

Judge Limits U.S. Check of Homosexuals

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The Defense Department's traditional view that homosexuals are security risks received two serious and perhaps fatal setbacks from a federal judge here yesterday.

U.S. District Judge John H. Pratt ruled that government security evaluators cannot subject homosexuals to "probing personal questions" about their sex lives or withhold security clearances for refusal to answer such questions.

Furthermore, he said, even if the government obtains the answers through its own investigation, the information — however bizarre — cannot be used as a basis to deny security clearance without a showing that it affects the individual's judgment, stability or vulnerability to blackmail.

The judge ordered the Defense Department to restore the security clearances of two avowed homosexuals who lost jobs with civilian defense contractors when their clearances were revoked for their refusal to answer detailed questions about the type, frequency, location and cause of all their homosexual acts.

He also ordered the Defense Department to hold a new inquiry into the case of a physicist who answered the questions and lost his clearance when government evaluators decided the answers justified revocation.

Judge Pratt issued his rulings orally at the conclusion of a three-hour hearing into

separate cases filed by American Civil Liberties Union attorneys.

He readily accepted the view advanced at the hearing by government attorneys that homosexuality is potentially relevant in determining if a person is eligible for a security clearance.

But he said "I just don't see why" avowed homosexuals should be subjected to the kind of questions asked in the cases before him yesterday.

Those were the cases of Otto H. Ulrich Jr., 36, a linguist described by his lawyer, Dennis M. Flannery of the Center for Law and Social Policy, as "brilliant"; Richard L. Gayer, 32, a San Francisco scientist, and George W. Grimm, 52, a physicist from New Jersey.

According to a statement by Flannery that was uncontested by government attorneys, Ulrich and Gayer have been homosexuals for many years, have said so openly, and have told the government about it. Ulrich, Flannery said, went so far as to list on his application for a security clearance his membership in the Mattachine Society, a homosexual civil rights organization. Ulrich formerly was employed by Melpar, Inc., in Falls Church and later for Bionetics Laboratories in Rockville.

Subsequent to their being cleared for security work, both were later subjected, for reasons that were not made clear, to investigations that resulted in suspension of their clearances. Last spring, the

suspensions were made permanent because of their refusal to answer the detailed questions about their private activities put to them by security evaluators.

Garven Oliver, a Justice Department attorney arguing the case for the government, acknowledged that their homosexuality alone was not grounds for revocation. But he said their refusal to answer the questions made it impossible to determine if they were "well-adjusted homosexuals," or were subjected to outside pressures, guilt feelings, blackmail, or other potential threats to their loyalty.

"Maybe they just hold hands in the movies," Oliver said. "Perhaps the homosexual activity was an isolated incident." He argued that that sort of information was needed for the government to exercise properly its discretion in security cases.

"I just don't see why," Pratt said. "You could ask any one of those questions of any individual."

"Both of these men," he said, "have a long record with no evidence that they have deviated from the trust placed in them. I should think the presumption would be in their favor."

In the case of Grimm, who, Flannery said, lost his clearance in 1964 and is now living on welfare, Pratt said the answers to the questions put to him indicated that there might be grounds for withholding or revoking clearance.