

The Mattachine Society of Washington, D.C.

The Legal Advisory Files / "Homosexuals" and "Suitability" of the Office of General Counsel (OGC) United States Civil Service Commission and the Office of Personnel Management (a sampling)

Discovered January 27, 2015 at the National Archives, College Park, Maryland by the Mattachine Society of Washington, D.C. working with pro bono legal counsel McDermott Will & Emery after successive FOIA requests to OPM and the Archives;
And
Select "Issuances" of the U.S. Civil Service Commission, discovered at National Archives, College Park, Maryland; and the Kameny Papers, Library of Congress, Washington, D.C.

The General Counsels:

L.V. Meloy--CSC

L.M. Pellerzi--CSC

Anthony L. Mondello--CSC

Margery Waxman (1980/1981, Office of Personnel Management)

Office of the Executive Director: Warren B. Irons

Bureau of Programs and Standards: O. Glenn Stahl, Director

Regulations and Instructions Division: John W. Steele, Chief

Civil Service Commission Executive Director: Nicholas J. Oganovic

Chairmen: John W. Macy, Jr.(Kennedy, Johnson);

Robert E. Hampton (Nixon); Alan K. Campbell (1979-1981, OPM)

"Our tendency to "lean over backwards" to rule against a homosexual is simply a manifestation of the revulsion which homosexuality inspires in the normal person. What it boils down to is that most men look upon homosexuality as something uniquely nasty, not just as a form of immorality."

John W. Steele, Chief

U.S. Civil Service Commission, 1964

Charles Francis

President, Mattachine Society of Washington, ccfrancis@aol.com

<http://www.mattachinesocietywashingtondc.wordpress.com>

CRITIC'S NOTEBOOK

For high court, a hateful history at close hand

BY PHILIP KENNICOTT

The preferred terms were "pervert" or "deviate," and if they needed further elaboration, favored adjectives included criminal, notorious, dishonest, immoral and disgraceful. There were no niceties of language when it came to the way the U.S. government treated gay and lesbian people for most of the past century.

"Washington Post" - 4.28.15

Style

In America's past, a culture of animus against federal workers



By Philip Kennicott Art and architecture critic April 27

The preferred terms were “pervert” or “deviate,” and if they needed further elaboration, favored adjectives included criminal, notorious, dishonest, immoral and disgraceful. There were no niceties of language when it came to the way the U.S. government treated gay and lesbian people for most of the past century.

As the Supreme Court hears arguments Tuesday about the constitutionality of gay marriage, one friend-of-the-court brief under consideration is based on a deep document dive into the government’s decades-long war on gay and lesbian civil service employees. The Mattachine Society of Washington, D.C., with the help of its pro bono legal partner, the law firm of McDermott Will & Emery, has created an insider’s look at how the fear and hatred of gay people was codified, disseminated, defended and adapted after homosexuals were officially banned from the civil service by President Dwight D. Eisenhower in 1953.

Philip Kennicott is the Pulitzer Prize-winning Art and Architecture Critic of The Washington Post. He has been on staff at the Post since 1999, first as Classical Music Critic, then as Culture Critic. [View Archive](#)

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“It took us three years of FOIAs and digging in the boxes of the National Archives,” says Charles Francis, president of the Mattachine Society, a new group researching gay and lesbian history that bears the same name as a pioneering gay rights organization. Francis used Freedom of Information Act (FOIA) requests to locate documents that show what was then known as the Civil Service Commission working diligently to fire gay and lesbian employees.

The breakthrough came in January when researchers were given a box with the labels “Homosexual” and “Suitability.” It contained CSC files rife with the kind of language that even most conservative opponents of gay rights now avoid.

“Our tendency to ‘lean over backwards’ to rule against a homosexual is simply a manifestation of the revulsion which homosexuality inspires in the normal person,” a CSC supervisor wrote in a 1964 memo typical of the era. “What it boils

down to is that most men look upon homosexuality as something uniquely nasty, not just as a form of immorality.”

“It is against this historical backdrop that this culture of animus developed and permeated every institution in American life,” says Lisa A. Linsky, a partner at McDermott Will & Emery who co-led the team that drafted what has been dubbed “the animus amicus.” “This is the basis, the context, the foundation of the marriage bans that are before the Supreme Court.”

