

FEDERAL EMPLOYMENT
OF
HOMOSEXUAL AMERICAN CITIZENS

A Statement Prepared By:

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At The Request Of:

The United States
Civil Service Commission

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I. Introduction

On September 8, 1965, in the course of a meeting with Mr. Lawrence V. Meloy, General Counsel for the United States Civil Service Commission (hereafter referred to as "the Commission") and Mr. Kimbell Johnson, Director, Bureau of Personnel Investigations of the Commission, both officially representing the Commission, representatives of the Mattachine Society of Washington (hereafter referred to as "the Society"), acting in informal capacity as spokesmen for the homosexual citizens of the United States, were invited (with explicit promise of a reply from the Commissioners themselves) to make a formal written presentation of their position and recommendations in regard to the present policies of the Commission on the employment of homosexual citizens by their government. This document is that presentation.

In our preparation, we have eschewed, although by no means entirely discarded, a narrowly and formally legalistic approach. This is made more specific in certain explicatory footnotes. The Commission has chosen to place the matter upon a basis of morals and mores, which, for administration, they have embedded in legal machinery. We have also chosen to ground our case upon morals and mores -- broader and more fundamental ones than those utilized by the Commission -- and upon certain philosophical principles underlying the relationship between citizen and government in our country. We have used formal legalisms, to a limited degree, for support but not as an indispensable foundation upon which to rest our case.

II. Position of the U. S. Civil Service Commission

The Commission's stand consists of a number of interrelated and interdependent facets, which can adequately be presented as follows:

A. Statute

The President is authorized to prescribe such regulations for the admission of persons into the Civil Service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of the service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties and establish regulations for the conduct of persons who may receive appointments in the civil service.

B. Regulation

Disqualification of applicants.

(a) Grounds for disqualification. -- An applicant may be

denied examination and an eligible may be denied appointment for any of the following reasons:

* * * * *

- (3) Criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct.²

C. Policy

In explication and implementation of the preceding, the Commission has adopted the following:

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, or records of conviction for some form of homosexuality 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.³

The Honorable John W. Macy, Jr., Chairman of the Commission stated:

It is the established policy of the Civil Service Commission that homosexuals are not suitable for appointment to or retention in positions in the Federal Service.⁴

D. Position

A Commission Appeals Examiner stated that:

"---to require employees to work with persons who have committed acts that are repugnant to the established and accepted standards of decency and morality can only have a disrupting effect upon the morale and efficiency of any organization."⁵

Finally, officials of the Commission have stated that homosexuals (i.e. those performing homosexual acts, even consensually and in private) do not meet standards of fitness for federal employment.⁶

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2. 5 C.F.R. 2.106 a(3) (1961); Currently 5 C.F.R. 731.201 (b) (1964)
 3. FPM Supp.(Int.) 731-71
 4. Letter to the Mattachine Society of Washington, September 28, 1962
 5. Dew v. Halaby, 317 F. 2d at 587, Fn 10
 6. L. V. Mcloy and K. Johnson, in discussion with representatives of the Society, September 8, 1965.

III. Position of the Mattachine Society of Washington

- A. Private, consensual sexual acts, of any nature, on the part of adults
 - 1. Are properly the concern only of the individuals involved
 - 2. May presently have been made the concern of those directly involved in the enforcement of the criminal law, but ought not to be so
 - 3. Are not, under any circumstances, the proper concern of an employer, public or private.

- B. Morality and Immorality
 - 1. Are matters of personal opinion and individual religious belief, explicit trespass into which by the government is prohibited by the First Amendment to the Constitution
 - 2. Are matters in which enforced conformity to the majority view and practice is as odious as in religious, esthetic, political, or other matters.
 - 3. Are matters in which the private pursuit of private beliefs bears no possible relevance to eligibility for any employment

- C. Eligibility for Employment
 - 1. Should be a matter of background, training, competence, on-the-job conduct
 - 2. Should not properly be a matter of private, out-of-working-hours sexual conduct

