Mr. GALLAGHER. The committee has no objection whatsoever to the aptitude test and the dexterity tests.

Mr. LUCE. I understand that, Mr. Chairman. But these are all called "psychological testing."

Mr. GALLAGHER. It is. But we are concerned with the personality, the temperament-type of thing that gets into these questions of privacy.

Mr. Romney?

Mr. ROMNEY. You do concede that the information could be elicited through interviews in depth, rather than through the testing procedure?

Mr. LUCE. If we had the money to handle this by interviews alone, and could employ the counselors to do this, there is no reason why any written question can't be asked verbally. You are right.

Mr. ROMNEY. Are you familiar, Mr. Luce, with a document which is part of the Civil Service Commission, appendix A to part 2 of the Commission's Organization and Policy Manual? On page 32 of this appendix is a statement which relates specifically to "Guide to Evaluation of Employees for Promotion." This came out in October of 1961, and I will read it:

> Certainly personal characteristics are significant to job success. However, the use of personality tests to evaluate these should be approached with great care. Many people know what behaviors or attitudes are approved or expected, and on a test can readily indicate the correct answer, even when in fact their attitudes and behavior are much different.
>
> A more dependable report of their personal characteristics can be obtained through other means, since most people develop characteristic ways of behavior. The manner in which they have adjusted to and handled their jobs and other activities in the past provides an indication of the way in which they probably will behave in the future.
>
> The supervisory appraisal and information obtained from others who have worked with the employee, and properly conducted interviews can be used to obtain information about the personal characteristics of employees as related to job requirements.

Were you aware of this statement by the Commission?

Mr. LUCE. I am, and I feel our program is consistent with it. It says the use of personality tests to evaluate personal characteristics should be approached with great care. And I think the evidence we put before the committee indicates we have approached it with the greatest of care.

Mr. GALLAGHER. Except it is now a violation of the civil service regulations.

Mr. LUCE. Mr. Chairman, it is a violation without the approval of the Civil Service Commission, of the particular test, that is right. Mr. Romney is reading from some previous regulations, is that not correct?

Mr. ROMNEY. This is not a policy document. It is merely a guide, issued by the Commission, to evaluate employees for promotion.

Mr. LUCE. I think it was issued a couple of years ago, wasn't it?

Mr. ROMNEY. In 1961, yes. I read it to stress the importance they place on the past performance of the employee and the importance of personal interviews and information obtained from fellow employees.

Mr. LUCE. We agree with it.

Mr. ROMNEY. You have mentioned earlier that you would regard the relationship of the employees taking this test to the test makers or the givers, as one of a doctor-patient type.

Mr. LUCE. Yes.

Mr. ROMNEY. Can you really have a doctor-patient type relationship? Isn't there something that is basically different between the relationship of an employee and a consultant, for example, and the relationship of an employee and a physician?

Mr. LUCE. I don't think so. When an employee applies for a job with the Federal Government, or with a private employer, he is often required to take a physical as well as a mental examination. And he is in a sense in a competitive position when he goes in for his physical examination.

And certainly, the physical examination invades privacy in the normal sense of the term. I think here we have approached as nearly as you can, without actually having a M.D. administer the tests, a medical or doctor-patient type relationship.

Now, it has been my experience in law practice, before I got on this job, that when an M.D. in the community where I practiced was asked to make a psychological report on someone, he frequently called in a psychologist to give the very tests we are talking about there. And then he made an evaluation on the basis of that. In other words, there was the doctor-patient relationship, with a doctor in the picture, but the doctor didn't give the tests.

Now, in the instructions I mentioned this morning, that the Episcopal Church puts out to doctors, who are going to make the examination of all candidates for the clergy, they specifically ask the doctors to use this Minnesota Multiphasic Test.

The Presbyterian Church does similarly for missionaries. Other churches do likewise. So I think we do preserve this relationship, and I don't think the use of this testing is inconsistent with a medical-type relationship, Mr. Romney.

Mr. ROMNEY. No, but——

Mr. GALLAGHER. Would you yield, please?

This interests me, the church aspect of this. We have had some experts here testify that if a person were overly religious, this might be scored as a negative factor. If they do take this test, would an overreligious feeling disqualify a person applying for a rector's job?

Mr. LUCE. Well, I think the Committee ought to consider, at least, hearing from the churches themselves. I am not speaking for the churches. But here is the report form for psychological examination required under canons 26, 34, 37, and 38 of the Episcopal Church: "Examiners are urged to use, whenever possible, psychological and psychodiagnostic tests as a regular part of their examinations, such as—" and then it gives a number of them, and one is the MMPI.

Now, the Presbyterian Church puts out a guide for counseling prospective church workers in which they recommend this type of testing under certain crcumstances. Supplement No. 2 is a guide and direction as to how to use the MMPI test.

Now, I can't believe that there is any moral question involved in this testing, when it is properly administered. I will grant that the mass application of this, by people who don't preserve this doctor-patient type relationship, raises some very serious questions. But when respectable, fine institutions such as I have just mentioned are using this type of testing, I can't see there is a moral question.

Mr. GALLAGHER. You don't feel there is a moral question involved to ask a person his innermost thoughts, which are theirs constitutional-

ly, guaranteed them to be their private thoughts? You don't feel there is a moral question in probing into a man's thinking and what he might think, as these tests indicate?

Mr. LUCE. If the tests are administered in a doctor-patient type of relationship, I don't believe there is.

Mr. GALLAGHER. There is no doctor in attendance at your tests; it is a skilled technician.

Mr. LUCE. Well, the tests are handled only by a doctor of psychology, not an M.D. That is true. But he probably knows a good deal more about this field than an ordinary general practitioner does.

Mr. GALLAGHER. Certainly he does, but he is not a doctor. You were talking about a doctor.

Mr. LUCE. Medical type, I said, yes.

Mr. GALLAGHER. There is a great deal of difference. The psychologists are pushing the tests, and they wrap it in all sorts of fine packaging and all facets of legitimacy. But do you feel that there is no moral infringement in asking a person these questions?

Mr. LUCE. If the man is applying for a job, where his personal characteristics are important to his qualifications for the job, and if the test is handled in the private way in which we handle it, I cannot see that there is a moral question.

And I think if there was a moral question, that my church and the Presbyterian Church and others wouldn't be using it.

Mr. GALLAGHER. You feel a person should answer such questions as appear in these tests, as to whether or not Christ performed miracles, and whether he changed bread and water into his body and blood?

Do you think there is no moral infringement to ask that of a person not of the Christian faith, that a Jewish person should be asked to pass on the second coming of Christ, when he doesn't accept the first?

Mr. LUCE. Well, if an employee objects to one of the particular questions you are talking about, he doesn't have to answer it, if he doesn't want to. It happens we haven't had any objections to this type of question.

Mr. GALLAGHER. These people are looking for promotions and therefore they are not going to object. This is the point of the whole argument as to why these people should not be subjected to this type of thing.

I will read you a couple of questions: "I go to church every week," and "I believe in the second coming of Christ." Suppose it is a Jewish person or a Moslem. This is all aimed at one particular mass, and the mass is composed of a great many individuals. Do you think there is no moral question involved, when you ask a non-Christian that question?

Mr. LUCE. I don't think there is a moral question in view of the fact it is handled in private. You either believe or you don't believe.

Mr. GALLAGHER. Then you place him at a disadvantage. If a person does believe, and he is a religious person, he might think this fellow doesn't know much about the facts of life and therefore you put him at an unfair advantage.

Mr. LUCE. Well, if we employed a consultant who regarded the answers in that manner, I might agree with you.

Mr. GALLAGHER. Well, I don't think the U.S. Government or any of its employees can always assume there are always good, kind, and

understanding men giving these tests. And if you go on that basis, you might have the very best of intended men in your organization, but we are trying to set some standards here, for the Government of the United States.

I think Mr. Macy has pointed out the flaws in this, and the mere fact that some churches give these tests doesn't in any way justify the intrusion into a man's privacy.

I think this is one of the problems we are trying to overcome, that these are closed and very pious statements. They are wrapped in some very attractive wrappings that have all of the degree of institutionalized respectability, but that does not necessarily make it so.

And, Mr. Luce, that is the point of this discussion here. It may well serve your purpose, but the problem involved here is whether or not we are in fact invading the privacy of the individual who is subjected to this humiliation and this indignity.

Mr. LUCE. Well, I don't know it is humiliation, but——

Mr. GALLAGHER. Would you answer all of these questions?

Mr. LUCE. I would feel no hesitancy.

Mr. GALLAGHER. Would you like in your public record all about your sex life?

Mr. LUCE. This is not a public record.

Mr. GALLAGHER. The personnel files become public records.

Mr. LUCE. Indeed not. As I said, nobody in the Government sees the answers to these questions. The psychologist who discusses the man's interests with him, and his personality with him, sees the answers and then destroys them. This never gets into any Government file.

Mr. GALLAGHER. You might have a tighter system out there, but we are talking about a set of standards for the Government. These things we have found follow people in their professional careers in the U.S. Government.

Mr. LUCE. Ours won't follow them.

Mr. GALLAGHER. Yours stays in your Deputy Administrator's safe, I believe you said?

Mr. LUCE. No. The answers to the questions go to the psychologist, who after he has read them and made his appraisal of the man's abilities and interests and aptitudes and personality, destroys them.

The appraisal that he gives us goes to the Deputy Administrator. It does not give the answers to any of these questions. And I have here, and would be happy to give the committee, a sample appraisal of the sort of report we get.

Mr. GALLAGHER. We would like to have that and make it a part of the record.

APPRAISAL REPORT REGARDING JOHN SMITH BY THE PSYCHOLOGICAL SERVICE OF PITTSBURGH

CONFIDENTIAL REPORT

To: A. S. Black, Vice President of Personnel, XYZ Co., Pittsburgh, Pa.

Present position: Chemical sales, ABC Co., Pittsburgh, Pa., age: 26.

Purpose of referral: District sales manager with particular attention given to advancement eventually to higher level sales management.

Date: October 17.

Under no circumstances should this report be shown to the examinee or any other person not professionally interested in the examinee.

PERSONAL HISTORY

Early family life

Mr. Smith grew up in Columbus, Ohio, and was the older of two boys. His father was a mild, quiet man and was employed at the same company all his life in the accounting department. Mr. Smith's mother was a dynamic, energetic person, set high standards for her children, and strongly influenced them to go on to school. It was a fairly normal home life in a middle-class family.

Educational background

In high school his grades were a little above average but not outstanding. He was considered a fairly serious boy but generally well liked by his classmates. He played football but was not a star. He held part-time jobs from an early age and earned all his personal expense money during high school. He saved money during the summers in preparation for college.

Upon graduation from high school in 1953, he enrolled at Oberlin College and received his B.S. in chemistry in 1957. He received a one-third scholarship from his father's company and was required to earn a third of his expenses himself. This he was able to do by working summers with his father's firm. His father supplied him with most of the rest of the money, and he had to borrow some from a college fund. He was not an outstanding student in college but was distinctly better in chemistry and mathematics and at no time was in danger of failing. He worked as a waiter throughout the school year. Although he did some dating in college, he had little time for social life.

Work history

Upon completing college, he participated in many job interviews but turned most of them down because they were predominantly related to research chemistry. He was not sure of his vocational goal but accepted an offer by his present company as sales trainee in the Chicago office. He was given very little training by the company and was soon assigned to his own district as a plastics salesman. He has been with the company now approximately 3 years and he has developed this territory to the point where he is one of the leading salesmen in his firm. He has had several increases in salary and he likes his job. His only reason for considering other employment at this time is because he is interested in moving in the direction of sales management, and he feels there is little opportunity for him to do this in his present company. He has the feeling that no one in the company is aware of his ambitions and his present manager is not thought too highly of by top management people.

Family and social activities

Mr. Smith met his wife while they were both in college and they were married shortly after graduation. They have one child. His primary recreation is golf and family activities. Because of extensive traveling in his job, he has not participated in civic and social organizations.

Health

According to his own statement, he has no physical disability at this time. He had a little stomach trouble at one time when he had a particularly difficult supervisor, but he has no problems of this kind now. He smokes and drinks moderately.

PSYCHOLOGICAL DESCRIPTION

Abilities

On the tests of intellectual capabilities, Mr. Smith is average to superior when compared with college graduates. He is average in the verbal area which is the ability to grasp and understand ideas expressed in words. He is superior, however, in the areas of quantitative reasoning, critical thinking, and logical reasoning. While not outstanding in general breadth of information, he is able to hold his own with college trained people, and he expressed himself well in the interview. This is consistent with his progress in high school and college where he found that he had to work somewhat harder than the other students, especially in the languages and the social sciences. His vocabulary is somewhat limited but appears to be highly specific to the general area of chemistry and particularly the field of plastics. He has read a great deal in this area, and he also does extensive reading of a general business nature. There is evidence that this man uses his ability more effectively than most and is outstanding in the reasoning areas. On a test productive of creative thinking, he showed unusual ability to develop good ideas when presented with new and unusual situations. He appears to have the intellectual capabilities for further advancement.

Interests

His interests show a strong preference for the scientific field, along with a high interest in working with people and being of help to others. He enjoys reading, particularly science and business, and he is now taking a correspondence course through Alexander Hamilton Institute and enjoys this very much. He possesses an intellectual curiosity and is motivated by material gain and by positions of prestige and influence. The pattern is generally consistent with his present position and his desire to move toward more managerial assignments.

Personality

Personalitywise, Mr. Smith shows above-average physical drive and energy and is highly ambitious for advancement. At the same time, he is a serious-minded person and is not likely to make impulsive decisions. In many respects, he appears to be more of a problem solver than a salesman and would probably seldom if ever resort to high-pressure sales methods.

He has considerable confidence in meeting and dealing with people and while he wants people to like him, he is to a large extent socially independent. He is not a "gladhander," is quite capable of working by himself, and is not inclined to lean heavily upon other people. He is independent in his thinking, will argue for what he believes to be right, and will not be easily dominated by others. Although he likes to help people, he sets high standards of performance both for himself and for others and may be a little "hard nosed" in working with people who do not produce. Although not a particularly thin-skinned person, he does have feelings and consequently has some perception of the feelings of others.

He is not detail minded and finds it difficult to complete some of the clerical aspects of his work. He does not appear to require a great deal of praise and encouragement but rather gets his greatest satisfaction in accomplishment on the job and by the money he is able to make. He is not likely to be easily satisfied unless there are continued advancement possibilities ahead.

POTENTIAL FOR DEVELOPMENT

Conclusions and recommendations

Mr. Smith has a number of assets for sales and sales management in the chemical field. His intellectual capabilities suggest that he can learn fairly easily and he is particularly outstanding in ability to reason through problems of a technical or logical nature. His interests are typical of people in sales and sales management jobs in this industry and are very similar to the pattern shown by your most successful sales management people that we have seen in the past. Although interested in people and in personal contact situations, he is not a high-pressure salesman but is primarily oriented to problem solving and service. He makes a very favorable appearance, expresses himself easily, and should be generally acceptable to customers at all levels. He can take the leadership role and would not hesitate to direct other people or to supervise their activities. He is a hard-working person and is ambitious for advancement.