While it isn’t surprising that homophobia was acceptable in government circles in the 1950s and ’60s, the Mattachine Society research yields texture and nuance, including the specific language used to confront people accused of being gay (“The commission has received information that you have recently and in the past engaged in homosexual acts,” was the preferred opener). As efforts to fire gay employees came under increasing legal scrutiny, the documents show the CSC going to tortuous lengths to maintain its policies, changing its language and articulating new rationales.

Linsky traces the evolution of anti-gay animus in the federal government from an initial period in the 1940s when “loyalty” was the main concern, through other justifications, including “suitability” for employment and risks to national security (during the McCarthy era), to a kind of catch-all argument about the “promotion of efficiency of service,” which was essentially about the discomfort gay employees might cause in the workplace.

But as the courts and eventually the media became more sympathetic to gay rights concerns, it began to look strange that the federal government was investigating messengers, mail carriers, typists and low-level clerks under suspicion of homosexuality. Yet the policy had a strange, almost self-perpetuating life of its own, and it became increasingly costly. One fascinating document details the price tag of “suitability” investigations from 1953 to 1970. Tens of thousands of employees were pursued under the specifics of Eisenhower’s notorious Executive Order 10450, which required the federal government to terminate anyone it considered a “sexual pervert.” And the cost of these investigations increased year by year, as investigators traveled the country to dig deeper into employees’ private lives.

That diligence led to sometimes absurd consequences. In 1958, a young African American air traffic controller named William Dew was deemed “unsuitable” because he acknowledged having sex with men several times when he was a college student. Dew was heterosexual, married with three children, and openly admitted his earlier same-sex encounters, meaning he wasn’t subject to coercion. And he had a good employment record.

Dew fought his termination, and in 1964, he persuaded the Supreme Court to hear his case — at which point the Civil Service Commission reinstated him with back wages rather than risk losing a court case that might establish

For Francis, however, one of the most disturbing signs of a new amnesia about anti-gay attitudes comes from Chief Justice John G. Roberts Jr., who argued that to claim laws against gay marriage are related to the longer history of anti-gay animus would “tar the political branches with the brush of bigotry.” In his dissent to the decision that overturned a key provision in the 1996 Defense of Marriage Act, Roberts chastised gay-marriage supporters for citing “snippets of legislative history” in making their case.

“It minimizes the history of six decades,” says Francis. “There is a unique historical experience here to gay and lesbian Americans. To minimize it by calling it ‘snippets’ is to walk away from any claims for justice.”

The process of historical recovery won't be easy, or painless. Having participated in the government's anti-gay agenda decades ago may be embarrassing to older politicians and retired bureaucrats. The Washington Post reported in 2009 that television commentator Bill Moyers approached the FBI looking for dirt on suspected homosexuals while he was serving in the Lyndon B. Johnson administration. Moyers didn't respond to an e-mail request for comment, but he said at the time that he couldn't remember the details of the incident.

But one of Moyers's colleagues, John Macy, the longtime head of the CSC, was passionately engaged with rooting out gay people from public service. In the CSC documents, he emerges as a dogged defender of anti-gay prejudice. In a 1966 letter written to gay rights advocates, the CSC defended its policy based on a laundry list of homophobic fears: “the apprehension caused other employees of homosexual advances, solicitations or assaults, the unavoidable subjection of the sexual deviate to erotic stimulation through on-the-job use of common toilet, shower and living facilities, the offense to members of the public who are required to deal with a known or admitted sexual deviate to transact Government business . . .”

Macy reviewed the memo and deemed it “effectively done” and said it “sets out a humane, public interest position.” Macy, who went on to become president of the Corporation for Public Broadcasting, died in 1986.

The gulf between the public face of the CSC and its internal homophobia even extends to memories of Macy. Moyers, in an email, said he was “bewildered” by the claims of Macy's dislike of gay people: “In my dealings with him he was always emphasizing the need to recruit the best person for the available position. He seemed to look on the civil service as a calling. Of course it was a wholly different era and if he were then privately scornful of homosexuality, he was participating in an almost universal cover-up. The fact that he never disclosed to some of us with whom he closely worked such bias -- if it existed, and from my dealings with him I have no notion

whatsoever that it did -- witnesses to what we can now acknowledge was a time of vast denial."

But the researchers and authors behind the "animus amicus" aren't out to embarrass anyone. Rather, they seek to connect the past to the present, in hopes that the Supreme Court will recognize that laws against gay marriage are based on and help perpetuate bigotry.