- D. Conformity, Generally Accepted Standards, Odium
 - 1. American citizens are under no proper obligation to accept or to conform to "generally accepted moral standards" (even if these can be determined) and have the right to expect no official disadvantage or inferior status as a consequence of such non-acceptance or non-conformity
 - 2. Our government cannot be granted the privilege of excluding from public employment members of a minority group merely because they are, or are claimed to be, odious or repugnant to the majority

- E. It is a proper role of our government actively to combat prejudice and discrimination when these are directed against any group of its citizens

IV. Discussion

A. Background

1. Definition

A homosexual is defined herein as a person who finds himself or herself emotionally and sexually attracted to members of the same

sex, regardless of the amount and nature of the sexual activity actually engaged in. It is to be expected, however, that homosexuals, as so defined, will usually have engaged in at least some homosexual acts.

2. Numbers

(a) In the General Population

From a careful reading of the "Kinsey Reports"⁷ and other sources, from discussion with competent authorities, and from knowledgeable observation, it seems that a reasonable, somewhat conservative estimate would place the number of homosexuals (male and female, both) at about 10% of the non-juvenile population -- some fifteen million American citizens.

(b) In the Federal Service

We know, from extensive knowledge of and contact with our own homosexual community -- knowledge and contact of a kind unavailable to the government from any other sources which we are aware that the government is utilizing -- that the screening procedures designed to eliminate homosexuals from the Federal Service are almost completely ineffective. We feel that the ineffectiveness of any possible or conceivable such procedures is inherent and unavoidable. The Federal Service presently includes some 2,500,000 citizens. Therefore, close to a quarter-million homosexual citizens are employed by the government.

3. Minority Status

Those groups which are considered to hold the status of sociological minorities will be found to meet four criteria:

(a) Possession of a Unifying Characteristic -- Members of the group possess some single characteristic or group of closely related characteristics, with heterogeneity in all other aspects

(b) Objects of Discrimination and Prejudice -- Because of the group characteristic, but not in reasonable, rational, or logical consequence of it, the majority looks down upon, and discriminates adversely against the individual members of the minority group

(c) Group Culpability -- Minority group members are judged not as individuals, upon those of their own personal merits and demerits which are relevant to the judgment, but as members of a group, every member bearing the consequences and stigma of the faults, the weaknesses, and the sins of particular individuals, with the creation, in many instances, of a distorted, non-factual, but widely-accepted stereotype.

7. Kinsey, Pomeroy, and Martin: "Sexual Behavior in the Human Male" and "Sexual Behavior in the Human Female"

- (d) Possession of a Feeling of Group Identity and Cohesiveness -- The members of the minority group are aware of a strong sense of kinship to others in their group

All of these criteria will be seen to apply to such groups in our culture as Negroes and Jews, and to those ethnic groups which still constitute sociological minorities in present-day America -- and to homosexuals.⁸

Thus homosexual American citizens constitute our largest national minority group after the Negro. This statement will deal with them, both individually and as a group, from that minority viewpoint.

B. Morality, Fitness, Efficiency and Morale

These somewhat disparate concepts are in their relevant applications so interwoven that they will be considered together.

The theme underlying the Commission's approach to these matters seems to be a requirement that citizens conform, even in matters most intimately personal, to what, correctly or incorrectly, is assumed to be the behavioral norm, with penalty⁹ for non-conformity being disqualification from federal employment. We cannot grant an obligation upon the individual citizen to conform in his private, consensual behavior, to what are allegedly the prevailing standards.

In a society, culture, and nation such as ours, which glory in their pluralism, a denial of public employment based simply upon a manifestation of that pluralism, but upon no demonstrated or demonstrable relevancy to logical criteria for suitability for employment -- a denial, in short, based simply upon unpopularity -- is arbitrary, capricious, discriminatory, and contrary to the most basic of American principles and ideals.

