

FINAL RESEARCH PROJECT



The Lavender Scare Legacy: A Policy & Law Sourcebook on U.S. Department
of State Employment and Hiring Discrimination Against Queer Americans



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The Lavender Scare Legacy: An Introduction

Founded in 1789, the United States Department of State (hereafter “State Department” or “State”) is the primary governmental agency tasked with diplomacy and foreign policy matters. With 24,000 combined Foreign Service and Civil Service employees, the State Department retains highly skilled career diplomats and civil servants to carry out its work both at home and abroad.

Since the early years of the Obama administration (2009–2017) the State Department has claimed that securing the rights of queer people around the world is an agency priority through forums such as the United Nations and individual diplomatic missions. However, internal State policies on LGBT employment have a much more sordid history than these international policy goals would suggest. Federal government policies surrounding LGBT employees have experienced a drastic evolution since the late 1940s. Most infamously, the State Department enacted a witch hunt against “homosexuals and sex perverts” within its ranks during the early 1950s. Mirroring accusations initiated by Senator Joseph McCarthy of Wisconsin that suspected communists were present within the State Department known as the “Red Scare”, the concurrent “Lavender Scare” was particularly vicious as it combined rhetoric of communist disloyalty and the outing of those suspected of being queer. As queer employees were “not to be trusted” and “might succumb to conflicting emotions to the detriment of the national security” due to suspected communist ties, they were often terminated from existing positions or barred from initial employment opportunities solely based on sexual orientation.¹ Implications of these policies persisted well into the 1990s with reforms by the Clinton administration (1993–2001), Obama administration (2009–2017) and the recent issuance of a formal apology on behalf of the State Department by former Secretary of State John Kerry. This Lavender Scare legacy has played a profound role in setting precedent for the relationship between government and its place in the private lives of employees, as well as contributing to the sense of second class citizenship felt by many queer Americans.

This policy sourcebook is meant to serve as a reference compilation and potential teaching aid on the evolution of State Department employment discrimination of queer Americans. It will examine seven varied primary sources – Executive Orders, letters, Congressional reports, court cases, and formal statements – from the past seven decades. Some of these sources focus on federal government employment generally, but all have impacted policies and attitudes at the State Department. Through the combination of carefully excerpted primary source material, analysis aided by secondary sources, and questions for further discussion, it is hoped that a more robust understanding of employment and hiring discrimination within the State Department can be attained while simultaneously attempting to dispute Whiggish narratives surrounding social progress pushed by the government to satisfy political agendas.

¹ United States Congress, “Homosexuals in government, 1950,” in *Congressional Record: 81st Congress, 2nd Session – March 29 to April 24 1950* (Washington, D.C. 1950), 4528.

Employment of Homosexuals and Other Sex Perverts in Government (1950)

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SEX PERVERTS AS GOVERNMENT EMPLOYEES

Those charged with the responsibility of operating the agencies of Government must insist that Government employees meet acceptable standards of personal conduct. In the opinion of this subcommittee homosexuals and other sex perverts are not proper persons to be employed in Government for two reasons; first, they are generally unsuitable, and second, they constitute security risks.

GENERAL UNSUITABILITY OF SEX PERVERTS

Overt acts of sex perversion, including acts of homosexuality, constitute a crime under our Federal, State, and municipal statutes and persons who commit such acts are law violators. Aside from the criminality and immorality involved in sex perversion such behavior is so contrary to the the normal accepted standards of social behavior that persons who engage in such activity are looked upon as outcasts by society generally. The social stigma attached to sex perversion is so great that many perverts go to great lengths to conceal their perverted tendencies. This situation is evidenced by the fact that perverts are frequently victimized by blackmailers who threaten to expose their sexual deviations.

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EXTENT OF SEX PERVERSION IN GOVERNMENT

It is not possible to determine accurately the number of homosexuals and other sex perverts in the Government service. The only known perverts are those whose activities have been brought to the attention of the authorities as the result of an arrest or where some other specific information has resulted in the disclosure of their perversion.

Not even the experts are in agreement as to the incidence of homosexuality and other sex perversion among the general population and to attempt to arrive at an estimated figure as to the number of perverts in the Federal Government would be sheer speculation and serve no useful purpose. While most authorities agree that the incidence of sex perversion follows a rather constant pattern throughout our entire social structure, regardless of education, wealth, or social position, it clearly does not follow that the same relative number of perverts should be found in the Federal service as are found outside of the Government. In this regard we must consider the fact that homosexuals and other persons with arrest records or other known indications of unsavory character are largely eliminated from a great many Federal positions in such agencies as the Atomic Energy Commission, the Federal Bureau of Investigation, the State Department, certain branches of the Treasury, and other sensitive jobs where all applicants are thoroughly investigated prior to employment. Furthermore, some check is made of all Government employees prior to or soon after their appointment and this would tend to eliminate many undesirables.

