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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 Commission meeting. (Editorial dated 10-10-64).

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

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John W. Steele /s/ JWS by

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 at 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,

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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.

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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.

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