In this vein we find inappropriate and somewhat offensive, the use of the word "rehabilitation" in the policy statement quoted above.³

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8. Lest this demonstration of the minority status of the homosexual citizen be countered by arguments derived from an assertion of sickness, neurosis, or other pathology, it should be clearly noted that in the continuing absence of valid evidence to the contrary, homosexuality cannot be considered to be a sickness, disorder, disturbance, or pathology of any kind.
 9. We recognize that in a narrowly technical, legalistic sense, denial of Civil Service employment is not a penalty. This is a legalism for lawyers and courtrooms. In any meaningful sense other than the technically legalistic, the citizen denied a particular avenue of employment opportunity which he would otherwise choose to follow is truly being penalized. We will use the term "penalty" in the latter sense.

We do not grant, conceptually, that rehabilitation applies to homosexuality and its practice.¹⁰ It is our view that the American citizen has the same moral right to be a homosexual and, privately and consensually, to live his homosexuality without penalty or disadvantage and free of pressures to convert to the prevailing heterosexuality, as do the Catholic and the Jew, to live as a Catholic or a Jew, without penalty or disadvantage, and free of pressures to convert to the prevailing Protestantism. The moral imperative upon which this position is based is found in the source of much of what might be considered our official, governmental, national morality and philosophy -- the Declaration of Independence: "...that all men...are endowed by their Creator with certain unalienable Rights, that among these are...the pursuit of Happiness."

It seems clear that the characterization of "unfitness" is again being used synonymously with "unpopularity." In our country, public employment cannot properly be based upon an individual or group popularity contest. The individual citizen has the right to be personally unpopular, or to be a member of an unpopular minority, without adverse official consequence; the government has the strongest of moral obligations to indulge such unpopularity, and not only not to penalize it, but to protect it.

Not so to indulge and to protect is to violate normal accepted standards of American governmental behavior, and can be considered to be immoral.

Arguments based upon unpopularity, or the very similar "people are not yet ready for this" may be politically expedient but are morally reprehensible. One cannot properly and morally dispose of (or postpone the exercise of) the rights of even one American citizen -- much less of those of a large minority -- in that fashion.

It has become increasingly customary in recent years for the government to avoid grappling with many of the truly fundamental issues of the rights of the citizen versus the rights of the government -- or, in different terms, the rights of the individual citizen versus what are taken to be larger interests of the citizenry, collectively -- by cavalierly and oft-times somewhat callously dismissing the rights of the individual, through the device

10. In regard to so-called "rehabilitation", we wish to point again to the case of Dew v. Halaby.⁵ In this case the government granted that Dew's homosexual acts were isolated ones, far in his youthful past, and represented no continuing course of action -- in short that any possible "rehabilitation" was complete. Nonetheless, not only was Dew disqualified from federal employment but also the government defended his disqualification and fought his reinstatement. We can only conclude that the phrase in FPM Supp (Int.) 731-71 about rehabilitation is "window dressing", not seriously intended, and that even one homosexual act whenever in one's past it might have been committed (beyond one's mid-teens, if then) is sufficient in actual fact for disqualification.

of classifying them as "privileges" instead of as the rights they are. This is a tactic of evasion, the validity and morality of which we cannot accept.

Aside from clearly invalid considerations of popularity and conformity, and despite repeated pointed questions by us designed to elicit from the Commission statements indicating such substance, no substance has ever been given to the assertion that homosexuals are unfit for federal employment. Accordingly we reject this argument.

Similarly, not only can we not grant the propriety of our government's attempting to enforce any particular standard of morality, or to impose conformity to such a standard as a condition for public employment, but, on the contrary, we must take the position that it is required of our government to indulge and to protect the right to private consensual departures from any standards of morality per se. We go further and state that any attempts by our government to enter the explicit field of private consensual morality per se, raise grave questions under the Fourth¹¹, Ninth¹² and Tenth¹³ Amendments to the Federal Constitution¹⁴.

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11. This Amendment, dealing with the right of the citizen to "be secure against...searches and seizures..." taken by itself, and in conjunction with the Ninth and Tenth Amendments, is increasingly being interpreted as the guarantor of a fundamental right to privacy, far broader in extent than the limited literal wording of the Amendment itself.
 12. "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."
 13. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." (Emphasis supplied)
 14. we recognize again here, as in Footnote 9, supra, and 21, infra, that many of these applications of the Fourth, Ninth, and Tenth Amendments have been taken to apply to more formal judicial, criminal and civil proceedings, and perhaps less to administrative policies, actions, and inquiries of the kind involved in this statement. We emphasize again that we are dealing here, however, with basic principles approached more from a moralistic than from a legalistic viewpoint (although not without a very strong element of the latter). These principles are broad ones and in this context seem indeed to justify the invocation of the Constitutional Amendments cited.

