

you want to know what they have done and so on, but my criticism is that we have rather unthinkingly just assumed that this is a good thing, that there must be good reasons for it without stopping to cast the balance, which I think you are suggesting is desired here, when you say how do you cast the balance in law enforcement, you are getting into a very large and difficult area and it is one in which I don't profess real competence.

What I do suggest is that too often, however, law enforcement agencies have assumed that they must be able to engage in certain practices, or that they must be able to disregard State legal provisions, because otherwise the criminal goes free. Yet once they begin to observe these procedures, I think it is frequently the case, has been the case, that they do their job just as well, and maybe with additional training do it better than in the past.

What I am really saying here is that one cannot answer your very penetrating question with a broadside statement. I think we must have a weighing for each alleged intrusive action, whether by government, by other individuals, or by private parties, and see what the justification is, and then, as reasonable men, the legislative branch, and those in all walks of national life, may conclude that it is a price we must pay because of some important individual or social value, then that intrusion will be borne.

We all agree that privacy, I think, is not an absolute, and in the nature of things, cannot be. A society in which it were an absolute would be one of the deadest societies which one can imagine.

I think what we need, and that is what I suggest in my statement, is the kind of careful gathering of empirical data, constantly seeking the justification for the intrusive action, constantly asking, is there an alternative way by which the job can be done without behaving in such an intrusive way, but seldom, it seems to me, have we asked the questions in this way. That is, if we want a free society, we have to work and ask the questions that will keep us a free society.

The direction of drift is perfectly clear. You don't have to be very intelligent to see that if this drift toward more and more intrusive action by private groups and organizations of all kinds, and by Government, isn't checked, in 20 or 30 years no one will bother asking questions about privacy, and we will take it for granted that we live in a fishbowl and that we are not free men, but fish.

Mr. HORTON. Doctor, in connection with that, you have indicated that justification might be sufficient for invading privacy. Would you—

Mr. BEANEY. I don't want to leave that impression.

Mr. HORTON. Perhaps you might speak to that.

Mr. BEANEY. There may be some bits of information which are obtained at such a high price that you would simply say we don't want them at all. The purpose for which you seek the information may have some value. There may be some social value attached to it, but the price, the cost to the individual and to the society of which he is a part, is simply so great that then you would say we will get along without it, because again in looking at the effect of the invasion you simply would not for a moment condone it.

But I am speaking of the less dramatic, the less obvious kind of intrusive action.

Mr. HORTON. You are talking in essence about what you might call a gray zone, where these problems become somewhat confused or