There are several possible limitations. Mr. Smith is not as strong in the verbal area as might be desirable for higher level management positions, and while he is attempting to broaden his general fund of information, he is now largely restricted to the area of chemistry and plastics and, to a lesser extent, to general business. Mr. Smith is not strong on detail and tends to avoid this type of activity as much as possible. At the same time, he is not as strongly persuasive a person as one might like to have in this situation and would not be a good risk in a situation requiring high-pressure methods. He may tend to be a little too independent for some situations and may not be the easiest man to control. He will argue fairly strongly if he believes he is right, but when the decision is made, will apply himself diligently to carrying it out whether it is his plan or someone else's. Being a little sensitive, he should be handled as diplomatically as possible, but on the whole, he should accept instruction and criticism in the way it is intended.

To be most effective, Mr. Smith should have good clerical help and as he advances, even an administrative assistant might be considered. He will set a very rapid pace for the salesmen who work with him and may need to be cautioned not to set unrealistic standards for them. While he would be willing to accept a job as a salesman with your company, he is definitely interested in the opportunity for sales management and would probably leave the company if he does not see this opportunity fairly soon. He should be capable of training and developing salesmen but has had no experience along this line and would be most effective if given some assistance in the early stages. In view of the above

information, Mr. Smith is considered a favorable candidate for district manager in one of your smaller districts, and he definitely has potential for advancement to higher level sales management position.

Mr. GALLAGHER. We were advised yesterday that there is a great tendency on the part of the psychologists to re-test, and therefore to re-test. In order to make a determination at some future date as to the validity of the original test, one must have to keep the original test in the interests of determined social behavior patterns.

Mr. LUCE. Well, we excluded that possibility, Mr. Chairman.

Mr. GALLAGHER. Now where are these tests given?

Mr. LUCE. In Portland.

Mr. GALLAGHER. Where, I mean what the particular circumstance is?

Mr. LUCE. Well, for a particular job we first, through our normal selection process, pick the field of candidates that we think would be the best qualified.

Let's suppose this is a chief of power operations. We would go through our rolls of employment, and find those men that we think would have the best qualifications for filling this particular vacancy.

This is done by a committee of supervisory personnel, whom we think know what it takes to fill this job.

Mr. GALLAGHER. Leading up to that point, how are these actual tests administered?

Mr. LUCE. Yes. This is how we get the field of men to whom they are administered.

Mr. GALLAGHER. No objection at all up to that point.

Mr. LUCE. Then the psychologist, Dr. Porter, from Pittsburgh, comes out and meets with these men individually, if there are only a few of them, or meets with them as a group if there are more than a few, and explains to them the tests that he is going to give them.

He tells them what it is all about, and why we are doing it, and that after the test is given he will have an individual conference with each one of them to discuss the result, and they will know what his appraisal is and have a chance to discuss it with him, before he gives it to us.

Then the test is taken, superintended by him or an assistant of his, not by us, and then he takes the tests, and while he is still out there, since he is quite a ways from Pittsburgh, he evaluates the tests.

Then he conducts his post-testing interviews with each of the persons, and discusses with them the results of the test, and gets their reactions to it and anything further they would like to add.

Then he gives us a written report of the type that I have just given the committee a sample. Then that written report goes to my deputy administrator, No. 2 man in our organization, and he, together with the selecting committee, considers this, along with all of these other things that Mr. Romney pointed out, and read from the civil service policies, the report of the man's superintendent, the interviews with the men themselves, their past performance, their education, what we have observed about their personality, and so forth.

And finally the selection is made.

Mr. GALLAGHER. Is there any certificate that these tests are destroyed?

Mr. LUCE. No. We could get a certificate, if you want.

Mr. GALLAGHER. Don't you think that would be important, since psychologists have a way of keeping tests so they can see whether their tests were correct?

Mr. LUCE. Well, I have confidence in the men we retained, just as if I employed a doctor or lawyer, I wouldn't employ one unless I thought he was honest and competent, and would do what he said he would do.

Mr. GALLAGHER. Did you ever ask to see these questions? Or do you take it strictly on the competency of the psychologist?

Mr. LUCE. Well, I would say I take it mainly on the competency of the psychologist. I don't attempt to ask or to tell a medical doctor what questions he will ask in a medical examination, and much less would I attempt to rewrite the psychologist's examination. That would be a mistake.

However, I did look through the personality tests, to look at those questions, and frankly there are some questions in there that seem to me a little silly, but I am not a psychologist.

I know that they are questions that are of the same type as psychiatrists do ask in personal interviews with people. So I relied and do rely upon the competence of the professional people we have selected that they know what they are doing.

Mr. GALLAGHER. You as an administrator have seen these questions that are silly. Don't you think there is a duty owed by you to your employees to protect them from indignity?

Mr. LUCE. Well, the employees don't have to answer these questions, if they don't want to.

Mr. GALLAGHER. That is an old song.

Mr. LUCE. But merely because I think a question is silly doesn't mean it is silly, Mr. Chairman.

Mr. GALLAGHER. But you are hiring this test.

Mr. LUCE. Well, many times when I was employed as an attorney, sitting at the counsel table in a trial, I might want to ask a question of a witness and my client might think it a silly question and that I shouldn't ask it. But he has employed me because I am a lawyer, and I presumably have the professional competence to know what questions to ask and what questions not to ask. I have the same respect for the profession of psychologists.

Mr. GALLAGHER. You are looking at one side of the coin. The other side is that you do have a professional responsibility toward your employees.

Mr. LUCE. I do, and we have done the best we know how to assure that our employees get their privacy respected, and at the same time get the advantage of these tests, so they get into the right jobs. That is most important.

Mr. GALLAGHER. Do you feel in asking these questions, compelling a person to answer these questions, that you are carrying out this responsibility?

Mr. LUCE. We don't compel them to answer them. But to answer your question, yes, I think we are carrying out our responsibility. We are trying hard.

Mr. GALLAGHER. If he did not answer them, would he not be eliminated from the group under consideration?

Mr. LUCE. No, he would not.

Mr. GALLAGHER. Has there ever been anyone promoted who refused to take this test?

Mr. LUCE. We haven't had such a case yet.

Mr. GALLAGHER. Well, that is probably the reason.

Mr. LUCE. Well, it is hard to convey in a hearing room the relationship between the management in an organization like Bonneville and our employees, but I assure you it is a very good relationship. We don't have a feeling of antagonism, or concern by the employees that some kind of retribution will be delivered upon them if they don't do everything we ask them to do.

You should have heard the comments when we reduced the hours that the coffee shop is open for coffee, and you would have been reassured that our employees have no hesitancy in telling the Administrator they disagree with him.

Mr. GALLAGHER. Do they tell the Administrator all of the questions that are asked here?

Mr. LUCE. No.

Mr. GALLAGHER. Does the Administrator tell them whether he has a happy sex life or whether he believes there is a devil or hell or hereafter, this type of thing?

We are not questioning the employer-employee relationship. We understand that is a happy and congenial group at Bonneville. We are concerned with a far broader question here, as to whether or not we are properly protecting the rights of Federal employees. And we hope that the rippling effect of this will have some feeling at the other end, in industry.

Now, the mere justification you have given us may well make for technically sound people, but is it at the expense of having to bare their souls for these promotions?

Mr. Macy seems to agree, and many of the other witnesses, that this type of thing is intrusive and violative of a person's privacy.

Mr. Horton?

Mr. HORTON. Mr. Luce, at the outset I do want to give you credit, as the Administrator of Bonneville, for trying to give these tests under certain safeguards. And I am impressed with the fact that you do have safeguards, and I think you ought to be commended for this.

The problem that I have is the same problem the chairman has, that I am concerned that even under the safeguards that you have provided and with the pressures on the employee who is desirous of a promotion, that there may be areas in which his privacy is being invaded, and he has got a family, he has a job, so he wants to get a promotion, so he is going to certainly comply with the regulations or go along with the group.

So I am interested to find out whether or not you are going to, when you present your case as it were to the Chairman or to the Civil Service Commission, I am interested to find out whether you, as the administrator, are going to recommend that this same procedure be continued under the safeguards that you have established.

Mr. LUCE. Well, Congressman Horton, the decision as to what recommendation is asked of the Civil Service Commission will actually be the Department's decision. You are asking me what I will recommend to the Department of the Interior?

Mr. HORTON. If you want to be technical, yes, that is right.

Mr. LUCE. I will recommend to the Department of the Interior that in my view the way we have conducted this testing, and the limited manner in which it has been used, and the careful way in which we have preserved the privacy of our employees, are consistent with the policies of the Civil Service Commission, and I will request the Interior Department to ask the Civil Service Commission to appraise or review the tests and our testing procedures that we use, and approve them.

Mr. HORTON. Now, in answer to the chairman, you indicated if an employee refused to take the test, this would not be a mark against him?

Mr. LUCE. I said the question has never arisen, but the answer to your question is "No, this will not be a mark against him."

Mr. HORTON. If a person was being considered for promotion, I assume he would be informed of this, and then he would be asked if he would take these tests, or this particular test, and if he said he would not, then what would happen?

Mr. LUCE. Well, then, we would have to rely only upon the interviews with him, the interviews with his former supervisors, looking at his education, looking at his experience, and acting on our hunches, you might say, to predict how he would perform under the new conditions of his new job. Then we would compare him with the other candidates for the job, and make the decision.

Mr. HORTON. Isn't it fair to say, though, that your hunches in that case would probably be a little bit against him because he wouldn't take the test?

Mr. LUCE. Well, you are asking a very hypothetical question. I would say not necessarily.

Mr. GALLAGHER. It states here in your report, Mr. Luce: "He may tend to be a little too independent for some situations, and may not be the easiest man to control." I wonder whether or not that might not be one of the recommendations in the potential for development?

Mr. LUCE. Well, you certainly would not want a man as the second man in a dispatching room that would tend to be a little independent and hard to control, because that chief dispatcher is going to have to be able to tell him what switching to do and make darn sure he is going to do it.

Mr. GALLAGHER. Would this be an indication of that if he would not take the test?

Mr. LUCE. It would depend upon the reason.

Mr. GALLAGHER. If he wanted to protect his privacy?

Mr. LUCE. Yes, if a man came to me and said, "Look, I think these tests are opposed to my religion," or, "I think they are going to make me answer some personal questions that I just don't want to answer," and I thought he had a valid reason for it, I would take that into account. He is not required to take the tests.

Mr. HORTON. I want to come to the other part of the safeguard, which was the report you have given to us. Is this report that you turned over to us—and I realize you would want to protect names——

Mr. LUCE. This is just a sample, Mr. Horton.

Mr. HORTON. Is this an actual case, though?

Mr. LUCE. Not in Bonneville; no, sir.

Mr. HORTON. Is this a sample case that the psychological service puts out?

Mr. LUCE. Right. But I have read, of course, our own reports and I can tell you it is a fair sample.

Mr. HORTON. Now, they do get into some of the answers, not perhaps in the sense that they give you the specific answer to the question, but they do draw conclusions?

Mr. LUCE. Oh, yes, they make an appraisal.

Mr. HORTON. Based on the answers that are given?

Mr. LUCE. That is the purpose of the examination, that is right.

Mr. HORTON. What happens to this report that is sent in—this report which I assume is similar to this?

Mr. LUCE. That report, as I testified this morning, is kept by the Deputy Administrator in a safe in his office. It does not go into the personnel jacket of the employee.

Mr. HORTON. So it is available?

Mr. LUCE. Yes; it is available in the safe of the Deputy Administrator.

Mr. HORTON. Is he the only one that has access to that safe?

Mr. LUCE. That is correct. I don't even know the combination, although I assume I could find out.

Mr. HORTON. Nobody else in his office?

Mr. LUCE. As far as I know, he is the only one that has access to it.

Mr. GALLAGHER. Wouldn't a Federal investigator have access to it?

Mr. LUCE. Well, we have never had that problem. If an FBI man presented himself and asked for it, I think I would refer the matter to the Interior Department for discussion with the Attorney General as to whether he got it. I obviously couldn't give him a final "No."

Mr. HORTON. How long do you keep them—keep these reports?

Mr. LUCE. The appraisals?

Mr. HORTON. Yes.

Mr. LUCE. Well, we have only been in this program for about 2 years, and as far as I know, we have them all at the present time, unless a man resigns or dies, or for some reason is no longer with us, then there is no point in keeping them.

Mr. HORTON. It is your opinion that this is a valuable guide in the evaluation of a person for a promotion?

Mr. LUCE. Yes, sir; we wouldn't spend $15,000 to get such reports if we didn't think they were valuable.

Mr. HORTON. And yet you have indicated in your statement that you could do without it?

Mr. LUCE. Yes. We could do without a lot of things, and do an inferior job, Mr. Congressman.

Mr. HORTON. Now, you talked earlier today about some of these promotions that were involved, and you talked in terms of comparison with the people in the airport and that sort of thing. Are all of these examples that you have been talking about, where tests have been given, in the category similar to that; that is, where there is a dangerous situation, or where someone is called upon to exercise great care in the duties he will perform?

Mr. LUCE. I would have to answer the question "No," but then qualify the answer. We test for the positions of the type you just described, and also for supervisory personnel, who will be over the man who has his hand on the switch, or the man who is at the dispatching desk.

I have a list here of the positions that we have tested for. In general categories, we have tested in only 9 out of more than 100.

Mr. GALLAGHER. Did you take one, Mr. Luce?

Mr. LUCE. No; I did not.

Mr. GALLAGHER. Would you?

Mr. LUCE. Yes.

Mr. HORTON. Mr. Luce, I think it would be well to make that part of the record, the positions that you test for, and you have it in some form that can be presented, do you?

Mr. LUCE. I have; yes, sir.

Mr. HORTON. Could we make that a part of the record, Mr. Chairman?

Mr. GALLAGHER. Yes; without objection, it will be made part of the record.

POSITIONS FILLED USING TEST AUGMENTATION OF EVALUATION FACTORS AS OF MAY 18, 1965

LOS ANGELES	PITTSBURGH
Seattle area manager	System operations officer [1]
Spokane area power manager	Operations engineer
Kalispell district manager	Operations superintendent, Walla Walla
Head, substation construction	Assistant power dispatcher (3)
Assistant chief, branch of construction	Chief IIA—Midway
Office services manager	Portland area engineer (2)
Budget officer	Transmission superintendent, Seattle [1]
Substation maintenance superintendent, Seattle	Spokane area manager [1]
Idaho Falls area manager [1]	Seattle area manager [1]
Idaho Falls area power manager (2)	Wenatchee district engineer [1]
Assistant to administrator (2)	Walla Walla area manager [1]
Assistant power manager [1]	Spokane area power manager [1]
Head, substation design	
Area engineer, Walla Walla	
Portland area power manager	
Budget coordinator (2)	

[1] Validation testing.

Mr. HORTON. Whose idea was it to institute this procedure of testing?

Mr. LUCE. Mine.

Mr. HORTON. Where did you get the idea?

Mr. LUCE. Well, I got the idea from several sources before I became convinced that we should use this type of testing. As I mentioned, I first became familiar with this when I was on the vestry of our church, and was senior warden.

Mr. HORTON. Mr. Luce, you are not trying to justify the position of the Federal Government doing this on the basis that the church does it?

Mr. LUCE. I am suggesting that it certainly removes, in my way of thinking, any moral issue. But to answer your question, that is where I first became acquainted with this kind of testing.

After I got on the job at Bonneville, and we discovered we had a lot of people who were going to retire out of top positions, and our program was expanding tremendously and we were going to have to fill a lot of jobs, I tried to find ways of improving our selection of personnel.