The matter of efficiency is a coin of two faces: the efficiency of the individual homosexual, and the efficiency of the office in which he works.

Insofar as the homosexual himself is concerned we feel it proper to reject, out of hand, as clearly disproven any allegations that the homosexual employee is inefficient. No demonstration has been made of any relationship between sexual preference, orientation, propensity -- and conduct -- on the one hand, and job performance, competence, and efficiency on the other. In fact the total lack of such relationship has been shown clearly.

Insofar as the office, or the Service generally, are concerned, there is no significant demonstration (allegations based upon prejudiced "armchair theorizing" notwithstanding) for disruption or deterioration of efficiency or (usually drawn in in this connection) destruction of morale. The present and long-continuing presence of large numbers of homosexual citizens in the Federal Service, with no ill effects, is in itself sufficient demonstration of the validity of the position which we take here.

Sufficiently improper behavior on the job by ANY employee, homosexual or other, is a proper ground for dismissal. This is an individual matter, not a class or group one, and in no way related to homosexuality. It is clearly unwarranted to exclude an entire segment of the populace because a few of its members -- no more, proportionally, than of the remainder of the population -- might possibly lower office efficiency.

The argument that homosexuals must be excluded because they are allegedly so repugnant to the average citizen that their mere presence in an office will supposedly be destructive of morale and efficiency (quite aside from the fact that it is a theory, undemonstrated and unproven) is clearly a violation of the most fundamental precepts upon which this country is founded, precepts which it is the duty of the government to support -- those involving non-conformity, individual freedom, dissent (all without adverse consequences), tolerance, pluralism, alluded to above.

If a Jewish citizen, or a Catholic one, are employees in an office with anti-Semitic or anti-Catholic employees, the government will not indulge the anti-Semitism or anti-Catholicism -- and properly not. The government does not defer to segregationist sentiment in its employment of Negro citizens -- and properly not. We fail to see the difference, conceptually and morally, in regard to homosexual citizens. We do not grant a difference. Morally there is none. The Commission needs no laws in order to cease discrimination -- only the clear knowledge that discrimination is immoral. It is.

We find it difficult indeed to take seriously arguments supporting a policy which rewards rather than penalizes those who are prejudiced, and further penalizes those who are already the victims of prejudice and discrimination.

C. Equality of Opportunity

The principle has become firmly embedded in our national thinking in recent years that American citizens are entitled to pursue their chosen occupations, in their chosen places of employment, subject only to considerations directly relevant to the employment itself, and unimpeded by obstacles arising from considerations of prejudices and discriminations based upon factors not directly related to the employment itself and having to do only with the subjective reactions of fellow employees and (in the private-employment context) of the employers themselves.

While this principle has been applied largely to discrimination based upon racial, religious, and ethnic considerations, it has clearly been accepted intellectually and emotionally on a far more general basis and is being extended elsewhere (currently to gender). Since, from examination of the Commission's own statements, it will be seen that the rationale for the exclusion of homosexual citizens from federal employment rests upon bases not different in any meaningful way from those discredited as bases for the exclusion of other minority groups, it is difficult to see how a valid case can be made for denial, by the government itself, of full equality of employment opportunity to the large homosexual minority.

We raise yet another point. In a recent article¹⁵ by the Honorable John W. Macy, Jr., Chairman of the Commission, the statement is made that: "The federal government has become the nation's leading employer of scientists and engineers."

We feel that the government cannot lightly close to any group (e.g. the homosexual American scientist or engineer) its largest single avenue of employment opportunity. In such a case, there is a clear obligation upon the government to demonstrate adequately the necessity for an action of such magnitude and impact. There is a burden of proof here which cannot be shrugged off, but which the government has not adequately shouldered. We fail to see how the government can properly deny to these people their major single employment opportunity without adequate demonstration of a compelling need for that denial. No such demonstration has been made.