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A glaring example of this latter situation involved the 91 homosexuals who left the State Department between January 1947 and January 1950. In most of those cases these known homosexuals were allowed to resign for "personal reasons" and no information was placed in the regular personnel files of the State Department indicating the real reason for the resignation; nor was the Civil Service Commission informed of the true reason for the resignation. The actual facts involved in the removal of these individuals were entered in certain confidential files of the States Department. Due to the manner in which these cases were mishandled, 23 of those 91 State Department employees found their way into other departments of the Government. The Civil Service happened to uncover 6 of these 23 cases as the result of independent investigations but no notification was given to the Commission by the State Department concerning the real reason for the dismissal of any of these persons until March of this year. At the present time 22 of these homosexuals have been removed from the agencies to which they transferred after leaving the State Department. In one case the individual involved was retained in the new agency after a reconsideration of the facts in his case.

The 81st Congressional Interim Senate Report entitled “Employment of Homosexuals and Other Sex Perverts in Government” was submitted to the Committee on Expenditures in the Executive Departments by its Subcommittee on Investigations pursuant to Senate Resolution 280. This extensive report detailed answers to the Subcommittee’s primary questions: “the extent of the employment of homosexuals and other sex perverts in government... reasons why their employment by the Government is undesirable, and... the efficacy of the methods used in dealing with the problem.” Having discovered 382 sex perverts in their ranks solely in 1950, the Subcommittee concluded that “those who engage in acts of homosexuality and other perverted sex activities are unsuitable for employment in the Federal government.

Page 3 of the report notes that homosexuals and other sex perverts are not proper persons to be employment in government for reasons of general unsuitability and the high level of becoming a security risk. The concurrent Lavender Scare and Red Scare had common emphasis of communist sympathizers and the risks that these people could pose to the federal government during the Cold War. The Subcommittee’s findings, also known as the Hoey Report after chairman Senator Clyde R. Hoey, emphasized in particular the security issue and its relation to homosexual blackmail, with Gregory B. Lewis noting that: “On one hand, their emotional instability and moral weakness made them ‘vulnerable to interrogation by a skilled questioner and they seem refuse to talk about themselves’... on the other hand, ‘the pervert is easy prey to the blackmailer.’”² This reliance upon tropes of queer men as evidence of broad unsuitability for federal jobs speaks to what the Mattachine Society of Washington, D.C. refers to as “the piling historical evidence of the blatant animus that the federal government has shown towards LGBT Americans for generations.”³

Page 6 of the Hoey Report notes that while the number of homosexuals and sex perverts employed by the government was unable to be accurately determined, these people would not have been widely employed by the State Department due to the security clearance system. However, page 11 directly contradicts this statement and speaks directly to homosexuals employed by the State Department and their en-masse departure between 1947 and 1950. While the Subcommittee states that the 91 former employees were allowed to resign for “personal reasons”, it is implied that these were forced resignations due to sexual orientation. The lack of mention for the true reason of these “resignations” in personnel files suggests that the State Department attempted to protect these individuals for fear of further outing or ridicule. However, the Civil Service Commission, which managed hiring practices and human resources of federal agencies and departments, undermined the protection of these 91 former employees by the State Department. While the State Department would appear to have attempted to mitigate the personal and professional damage through allowing resignations, it must be remembered that queer foreign service employees were outed by this department with devastating impact due to the political implications of the Lavender Scare.

Questions for Discussion

1. How does language about “known homosexual” State Department employees and that of “known communists” differ? How is it similar?
2. During the 1950s, would it be better to have been “allowed to resign” as a homosexual or fired? How can this be compared to military blue discharges of World War II?
3. Why would the presence of homosexuals within the ranks of the State Department have been a cause for greater concern than in other federal agencies and departments?

² Gregory B. Lewis, “Lifting the Ban on Gays in the Civil Service: Federal Policy toward Gay and Lesbian Employees since the Cold War,” in *Public Administration Review* 57, no. 5 (1997): 388.

³ Jonathan Morales “Homosexuals and Other ‘Sex Perverts’ Unsuitable for Federal Employment,” *The Mattachine Society of Washington, D.C.*, <https://mattachinesocietywashingtondc.org/2015/03/30/homosexuals-and-other-sex-perverts-unsuitable-for-federal-employment/>.