Now, specifically, what I did was talk to one of the top men in a private utility company, and asked him how they did it, the various methods they used, and he was very enthusiastic about psychological testing.

I also talked with a man who had been a general sales manager for an industrial company, and had had to pick salesmen. He thought this had been very useful in the selection of employees. I also discussed it with some other people in the industry, and then we decided to employ, on a trial basis, you might say, two reputable firms, who we checked out——

Mr. HORTON. Did you get approval for that procedure from any higher-up in your agency?

Mr. LUCE. No. I am the head of the agency.

Mr. HORTON. I mean from the Department.

Mr. LUCE. No, it was not required.

Mr. HORTON. So you put it in without any further approval. Was it submitted to the Civil Service Commission?

Mr. LUCE. No, it was not required to be submitted, and it was not submitted.

Mr. HORTON. It was not. So, up to this point, it has not been submitted?

Mr. LUCE. That is correct.

Mr. HORTON. Nor have all of these questions, or the tests that are given been submitted to the Civil Service Commission?

Mr. LUCE. Not by us; no.

Mr. HORTON. Now, you selected two agencies to perform these tests, and there came a time when you decided you would release one agency and use another?

Mr. LUCE. Right. Well, the contract of one expired, and it was a question of whether to renew it.

Mr. HORTON. But you decided not to renew one. I think you said one of the reasons why you stayed with Psychological Service of Pittsburgh was because of their experience in the utility field?

Mr. LUCE. Right.

Mr. HORTON. Isn't there a possibility that they pass this knowledge around among the employees of the Psychological Service of Pittsburgh, so this is how they get their experience and knowledge about their handling of these individual cases?

Mr. LUCE. I am not sure that I understand your question.

Mr. HORTON. I am talking about the employees of Psychological Service of Pittsburgh, the consultants, as you call them, whoever they happen to be. Are they men, or women, or both?

Mr. LUCE. Both, and in this case, Dr. Porter, one of the principal men in this particular organization, has been handling our account. But there are women in the organization, too.

Mr. HORTON. Is he the only one who has given these tests in your organization?

Mr. LUCE. As far as I know. I think that is correct. But to answer your question, how do I know what use they make of the test answers——

Mr. HORTON. That is right.

Mr. LUCE. I have their word for it that these are destroyed. Now, that is the answer to your question. I have confidence in their professional responsibility.

Mr. HORTON. Have they indicated to you that they destroy them, destroy the answers, prior to the time they make copies of them?

Mr. LUCE. Oh, yes.

Mr. HORTON. So this question——

Mr. LUCE. There would be no point in making copies of them. They have the test answers; we don't.

Mr. HORTON. What makes you think they have this expertise in this utility field?

Mr. LUCE. Because they have been doing this sort of thing for other utilities for nearly 20 years.

Mr. HORTON. And this, in your judgment, gives them more expertise in this field?

Mr. LUCE. More expertise than if they hadn't done it. I agree with the chairman that a mere 20 years' experience, per se, doesn't prove a thing is right, but it lends some credibility to it, certainly.

Mr. HORTON. In your statement you said no one has a vested right to Federal employment, or for that matter, to employment with a private firm, and then you go on to say in order to qualify, and you refer in order to apply, and you referred to this in other testimony, they would have to take physical examinations, and this sometimes can be embarrassing, and you talk about fingerprinting and other matters that are involved with employment, or advancement.

I assume what you are doing there is reasoning that as a result of a person applying for employment, or as a result of a desire for advancement, he or she has to give up a certain portion of their right to privacy.

Mr. LUCE. That is right.

Mr. HORTON. The only question we have, as I see it, is where we draw this line.

Mr. LUCE. I think that is the question.

Mr. HORTON. You, at least, draw the line on the other side of giving these types of tests? In other words, you feel that does not invade the right of privacy of the employee, so you feel that these are proper under certain safeguards which you have outlined?

Mr. LUCE. Yes, sir. I think it would be entirely possible to give these tests in such a way that they would fall on the other side of the line and constitute an unwarranted invasion of privacy. I think the way we do it, they do not.

Mr. HORTON. Then, the question is not about the test, but the question is about the safeguards, is that right?

Mr. LUCE. That is correct.

Mr. HORTON. So if you have the proper safeguards, in your judgment, it is all right to give these types of tests?

Mr. LUCE. The ones we are using; yes.

Mr. HORTON. And you feel that the safeguards that you have been using, and the ones you outlined are adequate?

Mr. LUCE. Yes, sir.

Mr. HORTON. Now, turning to these tests, some of the questions were read, but as I understand this Edwards Personal Preference Schedule, there is a section A and section B, and the directions indicate, as I read them hastily, that you can pick one or the other, and in some instances you can pick both, but you should pick one at least, and it says: "Some of the pairs of statements have to do with your life, such as A and B above. Other pairs of statements have to do with how you feel, and then they give an example. "Which of these two state-

ments is more characteristic of how you feel?" And then it goes on to describe that. It says: "Your choice in each instance should be in terms of what you like and how you feel at the present time, and not in terms of what you think you should like or how you think you should feel. This is not a test. There are no right or wrong answers. Your choices should be a description of your own personal likes and feelings. Make a choice for every pair of statements. Do not skip any."

And then we come—and some of them were read, but here is a series, "66–A. I would like to accomplish something of great significance." "B. I like to kiss attractive persons of the opposite sex." Now, that is the alternative that is given there. I will just read the next one.

"67–A. I like to praise someone I admire.

"B. I like to be regarded as physically attractive by those of the opposite sex."

"68–A. I like to keep my things neat and orderly on my desk or workspace.

"B. I like to be in love with someone of the opposite sex."

"69–A. I like to talk about my achievements.

"B. I like to listen to or tell jokes in which sex plays a major part."

Now, don't you think that series—I will read 70, too.

"A. I like to do things in my own way and without regard to what others may think.

"B. I like to read books and plays in which sex plays a major part."

Now, that is an alternative choice, and it goes on, and there are others, and the same questions are repeated in many of them.

For example, 209–A, "I like to kiss attractive persons of the opposite sex; B, I like to experiment and try new things."

Another, "A. I like to meet new people; B. I like to kiss attractive persons of the opposite sex."

Now, is it your feeling that a person's rights of privacy is not invaded by these types of questions?

Mr. LUCE. The particular tests you are referring to as our statement indicates, is used very infrequently by us, but I think under the right circumstances, the guarantees of privacy that we have indicated, that where a competent psychologist feels such an examination would assist him in appraising the personal qualifications of a man, the personality of a man to fill a particular position, that it is not improper. In any event, I don't think it is proper for me, as Administrator, to try to rewrite psychological examinations.

Mr. HORTON. I would agree with that. On the other hand, I think you have a responsibility as an Administrator to see the problems with regard to invasion of right of privacy and to protect that. I am trying to find out whether or not in your opinion you feel these questions invade that right of privacy.

Mr. LUCE. I don't think they do. And I think if a psychiatrist were giving an examination——

Mr. GALLAGHER. They don't. Psychologists give them.

Mr. LUCE. But if a psychiatrist were giving the examination——

Mr. HORTON. This is not a psychiatrist.

Mr. LUCE. Well, the question on the issue of invasion of privacy is identical. You cannot examine a man's personality without asking

some questions that to you and me as lawyers might seem irrelevant or worse.

Mr. HORTON. I am not arguing with you on that. The point I am trying to make is these questions are asked; they are not under your control; they are under the control of Psychological Services of Pittsburgh; it may be this doctor you referred to; it may not be; it could be any person they sent out there; they may be qualified; they may not be qualified. But the question I am concerned about is whether or not in your judgment these questions are an invasion of the right of privacy of an employee?

Mr. LUCE. As I have told you, I do not think so, under the circumstances we use them.

Mr. GALLAGHER. Even a lawyer can't ask any question he desires. There is the Bill of Rights. The Bill of Rights also would prevent a social scientist or psychologist from going beyond the limits of the fourth amendment, for example.

Now, do you think in the interest of obtaining behavior patterns that a person should be forced to answer questions that the Constitution gives him a protection against answering? It is unlawful search and seizure of one's thoughts.

Mr. LUCE. Under the circumstances we do it; I don't think it raises a constitutional question.

Mr. GALLAGHER. Under any circumstances. There are no circumstances in which a person can be compelled to testify against himself.

Mr. LUCE. Oh, yes. On form 57, when you apply for Federal service, you have to state whether you have ever been arrested.

Mr. GALLAGHER. Yes, but that is not testimony against yourself. I am talking about a person having the right to raise the fifth amendment. Similarly, in cases like this, it seems to me, there ought to be adequate protection through the fourth amendment.

Mr. LUCE. My point is when you apply for employment, you consent to the employer asking relevant information about your qualifications for the job. On form 57, the basic Federal form for employment application, you have to tell whether you belong or have belonged to any subversive organizations. Now, the Government would have no right to take John Q. Citizen off the street and ask, "See here, I want to know if you belong to any subversive organization." That would be clearly unconstitutional. But if a person applies for Federal employment, it is not only the Government's right but duty to ask it.

Mr. GALLAGHER. Do you think it is a duty to intrude upon the privacy of thoughts of any person seeking Government employment?

Mr. LUCE. Not to go beyond a reasonable line; no, sir.

Mr. GALLAGHER. Beyond a reasonable line, sex, religion, private thoughts, dreams. Do you think you have a duty to inquire into a person's dreams? That is what you are doing. You are authorizing a probe of dreams, sex, and religion.

Mr. LUCE. No, we are not.

Mr. GALLAGHER. You are buying this test and this test requests just that information.

Mr. LUCE. What we are buying is expert advice.

Mr. GALLAGHER. Let's get off the advice. Let's talk about individuals. Let's stop talking about masses and patterns. Let's talk about the individuals concerned here. Do you think the Government has a right or you have a duty to make inquiries of that nature?

Mr. LUCE. Where it is necessary to determine the qualifications for the particular job, I think we have.

Mr. GALLAGHER. How can a person's dream——

Mr. LUCE. I would have to be a psychologist to answer that question.

Mr. GALLAGHER. No, you don't. You are a lawyer, a skilled administrator, you have a high reputation, and you are the one who is authorizing this type of inquiry.

Mr. LUCE. Well, I know in a general way, from college psychology reading, that a psychiatrist or psychologist, from a man's or women's dreams, can learn a little something about his personality.

Mr. GALLAGHER. Do you think they have a right? We are not talking about whether they can or not. Of course, they can. But do they have a right, under the guise of determining social behavior patterns, to make this voyage?

Mr. LUCE. Well, the right we are talking about is not the right of the psychologist to make the examination.

Mr. GALLAGHER. The right you have to authorize it.

Mr. LUCE. The right of the employer to find out the relevant qualifications of an employee for a job.

Mr. HORTON. Excuse me. On the other side is the right of privacy of the employee. And this is the thing we are talking about trying to protect.

Mr. LUCE. I am interested in protecting it, too. But as I pointed out, when an employee asks for employment, he gives up a part of his right to privacy, he is fingerprinted, investigated by the FBI, he has to tell if he has committed crimes, he has to tell if he belongs to any subversive organization.

Mr. HORTON. Does he have to take a choice of "I would like to accomplish something of great significance," or "I would like to kiss persons of the opposite sex"?

Mr. LUCE. Well, if he is applying for a job in which his emotional constitution is an important part of the qualification for the job—a job in which if he goes to pieces, he may endanger the lives of others or the property of the Government, then I would say yes, he consents to relevant inquiry. We will have to establish to the satisfaction of the Civil Service Commission that this is a relevant inquiry.

Mr. GALLAGHER. Do you think that this inquiry up to now would come under the new policies set down by the Civil Service Commission?

Mr. LUCE. I think it is the type of inquiry they would have to approve before we could use it any further, Mr. Chairman. I have already told our people in Portland not to use these personality tests until we have further instructions from the Civil Service Commission.

Mr. HORTON. Mr. Chairman, would you yield here? In earlier testimony you did testify that you would recommend to your superiors that this same procedure, with these safeguards, be continued.

Mr. LUCE. That is correct.

Mr. GALLAGHER. I am curious. You have brought up the fact that you have been a senior vestryman, and potential ministers or pastors must undergo such a test. Did you advocate this test when you were in that position?

Mr. LUCE. It wasn't up to me to advocate it. It was already established by the canons of the church in 1949.

Mr. GALLAGHER. I see. Now, how do you feel a person applying for a parsonage would answer question 476, "I am a special agent of God."

Mr. LUCE. Well, all I can say is that our church, and a number of others, use this examination. I don't know how—I assume he would answer that I am not a special agent of God. If he thought he was a special agent, why, he might have some problems. But I don't know really, how he would answer it.

Mr. GALLAGHER. Well, in a true vocation, this man would have to think he does have some agency of God?

Mr. LUCE. He would have to think he is called to the ministry, that is true, but that is a little different than being a special agent of God.

Mr. GALLAGHER. Well, it says, "special agent of God," special as opposed to the rest of the flock, in that he is going to devote his entire life to carrying out God's word. The fact I am trying to point out, Mr. Luce, in this line of questioning, is that you have given new respectability to the test that doesn't exactly make it so, by pointing out that the churches use it. A great many wonderful organizations use these tests. We are just wondering whether or not they have not overlooked the fundamental rights of an American citizen in invading the protections set up by the Constitution of the United States. That is what this is all about. Not whether it is technically proficient. It probably is.

We all would like to know, probably, everything about our employees in order to judge them. But it is a question of whether or not we have a right to go beyond the reasonable limits. And the testimony we have adduced so far would indicate that these tests go beyond reasonable limits. Mr. Macy feels so, most people in the U.S. Government feel so, and I am rather saddened to hear you do not think so.

Mr. Rosenthal?

Mr. ROSENTHAL. Mr. Luce, I am rather intrigued by your strong advocacy of these tests. You are the first person we have had so far from a Federal agency who seems quite determined to continue their use. Would you offer any thoughts on that subject? Or is it merely that you have been professionally convinced as to their value?

Mr. LUCE. The experience we have had with them convinces me that they help management to do a better job, and help our employees get into jobs where they will be happy and productive. There is nothing more complicated to it than that.

Mr. ROSENTHAL. May I ask how you got your present position?

Mr. LUCE. Well, I——

Mr. ROSENTHAL. If you don't feel like it is an invasion of anything.

Mr. LUCE. I was seated in my law office, on December 20, 1960 minding my own business, when the telephone rang——

Mr. ROSENTHAL. What year was this?

Mr. LUCE. 1960, immediately after President Kennedy's election. I had been a delegate to the Democratic Convention, and was acquainted with Secretary Udall and the Senators from our State. I I was asked whether I would take this job. I said, "Let me think it over." I talked to my wife, and some of my friends, and here I am.

Mr. ROSENTHAL. That was the extent of your qualifying for the job?

Mr. LUCE. I didn't take a psychological examination. I might not have passed it.

Mr. ROSENTHAL. That was about the extent of it.

Mr. LUCE. Well, the man who called me knew who I was, knew a little about me.

Mr. GALLAGHER. He knew you were a delegate.

Mr. LUCE. Well, that didn't hurt me any, but I don't think it was the sole cause.

Mr. ROSENTHAL. What interests me, additionally, is that you have indicated you were a trial lawyer, had some experience as a lawyer, and you thought there was a lack of judgment when your client told you what was a proper question or not, that as long as you were doing the job you should make the decisions, as you are willing to defer to the psychologist. But in the courtroom you have the judge to determine whether the question is appropriate or violative of any constitutional rights or is relevant. Now in the case of psychological tests, where is the judge? Where is the intermediate between the psychologist who made up the questions and the person taking the test?