"Who would have thought that these documents would have become relevant in the 2000s on an issue like marriage equality?" says Linsky. Without them, she says, "We wouldn't have the evidence to back up what we as gay people know, that we were despised."

Suitability

BPI-.002

MARCH 1969

**THE INVESTIGATIVE AND
SUITABILITY EVALUATION PROGRAMS
of
THE U.S. CIVIL SERVICE COMMISSION**

BUREAU OF PERSONNEL INVESTIGATIONS • KIMBELL JOHNSON, DIRECTOR

Cost and Effectiveness of Full Field Investigations

The following table gives the volume and cost of the Commission's full field investigations program each fiscal year since 1953:

<u>Fiscal Year</u>	<u>Total No. of Cases</u>	<u>Number Conducted under E.C. 10450 (Included in Total No. of Cases)</u>	<u>Unit Cost</u>
1953	35,073		\$201
1954	39,465	8,268	224
1955	34,510	4,535	227
1956	33,946	7,531	237
1957	50,187	12,926	239
1958	31,923	7,449	303
1959	27,121	9,152	348
1960	23,765	8,021	352
1961	25,917	5,896	344
1962	30,172	5,854	351
1963	43,720	7,006	353
1964	38,501	5,822	349
1965	31,698	5,389	396
1966	35,667	10,153	393
1967	39,464	9,163	392
1968	29,498	6,216	418
1969	29,019	5,194	451
1970	24,926	5,195	537

Agencies are billed for the cost of these investigations. A revolving fund of \$4,000,000 to finance the investigations was provided by Public Law 375.

The cost of conducting these investigations has increased since 1953 for several reasons. Included among these were pay increases to all employees of--or approximating-- 7½% in 1955, 10% in 1958, 7½% in 1960, 5% in 1962, 6% in 1964, 3.6% in 1965, 2.9% in 1966, 4½% in 1967 and finally 4.9% in July 1968. In addition there was an overall increase of approximately 25% in travel costs brought about by increase in per diem and mileage allowances approved by Congress in 1955. Other periodic factors are the cost of training new investigators and overtime payments to keep backlogs from increasing.

The most important single factor in the upward cost trend during the late 1950's was the length of the investigative period. Uniformly going back to January 1937 or to the eighteenth birthday, whichever was later, meant a gradual lengthening of the period with each passing year, requiring investigation at more places, added travel, and increased investigating

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In April 1953, Eisenhower issued Executive Order 10450, which instituted new standards for internal security.

Investigators reviewed thousands of government workers deemed possible security risks, and dismissed around 1,500 between 1953 and 1957. Another 6,000 resigned rather than undergo often far-reaching questioning of their personal lives.

Eisenhower Library
TEXT BOARD -

No mention of HOMOSEXUALS
OR LAUNCH OF CSC "SUITABILITY"

SPECIAL

Memo from Mr. Steele to
Mr. Stahl brought about by
Mr. Stahl's request for
comments on a Washington
Post editorial that will be
discussed at a future Com-
mission meeting. (Editorial
dated 10-10-64).

10-10-64

Homosexuality and Government employment
(Chairman Macy's memorandum of October 14, 1964)

NOV 17 1964

PIP:JLN:dwb

John W. Steele /s/ JWS

O. Glenn Stahl

In considering this subject, I believe it is necessary to distinguish at the outset between homosexuality as a security factor and homosexuality as a suitability factor.

The security requirements for Government employment are set forth in Executive Order 10450. The Order provides that the occupant of a sensitive position must have a full field investigation designed to develop information as to whether the employment of that individual is clearly consistent with the interests of national security. Among the kinds of information identified by the Order as pertinent in this regard are the following:

Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

Although there are some dissenting voices, our society generally regards homosexuality as a form of immoral conduct. Also, our social attitudes being what they are, a homosexual is extremely vulnerable to blackmail: exposure means public opprobrium and, in the case of a Government employee, the loss of his job. Thus, under the terms of the Order, evidence of past or present homosexuality renders the individual unacceptable for a sensitive position. Action in these cases, therefore, is determined not so much by policy as by the intent of the Order.