Executive Order 10450 (1953)

WHEREAS the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

WHEREAS the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service.[...]

Sec. 6. Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary, the head of the department or agency concerned shall terminate the employment of such suspended officer or employee whenever he shall determine such termination necessary or advisable in the interests of the national security, in accordance with the said act of August 26, 1950.[...]

Sec. 8. (a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security:[...]

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

(iv) Any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.[...]

Executive Order 10450 was issued by President Dwight D. Eisenhower on April 27, 1953 as a codified consolidation of Lavender Scare attitudes and fears. It nullified Executive Order 9835, referred to as the “Loyalty Order”, issued in 1947 by the Truman administration and its Loyalty Review Board, and instead granted investigatory power into security risks of federal employees to the United States Office of Personnel Management (OPM) and the Federal Bureau of Investigation (FBI). While this Executive Order allowed for the investigation of many categories of applicants or employees deemed contrary to the interests of national security, it was specifically devastating to queer people due to the doubly damaging accusations of the Lavender Scare – accusations of homosexuality and risk of communist blackmail.

The preamble of this document details the qualities that “all persons privileged to be employed in the departments and agencies of the Government” and “all persons seeking the privilege of employment” should possess – reliability, trustworthiness, good conduct and character, and loyalty to country are all important characteristics for federal employees due to the sensitive nature of their work and their status as representatives of the government. However, the damaging assertion that queerness and good citizenship were mutually exclusive concepts had widespread impact. From 1947 to 1961, more than 5,000 allegedly homosexual federal civil servants lost their jobs for suspected homosexuality as a result of the powers granted by Executive Order 10450. 1,000 of these fired individuals were employed the State Department – a far greater number than were dismissed for their membership in the Communist party.⁴ This demonstrates that the Lavender Scare, though less well-known, had a broader impact within the State Department than the concurrent Red Scare.

Section 6 of Executive Order 10450 indicates that upon the discovery that employees are not in line with the government’s definition of proper conduct, suspension and possible termination by the head of the department or agency was fully within the interest of national security and therefore legal and just. This review process was carried out unilaterally by upper-level management and demonstrates the broad powers granted to the State Department in their crusade against queer employees in government. Section 8 (a) continues to detail the categories of people who might be deemed contrary to the interest of national security, including that of “sexual perversion.” Harkening back to the 1950 Hoey Report, this emphasis on sexual action placed a far greater number of people at risk of investigation by their respective departments and agencies than if it focused on sexual orientation or identity. In addition, Section 8 (a) denotes those with “any illness, including any mental condition” as grounds as barriers to employments or grounds for termination. Prior to the 1973 American Psychiatric Association removal of homosexuality from its list of mental disorders and 1975 American Psychological Association resolution stating that “homosexuality per se implies no impairment in judgment, stability, reliability, or general social and vocational capabilities,” medical professionals were well within contemporary understandings of sexuality to claim that queer employees were not healthy enough to carry out their jobs effectively.⁵

Questions for Discussion

1. How can Executive Order 10450 be viewed in relation to ideas surrounding illness and queerness? Were they considered one and the same?
2. In addition to “sexual perversion”, do the other disqualifying factors for employment contribute to existing stereotypes about queer individuals and communities?
3. In the eyes of the Eisenhower administration, did homosexuality automatically preclude queer employees from having “complete and unswerving loyalty to the United States”? How does this contribute to notions of queerness as historically contrary to good citizenship?

⁴ Nan D. Hunter, Christy Mallory, and Brad Sears, “The Legacy of Discriminatory State Laws, Policies, and Practices, 1945–Present,” in *Documenting Discrimination Based on Sexual Orientation and Gender Identity in State Employment* (Los Angeles: The Williams Institute, 2009), 5-3.

⁵ J. J. Conger, “Proceedings of the American Psychological Association, Incorporated, for the year 1974: Minutes of the annual meeting of the Council of Representatives,” *American Psychologist* 30 (1975), 633.

Letter to Mattachine Society of Washington from John W. Macy Jr. (1966)

Page 1

-COPY-

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

-COPY-

February 25, 1966

The Mattachine Society of Washington
Post Office 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 8, 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.

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."