Mr. LUCE. The psychologist has to be the judge of the relevancy, just as the M.D. has to be the judge of a physical exam.

Mr. ROSENTHAL. Have you noticed we seem to find a void, or a lack of a judge, and in this case we look to a Federal official to make a determination as to whether some of these questions are pertinent to the inquiry, and we seem to be distressed when the official says that is out of my scope of responsibility.

Mr. LUCE. I have observed that.

Mr. ROSENTHAL. Regarding the questions Mr. Horton put to you, particularly No. 19, I don't know what the appropriate answer should be for a fellow who is looking for a promotion, when he is asked to make a choice between "I like to read books and plays where sex plays a major part," or "I like to be the center of attention in a group." Which do you think would be the most appropriate answer for promotion in your organization?

Mr. LUCE. I wouldn't know. I am not a psychologist.

Mr. ROSENTHAL. If you were taking the examination, what would you say?

Mr. LUCE. I think you are invading my privacy now.

Mr. GALLAGHER. Assuming this fellow wasn't a delegate, how would he answer?

Mr. ROSENTHAL. Now getting back to another answer that you gave, you said in your opinion there comes a point where a fellow is seeking a promotion, and at that point he willingly gives up some degree of his right of constitutional privacy.

Mr. LUCE. Yes, sir.

Mr. ROSENTHAL. And this is what you believe?

Mr. LUCE. That is the law, not what I believe.

Mr. ROSENTHAL. Where is that the law?

Mr. LUCE. If it were not the law, how could the Federal Government inquire of a job applicant whether he belonged to a subversive organization? It has no right to ask that of a man on the street.

Mr. ROSENTHAL. You don't think there is a difference in belonging to a subversive organization and deciding whether you like to kiss people of the opposite sex?

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?

Mr. ROSENTHAL. He has already said that. He said that in substance.

Mr. LUCE. Of course the tests we give here, you gentlemen—and I am not criticizing you—but you are picking out certain questions out of hundreds and hundreds of questions.

Mr. GALLAGHER. Well, he can read the hundreds to you, if you want. We are just trying to make a point.

Mr. ROSENTHAL. We are impressed by even 5 out of 50. I will tell you what: I am impressed to the point where if the House were still in session today, and I don't think they are in session, I am prepared to offer a bill now or on Monday to prohibit the giving of psychological tests by any Federal agency, under any circumstances, at any place, and to make it a Federal crime for any Federal official to do it. That is how much I am impressed by the violation of privacy in the testimony we have had.

Thank you, Mr. Chairman.

Mr. GALLAGHER. Mr. Reuss.

Mr. REUSS. Thank you, Mr. Chairman.

I feel a certain multiphasic empathy with the administrator. I was a delegate to the 1960 Democratic Convention. And I used to be a trial lawyer, specializing in medical jurisprudence, and I am an Episcopalian. After this warmup I am going to proceed on a very empathetic level with you.

Let's talk about your days as a trial lawyer. And I feel confident you were a darn good one. When you had before you in the jury trial you were conducting, a medical question, you didn't supinely accept the word of the physician on the other side; you made yourself, on that particular narrow little branch of medical jurisprudence, as nearly a knowledgeable medical expert as you could, didn't you?

Mr. LUCE. Yes.

Mr. REUSS. I am sure you did, because that is what a good lawyer has to do.

Mr. LUCE. Yes; in order to conduct cross-examination, you have to.

Mr. REUSS. If you were today conducting a lawsuit in which the issue was the validity or the frivolousness and inutility of the MMPI, and its 563 questions, if, for example, the issue was whether someone fired on the basis of such a test, was validly fired, you would not content yourself with saying the Episcopalians and Puget Sound Power & Light do this, would you?

Mr. LUCE. No; I would seek competent medical advice, to tell me whether they thought that test was a good one.

Mr. REUSS. Then armed with that, would you not undertake a rigorous 2 hours, at least, examination of the learned doctor whom the other side presented as an expert witness in favor of the MMPI test?

Mr. LUCE. Well, it would depend on the advice I got from the psychiatrist that I questioned. If he told me it was a good test, if I couldn't find a psychiatrist who would say it was not a good test, I couldn't very well defend my man.

Mr. REUSS. Let's stop right here. Are you suggesting that in your trial lawyer days that you didn't use your own independent judgment and gumption on what was the truth of the medical matter? And that if you couldn't find a medical man on your side, that you then forwent the right of cross-examination and confessed judgment against your client? I am sure you didn't do that.

Mr. LUCE. If I couldn't find a doctor, a reputable doctor, who would advise me that the doctor on the other wide was wrong, then there was nothing I could do about it. I couldn't get on the stand and testify.

Mr. REUSS. But couldn't you, by your cross-examination, satisfy yourself as to where the truth probably lay?

Mr. LUCE. You are asking me about trial techniques. Frankly, I tried to satisfy myself on a medical question by going to doctors in whom I had great confidence and putting the question to them. Now, if they said to me you are wrong, you are up the wrong trail, I would maybe go to another doctor. But there might come a point where I would say, "Well, I guess maybe I am up the wrong trail."

Mr. REUSS. Didn't you ever have in your practice, as I surely did in mine, cases where, as it turned out, a lot of learned doctors were wrong, and hadn't sufficiently researched the matter, and where you, by perspicacity and dogged pursuit of the matter found out something about this occult medical matter that a lot of the medical men didn't know? Didn't you ever have that experience?

Mr. LUCE. I think I was dogged and I hope I was perspicacious, but I don't recall any instance in which I uncovered a medical truth that I hadn't first learned from a doctor.

Mr. REUSS. Well you missed a very rewarding part of law practice.

Let's get back to this hypothetical lawsuit. Don't you think that even without consulting with all of the psychologists you could find, that it would be a useful thing, on such an occasion, if you put the proponents of the MMPI test through the hoops on this, to find out precisely when these original tests had been conducted, in what mental institutions in Minnesota, who had conducted them, what outside controls they used, the makeup of these other people, both religious, racial, geographically, every other way? Wouldn't it have been interesting to inquire into who it was who set up the norms for this, who decided what were the normal people and how did they determine this, and who decided who were the people who had these 16 good qualities, the absence of which makes one flunk the MMPI test? And couldn't you, even without consulting any psychologist, but based on your natural inquisitiveness, ask a good many questions which would help you in your judgment as to whether this is really a valid or a frivolous and pseudoscientific test?

I am not trying to be disagreeable. I am talking to you as a fellow trial lawyer.

Mr. LUCE. I think you have asked a fair question.

I inquired of psychologists, people who were experts in the field, as to the validity of these tests. They told me that in their judgment the tests were helpful. And I, at this point, felt I had made a reasonable inquiry.

Now as to this Minnesota test we are talking about. The consulting firm we now retain has used it only twice in their testing of our employees, both times after it used one of the others. The one they usually use is the Guilford-Zimmerman test. And in one instance in which it was used, and I can't disclose the name, this Minnesota test saved the man's job. It didn't cost him his job. One of the questions you put to me asked what if we had a man fired because of this test. We saved a man's job.

Mr. REUSS. Well, either way, isn't the process of cross-examining, getting to the bottom of something, and the idea that a trained generalist, like yourself, is perfectly capable of making an independent judgment and doesn't have to rely entirely on the judgment of the so-called professionals, many of whom, as there was testified yesterday, may have an ax to grind because they may be making their living selling these psychological tests?

Wouldn't this seem to you a useful procedure?

Mr. LUCE. Well, it would seem that anyone in the position of having an agency should make a reasonable inquiry to determine for himself that these tests have validity.

I think I made a reasonable inquiry. Your question suggests I should have made a more detailed inquiry.

Mr. REUSS. I am not trying to rake up the past. But since you have before you the task of going before the Civil Service Commission and justifying what you are doing—and let me say parenthetically that perhaps unlike some of my colleagues here, I think you have presented a thoughtful piece of testimony here this afternoon—since you have to go before the Civil Service Commission, wouldn't it be an extraordinarily useful thing if you could spend some hours on making an independent inquiry in which you put your own good mind on the question of whether these tests are really efficacious for their purpose, sufficient to justify the admitted hazards, if they are misapplied, and I am not suggesting Bonneville has misapplied them.

Wouldn't this be a worthy use of some of your time?

Mr. LUCE. The more I know about my case, the better case can be made, the better judgment, the more accurate and more reasonable judgment can be arrived at. I really haven't thought out whether I will make some further inquiries of other psychologists or of anyone else about these particular tests. But I may do that if I think it is necessary.

Mr. REUSS. I would hope that in addition to inquiring among a broad spectrum of psychologists, you would put your own mind on it because I would hate to come to the conclusion that this subject was so occult that an intelligent and industrious administrator like yourself is incapable of grasping whether it is valid or not.

And indeed, I think one of the troubles of the last 25 years has been that everyone has been too ready to accept the fact that somebody else is using it.

For example, when I go to my fellow Episcopalians in a few days and say "Brethren, are we right in using this test?" they will say "Of course we are. Bonneville is using it." And so the picture goes.

Thank you, Mr. Chairman.

Mr. GALLAGHER. In fact, along the lines of suggested reading that Mr. Reuss has pointed out, it might well be in order if you saw fit to do this, before Mr. Rosenthal's law becomes effective, to read some of the writings of Mr. George K. Bennett, Ph. D., a psychologist, president of the Psychological Corp., which sells these tests. (See p. 65, supra.)

Mr. Bennett stated, and I quote:

> Over the past 40 years a great number of self-descriptive inventories have been conducted and tried out. This reviewer is unable to recall a well-established instance of useful validity for a class of questionnaires against a criterion of occupational success.

Now, this is one of the great authorities in this field of psychology and he doesn't have as much confidence in it as you do, Mr. Luce. That might be a good starting point.

The Chair would like to suggest, before any further use is made of the tests, that the entire program be submitted to Mr. Macy to see whether or not your views do hold water in light of the new policy.

Mr. LUCE. We have assured the committee we will do that.

Mr. HORTON. Mr. Chairman, I want to ask another question.

With regard to your opinion with regard to the invasion of the right of privacy of the employee, we have picked out in some of these tests some of the more exciting, if you will, questions. But you made reference to the Guilford-Zimmerman Temperament Survey and said the psycholological services use this.

Mr. LUCE. That is their basic personality test; yes.

Mr. HORTON. I would like to pick out a few questions, and I will go down the line, 1 through 10 or 11, and ask you, as I read these questions off, to ask yourself whether or not these questions don't invade the privacy of an individual to a degree beyond which we should really go.

Now, I think they do, because they ask a variety of questions. They go to a variety of subjects and emotions of the individual. It doesn't seem to me they should be subjected to even this type of questioning:

"1. Do you start to work on a new project with a great deal of enthusiasm?

"2. You would rather plan an activity than take part in it.

"3. You have more than once taken the lead in organizing a project or a group of some kind.

"4. You like to entertain guests." And there is nothing wrong or immoral—I mean this has to do with a personal like or dislike.

"5. Your interests change quickly from one thing to another.

"6. When you eat a meal with others, you are usually one of the last to finish.

"7. You believe in the idea that we should eat, drink, and be merry, for tomorrow we die.

"8. When you find that something you have bought is defective, you hesitate to demand an exchange or refund.

"9. You find it easy to make new acquaintances.

"10. You are sometimes bubbling over with energy and sometimes very sluggish.

"11. You are happiest when you get involved in some project that calls for rapid action.

"12. Other people shy of you as being very serious minded.

"13. In being thrown by chance with a stranger, you wait for him to introduce himself.

"14. You like to take part in many social activities.

"15. You sometimes feel just miserable for no good reason at all."

Now aren't these asking a series of questions that have to do with a person's personal and private rights that should not, even for the purpose of promotion, be invaded?

Mr. LUCE. I would have to answer as I did before, that as we administer the tests, I think these are proper questions to ask of employees applying for key positions, where their personality traits may have an important bearing on the way they perform the job.

As to most of those particular questions, even I as a layman in this field, would think I could see the relevancy of them to the personal qualifications of a man for a certain type of job.

If you are an outgoing fellow, for example, you might do better as a supervisor than——

Mr. HORTON. I don't mean to have you draw conclusions from these. All I am pointing out is they are asking a whole series—and that is just the first 15—a whole series of questions about personal life, that it seems to me an employee should not be subjected to.

Mr. GALLAGHER. Mr. Romney?

Mr. ROMNEY. Mr. Luce, there are three other power agencies, electric power agencies in the Department of Interior, besides Bonneville Power Administration, are there not?

Mr. LUCE. Yes.

Mr. ROMNEY. The Bureau of Reclamation, Southeastern Power Administration, and Southwestern Power Administration. We are informed that none of these agencies uses personality testing.

Does this correspond with your understanding?

Mr. LUCE. Yes; I think we are the only agency in the Interior Department that has tried this.

Mr. ROMNEY. But they do have some comparable operating responsibilities to yours?

Mr. LUCE. Not on nearly as large a scale, but comparable; yes.

Mr. ROMNEY. Now, the Tennessee Valley Authority, on the other hand, would be on a scale comparable or even greater than yours?

Mr. LUCE. Yes; their installed capacity, if you add in the steam-plants, is even greater than ours.

Mr. ROMNEY. For the record, I might say their installed capacity as of February 25, 1965, was 14.6 million kilowatts.

Mr. LUCE. About twice ours. They have half our hydro capacity, and the rest is steam.

Mr. ROMNEY. We are advised TVA does not use these tests and some time ago the question came up as to whether they might be used, and the suggestion was disapproved.

I merely wanted to make this point to indicate that there is nothing unique about the Bonneville Power Administration, per se.

One other question to just clear up a point, Mr. Luce: You referred to Mr. Macy's reference to an air traffic controller as the kind of responsible position which must be very carefully filled.

Mr. LUCE. In which this testing might be proper; yes.

Mr. ROMNEY. This is the point I make. Did you intend to make the point that Mr. Macy was suggesting, that this type of personality test about which we are talking would be in order for a position such as an air traffic controller?

Mr. LUCE. I just read his testimony. I wasn't at the hearing. I don't think he was talking about a particular test, Mr. Romney, but rather personality-type testing in general, and using a tested and reliable test. I understood his testimony to say he thought this would be proper for that kind of position.

Mr. ROMNEY. Well, I think just for the record I should read what he said. After referring to air traffic controllers as responsible positions, he simply says, "There are a few positions for which psychiatric evaluation is a regular part of the medical examination." And then he goes on to say that these examinations should be conducted by

qualified specialists, with full consideration of the rights of the individual, as well as the needs of the Federal service, and specify diagnostic methods used in such examinations are properly determined by the medical specialist.

My reading of his statement is not that he is suggesting that tests of the kind they have in effect prohibited in their policy statement would be in order for a position of this type.

Mr. LUCE. When we submit our tests, we will have the definitive answer to that question.

Mr. GALLAGHER. It is the understanding of the Chair that while a psychiatric evaluation might be necessary for an air traffic controller, Mr. Macy's testimony and the policy that he laid down was quite definite, in that personality tests would be prohibited in the U.S. civil service.

We will be interested to see the ruling on your request.

Thank you very much, Mr. Luce.

Mr. LUCE. Thank you, Mr. Chairman.

(The following exchange of letters between the chairman of the special inquiry and the Department of the Interior took place later:)

JUNE 28, 1965.

