

Federal Appeals Court Hears Case on Security Clearances

Judge Asks Gov't a Pointed Question About 'Stonewalling' on Reasons for Refusing to Answer Gays

by George Mendenhall

"It seems to me this is complete stonewalling. Does this man have any right to due process at all?" An exasperated federal judge gave this reaction on March 14. The case involves Dick Gayer, an employee of GTE Government Systems. Gayer tried again to find out from the CIA, or another government agency, why he and other "high tech" Gay engineers can't get a decision on their requests for a high-level government security clearance. The determined Gay activist has been fighting for his clearance since 1982.

Gayer, an attorney, represented himself and others as he gave arguments in a class action suit to require that the federal government come out of the closet on the issue. Those being refused the higher level clearance are denied the higher pay that goes with the positions that have that requirement.

The three justices of the Ninth U.S. Circuit Court of Appeals heard Gayer's argument. Gayer argued that people be granted the clearance to handle state secrets or at least be denied the clearance so they can take further legal action. The judges also heard from the Justice Department lawyer Freddi Lipstein.

Lipstein responded that even the reason why the government has not taken a position on the applications is secret. She said that any government statement might reveal the name of the secret sponsor of a given project. That brought the "stonewalling" comment from Justice Thomas Tang. "Stonewalling" means "to engage in obstructive parliamentary debate or delaying tactics, to be uncooperative or evasive."

Gayer has learned that the Central Intelligence Agency is the investigating agency on clearing employees to work on top secret projects. The only reason that Gayer and other Gay



Richard Gayer (Photo: Rink)

"high tech" engineers can determine that they cannot get such clearances is because they are Gay.

The CIA issued a public statement in August, 1983, in which it revealed that it considers homosexuals to be security risks. Earlier, in 1980, Gayer made his Gay lifestyle public and was successful in winning a lower level security clearance as an openly Gay person.

"The CIA wants to do as it damn pleases," Gayer states, "without having the courts, Congress, or the American people examine its actions for fundamental fairness. It simply wants the freedom to continue to discriminate as it always has, denying security clearances at the whims of its officers. The CIA wants to remain above the law, but this suit seeks to end that exalted status."

Gayer said the issue had become "one of due process, not Gay rights. If a person is being denied a security clearance, then they should be told why." He offered a possible solution: that President Reagan place the reason for denial on his letterhead "with no hint of what agency is involved."

Justices Tang, William Canby and Joseph Sneed will now privately review the classified documents in the case which explain the government's position in the case. They will issue a ruling later. ■

CIA Homosexuality Policy

The Central Intelligence Agency (CIA) is involved in processing security clearances such as the one being sought by Gay activist Dick Gayer. In August, 1983, the CIA issued the following policy statement on homosexuality:

Sexual conduct can be a relevant consideration in circumstances in which the conduct reflects upon the individual's stability, indicates a personality disorder, or could result in exposing the individual to direct or indirect pressure because of susceptibility to undue influence, direct blackmail, or coercion.

For example, foreign intelligence services are known to

target for cultivation and exploitation persons known or believed to be practicing adult homosexual behavior. There have been a significant number of espionage cases in which homosexual conduct has been a factor. In addition, homosexual activity is illegal in many areas of the world in which agency personnel must serve.

In examining such cases, it is

relevant to consider the age of the person, the voluntariness and frequency of such activity, the public nature and reactivity of the conduct, the identities of others participating in the conduct, and any other circumstances which may serve to aggravate the nature or character of the conduct.

A recommendation for disapproval is appropriate when, in view of all available evidence concerning the individual's history of sexual behavior, it seems likely that access to classified information could pose a risk to the national security. ■