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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,

(signed)

John W. Macy, Jr.
Chairman

The Mattachine Society, one of the earliest homophile rights organizations, was founded in 1950 with the aim of improving the lives of gay men in light of their treatment by the Eisenhower administration during the Red and Lavender Scares. While founder Harry Hay and other organizers were avowed communists, their initial efforts were marked by attention to “self-help issues” and a focus on “lobbying to psychological and religious authorities... that homosexuality is neither a sickness nor a sin, in the hope that these professionals would then advocate for tolerance on behalf of homosexuals.”⁶ However, with the dissolving of the national organization in 1961, regional groups such as the Washington, D.C. contingent were able to take on issues and tactics of their choosing. As such, the Mattachine Society of Washington decided to tackle the issue of federal discrimination, as their founder Frank Kameny had himself been fired due to Civil Service Commission policies against homosexual employment. The letter from Civil Service Commissioner John W. Macy Jr. therefore was a personal blow to the organization.

In the above 1966 letter, John W. Macy Jr. responded to inquiries from Mattachine Society Washington pertaining to Civil Service Commission’s maintenance of “the Government policy on the suitability for Federal employment, of persons who are shown to have engaged in homosexual acts.” The Mattachine Society sought to see the revocation of this policy. Macy demonstrated little sympathy for request from the Society through his restatement of Commission policy. This policy shows a level of progress from the broad-sweeping admissibility granted by Eisenhower’s Executive Order 10450 in that arrest, court, and medical records could be considered as proof of homosexuality or sexual perversion, but the inclusion that “admissions, or other credible information” would also be considered by the Commission negates the burden of proof necessary for determining suitability. Furthermore, some development is demonstrated on page 3 in that “a panel of three high level, mature, experienced employees” would consider the termination of queer employees, compared to the granting of this duty to department and agency heads in EO 10450. However, this progress is rendered null and void in the conclusion of this document.

John W. Macy Jr., like many at the time, focused on the delineation between homosexual actions and identity, with the former being viewed as grounds for legal discrimination while the latter simply did not exist in the eyes of the federal government. Though the complete rejection of the Mattachine Society aims, Gregory B. Lewis notes that Macy clearly expounded his personal beliefs and those of the Civil Service Commission that “there were only homosexual acts, and the attempt to define people with homosexual inclinations as a minority group was an attempt to excuse them from taking responsibility for their immoral actions.”⁷ The ominous tone of this letter and claim that the “authority and duty” of the Commission and wider federal government would not “permit any other course” than that of discrimination confirms that deeply entrenched fear of queer people in government had not lessened since the early 1950s. However, the entrance of organizations such as the Mattachine Society into political advocacy and lobbying echoed a turning of tides for the Civil Service Commission and State Department.

Questions for Discussion

1. The majority of Mattachine Society founders were communists and early leaders had connections to the Communist Party USA – how might this have colored John W. Macy Jr.’s response to their lobbying despite a change in political affiliation and tactics?
2. How does Macy’s emphasis on legal or medical records of homosexual conduct speak to the type of candidates the Commission hoped to hire? What communities might be most impacted by this emphasis on criminal and medical history?
3. How can this effort by the Mattachine Society be discussed in relation to activism by the homophile rights movement during the 1950s and 1960s?

⁶ Mary Bernstein, “Identities and Politics: Toward a Historical Understanding of the Lesbian and Gay Movement,” in *Social Science History* 26, no. 3 (2002), 541.

⁷ Lewis, “Lifting the Ban on Gays in the Civil Service,” 390.

Scott v. Macy (1968)

Bruce C. SCOTT, Appellant, v. John W. MACY, Jr., Chairman, U. S. Civil Service Commission, et al., Appellees.

United States Court of Appeals District of Columbia Circuit.

Argued October 23, 1967.

Decided September 11, 1968.

McGOWAN, Circuit Judge:

Appellant, an applicant for federal employment who has passed the competitive examinations, is before us for the second time in his effort to set aside a disqualification imposed upon him by the Civil Service Commission. In *Scott v. Macy*, 121 U.S.App.D.C. 205, 349 F.2d 182 (1965), we reviewed the Commission's debarment of appellant from all employment in the federal service "because of immoral conduct." A majority of the court were of the view that this action could not be sustained upon the record before us, and we directed that a judgment be entered which would have the effect of restoring appellant to the status of one eligible to be considered for federal employment, absent any further valid action by the Commission to accomplish his absolute disqualification. The Commission has purported to take such further action, but, for the reasons appearing hereinafter, we find it unavailing.

