

Mr. LUCE. As far as the fifth amendment is concerned, I would say the more serious question is whether you belong to a subversive organization, because that can subject you to criminal prosecution. Kissing a member of the opposite sex, so far, has not been outlawed.

Mr. GALLAGHER. We are heading in that direction. That is one of the reasons we are trying to eliminate the question as a condition of employment.

Mr. ROSENTHAL. I think most of the American public is willing to accept certain criminal offenses, violations, or convictions as precluding someone from either employment or promotion. But I am sort of amazed, frankly, that you can't see the distinction between that kind of thing and some of these questions that have been raised in these tests, that you have tacitly approved of, by giving them to your people.

Mr. LUCE. There is this vast difference. I see the answers to the questions on the Form 57. I don't see the answers, nor does anybody in Bonneville see the answers, to those questions.

Mr. ROSENTHAL. Right. But you know the questions are being asked. And you find nothing wrong with it. As a lawyer I feel we in the legal profession are sort of the last bastion of the preservation of constitutional rights, so I think we have a special obligation.

Mr. LUCE. I agree with you a hundred percent.

Mr. ROSENTHAL. As both a lawyer and an administrator, you don't feel there has been any violation of privacy by some of the types of questions here?

Mr. LUCE. Not the way we administer them; no. I think, as I say, it is possible to administer them in such a way that it would be a violation of privacy.

Mr. ROSENTHAL. I don't quite see the distinction between your giving the test with whatever safeguards you have, and giving the test to 20,000 people, or 3,000, in a wide open room. It seems to me the act of invasion occurs with the asking of the question.

Mr. LUCE. I would have to differ with you. I think where the question is established as part, or is included in a test that has been established as a reliable index of personality, that this is a reasonable invasion of privacy, if you want to so phrase it. Now you disagree with me.

Mr. ROSENTHAL. I don't think there is any such thing as a reasonable invasion of privacy.

Mr. LUCE. We say it is a reasonable invasion of privacy to ask a man if he belongs to a subversive organization, or as we also ask on the form 57 if he ever had a nervous breakdown.

Mr. ROSENTHAL. You don't see the difference between those questions on the form 57 and the questions in the MMPI?

Mr. LUCE. I think there is a bigger constitutional question in the form 57 questions than what we are doing.

Mr. GALLAGHER. You feel a person must stand psychologically naked for Federal employment?

Mr. LUCE. Well, no; I don't think that. I think where he goes into a key position, where this becomes very important, that he may be called upon to be examined in the way that we have described the examinations are held.

Mr. GALLAGHER. Then you feel there is some point where he must stand psychologically naked?