

of crime, they would find criminals, they would be able to find fugitives they cannot now uncover. But this is a price that we are unwilling to pay and, therefore, there are people who have committed crimes that go unpunished, and there are people for whom there is perhaps probable cause to arrest for crimes, but we are unable to convict. The Bill of Rights accomplishes that, and it does not seem to me to be unfair a price in order to have a free society; i.e., a government of limited powers.

The right of privacy is a developing concept, and we still have very few cases which indicate the scope of it.

Dr. Beaney referred a number of times to Justice Brandeis, and I find the same kind of admiration for his thoughts and his words. I think that he was being most perceptive when he said this in one of his opinions, "The makers of our Constitution sought to protect Americans in their beliefs, thoughts and their emotions, and their sensations. They conferred as against the Government the right to be let alone the most comprehensive of the rights of man and the right most valued by civilized men."

However, this concept we are losing more and more because of the interaction in our society, and the Government, as Dr. Beaney suggested, sets a pattern.

For example, in the field of Government employment, there is a belief, which is often expressed that Government employment is not a right, it is a privilege. Once you accept that contention, then you accept the argument that because it is a privilege, any condition at all can be attached to it, such conditions as the kinds of tests that you take, the questions you have to answer, the kind of searching, the kind of investigation that you can be subjected to in order to have Government employment.

This concept that Government employment is a privilege and, therefore, the Government may do anything is nonsense. It just isn't true. It is not true, for example, that merely because Government employment is called a privilege, that the Government could bar individuals who attend mass, or those who are of a certain color, or that it can bar individuals from Government employment who have red hair, or some other features.

There must be some reasonable relationship between the kind of condition that is imposed on Government employment and the Government employment itself.

There has been awareness among some executives in the Government about invasions of privacy. A memorandum was issued by Under Secretary of Defense, Walter T. Skallerup, Jr., on November 26, 1962, on the subject of civil and private rights.

In it he set forth guidelines that should be used by security investigators and review boards. He warned them to stay away from certain areas that would constitute invasions of privacy of individuals.

He stated, for example in his memorandum:

Inquiries which have no relevance to a security determination should not be made. Questions regarding personal and domestic affairs, financial matters, and the status of physical health fall in this category unless evidence clearly indicates a reasonable basis for believing there may be illegal or subversive activities, personal or immoral irresponsibility, or mental or emotional instability involved. The probing of a person's thoughts and beliefs and questions about his conduct, which have no security implications, are unwarranted.