Letter from John W. Macy, Chairman, U.S. Civil Service Commission, to Mattachine Society of Washington, D.C.

February 25, 1966

*Description:* A letter from Civil Service Commission Chairman John W. Macy that codified the “revulsion of other employees by homosexual conduct” as a legal basis for discrimination by the Civil Service. Macy justifies this “apprehension” of other employees citing “homosexual advances, solicitations or assaults, the unavoidable subjection of the sexual deviate to erotic stimulation through on the job use of common toilets,” among other lurid examples. U.S. District Court Judge Vaughn Walker used this letter in his 2010 ruling that overturned California’s Proposition 8.
The Malachi Society of Washington
Post Office Box 1032
Washington, D.C. 20013

February 25, 1956

Gentlemen:

Frequent to your request of August 15, 1955, commission representatives met with representatives of the Society on September 5, 1955, to enable the Society to present its views regarding the government policy on the suitability for Federal employment of persons who are known to have engaged in homosexual acts.

The Society was extended 30 days to submit a written memorandum in support of its position set forth at these discussions to ensure that full consideration could be given to the contentions and supporting data by the Commissioners. On November 13, 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-viewing board homosexual conduct on the part of adults, comes to be a bar to Federal employment. In the alternative, it is urged that the Commission be made to serve a progressive, idealistic, humane, forward-thinking, courageous role to select the holding of objective hearings leading to the adoption of the Society's recommendations.

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 making such a decision 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 are of the view that no misconception of our position stems from a basic cleavage in the perspective by which this subject is viewed. We do not subscribe to the view which indeed is the core upon which the Malachi Society is founded, that "homoisexual" is a proper term for an individual. Rather we consider the term "homoisexual" 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, emo-
tional, or nervous causals, the influence of drugs, alcohol or other contributing
factors, the public or private character of the acts, the incidence of arrest,
convictions, or of public offense, nuisance or breach of the peace related to the
acts, the notoriety, if any, of the participants, the arrest or effect of rehabilita-
itive efforts, if any, and the admitted acceptance of, or preference for homosex-
ual relations. Suitability determinations also comprehend the total impact of the
applicant upon the job. Dominant considerations here are the validation of other
employees by homosexual conduct and the consequent disruption of service efficien-
cy, the apprehensions caused other employees of homosexual advances, solicitations or
assemblages, the unavoidable contamination of the sexual deviate to erotic stimulation
through on-the-job use of common toilet, showers, 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 to furtherance of
conduct offensive both to the persons and the law of our society.

In the light of these prevailing requirements it is upon overt conduct that the Com-
mision's policy centers, not upon sporadic classification of individuals. The
Society apparently represents an effort by certain individuals to classify themselves
as 'homosexuals' and their acquaintances as homosexuals' and their acquaintances as homosexuals. It is significant to note, however, that the
removal of the 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. If p. 21, Whether
the criminal law 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 prise into the private sex
life of those seeking Federal employment, or that it discriminates in favoring or
hindering homosexual conduct. The standard against homosexual conduct, as set forth in
BRO. 3 INTERNAL REPORTS: Idaho, Georgia, North Carolina, Institute of Sex Research (1965);
SEXUAL BEHAVIOR AND THE LAW, Samuel O. Eling, Random House (1965); HOMOSEXUALITY AND
CITIZENSHIP IN FLORIDA, Legislative Investigation Committee Report (1965); THE AMER-
ICAN LAW INSTITUTE, FEDERAL CRIMINAL PROCEEDINGS, Proposed Official Draft (1965); PRIVATE CON-
SENSUAL HOMOSEXUAL BEHAVIOR: THE CRIME AND ITS ENFORCEMENT, Yale Law Journal, 623
(March 1951); REPORT OF THE COMMITTEE ON HOMOSEXUAL OFFENSIVE AND PROSTITUTION BY THE
SECRETARY OF STATE FOR THE HOME DEPARTMENT AND THE SECRETARY OF SCOTLAND (WOLFENBRO
REPORT) (1957); A PSYCHIATRIC EVALUATION OF LAW OF HOMOSEXUALITY, 29 Temple Law
Quarterly, 273 (Spring 1956) and SEXUAL ORIENTATION RESEARCH, Calif. Legislature
Judiciary Committee, Subcommittee on Sex Research (1952).
notoriously disgraceful conduct is uniformly applied and suitability investigations
underlying its observance are objectively pursued. By now of no means, consistent
with American notions of privacy and fairness, and implicit in governmental autho-
risation, which could ascertain the nature of individual private sexual behavior be-
tween 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 applicants
sexual behavior, be it heterosexual or homosexual, becomes a matter of public know-
ledge, an inquiry may be warranted. Criminal or licentious heterosexual conduct may
equally be disqualifying, and like homosexual conduct, may become the subject of le-
gitimate concern in a suitability investigation. In all instances the individual is
apprised of the matter being investigated and afforded an opportunity to rebut, ex-
plain, supplement or verify the information.

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 emo-
tionally disturbed, and that he simply has different sexual preferences, as some mem-
bers of the Matteconic 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 be-
havior and preferences is itself public conduct which the Commission must consider in
assaying an individuals suitability for Federal employment.

Hence it is apparent that the Commissions 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 thor-
oughly considered. The fairness of this result, in the light of the investigative
evidence including the applicants 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 prefer-
ences 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,

(signed)

John W. Macy, Jr.
Chairman