

FBI Agent Loses Court Fight On Discipline

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A federal judge rejected yesterday an FBI agent's attempt to prevent his employer from transferring him as a disciplinary measure because he was living with a woman out of wedlock.

The FBI's response to the action by U.S. District Judge Albert V. Bryan Jr. in Alexandria was swift, according to the agent, Jack T. Colwell. Shortly after the court hearing, he said, he was ordered to report on Monday to the FBI's New York field office. Colwell said he will do so. He and his attorney said they have not yet decided whether to appeal.

The judge ruled that Colwell has no constitutional right that prevents the FBI from firing or transferring him and that therefore the court has no jurisdiction in the matter.

The ruling also doomed Colwell's effort to force the FBI to give him back pay for the three weeks, from Sept. 29 through Oct. 20, when he was suspended without pay in the incident.

Both the transfer and the suspension resulted after the FBI learned that Colwell, who has been an agent for 4½ years, was living with a woman to whom he was not married in a house he owns in Chantilly.

The suspension was the first disciplinary step the FBI took, and in informing Colwell of it, FBI Director Clarence Kelly said in a letter:

"You engaged in indiscretions which reflect unfavorably on your moral character and which are not in keeping with the high standards which are expected of employees of the FBI. This conduct on your part is inexcusable and will not be tolerated by me."

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FBI, From B1

Colwell argued in his suit that his conduct "is neither immoral under current standards nor disrespectful of the high standard of conduct expected by the FBI . . ."

The FBI contended that Colwell violated a Justice Department code of conduct. The code specifically covers conflict of interest, financial disclosure, improper use of entertainment and other kinds of conduct, but contains no specific section on improper sexual conduct.

In arguments filed in court on behalf of the FBI, the Bureau also said that Colwell had violated Virginia law by living with a woman out of wedlock and that he was lucky that he had not been prosecuted or fired.

Colwell's attorney, Steven A. Pickard, argued in court yesterday that

the FBI had violated his client's constitutional right to privacy when his client had been asked if he had had sexual relations with the woman and whether he intended to marry her.

In addition, Pickard told Judge Bryan, Colwell's right of association had been violated when the Bureau ordered him to terminate the relationship with the woman. Pickard said the government had failed to prove that his client's personal life had interfered with his work.

But the government's attorney, Joseph A. Fisher, told the court that the government does not concede that there exists a difference between criminal and moral conduct and characterized the agent's conduct as both immoral and criminal.

Colwell is married, although he does not live with his wife, and Fisher

said that adultery is a criminal offense in 49 states.

"Does it concern you that morality is a standard by which a man can be transferred or not?" Judge Bryan asked Fisher.

Fisher said that it did not and added that "the public expects a standard of conduct of FBI agents, assistant U.S. attorneys, and federal judges that is different" from conduct required of others.

Despite voicing serious doubts about Fisher's views, Judge Bryan ruled that the jurisdiction of the court in this case was limited to the propriety of internal departmental procedures, and he said the court could not rule as to the wisdom of the regulations themselves.

"It is a standard of conduct that this agency, in my view, can impose on its employees," Judge Bryan said

in denying Colwell's request for an injunction.

Asked in a telephone interview yesterday whether he was still living with the woman, Colwell laughed and said: "She lives in my house and I visit her." Colwell said had recently moved elsewhere in Fairfax County.