Hon. STEWART L. UDALL,
Secretary of the Interior,
Department of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: This is in reference to the recently discontinued psychological testing program of the Bonneville Power Administration. The personality test aspect of the program was discussed in detail by the Administrator on June 4, 1965, before the special inquiry of the House Government Operations Committee.

The Administrator testified that BPA had spent approximately $15,000 for the testing service. Two consulting firms were used initially, Subsequently, one was dropped. As described by the Administrator, the procedure was for BPA to furnish to the firm a job definition and qualification statement. The firm then "tailor made" tests for each position. Before the test, the employee was interviewed by the firm. Following the test, he was again interviewed by the firm. After that BPA received from the firm an appraisal of the employee, containing a personal history, a psychological description, and a statement of his potential for development including recommendations. BPA's selection officer used the appraisal along with other pertinent information to make his selection. The BPA did not receive or see the specific test results of any individual employee.

On June 3, 1964, the Chairman of the U.S. Civil Service Commission announced before our panel his agency's broadened policy on personality tests, part of which we quote:

"* * * the Commission does not itself use and prohibits agencies from using personality tests as such in any personnel action affecting employees or positions in the competitive service. This does not, of course, relate to the proper use of such tests by a qualified psychiatrist or psychologist when, in his professional judgment, they would assist in his total study of an individual in connection with medical determinations for employment or fitness for duty.

"The above policy restricts the use of current personality test methods intended to gage personal characteristics. The Commission will consider proposals for the use of a particular personality test only when it has been shown by systematic research to have a direct value in making personnel decisions."

The Administrator advised our panel on June 4 that in compliance with the new Civil Service Commission policy, he was discontinuing the personality tests. He declared, however, that he proposed to submit through departmental channels a request that the Commission consider for approval BPA's personality testing program. He added that he would request the consulting firm to furnish the research backing up the preparation of the test questions and the analysis system used.

It seems to us there are several reasons why further personality testing by or on behalf of agencies within the Department should be a matter of high-level concern and one for which there should be a carefully determined departmental policy:

1. The Civil Service Commission has clearly and positively rejected personality testing within the competitive service, with limited exceptions.

2. (a) The BPA has no monopoly among Government agencies on positions which impose special demands of judgment, alertness, discipline, or responsibility. Sound personality evaluation is as much a prerequisite to filling these positions as to filling BPA's "key" positions. (The Tennessee Valley Authority, for instance, has electric power functions even more extensive than the BPA, but does not use personality tests.)

(b) The Administrator testified about the problem of selecting for key positions in BPA involving "stress situations" where a mistake could cause loss of life and property. (See attached list furnished by the Administrator of "Positions Filled Using Test Augmentation of Evaluation Factors".) He likened this to selecting for such positions as an air traffic controller, to which the Chairman of the Civil Service Commission made an illustrative reference before our panel. However, the Administrator did not associate such testing with being a part of a medical examination, whereas the Civil Service Commission policy limits use of available personality tests to assisting in the "total study of an individual in connection with medical determinations for employment or fitness for duty."

3. The Government has long been guided by a general policy rule that purely personal services may not be obtained on a contractual basis but should be performed by a regular employee responsible to the Government and subject to its supervision. Exceptions are, of course, recognized by the Comptroller General in a number of circumstances. We take no position as to whether the regular use of a consulting firm as in BPA's testing program would come within this general rule. We do suggest, however, that this point should be examined as a matter of departmental concern.

4. An agency's practices and policies regarding personality tests might tend to influence agency contractors as to use of personality tests for contractor personnel or job applicants, particularly as this testing might relate to contract operations.

In view of the foregoing, we would appreciate your advising us promptly on the following points:

(1) The Department's policy in relation to (a) seeking Civil Service Commission approval of further personality testing and (b) contract terms relating to Government contractor's use of personality tests.

(2) Any instances of contracts entered into by BPA in which there is provision relating to personality testing of personnel or job applicants of the contractor, plus estimates of the numbers involved in such testing and the cost.

(3) The extent to which the cost of the consulting firm's assembly of supporting research to justify BPA's request for further testing would be borne by the Government.

Sincerely yours,

CORNELIUS E. GALLAGHER,
Chairman, Special Subcommittee on Invasion of Privacy.

(The list furnished by the Administrator entitled "Positions Filled Using Test Augmentation of Evaluation Factors," appears on p. 206.)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 2, 1965.

Hon. CORNELIUS E. GALLAGHER,
Chairman, Special Government Operations Subcommittee,
Committee on Government Operations,
House of Representatives, Washington, D.C.

DEAR MR. GALLAGHER: This is in further reply to your letter of June 28, 1965, concerning personality testing.

Your first question asks what is the Department's policy in relation to (a) seeking Civil Service Commission approval of further personality testing and (b) contract terms relating to Government contractor's use of personality tests.

Since the Commission has prohibited agencies from using personality tests, as such, in any personnel action affecting employees or positions in the competitive

service (which we administratively are extending to the Department's employees and positions in the excepted service), the Department has no present intention of requesting authority from the Commission for the use of personality tests, and no such request will be made unless and until the Commission adopts a Government-wide policy authorizing the use of such tests. As to the second part of this question, pending the adoption of such a Government-wide policy by the Civil Service Commission, no further contracts will be made with private firms for the use of personality tests in connection with applicants for our jobs or employees on our rolls, nor will there be any requirement in any contract with this Department or any of its bureaus or offices that such tests be administered to or used in connection with the employment or assignment of the contractor's employees.

Your second question asks whether there are any instances of contracts entered into by the Bonneville Power Administration in which there is provision relating to personality testing of personnel or job applicants of the contractor, plus estimates of the numbers involved in such testing and the cost. There are no contractual commitments or agreements within this Department containing any provisions relating to personality tests or requiring that contractors test their personnel prior to assigning them to work on matters of interest to the Department.

Your last question asks the extent to which the cost of the consulting firm's assembly of supporting research to justify the Bonneville Power Administration's request for further testing would be borne by the Government. In conformance with our position stated above, the Department will undertake no research, either on its own or through any private firms in the area of personality tests, and will not request any private firm to undertake such research. Hence, if any such assembly of supporting research mentioned in your question is undertaken, it will not be at the request of this Department and the costs will not be borne by this Department.

The positions stated herein are being transmitted to our bureaus and offices for compliance and implementation. I can assure you that the matter of using personality tests within the Department will depend upon whether or not the Civil Service Commission prescribes Government-wide standards and guidelines for use throughout the executive branch. I appreciate your summarizing the reasons for the importance of our concern in this matter and recognize the validity of the points made in your letter.

Sincerely yours,

D. OTIS BEASLEY,
Assistant Secretary of the Interior.

Mr. GALLAGHER. The Chair would like to call Mr. Kingston Berlew, Acting Associate Director for Peace Corps Volunteers; Dr. Abraham Carp, Director of Selection of the Peace Corps; and William Josephson, General Counsel of the Peace Corps.

TESTIMONY OF F. KINGSTON BERLEW, ACTING ASSOCIATE DIRECTOR FOR PEACE CORPS VOLUNTEERS; ACCOMPANIED BY DR. ABRAHAM CARP, DIRECTOR OF SELECTION; AND WILLIAM JOSEPHSON, GENERAL COUNSEL

Mr. GALLAGHER. The subcommittee welcomes you, gentlemen. Before we proceed, may we ask you to be sworn.

(Whereupon the three witnesses were sworn.)

Mr. GALLAGHER. If you would like to summarize your statement, you may, or go ahead with the prepared statement, whichever you wish.

Mr. BERLEW. Mr. Chairman, members of the committee, first I would like to say Mr. Shriver regrets he was unable to be here this afternoon. He had a previous commitment to make a commencement address at a college in New York and felt he should keep that commitment.

As you know, before the Peace Corps was invited to appear before this special inquiry, the Constitutional Rights Subcommittee of the

Senate Judiciary Committee invited the Peace Corps to testify before it on this subject on June 9.

Mr. Shriver has prepared and submitted to that subcommittee a statement of his own. I would like to read the substance of that statement and add to it a few brief personal remarks of my own.

In 1961, President Kennedy assured the Congress that Peace Corps applicants "will be carefully screened to make sure that those who are selected can contribute to Peace Corps programs, and have the personal qualities which will enable them to represent the United States abroad with honor and dignity."

In our opinion the single most critical issue which confronted the Congress in considering the Peace Corps Act in 1961 was whether or not the Peace Corps would be able to select the right people to be Peace Corps volunteers. Had there been any substantial question as to the Peace Corps ability to do this, we doubt if the Peace Corps Act would have been passed.

Before we asked Dr. Nicholas Hobbs to be the Peace Corps' first Director of Selection, we asked many selection experts for recommendations. Dr. Hobbs was then and is now chairman of the Human Development Division of the George Peabody College for Teachers in Nashville, Tenn. Previously, he had been head of the department of psychology at Louisiana State. During World War II, he was the Air Force Director of Research in the selection and training of aviation cadets and gunners. Nick is now the American Psychological Association's president-elect.

Dr. Hobbs gathered an outstanding group of experts in selection. They developed a comprehensive selection process. It includes references, aptitude, and intelligence tests, evaluations from instructors during the 10-to-12-week-long Peace Corps training program, the opinions of host country nationals participating in the training program, peer ratings, health examinations, observations and interviews by qualified and experienced psychologists, performance in the various components of training including technical skills, language achievement and physical education, psychiatric interviews when indicated, and review of a full field investigation conducted by the Civil Service Commission or in some cases the Federal Bureau of Investigation.

No one element of this process is determinative. No one element makes the same contribution as another. But each makes a definite and distinctive contribution to the process.

A selection board meets once during and once at the end of training to weigh all the available evidence about each applicant. It is chaired by a highly qualified and experienced psychologist employed by the Peace Corps. We call him the field selection officer. On the board sit the training program director, the training program psychologist, resource persons representing the various components of training, the Peace Corps representative from the country for which the volunteers are being trained, and others. The decision to enroll or not to enroll an applicant is made by the field selection officer. But it is a product of the board's deliberations.

Dr. Hobbs was succeeded as Director of Selection by Dr. E. Lowell Kelly, a former president of the American Psychological Association. Lowell was and is chairman of the Department of Psychology at the University of Michigan.

Dr. Edwin R. Henry succeeded Dr. Kelly in January 1963. Ed was and is manager of the Social Science Research Division of Standard Oil Co. (New Jersey). During World War II he was Chief of the Personnel Research Branch of the Army Adjutant General's staff.

Dr. Henry was succeeded last fall by Dr. Al Carp. Dr. Carp was Technical Director of the Personnel Research Laboratory, Aerospace Medical Division, Air Force Systems Command. He was one of those who worked out the selection process for screening space program applicants and determining those best qualified to be astronauts.

The Peace Corps selection process, in our opinion, has worked. On a completed project basis, only 7.9 percent of our applicants have failed to complete their service for reasons related to "personal adjustment."

Fewer than seven-tenths of 1 percent have returned because of psychiatric difficulties.

Moreover, every foreign country to which Peace Corps volunteers are now assigned wants more volunteers. And I might add many other countries have requested volunteers for which we have not been able to meet the request.

Last year about 46,000 Americans volunteered to join the Peace Corps. This year about the same number will volunteer.

If host countries thought Peace Corps volunteers were not effective, I doubt if they would ask for more and use their own scarce resources to bear a portion of the program's cost.

If the American people thought poorly of those serving in the Peace Corps, the Peace Corps would not enjoy their support and the support of Congress, the President, the Secretary of State, and the American Ambassadors to the countries in which Peace Corps volunteers serve. Nor would 46,000 people each year volunteer to serve in the Peace Corps.

I was the Peace Corps Director in Pakistan for 2 years prior to assuming my present job. I took that responsibility, I believe, quite seriously, just as you take yours seriously. I have some familiarity and understanding of the nature of the Peace Corps assignments, and the frustrations and unusual stresses which Peace Corps volunteers are called upon to meet.

I think I am also personally familiar with and concerned about what happens to persons, including Peace Corps volunteers, who are not capable of coping with these situations and these stresses.

In my present capacity I feel a very strong obligation and responsibility to take every reasonable measure to minimize the number of individuals who would be so affected. All of us, I think, in the Peace Corps feel that same responsibility.

Dr. Carp, the Director of our Selection Division, is here to testify with regard to the use of personality inventory tests and their value in this type of problem.

Mr. GALLAGHER. Thank you very much, Mr. Berlew. Dr. Carp, would you like to make a statement?

Dr. CARP. Yes, sir. I think the point that is made in my prepared statement is that, first of all, the Peace Corps was charged by Congress, in enacting the Peace Corps Act, to make every effort to insure that only individuals of emotional maturity and sound mental health be sent overseas. In implementing this directive from Congress, as

was indicated in Sargent Shriver's prepared statement, the Peace Corps took advantage of expert recommendations from the field of psychology and psychiatry, the disciplines most experienced, I believe, in evaluating emotional maturity and mental health. As one part of the overall evaluation process it was determined, it was decided that personality inventories could play a limited but significant contribution to this overall evaluation. It was recognized that in some respects taking these kinds of tests are uncomfortable and are not pleasant. However, it was felt and we still feel that the benefits derived from the proper use of these instruments certainly justify the discomfort to the individual. And I think the proof, in a sense, of our use of these tests is that in fact we do have what I think is a very successful selection process. Less than 1 percent of the volunteers who go overseas have returned for psychiatric reasons. This is a remarkable record. I would not maintain that this is due solely to the use of psychological inventories or any one psychological test. But I think it is due to the sincere, conscientious, dedicated individuals and processes which we have set up, to which psychological testing does indeed contribute.

Thank you.

Mr. GALLAGHER. Mr. Josephson?

Mr. JOSEPHSON. Mr. Chairman, I would only request that Dr. Carp's statement be put in the record in its entirety.

Mr. GALLAGHER. Yes, without objection it is so ordered.

(The prepared text follows:)

STATEMENT OF DR. ABRAHAM CARP, DIRECTOR OF SELECTION OF THE PEACE CORPS

Mr. Chairman, in 1961 the Congress made clear, in the Peace Corps Act, its concern with the qualifications of Peace Corps volunteers. It directed that the Peace Corps make available to interested countries "men and women of the United States qualified for service abroad and willing to serve, under conditions of hardship if necessary." The President was authorized to enroll in the Peace Corps only "qualified citizens and nationals of the United States."

In 1961 both the Senate and House Peace Corps bill reports specified that Peace Corps volunteers should be "emotionally mature" and "in excellent * * * mental health."

This concern is understandable. A Peace Corps volunteer does not live the life of the typical U.S. Government employee overseas. He must demonstrate his technical competence in what is often a technically primitive environment. Often he must communicate in a new and difficult language. He must live with and work for people whose background, culture, and way of life contrast dramatically with that to which he has been accustomed. Through all this, he must maintain his own physical and psychological well-being in essential isolation from his own culture.

An emotionally immature and mentally unstable volunteer could do serious damage to the United States and the Peace Corps overseas.

But not only the United States' and the Peace Corps' interests are at stake. The individual volunteer has an obvious stake in his mental health. If the Peace Corps sent overseas a volunteer who was not qualified in this regard, it could be responsible for seriously and even permanently damaging his mental health.

Mr. Shriver has already described generally the Peace Corps' selection process. Let me turn to the use of personality inventories.

