

Surely it will not be contended that Federal employees, and I might add schoolchildren, are less entitled to the protection afforded by this fundamental principle than are criminal defendants, or that it is less serious to have a dangerous criminal at large than it is to have a psychologically inadequate employee, or that occasional wiretapping of suspected criminals is more ignoble than the wholesale "brain-tapping" of Federal employees, and of schoolchildren.

It was in his famous and much approved dissent in the same case that Justice Brandeis prophesied the very kind of problem that we face today.

Referring to "subtler and more far-reaching means of invading privacy," Justice Brandeis predicted that "advances in the psychic and related sciences may bring means of exploring unexpressed beliefs, thoughts, and emotions."

"Can it be," Justice Brandeis asked, "that the Constitution affords no protection against such invasion of individual security?" And he answered this question:

The makers of our Constitution * * * recognized the significance of man's spiritual nature, of his feelings and of his intellect * * *. They sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the fourth amendment * * *.

Justice Brandeis might well have been directing himself to the MMPI test itself, in his direct references to the constitutional protection of beliefs (I believe there is a devil and a hell in afterlife); thoughts (I think of things too bad to talk about); emotions (I am attracted by members of the opposite sex); and sensations (I enjoy the excitement of a crowd).

Clearly people are not "secure in their persons," within the meaning of the fourth amendment, when answers to such questions may be demanded of them.

It is significant that only last term the Supreme Court had occasion to broaden the "zone of privacy" protected by the fourth amendment in a case involving marital sex relations.

The critical point is that if one ideal distinguishes the free society from the totalitarian, it is a recognition that things of the mind and the emotions are inviolably personal. An analogy is sometimes suggested between detection of a dangerous physical disease and detection of dangerous ideas, attitudes, or personality traits. This is, of course, a common justification for the oppressions of totalitarian governments.

If that analogy between physical examination and personality examination is sound, the most cherished ideals of Western civilization, freedom of speech, freedom of religion, freedom of association, the sanctity of the individual, all these are false.

I have been told by one psychologist, however, that "the test is used only for a limited purpose, and only within our own agency." This protestation fails to take into account several important and undeniable facts.

First, a psychological test does not destroy itself with a single use. The same test answers that are used today to assess adaptability to