Although this case provides an excellent example of the effect of the Commission's policies, we are not advocating that scientists and engineers or any other group be placed in a preferred position. When any group of citizens is denied any opportunity for employment -- even one citizen and one job -- a strong moral burden of proof rests upon those doing the denying. When the government is the employer, this moral burden becomes a weighty one, indeed, and an unavoidable one.

When, without sufficient reason, any single citizen or any group of the citizenry is placed at any disadvantage in terms of his

15. Macy, J. W., Jr., Science, 148, No. 3666, 2 April 1965, 51

ability to earn his livelihood and to advance himself, and when, without sufficient reason, any restriction is placed upon the ability of any single citizen or any group of citizens to make their maximum contribution to the society in which they live, our nation is badly the loser. Homosexual citizens are placed at such disadvantage and under such restriction. The reasons given are not sufficient.

The issue can properly be put more strongly. Federal employment is no longer a minor aspect of the national employment picture. The standards set by the Commission for federal employment eligibility are becoming increasingly pervasive and intrusive throughout the nation. The Commission cannot responsibly ignore the heavy and growing impact of its employment policies and practices outside the Commission's own bailiwick.

The homosexual citizen is presently in a difficult position in regard to employment. With the growth of direct and indirect federal employment, and the increasingly overt adoption of federal standards everywhere, he will find himself, by virtue of closure to him of whole segments of employment opportunity, truly reduced to the level of second-class citizenship which this country decries elsewhere.

The potential effect of the Commission's present employment policies upon the nation's large homosexual minority is appalling. We feel that the Commission cannot, in morality and in practicality, ignore these effects.

Mr. Macy, in a statement which was recently reported under the headline: "Civil Service to Press Jobs Equality Drive" said that the Commission "intends to work diligently with the heads of executive departments and agencies, with a view toward making the federal service a showcase of equal opportunity."¹⁶

It will be a shabby-looking showcase indeed, in which equality of opportunity is neted out to some and arbitrarily withheld from others. Mr. Macy has set forth the guidelines clearly. Let the Commission now meet the obligation placed upon it thereby!

D. Senate Document 241 ¹⁷

In modern days, much of the Commission's explicit formulated policy upon the employment of homosexual citizens seems to arise from Senate Document 241. We will not attempt here to refute in detail the positions and arguments of that document. Many of its arguments and claims are dealt with effectively but implicitly elsewhere in this statement. We note only (1) that the stated purpose of the

16. Washington Star newspaper, November 4, 1965, p. A-2

17. Employment of Homosexuals and Other Sex Perverts in Government: Interim Report, Committee on Expenditures in Executive Departments; 81st Congress, 2nd Session, Senate Document 241

subcommittee preparing Document 241 was: "To consider why the employment of homosexuals by the government is undesirable---" (emphasis supplied). By the use of the word "why", rather than "whether" the subcommittee indicated that it had made up its mind in advance. All points and arguments presented under such circumstances are clearly suspect; and (2) that no homosexuals as such, or spokesmen for the homosexual American citizenry, testified at the closed hearings upon which the Document is based.

We feel obliged to reject in toto all conclusions drawn in or derived from Senate Document 241; to suggest that the Commission do likewise; and to request, should the need be felt for Congressional sanction for Commission (or other Executive Branch) policy, that an objective, impartial investigation be made, in which spokesmen for the homosexual community play the role to be expected of and by any group of the American citizenry in matters which are dispositive of their own fate.¹⁸

E. Illegality, Criminality and Arrests

We believe that the relevance of the element of criminality and illegality to the employment of homosexual citizens is academic, has been much over-emphasized, and has been used as a poor crutch to support an otherwise weak position.