The selection of people is a young science. No one selection tool even begins to approach perfection. That is why Peace Corps' selection is deliberately structured to bring to bear many different selection tools. As Mr. Shriver says in his statement, no one element of this process is determinative but each makes a definite and distinctive contribution to the process.

In our judgment, the Peace Corps would be derelict in its responsibilites if its selection process deliberately failed to employ any one element of that process, including personality inventories properly used by qualified persons. Indeed, in

1961 the House Foreign Affairs Committee specified that during Peace Corps training each applicant will receive "psychological and psychiatric tests." (See p. 267.)

Each Peace Corps training contract requires the training institution, usually an American college or university, to appoint at least one experienced and qualified psychologist to be what we call a field assessment officer. He is responsible for gathering psychological data throughout training. The only personality inventory he is asked to give all trainees is the Minnesota Multiphasic Personality Inventory, although the field assessment officer may decide in consultation with the Peace Corps' field selection officer to give either generally or individually other personality inventories.

In our judgment the MMPI is the only objective personality inventory which helps identify persons who may have or develop serious personality disorders. It has been extensively used for more than 20 years. More data has been accumulated about it than any other similar inventory, and much of it is relevant to the Peace Corps' selection process.

The MMPI consists of 566 statements which the trainee is asked to designate as true or false as he thinks they apply to him. His responses are then distributed among 14 different scales. The score the applicant makes on each scale is then compared with the scores made by persons who are known to have personality disorders.

In my opinion, a good alternative to use of the MMPI does not now exist. Many persons who have potentially serious personality disorders are readily identifiable. Many are not. It is of critical importance that the Peace Corps' selection process make the best effort possible to identify those who are not readily identifiable.

Clinically, potentially serious personality disorders are identified through individual psychiatric interviews. But it is simply not humanly possible to have a qualified psychiatrist interview each of the approximately 10,000 persons who enter Peace Corps training each year. There are not enough psychiatrists, and since most of the interviews would be routine, individual psychiatric interviews would waste scarce professional resources.

The MMPI represents an effort to recreate objectively a psychiatric interview, and the Peace Corps has substantial evidence in the form of case studies that the MMPI makes a definite contribution to Peace Corps selection. In other words, if the Peace Corps did not use the MMPI, more volunteers sent overseas would fail to complete their Peace Corps service for psychiatric reasons. This would not be in either the United States' or the Peace Corps' interest or, perhaps most important, in those volunteers' own interest.

The MMPI contributes to selection-in decisions as well as to selection-out. A normal MMPI profile can help counterbalance negative data from other elements of the selection process. Moreover, trainees with abnormal MMPI profiles are not automatically selected out. Special attention is paid to them. As a result more data accumulates about them than usually accumulates about a trainee. This has resulted in selection-in decisions notwithstanding the abnormal MMPI profile.

Many MMPI items relate to attitudes toward sex, one's body, religion, one's parents and other personal matters. This is because, as most of us know from common experience, personality disorders often express themselves in relation to these matters. What is significant is not an individual's particular responses but whether or not his aggregate score on the MMPI's scales is similar to that of persons with serious personality disorders.

Because the MMPI involves personal matters it is only given by the field assessment officer. He as we have seen is always a qualified and experienced psychologist. He is trained to respect the confidentiality of an individual's MMPI profile.

Only two other persons have access to that profile, the Peace Corps' field selection officer, who is also a highly qualified and experienced psychologist, and if the profile suggests that a psychiatric interview is warranted, a medical doctor trained in psychiatry.

After the end of the training program all MMPI and any other personality inventory data will be destroyed. Our inquiry into the use of personality inventories during Peace Corps training has indicated that the Peace Corps has not had a consistent policy on this in the past. This was a serious error, and I assure you it has been corrected.

I would like to draw an analogy here between the Peace Corps' selection process as it relates to emotional maturity and mental health and a comprehensive health examination. The Peace Corps is obviously equally interested in an

applicant's mental and physical health. Properly evaluating either requires a highly professional examination. In both cases failure to conduct the examination runs the risk of serious harm to the United States, to Peace Corps, and to the applicant. But certain aspects of both kinds of examinations are quite personal, and as many of us know, some are not only personal but unpleasant as well. This does not mean that these examinations should not be given. But this does mean that they should only be given by qualified and experienced professionals who are trained to respect the individual's privacy.

Mr. GALLAGHER. We welcome you here today. Since you have given your credentials on the Peace Corps, we might as well give ours. One of the original ideas for formation of the Peace Corps came from our distinguished colleague, Mr. Reuss. I introduced the original proposal of creating the Peace Corps. I acted as one of the floor managers for the bill, long before it became fashionable to support the Peace Corps. So all of the Members up here are in complete agreement that the Peace Corps has been an outstanding success. With that having been said, let's get to the point of whether or not these tests are in fact a violation of the privacy of the individuals who must take them. Or perhaps I am on dangerous ground by saying "must take the test," because there is always the out that they may volunteer to take these tests, but they may volunteer themselves out of the program, too, if this testing pattern follows the other testing patterns.

Do you feel there is no violation of privacy in these tests, or of the constitutional rights of the people involved?

Mr. BERLEW. That is our position, Mr. Chairman, on the advice of our General Counsel.

Mr. ROSENTHAL. Mr. Chairman, will you yield for a moment?

Mr. GALLAGHER. Yes.

Mr. ROSENTHAL. I think perhaps at this hour we might zero in. Dr. Carp is the first witness we have had who would seem to me well qualified to offer rebuttal to the attack that has been made on the MMPI by other witnesses so far, and I would appreciate a 10 or 15 minute summary on his views as to the validity of the test, its usefulness and in what way there is no violation of the right of privacy, if that is all right.

Mr. GALLAGHER. Yes.

Mr. ROSENTHAL. I feel I need it badly at this point, and I think Dr. Carp is qualified to give it to us on a reasonable basis.

Dr. CARP. With only one reservation: I don't consider myself an expert on the invasion of privacy problem, and perhaps our general counsel, Mr. Josephson, might comment on that aspect of it. But I would certainly be willing to discuss or to talk briefly on the use which the Peace Corps makes of the MMPI, the role it plays, the evidence we have for its validity and usefulness.

Mr. ROSENTHAL. And your knowledge as to its origination and the circumstances under which it originated.

Mr. HORTON. I think, if you will yield, aren't you asking the witness as an expert to talk about the test itself, and to justify the test and what it does, and the validity of the test?

Mr. ROSENTHAL. As an opening point for further inquiry.

Mr. GALLAGHER. We took testimony yesterday, and I will state two quotes which disturbed this subcommittee.

One is from Dr. John Dollard, professor of psychology at Yale University. He, in considering the question of these tests, states,

and I quote, "There may be exceptions unknown to me, but generally speaking, projective tests, trait scales, inventories, or depth interviews, are not proved to be useful in selecting executives or salesmen or potential delinquent or superior college students."

And I quote Dr. Bennett again, president of the Psychological Corp., a well-known authority, "Over the past 40 years a great number of self-descriptive inventories have been constructed and tried out. This reviewer is unable to recall a well-established instance of useful validity for a class of questionnaire against a criterion of occupational success."

If we could start at that point, and if you could dispute that or lend validity or disturb the credibility, you would serve a great purpose here.

Dr. CARP. I don't know if it is ethical, but perhaps the best way I could refute at least part of it is by reading another statement by Dr. Bennett, if this is permissible.

This is a somewhat more recent statement.

Mr. REUSS. To refresh my recollection, who is Dr. Bennett again?

Mr. GALLAGHER. Dr. Bennett is the president of the Psychological Corp. He is a Ph. D., president of the corporation that puts out these tests.

Mr. REUSS. Is that a profit or nonprofit group?

Mr. GALLAGHER. It is a profit corporation, many psychologists own shares in it, and so he would be a witness, you would think that would be in favor of the tests, and yet this is his statement.

I might say, Dr. Carp, do you own shares in this corporation?

Dr. CARP. I am happy to say, sir, that I do not.

Mr. GALLAGHER. Fine.

Mr. ROSENTHAL. You are happy because it permits you objectivity, or are you happy because their financial success has not lived up to promise?

Dr. CARP. I am happy because it permits objectivity. I have no knowledge of its financial success. But I think they are doing very well.

Mr. GALLAGHER. Yes, it is a tremendous financial success.

Mr. ROSENTHAL. We are beginning to suspect that.

Mr. GALLAGHER. Proceed, please.

Dr. CARP. This is a statement from Dr. Bennett. He says, reading in part——

Mr. JOSEPHSON. Excuse me. I think this statement should be identified, It is a statement which Dr. Bennett has prepared for the other body's subcommittee. I do not know whether or not he has been invited to testify before this inquiry.

Mr. GALLAGHER. We would welcome his statement or his testimony. In fact, we were trying to determine who could best state the position of the industry, or profession.

Mr. REUSS. Apparently you can get a witness on both sides for the price of one.

Dr. CARP. I think essentially Dr. Bennett's statement is:

> I do state that I do not believe any accepted test or inventory properly administered by responsible persons invades traditional personal rights. For these reasons, in the context of such testing, the question whether public employment is or is not a right or a privilege is irrelevant.
>
> I take now the Minnesota Multiphasic Personality Inventory to illustrate my thesis: This technique is really, as its name implies, an inventory, not a test,

though in the nature of the device no answers are "correct" or "incorrect", as we shall see.

Then:

The MMPI was developed at the University of Minnesota to assist in the classification of persons to whom various labels were attached denoting degree of psychological or emotional instability. The test consists of 566 questions to which answers given by a cross section of people present a different profile from those obtained from people who are believed to be emotionally unstable or potentially so. In fact, the test was developed by careful observation and experiment with the use of many more questions, including the 566, on 2 distinct groups of people at the University of Minnesota Hospital. One group comprised visitors to the hospital—presumably a cross section of the population—and the other consisted of patients who were being treated after diagnosis for certain emotional or mental disorders.

No one contends that every question in the MMPI is critical nor that better questions may not be developed. However, the 566 questions have proved satisfactory in practice, have been the subject of a great quantum of data and experience, and could be rephrased or replaced only at great cost and without assurance that the end product would be so successful a tool.

The answer one gives to one question—indeed, the answers to dozens of questions on the MMPI—are not critical in the evaluation of personality. Indeed, no answer is "correct" or "incorrect," Experience alone shows that certain constellations of answers are given by people possessing certain characteristics. People of similar characteristics, however, may answer many questions quite differently—so nothing is necessarily determined by isolated answers. The test is valid because experience validates it, though no answer is itself valid. For those reasons, the persons who evaluate or score the MMPI couldn't care less about what answer is given to a particular question. Such information is absolutely meaningless whether the question is whether one likes sailing in a boat or whether one wished as a child to be a locomotive engineer.

However, a constellation of certain answers has meaning—not because the developers of the MMPI were supermen but because they were careful empiricists. The test was, in effect, developed by the corollation of replies of a cross section of America with those of a group who were having emotional difficulty. The test therefore was proved before it became a test, and it has been proving itself ever since.

Now I should like to discuss the uses and abuses of tests. The MMPI is not a test to determine who should be employed in a job. No test should be the absolute criterion in such an evaluation. The job of selection for employment still is done best by humans and in my judgment this will always be so. That is not to say that useful psychological and testing tools have not been developed which can and do greatly assist the personnel or selection officer. But the task of selection must be performed by skilled, trained, and conscientious men and women using the best tools available. The MMPI is such a tool. It does not purport to be a test of a person's skills, education, or training. It only seeks to measure emotional components to determine the probable state of emotional equilibrium. Furthermore, the MMPI is not infallible, and its results should never be the sole basis for judgment. However, in those circumstances, now of increasing frequency, in Government and business of placing men and women in stressful jobs, some in faraway lands, it is only fair to the employee and the employer that predictable tragedy, be, if possible, averted.

The Peace Corps has had a remarkable success because it has chosen its volunteers and staff so well. When the agency was established, dire predictions were heard that the Peace Corps would be filled with romanticists, zealots, misfits, and escapees from life at home. The Peace Corps personnel have proved to be remarkably stable—far better able to cope with real austerity and adversity in good cheer than most of us. This is due in no small degree to the training of the volunteer and to the administration of the corps. However, nothing could have compensated for poor selection. The selection procedures have been superb. To a considerable extent the selection has been through the training process itself, which tends to weed out the miscast volunteer. But one must not entirely discount the role of the MMPI which every Peace Corps volunteer receives at the training institution.

I can assure you that the burden of the test is worth it to the Peace Corps applicant, who is saved from the embarrassment and loss of self-esteem from failure abroad after acceptance and goodbys to family and friends.

I think I could add more, but I think you get the gist of Dr. Bennett's remarks with respect to the MMPI and its use by the Peace Corps.

Mr. GALLAGHER. Does he allow for error in this?

Dr. CARP. I am sure he allows for error in it, and the Peace Corps certainly allows for error in it.

Mr. GALLAGHER. It was pointed out yesterday that there was a false positive factor of 11 percent in this area of screening.

Dr. CARP. Well, the Peace Corps' procedures are such to take account of both the problem of the false positive; that is, those individuals who appear to have a deviant profile on the MMPI, and who are not in fact so psychologically deviant that they cannot be sent overseas, and also to help aid the false negatives, of whom there are some, those individuals whose MMPI patterns look perfectly normal, yet who are in fact emotionally disturbed.

The whole training and global assessment procedure, which lasts usually for 3 months, is designed to provide corroborative evidence in support of any hypothesis, based upon the MMPI testing.

The MMPI test is never determinative. The Peace Corps would never consider eliminating an applicant, solely on the basis of his MMPI profile. This is inconceivable, does not happen, and will not happen.

Mr. GALLAGHER. Well, assuming he refused to take it on the ground that it was an invasion of his privacy, or if the false positive factor is similar to the false negative, it is quite conceivable that some 4,600 young Americans have been eliminated as a result of even a minimum false positive factor.

Dr. CARP. No.

Mr. GALLAGHER. Last year 4,600 could have been, if you use the same 10 or 11 percent.

Dr. CARP. No; no one is eliminated on the basis of the MMPI, sir.

Mr. GALLAGER. Well, no one is ever eliminated. But if they are not selected, therefore they are probably to some extent eliminated. If not, why is it needed at all?

Dr. CARP. One thing I would like to point out, that is the MMPI is not given to all 46,000 individuals who apply to the Peace Corps.

I want to point out the stage at which this is given, because I think it does make a difference. It is only given to those individuals who accept an invitation to a training program and who end up in training.

In this year, for example, there will be about 9,200 people in training. It is only these 9,200 people to whom personality inventories are given, so they are never in a situation where a decision is made merely based upon a test profile or test score.

There is always further followup, further study, further interview, psychiatric evaluation when required, observation in the training program itself, which contributes to the total evaluation of the person.

Mr. GALLAGHER. Would you, as a psychologist, tell us why these tests are needed? What do they do? What is the justification for these tests?

Dr. CARP. We need to investigate and evaluate the emotional maturity and the mental health of these individuals. This is why these inventories are used. I know of no way, really, of evaluating the mental health and emotional maturity, the psychological and psychiatric adjustment, of individuals without investigating some of

the areas which are considered, or would be considered in other circumstances voyeuristic probing, or invasions of privacy, or unwarranted questions. This is why we use this test and why we ask these kinds of questions.

Individuals who are psychiatrically disturbed or emotionally unwell show disturbances in these kinds of areas.

