our general guides on homosexuality did not distinguish clearly between homosexual tendencies and overt homosexual acts. In order that there could be no misunderstanding on

this point, in July 1963 we changed our general guides on the subject in the Suitability Rating Examiners Handbook to read as follows:

General Guides

Homosexuality and sexual perversion -- Persons about whom there is evidence that they have engaged in or solicited others to engage in homosexual or sexually perverted acts with them, without evidence of rehabilitation, are not suitable for Federal employment. In acting on such cases the Commission will consider arrest records, court records, or records of conviction for some form of homosexuality or other credible information indicating that the individual has engaged in or solicited others to engage in such acts with him. Evidence showing that a person has homosexual tendencies, standing alone, is insufficient to support a rating of unsuitability on the ground of immoral conduct.

7. Implementation of policy on homosexuals.

We have made continuous efforts to see that the general guides on this subject were followed by all rating officers of the Commission. For example, in February 1960 you directed me, in view of the number of basic changes in the rating guides recommended by Mr. Oganovic's committee, to visit each region separately to explain in detail and to discuss fully the impact of these changes on our rating actions. In carrying out this directive I was careful to emphasize the importance of the panel review by persons in GS-13 or above of questions of immorality and the necessity of achieving objectivity and lack of bias in such cases. I was supported in this task by instructions already in our Suitability Rating Examiners Handbook such as the following:

Persons authorized to analyze, make recommendations and take final rating actions must be selected with care. Maturity of judgment, objectivity, freedom from personal bias and the possession of good common sense are essential prerequisites for performance of this function.

Also, the rating examiner "should not establish in his own mind an unreasonably high, artificial, or ideal standard and consider all applicants who do not measure up to this standard as being unqualified." (p. 32, In-204).

The guides on homosexuality were stressed in our latest round of refresher training courses for investigators as well as in our post-audit of regional office cases. In August 1963 we issued special instructions on conducting special interviews which included a section on homosexuality as follows:

Homosexuality is another special area that is causing concern. There have been many instances in which the matter is presented

as "The Commission has information that you are a homosexual," or "The Commission has received information that you have engaged in homosexual acts." This has been done even when there is specific information in file of such nature that it can be used without violating a pledge of confidence. The disqualification may be immoral or criminal conduct. The first illustration presumes immoral conduct without actually alleging it; the second, while slightly better, does not indicate whether the acts occurred yesterday or twenty years ago. The first illustration is completely inadequate from a rating standpoint unless an admission is offered or volunteered. A question such as "The Commission has received information that you have recently and in the past engaged in homosexual acts." with such specifics as may be permissible, is preferred.

8. Conclusion

In this memorandum I have attempted to point out the highlights leading to the development of our present policy on this subject. On the whole these developments show that our policy has been subject to frequent scrutiny and has not been inflexible, that is, it has been changed as a need for change has been demonstrated. We have made every provision, including provision for high level panel review prior to final action in removal cases, to insure that our evaluations in these cases will be objective and not subject to an individual evaluator's bias. It is no doubt true that in the course of developing our present policy we may have taken action in some cases which we would not now take under our present guides. It is doubtless equally true that we have not been able to take removal action in other cases in which such action was justified because of our inability to identify specifically sources of information. These sources would be for the most part confessions or statements of witnesses who participated in overt acts but who would not allow their testimony to be used in personal hearings or letters of interrogatory.