Appellant's initial disqualification "because of immoral conduct" was founded upon a 1947 arrest for "loitering," a 1951 arrest "for investigation," and undisclosed "information indicating that you are a homosexual." Not long after our decision, appellant was confronted with a Civil Service Commission investigation report which set forth (1) the 1947 arrest, (2) the 1951 arrest, (3) statements alleged to have been made by appellant to a former supervisor when he was in state employment that he was a homosexual, that he had been "perverted" since youth, and that he lived with a "lover," and (4) that appellant had stood mute when a neighbor had characterized him as a homosexual. Upon the basis of these four matters, appellant was asked the question: "In view of the information which has been cited above, do you now deny that you have engaged in homosexual acts?"[...]

[...]The Government insists that we measure the Commission's action solely by reference to the uncited subparagraph (d). We are unable to conclude, however, that the Commission's decision did not in fact rest upon a finding of "immoral conduct." Therefore, the current disqualification cannot stand. Where individual rights of substance turn upon whether the Commission acted for one reason rather than another, we think it not too much to expect that the Commission will not leave its motivations clouded by inexactitude of expression.[...]

[...]The judgment of the District Court is reversed, and the case is remanded for the entry of a judgment in accordance with this opinion. It is so ordered.

In further efforts to combat discrimination by federal departments such as the State Department and Civil Service Commission, the Mattachine Society expanded upon its lobbying efforts through the judicial process as a means of setting precedent for future cases. Building upon the work of the national Mattachine Society founder Frank Kameny, co-founder of the Washington, D.C. regional Mattachine Society Bruce C. Scott sought legal action against John W. Macy Jr. and the Commission after applying and subsequently being barred from federal employment based on “immoral conduct” in a job application.⁸ While Commission policies were still in place and legal under Executive Order, Scott’s claim was not against the policy itself but rather that it damaged his liberty interests as his chances of finding employment elsewhere were subsequently jeopardized. As such, the government was called upon to make a compelling case for its actions but failed to do so in the eyes of the D.C. Court of Appeals.

The concurring decision to *Scott v. Macy* written by Circuit Judge Carl E. McGowan verified claims by the Mattachine Society and Bruce C. Scott that disqualification “because of immoral conduct” should not be a legitimate ban from federal employment in relation to occupational competence or fitness. The Court of Appeals notes that the Commission’s questioning of Scott based on his prior arrests and decision to disqualify him “did not in fact rest upon a finding of ‘immoral conduct’”. While this concurring opinion called only for greater specification of the immoral conduct charge rather than an outright ban on employment discrimination by the federal government, the Court’s demand for the Commission to abandon “motivations clouded by inexactitude of expression” is a clear condemnation of the vague nature of federal hiring and firing discrimination policy.

This progressive judgement is indicative of the desire for societal changes that occurred throughout the 1960s and the rise of civil rights movements’ emphasis on utilizing courts as a means of obtaining these changes. These methods were encouraged both by members of queer communities and legal scholars who saw a hopeful case in the cause of equal opportunity federal employment, with civil liberties lawyer David Carliner urging that “arguments about morality and attempts to influence votes are fruitless tactics for homophile groups.... We must distinguish between what the courts will do and what Congress will do.... The courts...are very sensitive to demands for rights in the due process field.”⁹ In addition, *Scott v. Macy* has served as legal precedent over the years for cases surrounding questionably legal discrimination practices and firing of federal government employees in *Polcover v. Secretary of Treasury* (1973), *Gueory v. Hampton* (1974), and *Doe v. Hampton* (1977). While these cases nor *Scott v. Macy* involved State Department employees, their legal actions had rippling effects for the homophile rights movement and later gay liberation movement contrary to the beliefs and desires by those who wrote and directed federal employment policies.

Questions for Discussion

1. How does the language of this court decision differ from that used in the primary sources from the 1950s? Why might this language have evolved?
2. This case is an example of the judicial safeguarding detailed by John W. Macy Jr. in his letter to the Mattachine Society – does this judgement undermine his defense of Commission policy?
3. Why is it important to consider the impact of legal precedent and impact when discussing State Department discrimination policies?

⁸ Lewis, “Lifting the Ban on Gays in the Civil Service,” 391.

⁹ Marc Stein, *Sexual Injustice: Supreme Court Decisions from Griswold to Roe* (Chapel Hill: University of North Carolina Press, 2010), 142.

Executive Order 12968 (1995)

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Monday, August 7, 1995

Presidential Documents

Title 3—

Executive Order 12968 of August 2, 1995

The President

Access to Classified Information

The national interest requires that certain information be maintained in confidence through a system of classification in order to protect our citizens, our democratic institutions, and our participation within the community of nations. The unauthorized disclosure of information classified in the national interest can cause irreparable damage to the national security and loss of human life.