On the suitability side, the essential instructions, standards, and guides required for the rating of suitability cases within the Commission's jurisdiction are contained in FPM Supplement (Internal) 731-71, "Suitability Rating --- Instructions to Suitability Examiners." One of the basic disqualifications listed in this supplement is "Criminal, infamous, dishonest,

John W. Steele
Chief, Program Systems
and Instructions Division,
Civil Service Commission, 1964

immoral, or notoriously disgraceful conduct." The following is excerpted from the discussion of immoral conduct:

"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 ... Evidence showing that a person has homosexual tendencies, standing alone, is insufficient to support a rating of unsuitability on the ground of immoral conduct.

"Other immoral conduct. -- These cases raise special problems because the morals of an individual are generally considered to be his own private affair. Also, there is a wide variation in views, both between individuals and social groups or classes, as to what constitutes immoral conduct. Further, public opinion relating to moral standards shifts from time to time over the years ... Our main concern in these cases is to determine whether or not the immoral behavior is such as to render the applicant, in the minds of responsible people, unfit for Federal employment." It should be clear in reaching an adverse decision in these cases that the Federal service would suffer by permitting the employment of the person."

From the foregoing, it is evident that we set homosexuality apart from other forms of immoral conduct and take a much more severe attitude toward it. In evaluating other morals cases we consider such factors as the seriousness of the act or acts, the age of the individual at the time the conduct occurred, the individual's general reputation, the recency of the conduct, and so on. In evaluating cases of homosexuality, we automatically find the individual not suitable for Federal employment unless there is evidence of rehabilitation. This is our stated policy. There is room for considerable variation in the application of this policy, however, because nothing whatever has been issued to indicate what the term "evidence of rehabilitation" contemplates.

The result is that our evaluations are quite subjective, depending on the strength of the reviewing official's personal aversion to homosexuality in general and his reaction to the circumstances of the particular case at hand. This was apparent from conversations with a number of officials who are or have been engaged in suitability rating or the appellate review of agency actions. For example, one expressed the view that he would regard as rehabilitated and suitable for Federal employment a man who had been the passive partner in a few homosexual acts in his youth but who had since married, had children, and for the past 4 or 5 years lived a seemingly normal life, without questionable associates or habits. He was then asked whether he would regard this same pattern as evidence of rehabilitation in a case when the homosexual conduct had consisted of molesting male children. To this he responded, with some heat, that he did not believe such an offender should ever be allowed in the Federal service.

Some feel that "once a homo, always a homo" and tend to find against anyone who has ever engaged in such activity. This may have been at the root of our sustention of the FAA's action in the Dew case, although the rationale was something like this: homosexual conduct is evidence of some emotional imbalance and indicates instability or immaturity; the work of an airport control tower operator is pressure-filled, rigorous, and demands a high degree of steadiness; since there is reason to believe that Dew may have a basic emotional flaw which may some day give under pressure, he is less than a good risk in a job where the safety of human lives is at stake. The fact remains, however, that Dew's homosexual conduct occurred in his youth; that for many years thereafter he lived a normal life with no recurrence of or apparent interest in homosexual activity, that he had a good work record; and that, to all intents and purposes, he was "rehabilitated."

In summary, it seems clear that this is an area in which there is little objectivity. Although it is Commission policy to rule in favor of the individual if there is evidence of rehabilitation, in actual practice we rarely find evidence of rehabilitation. Really, we do not apply Commission policy at all; we apply our own individual emotional reactions and moral standards. Our tendency to "lean over backwards" to rule against a homosexual is simply a manifestation of the revulsion which homosexuality inspires in the normal person. What it boils down to is that most men look upon homosexuality as something uniquely nasty, not just as a form of immorality. It is problematical whether any study of the subject could result in overcoming an attitude this ingrained.

PIP:JLNammack:dwb t.d. 11-13-64

PIP:JLNammack:dwb rewritten 11-16-64

BCW for PM SAC 11/26/64



UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

YOUR REFERENCE

AUG 27 1965

Mr. Franklin E. Kameny
Chairman, Committee on
Governmental Concerns
P.O. Box 1032
Washington, D.C. 20013

Dear Mr. Kameny:

With respect to your request of August 15, 1965 for a meeting with the United States Civil Service Commission to express your views concerning the Commission's policy toward homosexuals, please be advised that the Commission has designated Mr. L.V. Meloy, General Counsel and Mr. Kimbell Johnson, Director of the Bureau of Personnel Investigations, to meet with representatives of your society.

You may call Mr. Meloy by telephone, 343-7334, who will make arrangements for a mutual time and place for the meeting.

