

On the other hand, the Medical Division of the Department of State, which is no less intent upon psychological testing, has found it possible to fulfill its personnel responsibilities despite elimination of all questions pertaining to religion and sex.

I feel compelled to add that I am unable to give substantial weight to the testimony of psychologists regarding the importance, accuracy, and value of their own tests, and I may add, as to their own expertise in giving the tests.

Unquestionably there is at least unconscious bias favoring testing on the part of those whose living is earned by composing and administering the tests. I have seen too much partiality on the part of allegedly impartial psychological experts in court, to indulge the assumption that our scientific experts are any less prone to ordinary human interest and bias than are the rest of us.

Illustrative is the pious avowal of Dr. Brayfield, executive director of the American Psychological Association, that his organization has no financial interest in the psychological testing, because the APA neither composes nor sells tests. What he neglected to say is that the members of the APA, whom Dr. Brayfield is paid to represent at these hearings, do have a very direct and substantial financial interest in such tests.

Dr. Brayfield's testimony, therefore, is less than disinterested although he would have the subcommittee believe otherwise.

Despite the inconsistencies in scientific conclusions by the scientific experts, and despite their failure to carry the burden of proving the reliability of psychological testing, I am willing to assume *arguendo* that such tests do have some degree of reliability.

Even so, their use is insupportable. It is not at all farfetched to assume, for example, that a reliable truth serum could be administered as quickly and as inexpensively as written psychological tests. Undoubtedly, the accuracy of interrogation under truth serum would far surpass the uncertain inferences from a fakable written test. I trust that none of us would support such an affront to personal dignity, even in the name of pursuit of knowledge, yet I find it hard to distinguish the two methods.

There is a clear analogy in the due process principle that excludes involuntary confessions regardless of reliability. As Justice Frankfurter wrote for the Court in a case involving only psychological pressure, with no physical coercion at all:

Our decisions * * * have made clear that convictions following the admission into evidence of confessions which are involuntary * * * cannot stand. This is so not because such confessions are unlikely to be true * * *. Indeed, in many of the cases in which the command of the due process clause has compelled us to reverse State convictions involving the use of confessions obtained by impermissible methods, independent corroborative evidence left little doubt of the truth of what the defendant had confessed. Despite such verification, confessions were found to be the product of constitutionally impermissible methods * * *.

This is so because the methods used to obtain such confessions are offensive to an underlying principle in our system of Government.

The essence of that principle was voiced by Justice Holmes in a wiretapping case nearly 40 years ago:

* * * For my part I think it a less evil that some criminals escape than that the Government should play an ignoble part.