Security policies designed to protect classified information must ensure consistent, cost effective, and efficient protection of our Nation's classified information, while providing fair and equitable treatment to those Americans upon whom we rely to guard our national security.

This order establishes a uniform Federal personnel security program for employees who will be considered for initial or continued access to classified information.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

(c) The United States Government does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation in granting access to classified information.

(d) In determining eligibility for access under this order, agencies may investigate and consider any matter that relates to the determination of whether access is clearly consistent with the interests of national security. No inference concerning the standards in this section may be raised solely on the basis of the sexual orientation of the employee.

(f) This order is effective immediately.

THE WHITE HOUSE,
August 2, 1995.

[FR Doc. 95-19654

Filed 8-4-95; 12:18 pm]

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Federal government employees who often come across sensitive state information are required by law to receive security clearance through an extensive background check process. These employees, and particularly employees of the State Department who are tasked with the most sensitive foreign policy and diplomatic issues, were legally barred from receiving this security clearance if at some point in the process it was revealed that they were queer. While the stringency with which this law was enforced had somewhat been relaxed, these policies still remained on the books. However, Executive Order 12968, issued by the Clinton administration in 1995, amended the previously analyzed Executive Order 10450 by the Eisenhower administration in 1953. After decades of refused or revoked security clearances and access to classified information by queer federal employees, President Clinton chose to establish uniform standards for all federal employees regardless of sexual orientation.

This discursive shift from language of “sexual perversion” and “homosexual conduct” and an emphasis on same-sex actions rather than identity is clear in this document. President Clinton’s inclusion of sexual orientation as part of federal equal opportunity employment efforts marked a certain change in policy from those of the Eisenhower-era stance amended by this Executive Order. While page 1 includes the oft stated paragraph on the importance of “certain information [being] maintained in confidence,” it continues to alter the relationship between queerness and good citizenship as being not mutually exclusive but in fact potentially symbiotic.

In addition to the domestic context, Executive Order 12968 should be looked at in the broader scope of geopolitical events and attitudes. The end of the Cold War in 1991 and subsequent elimination of foreign communist threat allowed the government to feel a level of security in regard to their foreign policy employees and diplomatic corps. In 1998, the Clinton administration would go further to issue Executive Order 13087 which amended President Richard Nixon’s Executive Order 11478, concerning equal employment opportunity for federal workers; sexual orientation identity could no longer be used to disqualify a person for federal civilian employment.¹⁰ These significant changes marked a victory for both queer people nationwide and individuals, with Mattachine Society founder Franky Kameny stating in a New York Times interview that “there has been a gradual falloff in enforcement over the years... what this represents is the next step. The Government has gone beyond simply ceasing to be a hostile and vicious adversary and has now become an ally.”¹¹ While this Executive Order certainly would have been a personal achievement for Kameny and those who fought for protection and recognition over the decades, the claim that the government had emerged as an ally is far-fetched in comparison to the remaining anti-LGBT policies that persisted and those that would emerge throughout the Clinton administration and beyond.

Questions for Discussion

1. What is the significance of placing the necessity of “consistent, cost effective, and efficient protection” security clearances in conjunction with sexual orientation?
2. How can this Executive Order be examined within the broader context of Clinton administration LGBT policies and specifically “Don’t Ask, Don’t Tell”, implemented one year prior?
3. How does Executive Order 12968 demonstrate a shift in notions surrounding queerness and good citizenship from those in Executive Order 10450?

¹⁰ Trevor G. Gates and Margery C. Saunders, “Executive orders for human rights: The case of Obama’s LGBT nondiscrimination order,” in *International Journal of Discrimination and the Law* 16, no. 1 (2016), 29.

¹¹ Todd S. Purdum, “Clinton Ends Ban on Security Clearance for Gay Workers,” *New York Times*, August 5, 1995.

Executive Order 13672 (2014)

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Federal Register / Vol. 79, No. 141 / Wednesday, July 23, 2014 / Presidential Documents

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Presidential Documents

Executive Order 13672 of July 21, 2014

Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 121, and in order to provide for a uniform policy for the Federal Government to prohibit discrimination and take further steps to promote economy and efficiency in Federal Government procurement by prohibiting discrimination based on sexual orientation and gender identity, it is hereby ordered as follows:

Section 1. Amending Executive Order 11478. The first sentence of section 1 of Executive Order 11478 of August 8, 1969, as amended, is revised by substituting “sexual orientation, gender identity” for “sexual orientation”.

Sec. 2. Amending Executive Order 11246. Executive Order 11246 of September 24, 1965, as amended, is hereby further amended as follows:

(a) The first sentence of numbered paragraph (1) of section 202 is revised by substituting “sex, sexual orientation, gender identity, or national origin” for “sex, or national origin”.