Sincerely yours,

Nicholas J. Oganovic
Nicholas J. Oganovic
Executive Director

Proposed response to the Mattachine Society

January 26, 1966

L. M. Pellerzi
General Counsel

GC:LMP:cd

Chairman Macy

Attached is a draft of a proposed response to the Mattachine Society. It has not been cleared with Kimbell Johnson and may require some minor alterations to reflect interests he deems important. Kim and I have agreed, however, on a somewhat similar approach to be used in the suitability letter in the Scott case.

The draft makes clear what, in fact, should be the actual practice, namely that the Commission's policy is based on overt homosexual conduct, not upon undisclosed private sexual activity. This perhaps amounts to a liberalized refinement of our policy stated in terms most favorable to the Commission. However, I think we will be required to adopt this position before the courts and will be well served by stating it publicly now.

Attachment

GC:LMPellerzi:cd 1-26-66

Homosexuals
-2/25-

February 14, 1966

Memorandum for Mr. L. M. Pellerzi

2/25
L. M. Pellerzi

Subject: Proposed response to the Mattachine Society

I have reviewed with thoughtful care the proposed response to the Mattachine Society. I believe it is most effectively done and sets forth a humane, public interest position. I would appreciate it if you would review this with the other Commissioners and the Executive Director and return it to me for signature.

JWM

(John W. MACT)

attachment

LOW PELLERZZI, WAS A
GENERAL COUNSEL

The Mattachine Society of Washington, D.C.

John W. Macy
LBJ's appointed Chairman
U.S. Civil Service Commission
"Revulsion Letter", 1966

"Pertinent considerations here (for maintaining the ban on homosexuals in government) are the revulsion of other employees by homosexual conduct and the consequent disruption of service efficiency, the apprehension caused other employees by homosexual advances, solicitations or assaults, the unavoidable subjection of the sexual deviate to erotic stimulation through on-the-job use of common toilet, shower and living facilities, the offense to members of the public who are required to deal with a known or admitted sexual deviate."

Letter to The Mattachine Society of Washington, D.C.
(1966) Discovered in a box of mimeographs in
Frank Kameny's attic in 2006. Now part of The Kameny Papers,
Library of Congress, Washington, D.C.

11707
Suitability

GC:LMP:fz
t.d. 1-25-66

Feb 25, 1966

February 25, 1966

OGC Index Digest Office

The Mattachine Society
of Washington
P.O. Box 1032
Washington, D. C. 20013

Gentlemen:

Pursuant to your request of August 15, 1965, Commission representatives met with representatives of the Society on September 3, 1965, to enable the Society to present its views regarding the Government policy on the suitability for Federal employment, of persons who are shown to have engaged in homosexual acts.

The Society was extended 30 days to submit a written memorandum in support of the positions set forth at these discussions to ensure that full consideration could be given to its contentions and supporting data by the Commissioners. On December 13, 1965, the Society filed five documents,* which, along with the substance of the September discussions, have been considered by the Commissioners.

The core of the Society's position and its recommendations is that private, consensual, out-of-working hours homosexual conduct on the part of adults, cease to be a bar to Federal employment. In the alternative it is asked that the Commission activate continuing discussions with representatives of the Society to take a "progressive, idealistic, humane, forward-looking, courageous role" to elicit the holding of objective hearings leading to the adoption of the Society's recommendation.

* "DISCRIMINATION AGAINST THE EMPLOYMENT OF HOMOSEXUALS", dated February 28, 1963, by the Society, "RESOLUTION OF NATIONAL CAPITOL AREA CIVIL LIBERTIES UNION ON FEDERAL EMPLOYMENT OF HOMOSEXUALS", dated August 7, 1964, "A BRIEF OF INJUSTICES" by the Council on Religion and the Homosexual, Inc., San Francisco, California, June 1965, "WHY ARE HOMOSEXUALS PICKETING THE U. S. CIVIL SERVICE COMMISSION", June 26, 1965, by the Society, and "FEDERAL EMPLOYMENT OF HOMOSEXUAL AMERICAN CITIZENS", November 15, 1965, by the Society.

THE "Revulsion" Letter

The Commission's policy for determining suitability is stated as follows:

"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 homosexual conduct or sexual perversion; or medical evidence, admissions, or other credible information 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."

