

Judge in F.B.I. Ouster Case Suggests Veteran's Right to Neck

By FRED P. GRAHAM

Special to The New York Times

WASHINGTON, Sept. 20—A Federal judge suggested today that a young man who became accustomed to necking and petting while in the military might have a legal right to continue for a while after he returned to civilian life.

Furthermore, the judge said, the veteran's right to neck might even apply if he became an employe of the Federal Bureau of Investigation.

These observations of the subtleties of veterans' rights were made by Judge Harold Leventhal of the Court of Appeals for the District of Columbia.

The Court is considering whether J. Edgar Hoover, the director of the F.B.I., acted legally in dismissing a bache-

lor clerk who had kept a girl overnight in his apartment.

The clerk, Thomas H. Carter, 26 years old, has sworn in court papers that nothing but "necking and spooning" went on. But a lower Federal judge threw out his suit for reinstatement on the grounds that the circumstances were sufficiently "indiscreet" to justify his dismissal.

Served 4 Years in Air Force

In dismissing the \$4,930-a-year clerk, who had been with the F.B.I. for only a month after returning from a four-year hitch in the Air Force, Mr. Hoover said that his dalliance with the girl constituted "conduct unbecoming an employe of this bureau."

Judge Leventhal reminded the Government's counsel that under the Uniform Military Training Act a returning serv-

iceman must be given a chance to adjust to the changed conditions of his civilian job.

He cited several post-World War II court decisions in which baseball clubs were required to keep returning servicemen until they had had an opportunity to get back into playing condition.

Under the same reasoning, he said, the F.B.I. might have to give returning servicemen a chance to adjust to the F.B.I.'s lofty standard of girl-boy relations. Mr. Carter's Air Force service included two years in Japan.

"Many people in the military service think that premarital petting in private is not offensive," said Judge Leventhal, a former Coast Guard lieutenant commander. "Maybe even officers would do it."

Assistant United States Attorney Thomas Lumbard re-

plied that Mr. Carter's offense had been his carelessness and poor judgment in creating the impression of misconduct. His conduct came to light when an anonymous person wrote the F.B.I. about the overnight tryst and said: "It annoys me terrible."

The Government lawyer argued that the incident compromised the reputation of the bureau as well as the girl's.

"A vast number of people still feel that this kind of conduct is wrong — people in Oklahoma and Kentucky where this young man came from — even if perhaps not in the sophisticated East," said Mr. Lumbard, who is the son of Chief Judge J. Edward Lumbard of the United States Court of Appeals in New York.

Richard M. Millman, who is representing Mr. Carter, argued that the young man's actions

"were not only normal but healthy, leading toward a marital relationship."

He intimated that the tipster had been a jealous female employe who worked in the bureau's fingerprinting division with Mr. Carter.

Mr. Carter, who is still a bachelor, now works for a bank here. Mr. Millman said that he was seeking back pay and reinstatement, so he could resign with a clear record.

Legal observers said the case could be legally significant as a test of the constitutional rights of employes of sensitive Federal agencies that are not covered by the Civil Service laws.

Mr. Carter's attorney have charged that the F.B.I.'s actions violated his right of personal privacy and his right to due process as a Federal employe.

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