Mr. GALLAGHER. Wouldn't it be possible to arrive at these same conclusions through psychiatric or psychological questioning between a trained person and the individual rather than to have him write down these answers, which become part of his permanent inventory?

I worry about a young man or young girl who answers these questions, and the possibility of them being taken out of context. They could follow them through the rest of their life. At some point along the line, the answers to many of these sex or religious questions might turn up when a person later runs for public office, for example.

This is the thing we worry about, that this is going to be something that could absolutely destroy this person's usefulness, merely because there had to be a written record as to whether or not he believed in the second coming of Christ, or whether or not his sex life was disturbed. There is the potential of danger here, something which could destroy these young people's lives if the answers ever fell into the wrong hands.

Now, do you feel that there is sufficient justification to put as part of a potential permanent record answers such as appear in the Minnesota test?

Dr. CARP. Well, the Peace Corps has taken and is taking even more serious efforts to insure that the kind of thing that you described does not exist. In the past these test protocols, the answer sheets, have not become a part of the individual's permanent record. They have been kept in a confidential folder.

Thanks, really, to being alerted by this committee, we have reviewed our procedures and have realized we can go even further. As of about 2 weeks ago, due to the prompting of this committee, all of these test protocols are being destroyed immediately after they have served their purpose, after the selection process is completed.

They do not become a part of anybody's file or folder. Nobody has access to the answers to individual questions.

It is also true that in our use of the test the individuals interpreting the tests are not concerned, are not interested in and do not study the responses to individual items. And I think you will agree that our procedures are such that there really is no danger of that material becoming a part of a man's permanent record.

Mr. GALLAGHER. Well, the potential for danger exists when a person has to write down answers to such questions because there is always a breach of security at some point in this type of thing. He has to write down his innermost thoughts and the secrets that he keeps locked up in his mind and heart, thus making them available to a government.

We have heard of many breaches of security where these personnel files will follow a person from one agency to another, some of them far more security conscious agencies than the Peace Corps.

Dr. CARP. I think it is extremely important that whatever measures are necessary be set up to insure the security of this kind of information and that it does not in fact become a matter of permanent record.

I do not think the danger of this is so great in fact that it justifies depriving us of what is useful information for the individual's own protection.

Mr. GALLAGHER. Well, again I might make a statement. What we are opposed to, and what we are trying to perhaps resist, is the totally computerized man of the future of 10 years from now and that a young man or young girl, who wants to serve in the Peace Corps, and does such great work and noble work and serves his country and himself, that at some point along the line, all of this goes into the computer, and at some point along the line, someone presses a button and says "This fellow didn't believe in God," or "He did believe in God." We are placing these people in a position of jeopardy. For what you are trying to seek as complete knowledge of a person, at the expense of this man's privacy, does in effect place him in a position of jeopardy at some future point.

Mr. Josephson?

Mr. JOSEPHSON. Thank you, Mr. Chairman. I think I can give you an example that I hope at least will underline the seriousness with which the Peace Corps shares your very serious concern.

The Peace Corps prides itself on the number of former volunteers who have decided to work for the Peace Corps, either in Washington or overseas. Naturally we are concerned to select the best of the former volunteers to spend a temporary tour of duty on our staff. In that process, we do not use the selection file of those volunteers.

Mr. GALLAGHER. Well, I am happy to hear that. The problem is that the danger still exists. Right now there are a lot of nice people in the Peace Corps. That might not always be the case. Therefore, why should it be left up to the hope that they will continue to employ nice people, with those files over there.

Mr. JOSEPHSON. That is why we have a policy of destroying these test protocols. I should also add we do not use computers in the selecting process during training.

Mr. GALLAGHER. This is a new policy you are talking about now, destroying the files?

Mr. JOSEPHSON. This was prompted by the inquiry from this committee. It has been a serious mistake for us not to have had a firm policy on this in the past. We have corrected that, and I am satisfied that the procedures we have instituted will insure that not only existing protocols, but all future ones will be destroyed.

But again I want to reiterate, no computer receives the information which the selection process produces. Computers do not play any role.

Mr. GALLAGHER. I am looking ahead, as the computers jump ahead. I am recalling that the other day in settling a small estate, involving a 3-month-old child, it was necessary first to obtain a social security number for that child, and therefore any banking transactions would have to have his number.

Looking ahead, every individual will have a number. And it may well be, developing this to a finer sense, that when these people take this type of test, the numbers will correspond, and somebody will throw it into the computer, and we will have witnessed the arrival of the completely totalized, computerized, man.

Now what are we doing about this? This is one of the reasons why we are very concerned with the privacy of individuals.

Dr. CARP. Also, I think we should differentiate between the Peace Corps situation and the typical employment situation. All of our literature that we send out to the potential applicant, the potential volunteer, first of all, illustrates what the selection process is.

We do not, although we would have no objection in the future, spell out the MMPI. But we definitely indicate they are going to be tested through psychological means, that they are going to be evaluated for emotional maturity and mental adjustment, that we know all will not get through, and that this is both for their own good and for the good of the country and for the good of the host country overseas. This is an open procedure at all points.

Very early, when the trainees appear at the training site, a representative of the Selection Division appears there and doesn't lecture, but discusses with them the entire selection process, elicits questions, assures them at that time of the complete confidentiality of the information, and assures them of the fact that this test is not really mandatory but that it is useful.

When the test is given, the freedom to not answer any particular item is emphasized.

Mr. ROSENTHAL. If I may interrupt, I still would like to hear some scientific justification for the use of this test. This test has been attacked before the special inquiry, and I am looking to you for the other side of the case.

I am sure the General Counsel and the Associate Director can tell us about the procedures, but I am looking to you for some scientific information and justification and education, as it were, as to why this test is used, why it is necessary.

Mr. GALLAGHER. Dr. Carp, it is getting late, and since this is an area, as Mr. Rosenthal has stated, an area of great interest to us, could you be prepared to do this perhaps on Monday afternoon? Would that meet with your approval?

Dr. CARP. Certainly.

Mr. GALLAGHER. Then we could get into that aspect of it.

The Chair, on behalf of the committee, would like very much to thank you for your appearance here today, and to congratulate you on the protocols that you have changed and the consideration you do give to these idealistically motivated young men and women. We share a concern for their future and I am happy to see we have a concurrence of thought on this.

Mr. Reuss?

Mr. REUSS. Mr. Chairman, I am delighted that Dr. Carp will be able to be with us Monday. Would you request him to bring along the answers to those 566 questions which we have been trying to get, and without those answers before us, I don't frankly see how he is going to explain the nature of the test.

Dr. CARP. Would you let me try, and then if you feel the need——

Mr. REUSS. No, I really want you to bring the answers. Everyone gives us this, listen to the technicians, and puts the answers off. But I really think we are entitled to know whether Lincoln was greater than Washington, or vice versa.

Mr. ROSENTHAL. We can't wait to find out.

Dr. CARP. The answer is, "It doesn't matter."

Mr. JOSEPHSON. Perhaps I could be helpful here. First of all, I am satisfied, as a result of a fair amount of time looking at my case, as a

good trial lawyer should, that Dr. Carp is right in saying that particular answers don't matter. But I believe there is another concern here, too——

Mr. REUSS. May I interrupt to say I think the special inquiry should determine whether they matter or not.

Mr. JOSEPHSON. I agree. I understand the committee's concern with respect to the validity of the test. I would like to consult with Dr. Carp about this, but I feel that he would be glad to discuss this issue under circumstances where the significance of answers to particular questions are not necessarily going to be made public.

I think he can explain at great length why——

Mr. GALLAGHER. Would you agree if we had it in executive session?

Mr. JOSEPHSON. Would that be satisfactory? Am I right in assuming that your concern is with the validity of the test?

Dr. CARP. Yes; my concern is with the validity of the test, and I think in a sense, that the question, what are the right and wrong answers to a particular item indicates, if you will pardon the expression, a lack of appreciation on the part of the committee of what these tests are trying to do, and what answers to particular items mean.

When the test directions say there are no right or wrong answers, they mean this.

Mr. GALLAGHER. But there is a positive and negative factor in whether or not George Washington was greater or Lincoln. That is a fact which cannot be denied.

Mr. REUSS. Give us the template and let us make the judgment as to whether we are able to understand it.

Dr. CARP. If this could be in executive session and if the way in which the test is scored would not be made a matter of public record, then my anxiety would be minimized. This is my concern.

Mr. ROSENTHAL. We don't want to contribute to your anxiety.

Dr. CARP. You have already.

Mr. GALLAGHER. We don't have the full membership of the special inquiry here. Mr. Horton is not here, so I think it might be in order if you weighed Mr. Reuss' suggestion, and we would very much like to do this. If you would be here at 2 p.m. and feel at that point it should not be made public, and if we are unable to purchase one in the meantime, perhaps we will hold an executive session at a later date.

But we will have an open meeting at 2 p.m.

Mr. REUSS. If you aren't going to level with us on these things, I wish you would let me know before 2, so I can rearrange my schedule, because it is not useful for me to be patronized and told we can't have the whole answers to this MMPI test.

Are you prepared to tell me that now?

Mr. JOSEPHSON. Mr. Reuss, may I try to answer that?

Mr. REUSS. Please.

Mr. JOSEPHSON. Psychologists, as a profession, are a lot younger than lawyers. They, however, have made and are making a serious effort to develop professional ethical standards which are in every respect comparable to those which the legal and medical professions have developed and which are respected.

My hunch is, although Dr. Carp is free to speak for himself, is that he would be delighted to discuss the area of your concern in executive session. But that he could not ethically commit himself to discuss

them in a public session. My hunch also is that after that discusssion, you would appreciate the reasons for his ethical concern.

Mr. REUSS. If I may address my question to him through his authorized agent here, when will he be able to tell me whether his ethical conscience will permit him to tell us about this on Monday?

Dr. CARP. My ethical conscience tells me I cannot do this in open session. In a closed session, executive session, there would be no problem.

Mr. JOSEPHSON. I would like to make it clear this is not because the Peace Corps has anything to conceal or wishes to conceal anything.

Mr. GALLAGHER. No, I understand.

Mr. REUSS. Mr. Chairman, why don't we proceed on Monday and at the point where Dr. Carp for any reason wants to go into executive session, let him ask the special inquiry at that point and I am sure the Chair, by a vote or some other method, could determine that at that time.

Mr. GALLAGHER. I think that would be an appropriate way to proceed.

Mr. Berlew, do you have a statement?

Mr. BERLEW. Yes, Mr. Chairman.

I was a little bothered by Congressman Reuss' feeling that we were being patronizing. That certainly is not our intent. We have been asking some of the same questions of our director of selection and other psychologists associated with the Peace Corps that you have been asking. And we have statisfied ourselves that in fact Dr. Carp does not know as of this minute which answers to any specific question would be appropriate or not, because he is not concerned with it in any way.

Mr. REUSS. This disturbs me, I might add, because it seems to me that the future of the Peace Corps volunteer should depend upon a test which is completely understood by the Peace Corps agency.

Mr. BERLEW. The point I was trying to make, as a fellow layman in this area, is that the answer to any particular question is not relevant to the determinations we are after. And that is the reason why our psychologists are not concerned with the answer to any particular question.

Mr. ROSENTHAL. Then why give the test?

Mr. BERLEW. They are concerned with a pattern.

Dr. CARP. Why an item is scored on a particular scale is not dependent on any particular theory of personality, with respect to the MMPI. It depends on the empirical investigations that answering an item in this particular way does in fact differentiate between a group who are called normal and a group who are given a particular psychiatric diagnosis.

Now, I am perfectly willing to share, in executive session, which items answered are scored in which way on which scales. But I really have no explanation as to why this item is scored this way on this scale. It is strictly empirical, because a certain percentage of this group answered it this way and a significantly different percentage of a different group answered it another way. Therefore, this item can differentiate between these two kinds of people.

Mr. REUSS. But you have uttered one of the greatest non sequiturs in psychological history, as far as I am concerned. It may or it may not. You are assuming it does. Let's see about it Monday.

Mr. GALLAGHER. We have a companion concern, that is why we are meeting. We are concerned with the corrosion of the whole fiber of American privacy, the right of the privacy of the individual, which is being violated under the excuse or veil of studying human behavior. And we are wondering whether or not we have reached a point where we had better reconsider some of our values and whether the importance of this study of human behavior outweighs the breach of constitutional rights.

Mr. JOSEPHSON. Mr. Chairman, a few months ago you expressed interest in the circumstances surrounding the development of the test. I don't know if the committee is aware of this article by the developer of the test, which appeared in the March 1964 American Psychologist. But it is a useful article, and I would be glad to submit if for the record.

Mr. GALLAGHER. We would include it and make it a part of the record.

(The article referred to, entitled "Psychology in Action," appears on p. 390 of the appendix.)

Mr. GALLAGHER. Gentlemen, we thank you very much.

We want to thank and congratulate you for the progress you have made, and the consideration you have given to this problem.

The subcommittee will stand adjourned until 2 p.m. Monday afternoon.

(Whereupon, at 4:45 p.m. the subcommittee was adjourned, to reconvene at 2 p.m. Monday, June 7, 1965.)

SPECIAL INQUIRY ON INVASION OF PRIVACY

MONDAY, JUNE 7, 1965

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVASION OF PRIVACY
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 2:40 p.m. in room 2203 Rayburn Office Building, Hon. Cornelius E. Gallagher (chairman of the subcommittee) presiding.

Present: Representatives Cornelius E. Gallagher, Benjamin S. Rosenthal, and Henry S. Reuss.

Also present: Norman G. Cornish, chief of special inquiry; Miles Q. Romney, associate general counsel, Government Operations Committee, and Raymond T. Collins, professional staff member.

Mr. GALLAGHER. The subcommittee will come to order.

The Chair will ask Mr. Berlew, Dr. Carp, and Mr. Josephson to resume their seats at the witness table. You gentlemen will consider yourselves sworn as you were at the completion of the testimony Friday.

We will renew at this point.

It is the understanding of the Chair that you, Mr. Berlew, would like to make some additional remarks concerning the protocols on the psychological testing and insert in the record your new policy pertaining to the use of the tests.

FURTHER TESTIMONY OF F. KINGSTON BERLEW, ACTING ASSOCIATE DIRECTOR FOR PEACE CORPS VOLUNTEERS, ACCOMPANIED BY DR. ABRAHAM CARP, DIRECTOR OF SELECTION, AND WILLIAM JOSEPHSON, GENERAL COUNSEL

Mr. BERLEW. Yes, Mr. Chairman. Members of the committee, the Peace Corps has always prided itself on having a great concern for the interest of the individual. I have never myself been associated with an organization which has spent as much time at high levels as well as low levels on the individual problems of the Peace Corps volunteers, for example.

There is a division, called the Division of Volunteer Support, in the Peace Corps, which would not exist bureaucratically if it were not for a particular concern for the interests of individuals.

Therefore, when this committee first initiated its inquiries into the use of the personality inventory tests, our initial reaction frankly was to believe that we had already used all of these precautions which could reasonably be used to protect any—against any unnecessary invasion of privacy. Nevertheless, because of your concern and because of your diligence in pursuing that concern, we have carefully

reexamined and reconsidered the procedures that we now use, both before last Friday's hearings and since that time.

We now have, we believe, a series of procedures by which we believe an improvement can be made and the interest of the privacy of the individual can be better protected.

I would like, with your permission, to outline what we intend to do in this regard.

Mr. GALLAGHER. If you will, please.