We have carefully weighed the contentions and recommendations of the Society, and perceive a fundamental misconception by the Society of our policy stemming from a basic cleavage in the perspective by which this subject is viewed. We do not subscribe to the view, which indeed is the rock upon which the Mattachine Society is founded, that "homosexual" is a proper metonym for an individual. Rather we consider the term "homosexual" to be properly used as an adjective to describe the nature of overt sexual relations or conduct. Consistent with this usage pertinent considerations encompass the types of deviate sexual behavior engaged in, whether isolated, intermittent, or continuing acts, the age of the particular participants, the extent of promiscuity, the aggressive or passive character of the individual's participation, the recency of the incidents, the presence of physical, mental, emotional, or nervous causes, the influence of drugs, alcohol or other contributing factors, the public or private character of the acts, the incidence of arrests, convictions, or of public offense, nuisance or breach of the peace related to the acts, the notoriety, if any, of the participants, the extent or effect of rehabilitative efforts, if any, and the admitted acceptance of, or preference for homosexual relations. Suitability determinations also comprehend the total impact of the applicant upon the job. Pertinent considerations here are the revulsion of other employees by homosexual conduct and the consequent disruption of service efficiency, the apprehension caused other employees of homosexual advances, solicitations or assaults, the unavoidable subjection of the sexual deviate to erotic stimulation through on-the-job use of common toilet, shower, and living facilities, the offense to members of the public who are required to deal with a known or admitted sexual deviate to transact Government business, the hazard that the prestige and authority of a Government position will be used to foster homosexual activity, particularly among the youth, and the use of Government funds and authority in furtherance of conduct offensive both to the mores and the law of our society.

In the light of these pervading requirements it is upon overt conduct that the Commission's policy operates, not upon spurious classification of individuals. The Society apparently represents an effort by certain individuals to classify themselves as "homosexuals" and thence on the basis of asserted discrimination to seek, with the help of others, either complete social acceptance of aberrant sexual conduct or advance absolution of any consequences for homosexual acts which come to the attention of the public authority. Homosexual conduct, including that between consenting adults in private, is a crime in every jurisdiction, except under specified conditions, in Illinois. Such conduct is also considered immoral under the prevailing mores of our society.

We are not unaware of the numerous studies, reports and recommendations pertaining to the criminal aspects of aberrant sexual conduct and the unequal and anomalous impact of the criminal laws and their enforcement upon individuals, who for whatever cause, engage in homosexual conduct.* It is significant to note, however, that the renowned Wolfenden Report, which recommended that consensual homosexual conduct, in private between persons over 21 years of age, be excluded as an offense under the criminal law of England, nevertheless recognized that such conduct may be a valid ground for exclusion from certain forms of employment. id p. 22. Whether the criminal laws represent an appropriate societal response to such conduct is a matter properly addressed to the state legislatures and the Congress. It is beyond the province of this Commission.

We reject categorically the assertion that the Commission priss into the private sex life of those seeking Federal employment, or that it discriminates in ferreting out homosexual conduct. The standard against criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct is uniformly applied and suitability investigations underlying its observance are objectively pursued. We know of no means, consistent with American notions of privacy and fairness, and limitations on governmental authority, which could ascertain, or ~~make~~ it desirable to ascertain, the nature of individual private sexual behavior between consenting adults. As long as it remains truly private, that is, it remains undisclosed to all but the participants, it is not the subject of an inquiry. Where, however, due to arrest records, or public disclosure or notoriety, an applicant's sexual behavior, be it heterosexual or homosexual, becomes a matter of public knowledge, an inquiry may be warranted. Criminal or licentious heterosexual conduct may equally be disqualifying, and like homosexual conduct, may become the subject of legitimate concern in a suitability investigation. In all instances the individual is apprised of the matter being investigated and afforded an opportunity to rebut, explain, supplement or verify the information.

* E.g., The American Law Institute, Model Penal Code, Report of the Committee on Homosexual Offenses and Prostitution by the Secretary of State for the Home Department and the Secretary for Scotland, September 1957 (Wolfenden Report), Sex Offenders, Gebhard, Gagnon, Poweroy, Institute of Sex Research, 1965, Sexual Behavior and the Law, Samuel G. Kling, Random House 1965, Homosexuality and Citizenship in Florida, Legislative Investigation Committee Report (1964), Sexual Deviation Research, Calif. Legislature, Judiciary Committee, Subcommittee on Sex Research (1962)

* "Private Consensual Homosexual Behavior: The Crime and its Enforcement," Yale Law Journal, 623, March 1961, "A Psychiatric Evaluation of Laws of Homosexuality," 29, Temple Law Quarterly, 273, Spring 1956.