(b) The second sentence of numbered paragraph (1) of section 202 is revised by substituting “sex, sexual orientation, gender identity, or national origin” for “sex or national origin”.

(c) Numbered paragraph (2) of section 202 is revised by substituting “sex, sexual orientation, gender identity, or national origin” for “sex or national origin”.

(d) Paragraph (d) of section 203 is revised by substituting “sex, sexual orientation, gender identity, or national origin” for “sex or national origin”.

Sec. 3. Regulations. Within 90 days of the date of this order, the Secretary of Labor shall prepare regulations to implement the requirements of section 2 of this order.

Sec. 5. Effective Date. This order shall become effective immediately, and section 2 of this order shall apply to contracts entered into on or after the effective date of the rules promulgated by the Department of Labor under section 3 of this order.

THE WHITE HOUSE,
July 21, 2014.

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The legacy of President Obama as an advocate for queer individuals and communities is certain – the broadly positive social changes that occurred over eight years were the most consequential for LGBTQ rights of any President in history. While the administration was slow to adopt queer issues as part of its agenda in its first years, it had done so in full force by the beginning President Obama’s second term in office. The implementation of Executive Order 13672 on July 21, 2014 amended two previous Executive Orders from the 1960s – EO 11478 pertaining to equal employment opportunities for federal civil servants and EO 11246 pertaining to equal opportunity hiring and employment of government contractors. While Executive Order 11478 does not relate to hiring and employment of State Department personnel, the Executive Orders were paired together due to the perceived similar nature of the protections they sought to extend.

With the simple substitution and addition of words, in Sections 1 and 2, this Executive Order altered federal employment policy. Gates and Saunders note that “the consequences of this [Executive Order] are huge, as approximately a quarter of American workers are either employed directly by the federal government or by agencies that contract with the government.”¹² However, one must ask – if alterations in policy were this simple, why did they take so long? The answer is certainly a political one, full of behind-the-scenes deals and negotiations, but one must question why, if Democratic Presidents have had the unilateral power to institute equal employment policies for federal government employees all this time, did they not exert this privilege as head of the Executive Branch? While the Obama administration should be lauded for some of its actions pertaining to queer rights and communities, the tardiness of these policies should provide room for further contemplation and debate.

Furthermore, this Executive Order is an example of the rising importance placed on gender identity as part of the LGBT rights movement and a rise in nation-wide debate surrounding transgender rights. The Obama administration’s coupling of sexual orientation and gender identity under the umbrella of federal protection speaks to the viewed affinity between these two concepts. Furthermore, during the Obama administration, twenty-four agencies added “gender identity” to their respective Equal Employment Opportunity policies.¹³

Questions for Discussion

1. What are the implications of equal opportunity, non-discrimination policies in the federal government while many states continue to lack such protection?
2. How does the prohibition of discrimination against gender identity speak to the discursive shift from LGB rights to LGBT rights in America?
3. How can this Executive Order be examined in relation to the Obama administration’s broader LGBT social policy record?

¹² Gates and Saunders, “Executive orders for human rights,” 31.

¹³ Matthew S. Nosanchuk, “The Endurance Test: Executive Power and the Civil Rights of LGBT Americans,” in *Albany Government Law Review* 5, no. 2 (2012), 461.

Apology for Past Discrimination toward Employees and Applications based on Sexual Orientation (2017)

Press Statement

John Kerry

Secretary of State

Washington, DC

January 9, 2017

Throughout my career, including as Secretary of State, I have stood strongly in support of the LGBTI community, recognizing that respect for human rights must include respect for all individuals. LGBTI employees serve as proud members of the State Department and valued colleagues dedicated to the service of our country. For the past several years, the Department has pressed for the families of LGBTI officers to have the same protections overseas as families of other officers. In 2015, to further promote LGBTI rights throughout the world, I appointed the first ever Special Envoy for the Human Rights of LGBTI Persons.

In the past – as far back as the 1940s, but continuing for decades – the Department of State was among many public and private employers that discriminated against employees and job applicants on the basis of perceived sexual orientation, forcing some employees to resign or refusing to hire certain applicants in the first place. These actions were wrong then, just as they would be wrong today.

On behalf of the Department, I apologize to those who were impacted by the practices of the past and reaffirm the Department's steadfast commitment to diversity and inclusion for all our employees, including members of the LGBTI community.