If particular, private, out-of-working-hours consensual acts are indeed illegal, this is properly a matter between the citizen and those entrusted with the enforcement of the criminal law. We are not aware of any demonstration of concern on the part of the Commission over the use of contraceptives by married heterosexual federal employees in Connecticut over the eighty-or-so years during which such usage was criminal; nor are we aware of any concern shown by the Commission over the fact that the same acts which are criminal for homosexuals are also no less criminal for married heterosexuals, but are exceedingly commonly engaged in by married heterosexual employees. We feel that such unconcern by the Commission is indeed the proper course for it to follow. There can be no possible justification for picking and choosing among the groups

18. While, clearly, a somewhat valid claim can be made that homosexual citizens themselves are not going to be able to play an objective and impartial role in any investigation into the questions discussed here, (1) we feel that a necessary part of any objective, impartial evaluation of these matters is a presentation and consideration of all sides; the side of the homosexual citizen himself, as presented by the homosexual citizen himself, has not been heard and considered before; and, (2) we feel that the homosexual citizen can present both facts and viewpoints which are not otherwise available, and which are necessary to the making of any valid decisions on these matters; and (3) we feel that just as Negro citizens, Jewish citizens, or citizens of other minorities in our country would properly expect to have a direct voice in investigations affecting them, so should the homosexual citizen.

of the citizenry for whom violations of particular laws or classes of laws are, or are not, to be disqualifying. In this regard, it should also be pointed out that many states retain on their books harshly punitive laws against miscegenation -- laws supported by their proponents with the strongest of appeals to morality. We know of no instance in which the Commission has used such criminal miscegenation as a basis for the disqualification of a citizen from federal employment.

We find the Commission's use of the present illegality of some homosexual acts as a prop upon which to rest a justification of its policies upon this issue, to be completely negated by its policy of treating the residents of the State of Illinois¹⁹ on an equal basis with the residents of all other states.

Furthermore, many particular homosexual acts are not criminal in many states²⁰, but are still used as a basis for disqualification. Again, this implies that the criminality of some such acts is being used merely as a shield behind which to hide a reluctance to change policies in regard to all such acts and toward those performing them.

In addition, we find it violative of one of the most fundamental axioms of the Anglo-American approach to the relationship between citizen and government: A man is innocent until proven guilty²¹ -- to inquire into his record of arrests, rather than into his record

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19. Effective January 1, 1962, the proscription against private, consensual homosexual acts upon the part of adults, was removed from the Illinois Penal Code.
 20. Under the Criminal Code of the District of Columbia, for example, only two particular acts, performable by heterosexuals as well as by homosexuals, are illegal. All other homosexual acts are not illegal, but are nonetheless a basis for disqualification from the Federal Service; heterosexual citizens performing these acts heterosexually are no less in violation of the law but do not find themselves subjected to disqualification.
 21. We are aware that (as in the case of the concept of penalty as discussed in Footnote 9 above) this is taken usually to apply only to formal criminal prosecutions and not to administrative proceedings. Nevertheless, it has become a cornerstone not only of our entire philosophy of government-citizen relationships in all aspects, but also has become woven into the entire fabric of our cultural philosophical heritage as applied to all human relationships. In this sense, any disadvantage in any slightest sense visited upon a citizen because of an arrest, as distinguished from a conviction, is truly un-American. In the sense that a violation of mores is immoral, a question phrased in terms of arrests instead of convictions is immoral and should never be asked by our government.

of convictions. While the Commission's question²², phrased in this fashion, is offensive to all citizens with a feeling for the principles upon which our American system is based, the homosexual American citizen finds it particularly offensive because the admission of an arrest, even without conviction, can result in severe penalty to him -- improperly so.

F. The Government's Role as Leader

In 1960 the Report of the President's Commission on National Goals was published -- a report repudiated in no degree to our knowledge by any succeeding administration. In that Report we find the statement: "One role of government is to stimulate changes of attitude."²³ This clearly places the government under obligation to be at the van not in the rear, to be in a position wherein it leads not lags, in the making of social changes.

More recently, Veterans Administrator William J. Driver commented publicly (reported under the headline: "CS Seen as Leader in Social Change"): "But [the Civil Service] also has been discovered to be an instrument of social change, a kind of combination lever by which large and somewhat recalcitrant social tasks can be accomplished."²⁴ A more succinct and directly pertinent formulation of what we see as the Commission's proper role in this area would be hard to find.