To be sure if an individual applicant were to publicly proclaim that he engages in homosexual conduct, that he prefers such relationships, that he is not sick, or emotionally disturbed, and that he simply has different sexual preferences, as some members of the Mattachine Society openly avow, the Commission would be required to find such an individual unsuitable for Federal employment. The same would be true of an avowed adulterer, or one who engages in incest, illegal fornication, prostitution, or other sexual acts which are criminal and offensive to our mores and our general sense of propriety. The self-revelation by announcement of such private sexual behavior and preferences is itself public conduct which the Commission must consider in assaying an individual's suitability for Federal employment.

Hence it is apparent that the Commission's policy must be judged by its impact in the individual case in the light of all the circumstances, including the individual's overt conduct. Before any determination is reached the matter is carefully reviewed by a panel of three high level, mature, experienced employees, and all factors thoroughly considered. The fairness of this result, in the light of the investigative evidence including the applicant's statements, is subject to administrative review and may also be judicially reviewed. Hence there are safeguards against error and injustice.

We can neither, consistent with our obligations under the law, absolve individuals of the consequences of their conduct, nor do we propose by attribution of sexual preferences based on such conduct, to create an insidious classification of individuals. We see no third sex, no oppressed minority or secret society, but only individuals; and we judge their suitability for Federal employment in the light of their overt conduct. We must attribute to overt acts whether homosexual or heterosexual, the character ascribed by the laws and mores of our society. Our authority and our duty permit no other course.

By direction of the Commission:

Sincerely yours,

John W. Macy, Jr.
Chairman

3

THE MATTACHINE SOCIETY OF WASHINGTON

September 21, 1962

L. V. Meloy
General Counsel

GC:LVM:d

John W. Macy, Jr.
Chairman

Reference is made to your memorandum of September 15, 1962 regarding the correspondence from the Mattachine Society of Washington and the reply to Mr. Trimble, a free-lance writer.

You state "that any legal implications be fully understood before administrative action is taken." I have reviewed the correspondence keeping in mind the question of constitutionality regarding minority groups, and the administrative process under which the Commission makes determinations as to suitability. During the course of my study I reviewed the case of Franklin E. Kameny. Kameny was an employee of the Army Map Service. The Commission caused his dismissal because of "immoral conduct" based upon evidence of homosexuality.

This case went through the District Court which sustained the Commission, the Court of Appeals sustained, and a writ of certiorari was denied by the Supreme Court. The case of Kameny is pertinent because Kameny as of July 9, 1962 was President of the Mattachine Society of Washington.

I reviewed the Department of Justice file on Kameny and on July 9, 1962, further correspondence with Kameny was foreclosed by the Department. In the brief filed by Kameny, pro se, with the Supreme Court in seeking a certiorari he labored long and hard on his constitutional right. In fact, his whole brief was a constitutional argument and an attempt to persuade interest in the court that he and his kind constituted a "minority group" and entitled to constitutional protection under the same conditions as race and religion. A copy of his brief is attached. The court was not impressed and denied certiorari. The letters we have in the file are reiterations of the arguments presented in Kameny's brief. I think we can dispose of the constitutional question rather quickly.

Howe ... 3

GC:LVM:gdc

April 30, 1963

Honorable Charley Johns
Chairman, Florida Legislative
Investigations Committee
State House
Tallahassee, Florida

*Signed & mailed
May 1, 1963*

Dear Mr. Johns:

I noticed an article in a newspaper from St. Petersburg regarding an explanation given by you of the Committee's two-year study of communism and homosexuality in public institutions in Florida.

Criminal, infamous, dishonest, immoral or notoriously disgraceful conduct constitutes one of the grounds for disqualification for employment in the competitive civil service of the Federal Government. Homosexuality falls within this disqualification.

As General Counsel of the United States Civil Service Commission I am interested in obtaining several copies of your Committee report.

The Federal Government has related problems in this area and I am sure your investigation will shed additional light on a most difficult problem in suitability for government employment.

Sincerely yours,

L. V. Meloy
General Counsel

GC:LVMeloy:gdc 4-30-63



HOMOSEXUALITY AND CITIZENSHIP IN FLORIDA

a report of the florida legislative investigation committee
january, 1964
tallahassee, florida