On November 29, 2016, Secretary of State John Kerry received a letter from Senator Benjamin L. Cardin, Ranking Member on the Senate Committee on Foreign Relations. In this letter, he requested Secretary Kerry to “take steps to remedy a deep stain on our national history and that of the State Department itself: The legacy of the so-called ‘lavender scare’,” noting that “the Senate bears a special measure of responsibility... as the Department’s actions were in part a response to... reports on the employments of ‘moral perverts in Government Agencies.’”¹⁴ As a result of this communication, Secretary Kerry issued a formal apology in the final days of his tenure on behalf of the U.S. Department of State for its past treatment of queer Americans employed.

Secretary Kerry’s apology, issued on the State Department website on January 9, 2017, focused first on the progress achieved by the Department, the Obama administration, and himself. While it is true that these achievements occurred and that they increased the credibility of the administration’s supposedly pro-LGBT policies and the Department on the whole in the eyes of queer employees and communities, the act of beginning an apology with mention of one’s achievements is questionable at best. From a standpoint of composition, the section of this apology detailing the sentiments of regretful past actions is shorter than of the details of Departmental achievements.

Reactions over this apology were mixed and while Secretary Kerry and the State Department received praise, it is important to note that the act of apology can often serve political aims rather than solely based on moral convictions of right and wrong. Human Rights Campaign government affairs director David Stacy noted that “although it is not possible to undo the damage that was done decades ago, Secretary Kerry’s apology sets the right tone for the State Department as it enters a new and uncertain time in our country under a new administration.”¹⁵ Conversely, author of *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* David K. Johnson criticized the statement:

“The apology made it sound like the State Department was just one of many institutions that was discriminating against gay men and lesbians ... that it was just sort of run-of-the-mill 1950s anti-gay discrimination... In fact, the State Department was unique in its level of homophobia.”¹⁶

It is important, therefore, to consider the reasons governments issue apologies – whether they are made to assuage guilt, meet political goals, express feelings of true regret or, more likely, a combination of all three, a critical lens must always been applied when examining primary source governmental documents.

Questions for Discussion

1. How does the act of apology serve as a reconciliatory tool for politicians? Are apologies effective?
2. Is this apology sufficient now that there is some temporal distance from state-sanctioned discrimination from the State Department? Why or why not?
3. This apology was issued on January 9, 2017 – 10 days before the end of the Obama administration. What is the significance of the temporality of the press release?

¹⁴ Benjamin L. Cardin, “Senator Benjamin L. Cardin to Secretary John Kerry,” Washington, D.C., November 29, 2016.

¹⁵ Anne Gearan, “John F. Kerry apologizes for State Department’s past discrimination against gay employees,” *The Washington Post*, January 9, 2017.

¹⁶ Camila Domonoske, “State Department Apologizes For Decades Of Anti-LGBT Discrimination,” *National Public Radio*, January 9, 2017.

Concluding Thoughts

In the final chapter of his seminal book on the Lavender Scare, David K. Johnson notes that “the demise against the federal government’s campaign against homosexual civil servants, like its genesis, was a slow process.”¹⁷ This compilation of primary source material from 20th and 21st century government archives has shown this to be true. While Whiggish interpretations of history, and in particular political history, push the narrative of progress as an ever-improving societal norm, the bonds of state-sponsored homophobia and legally mandated anti-queer discrimination in federal employment have only recently been broken. The current Trump administration is an example of the uncertain future faced by queer federal employees and especially those at the State Department which remains void of a plethora of ambassadorial, diplomatic, and administrative employees as a result of current neo-Republican rhetoric surrounding foreign policy and human rights. The Trump administration demonstrated its unwillingness to maintain the strides made by the State Department through its removal of Secretary Kerry’s apology from the Department’s website almost immediately after taking office in January 2017.¹⁸

Despite these personal criticisms and those made by scholars, it is important to recognize the power of the greater transformation of the State Department. It was entirely intentional that this policy and law sourcebook is bookended by the drastically different 1950 Hoey Report and the 2017 Kerry apology – the mere 67 years that separate these two primary sources speak to the unspeakable dedication of civil and human rights advocates through court cases, political lobbying, and greater involvement in the American political system. While historians can critique the actions of those involved and current scholarship that has developed, broad societal changes that have occurred over the past 67 years speak to the power of advocacy and the strength of those who are oppressed to fight back.

¹⁷ David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays and Lesbians in the Federal Government* (Chicago: University of Chicago, 2009), 209.

¹⁸ Joseph Patrick McCormick, “Historic John Kerry apology deleted from US State Department website,” *Pink News*, January 24, 2017.

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