As this statement was being drafted, Mr. Macy stated that the Commission plans:

"A renewed attack on prejudice itself -- with the goal of eradicating every vestige from the federal service. We must insure a better perception among the men and women in the public service. For the goal of equal result means full acceptance, not just tolerance of minority associates."²⁵

Prejudice is prejudice; tolerance is tolerance; intolerance is intolerance. The homosexual minority can only improperly and arbitrarily be omitted by the Commission from inclusion in the attitudinal benefits flowing from Mr. Macy's statement.

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22. Standard Form 57; Application for Federal Employment (Revised March 1961): Question 37. Have you ever been arrested, taken into custody, held for investigation or questioning, or charged by any law enforcement authority? (You may omit: (1) Traffic violations for which you paid a fine of \$30.00 or less; (2) Anything that happened before your 16th birthday. All other incidents must be included, even though they were dismissed or you merely forfeited collateral).
 23. Report of the President's Commission on National Goals(1960), p. 4
 24. Reported in The Washington Post, Federal Diary Column, September 21, 1965, p. B-1
 25. Reported in the Washington Daily News; 9 to 4:30 Column, November 4, 1965, p. 92

One does not expect the employment policies of an enlightened government to lag with or behind those of unprogressive legislatures. It is widely accepted that law lags behind both intellectual leadership and scientific knowledge. One has a right to expect that a government for the people as well as by the people will accept what its intellectual and scientific leaders have for several decades been preaching and what is already being reflected in the legislation and jurisprudence of several jurisdictions -- namely that both present law and attitudes are archaic, unjust, unjustified and unjustifiable; and that there is no warrant whatever either for the common allegations made against homosexuals and homosexual conduct, or for the exercise of discrimination against homosexuals and the adult practitioners of private consensual homosexual conduct. Accordingly, we ask the Commission to remove its strictures upon the employment of homosexual citizens, and by so doing to lead the way to an elimination of all such strictures.

We are well aware of the difficulties faced by the Commission in dealing with this question -- it is a touchy and potentially explosive issue. We feel that such difficulties and the expediencies (consisting often of little if anything more than inaction) used to cope with those difficulties cannot morally be made the basis for denying to any group of the citizenry the enjoyment -- here and now -- of the rights and privileges of all of the citizenry or for the postponement of that enjoyment, even briefly, or for making second-class citizens of any minority.

The present administration with forward-seeing courage and determination has come to grips constructively with many of the problems of our nation. We feel it proper to ask that the Commission follow the lead taken by the administration of which it is a part.

There are many ways in which these questions can be approached and dealt with publicly and governmentally, by placing them in carefully and properly chosen philosophical and conceptual settings in order to render them more palatable to those who might protest. We feel it to be in order to suggest that continuing dialog between the Commission and the Society, entered into in good faith with a desire to work constructively toward an early, meaningful, practical solution of the problems at hand leading to a long overdue improvement in the status of the homosexual American citizen, will serve the government, the nation, and its people, to the benefit of all and to the detriment of none.

G. Public Support

Although our position stands quite sufficiently upon its own merits, it is not irrelevant to point out that our view is supported by many whose approach to this question may be considered less self-serving and more disinterested than ours.

The National Capital Area Civil Liberties Union has taken a formal position strongly opposing the Commission's present policy.²⁶

The Council on Religion and the Homosexual, Inc., an organization consisting of clergymen and laymen, has published a long statement which, while dealing primarily with certain local problems faced by the homosexual in San Francisco and others faced by homosexual citizens generally but not relevant to this statement, does indicate clearly and explicitly the Council's opposition to present Commission policy toward the employment of homosexuals.²⁷

In discussion with clergymen of the three major faiths, during the establishment of the newly formed Washington (D. C.) Area Council on Religion and the Homosexual, it became plain that whatever their theological and other approaches to homosexuality itself and its practice, they were unequivocally opposed to the exclusion of homosexual citizens from the Federal Service.

Informal discussions with a significant number of Congressmen or members of their staffs have also indicated that, as individuals, they do not favor present Commission policy.

The body of intelligent, informed opinion opposing the Commission's present policy on the employment of homosexuals is large and growing and is becoming increasingly vocal. The Commission will find substantial and weighty support in any action which it takes in liberalizing its policies on the employment of homosexual citizens.

V. Summary and Conclusions

The Commission's policy against the employment of homosexual citizens is based upon factors which are tantamount to little else than a measure of the controversiality and unpopularity of those citizens. No showing of meaningful unfitness has been made; in fact, not only has no showing been made -- beyond mere theorizing -- that the employment of homosexuals would result in the lowering of efficiency and morale, but also the existing presence of almost as many homosexuals as would be present were the proscription upon their employment dropped, seems to indicate that the assumption of lowered efficiency and morale is gravely in error.

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26. Resolution of National Capital Area Civil Liberties Union on Federal Employment of Homosexuals, August 7, 1965 (Appended).
 27. A Brief of Injustices, an indictment of our society in its treatment of the homosexual; The Council on Religion and the Homosexual, Inc., San Francisco, 1965 (Appended). See pages 6 and 11.

The Commission's policy against the employment of homosexual citizens, because it can be and has been defended upon no bases other than the unpopularity of such citizens, is a discrimination in a class with, and as morally indefensible and as odious as that directed toward members of the Negro minority and other of our American minorities.

The Commission's policy against the employment of homosexual citizens must be deemed immoral because in denying equality of employment opportunity upon such bases as mere prejudice and unpopularity, it violates commonly accepted, modern American standards of morality. There are other norms than the sexual; there are other accepted standards of conduct than the sexual; there is other morality and immorality than the sexual. These are more important than the sexual. These are being violated by the Commission in its policies against the employment of homosexual American citizens.

The Commission's policy against the employment of homosexual citizens operates against the national interest in that without validly demonstrated or demonstrable reason the policy excludes from the Federal Service many citizens who have much to offer, closes to many of them important avenues of opportunity, and thereby reduces their capacity to contribute to society and to nation.

Because the present situation in regard to federal employment of homosexual citizens is so clearly unsatisfactory not only to the homosexual citizenry involved but also to large numbers of other citizens; because only a feeble case at best has been made to support present Commission policies and it seems unlikely that a better case exists to be made; because the impression has been conveyed to us that the Commission feels a great reluctance to deal with this question without more support and preparation; it seems clear that the need exists for extensive, continuing, constructive dialogue and communication between the Society and the Commission in order to resolve, at a very early date, existing differences between the Commission and our nation's large homosexual minority.

No society can be a Great Society which without valid reason systematically excludes any minority of its members from full and equal participation, responsibility, contribution and benefit. The Commission has a proper role, as one of the agencies of our government most important in setting the tone and the attitude of the government as a whole and in setting the lead which much of the nation will follow, in seeing to it not only that it does not become the perpetrator, perstuator and purveyor of prejudice, but also that it works actively and effectively to eliminate such prejudice, discrimination and exclusion as may exist.

VI. Recommendations

1. For the reasons adduced above we recommend that private, consensual, out-of-working-hours homosexual conduct upon the part of adults cease to be a bar to federal employment.

2. Should the Commission not find it possible to approach the matter in the direct and forthright fashion of Recommendation 1, then we recommend that:

(c) An active program of continuing, meaningful, constructive discussions be initiated promptly between the Society and the Commission in order, as quickly as possible, to effect Recommendation 1.

(d) If the Commission feels governmental hearings and conferences on the subject to be necessary, the Commission within the scope of its powers and influence set into motion the governmental machinery to elicit the holding of impartial, objective hearings and conferences, involving representatives of the homosexual community.

3. On the question of the employment of homosexuals, we recommend that as it indeed has done on other questions the Commission take the progressive, idealistic, humane, forward-looking, courageous role which its own public statements proclaim for it and which would be in keeping with the role taken on many other matters by the administration of which the Commission is a part.

Appended: 1. Discrimination Against the Employment of Homosexuals
2. NCACLU statement
3. Brief of Injustices
4. Why are Homosexual Citizens Picketing the U. S. Civil Service Commission?