Mr. BERLEW. First, the Peace Corps at this point does not destroy the answer sheets to the MMPI questions. We propose in the future to destroy all answer sheets after they are scored. The answer sheets will come into Peace Corps at Washington and be destroyed by our own psychologist in Peace Corps Washington to insure there was no slip-up in this regard.

The profiles or the patterns of answers will be sent to the psychologists who are responsible for the selection of individuals in or out of the Peace Corps.

It is not possible to determine the answer to any given question from these profiles. Nevertheless, these profiles will also be destroyed as soon as the selection process is completed, that is at the end of the training period.

Secondly, there are some 185 questions on the MMPI which are not scored. One hundred and eighty-five of the five hundred and sixty-six total questions are not scored—I will leave to Dr. Carp any explanations you may wish as to why they are there if they are not scored. In any event, they are not scored.

We would propose to eliminate these questions from future tests administered by the Peace Corps.

Thirdly——

Mr. CORNISH. May I interrupt you there. I understand a number of the 185 questions include those which members of the subcommittee have taken some exception as being too intrusive.

Mr. BERLEW. That is correct, Mr. Cornish.

Mr. GALLAGHER. Questions referring to Christ and other religious matters.

Mr. BERLEW. I believe some 10 of the 22 questions which might be described as religious are unscored and would be eliminated as a result of this new procedure.

Mr. GALLAGHER. Please continue.

Mr. BERLEW. Thirdly, we intend to negotiate for a test booklet which is specifically designed for Peace Corps purposes. This test booklet for example, would omit these 185 questions to which I just referred. It would also include new test instructions on a cover sheet.

Mr. GALLAGHER. The test that you will remove the 185 questions from is the Minnesota Multiphasic Personality Inventory presently being used?

Mr. BERLEW. That is correct, Mr. Chairman.

The new test instructions would state more clearly than they do at this point that any person who has personal convictions against answering any one or more of the questions on this test is free to omit the answer to those questions, and will also state that any such omission will not lead to selection out of the Peace Corps.

Mr. Chairman, those are the principal procedures that we intend and propose to institute, largely as a result of your inquiries into this subject matter, which we very much appreciate.

Mr. GALLAGHER. Will the applicants be counseled that they are free to refuse their answers, or do you intend to write this into the preface?

Mr. BERLEW. This would be on the cover sheet of the test booklet. It is something that we could very easily call to the attention specifically on the persons taking the tests at the time they take it.

Mr. CORNISH. Does that relate to any and all questions?

Mr. BERLEW. That relates to any and all questions, Mr. Cornish. On June 11, 1965, the Peace Corps transmitted to all field assessment officers supplementary instructions to be read to all trainees taking the MMPI. A copy of these instructions is enclosed. We have since reviewed these instructions and made substantial revisions in them. We have asked the Psychological Corp. to print for the Peace Corps an MMPI booklet with 399 items and a special introduction and set of instructions on the cover page. A copy of our proposed introduction and instructions, which is being transmitted to the Psychological Corp., is enclosed.

SUPPLEMENTARY INSTRUCTIONS FOR THE MMPI TRANSMITTED TO ALL FIELD ASSESSMENT OFFICERS ON JUNE 11, 1965

SUPPLEMENTARY INSTRUCTIONS FOR THE MMPI

(Distribute booklets and answer sheets first and then read the following instructions to the trainees.)

The Minnesota Multiphasic Personality Inventory, which you are to take now, is a widely used questionnaire which will help us understand the sort of person you are. It is a standard part of Peace Corps assessment procedures, and has been taken by thousands of trainees in previous programs. Since many of the items inquire about very personal matters, three points concerning the use of the inventory should be made clear before you take it.

1. The results will be held in strict confidence by the assessment and selection staff. The inventory will not become part of your permanent Peace Corps file and will be destroyed once selection is completed.

2. While we find the inventory useful, it is never by itself the basis for a selection decision or a placement recommendation.

3. We encourage you to take the inventory because it is in your interest as well as that of the Peace Corps that we understand you as thoroughly as we can, but taking it is voluntary. If you decline to take it, we would naturally like to know why, but a refusal will not in and of itself harm your chances for selection.

Some of the items may strike you as strange and many of them are quite personal. Since they ask you to report your feelings and experiences, it should be obvious that they cannot be scored as correct or incorrect. Indeed, we will not even look at your responses to any individual items.

In our use you are to answer only items 1 through 366 and items 374, 383, 397, 398, 406, 461 and 502. I have written the numbers of these items on the blackboard (if the items are marked in the booklet or identified in some other way, substitute an appropriate phrase here). Please be sure to answer these items in the appropriately numbered spaces on your answer sheet.

Now read the instructions on the front of the booklet to yourselves while I read them out loud. (Read the instructions.)

PROPOSED INTRODUCTION AND INSTRUCTIONS SUBMITTED TO THE PSYCHOLOGICAL CORP.

DO NOT OPEN UNTIL TOLD TO DO SO

PEACE CORPS EDITION OF THE MINNESOTA MULTIPHASIC PERSONALITY INVENTORY

Starke R. Hathaway, Ph.D., and J. Charnley McKinley, M.D.

INTRODUCTION

The Minnesota Multiphasic Personality Inventory is a widely-used questionnaire. Many of the statements concern personal matters. None of your responses to particular statements, however, is available to the Peace Corps. Only the total of your true or false responses to large groups of statements (which are called scales) is provided to the Field Assessment and Selection Officers in a report (which is called a profile).

The Field Assessment and Selection Officers will keep your profile in the strictest confidence just as a doctor would keep confidential the results of a medical examination. The profile will not become part of your Peace Corps file. It will be destroyed as soon as Peace Corps selection ends. Your individual answer sheet will be destroyed as soon as it is scored.

If you would prefer not to respond to any statement, you need not do so.

No one is ever selected out or enrolled as a Peace Corps Volunteer solely on the basis of his or her MMPI profile.

We hope, however, that you will take the inventory. Its profiles have provided us with useful information.

INSTRUCTIONS

This inventory consists of numbered statements. Read each statement and decide whether it is true as applied to you or false as applied to you.

Please respond to as many statements as you can. The profiles are of greatest value when all or almost all of the statements are answered.

You are to mark your answers on the answer sheet you have. Look at the example of the answer sheet shown at the right. If a statement is TRUE or MOSTLY TRUE, as applied to you, blacken between the lines in the column headed T. (See A at the right.) If a statement is FALSE or NOT USUALLY TRUE, as applied to you, blacken between the lines in the column headed F. (See B at the right.) If a statement does not apply to you or if it is something that you don't know about, make no mark on the answer sheet.

Section of answer sheet correctly marked

	T	F
A	●	
B		●

Remember to give YOUR OWN opinion of yourself.

In marking your answers on the answer sheet, be sure that the number of the statement agrees with the number on the answer sheet. Make your marks heavy and black. Erase completely any answer you wish to change. Do not make any marks on this booklet.

NOW OPEN THE BOOKLET AND GO AHEAD.

Mr. BERLEW. We also publish a Peace Corps Handbook which is distributed to all persons who join the Peace Corps. We can include in the handbook a statement to this effect and would include in the handbook a statement to this effect.

Following is a copy of the language relating to psychological testing to be included in the revised version of the Peace Corps Handbook distributed to all Peace Corps trainees at the outset of training. That section is now in final draft and should be sent to the printer within the next 6 weeks for final printing. It reads:

"During training the training institution field assessment officers will give some psychological tests and personality inventories. You are not required to answer any of the test questions if to do so would be contrary to your personal convictions. Failure to answer any or all of them will not prejudice consideration of your potential for overseas service, and in no instance are these tests and inventories used as the exclusive basis for judging you. In fact no one element of the selection process is used to decide whether you qualify. Each element makes a distinctive contribution of its own. It is the total picture that counts."

Mr. GALLAGHER. Mr. Rosenthal.

Mr. ROSENTHAL. I would like to withhold judgment, Mr. Chairman, until we can hear from Dr. Carp as to why these questions were in if they were not counted, or if we can have some explanation as to whether the type of questions, other than those the chairman referred to, are going to be eliminated.

Another thing I would like to add is I think your attitude is commendable, and somewhat different from other witnesses we have had before the committee, which prompted some of us to take more direct action.

I still solicit Dr. Carp's help in explaining to us some of these problems we have had.

Dr. CARP. The developers of the test identified 566 items which they thought would be potentially useful in differentiating between people with various psychiatric problems and those who are normal.

In the scales that have been developed to date, only 371 items have turned out to in fact be useful in differentiating between psychiatric normals and abnormals. The other items are in there primarily for research purposes, to lead to the development of future scales which might in fact prove useful.

Since, however, the Peace Corps is engaged in a sense in the operational job of applying the scales and instruments that have already been developed, we see no need for administering items which are not in fact going to be used in decisions about this particular individual volunteer. So that there is no need for the Peace Corps to administer these items which are not interpreted, which do not contribute to the test profile that the pyschologist uses.

The items that are not scored do not particularly differ in kind or degree of subject matter from the ones that are scored. They are the ones that I guess you would say just did not turn out to be differentiating, so they are not in fact scored.

Mr. ROSENTHAL. Can we draw the same inference that when this test was used by other Federal agencies, they, too, were unable to score these 185 items? I would assume that to be the case.

Dr. CARP. There are many other scales available for use with the MMPI that are not what are called the clinical scales, and since the Peace Corps is using the MMPI primarily to assist in identifying people with psychiatric abnormalities, it does not fit our purposes to use these other scales.

I am just really in no position to judge as to what other agencies do or why.

Mr. ROSENTHAL. Is it your intention to advise us of the 185 questions or subjects that are going to be eliminated?

Dr. CARP. I see no problem in this. They are roughly the last 185 items in the booklets which you have.

Mr. GALLAGHER. This is the one that ends in 566—"I like movie love scenes."

Dr. CARP. That is correct.

Mr. GALLAGHER. "I feel like jumping off when I am on a high place." This does include the religious question—"Did Christ perform miracles such as changing water into wine?"

It is the last 185?

Dr. CARP. Yes, sir; roughly.

Mr. ROSENTHAL. You have no objection to our including those questions in the record; the questions that were eliminated.

Mr. BERLEW. No, we don't. Excuse me. The General Counsel had better answer that question.

Mr. ROSENTHAL. Beginning with what number, Dr. Carp?

Dr. CARP. I do not have that precise information here. The reason I said about the last 185 is I think there are 5 items in there which I have not identified, which are scored on one of the scales, and which when we negotiate with the Psychological Corp. for republishing, will be included as part of the regular test.

Following are all of the numbers and several examples of questions which Peace Corps trainees will no longer be asked to answer as part of the MMPI. In the future, trainees will be asked to respond to 399 items. Those items eliminated are:

367.
368.
369. Religion gives me no worry.
370.
372.
373. I feel sure that there is only one true religion.
375.
376.
378. I do not like to see women smoke.
379.
380.
381.
382.
383.
384.
385.
386.
387. The only miracles I know of are simply tricks that people play on one another.
388.
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412.
413. I deserve severe punishment for my sins.
414.
416.
417.
418.
419. I played hooky from school quite often as a youngster.
420. I have had some very unusual religious experiences.
421. One or more members of my family is very nervous.
422. I have felt embarrassed over the type of work that one or more members of my family have done.
423.
424.
425. I dream frequently.
426.
428.
429.
430. I am attracted by members of the opposite sex.
431.
432.
433.
434.
435. Usually I would prefer to work with women.
437. It is all right to get around the law if you don't actually break it.
438.
439.
441. I like tall women.
442.
443.
444.
445.
447.
448.
452.
453.
454.
456. A person shouldn't be punished for breaking a law that he thinks is unreasonable.
457. I believe that a person should never taste an alcoholic drink.
458. The man who had most to do with me when I was a child (such as my father, stepfather, etc.) was very strict with me.
459. I have one or more bad habits which are so strong that it is no use in fighting against them.
460. I have used alcohol moderately (or not at all).
463.
464.

465.
466. Except by a doctor's orders I never take drugs or sleeping powders.
467.
468.
470. Sexual things disgust me.
471. In school my marks in deportment were quite regularly bad.
472.
474. I have to urinate no more often than others.
475.
476.
477.
478. I have never been made especially nervous over trouble that any members of my family have gotten into.
480. I am often afraid of the dark.
483. Christ performed miracles such as changing water into wine.
484.
485. When a man is with a woman he is usually thinking about things related to her sex.
486. I have never noticed any blood in my urine.
488. I pray several times every week.
489.
490. I read the Bible several times a week.
491. I have no patience with people who believe there is only one true religion.
492.
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513. I think Lincoln was greater than Washington.
514. I like mannish women.
515. In my home we have always had the ordinary necessities (such as enough food, clothing, etc.).
516. Some of my family have quick tempers.
517.
518.
519. There is something wrong with my sex organs.
520.
522.

523.
524. I am not afraid of picking up a disease or germs from door knobs.
525.
526.
527. The members of my family and my close relatives get along quite well.
528.
529. I would like to wear expensive clothes.
530.
531.
532.
533. I am not bothered by a great deal of belching of gas from my stomach.
534.
535.
536.
537.
538.
539. I am not afraid of mice.
540.
541.
542. I have never had any black, tarry-looking bowel movements.
543.
544.
545.
546.
548. I never attend a sexy show if I can avoid it.
550.
551.
552.
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555.
556.
557.
558. A large number of people are guilty of bad sexual conduct.
559.
560.
561.
562. The one to whom I was most attached and whom I most admired as a child was a woman. (Mother, sister, aunt, or other woman.)
563.
565.
566. I like movie love scenes.

The 399 items retained are scored on the original 9 clinical scales, the 3 verification scales, and the social introversion scale of the MMPI. The latter scale is the most widely used of the nonoriginal MMPI scales and as a practical matter has become one of the standard scales. This summer, Peace Corps trainees who were asked to take the MMPI after June 15, 1965, were asked to respond to only 373 rather than all 566 items, because only the 12 original scales were being used.

Mr. CORNISH. Mr. Berlew, you also, as I understand it, in some localities give tests that are different from the Minnesota Multiphasic Personality Inventory. As I understand it, they are given in addition to the Minnesota test because the Minnesota test is the only one which is used throughout all of the Peace Corps trainee centers.

Will this same matter of choice apply also to those personality inventories, the ones that are used besides the Minnesota test?

Mr. BERLEW. Mr. Cornish, I see no reason for differentiating the handling of the different tests that are used.

Mr. CORNISH. I know also that in one locality, I think on the west coast, you utilize essay type questions as one of the personality tests, and I assumed that would also apply to those tests.

Dr. CARP. Yes, sir.

Mr. BERLEW. Yes, sir.

Mr. ROSENTHAL. Going back again—the thing that disturbs me is that some of these things could be done in a more direct fashion—for instance, among the questions that remain are questions obviously intended to inquire into the applicant's health. No. 14 says "I have diarrhea once a month or more." No. 18, "I am very seldom troubled by constipation." No. 29, "I am bothered by acid stomach several times a week." No. 24, "I have a cough most of the time." No. 44, "Much of the time my head seems to hurt all over."

Wouldn't these kind of answers come out in a less offensive way if they were part of a medical interview? Or is it geared toward some kind of esoteric psychological inquisition?

Dr. CARP. I don't think it would make any difference to the applicant whether he answers this question as a part of an extensive physical examination form, as opposed to being in the format of the psychological test.

Mr. ROSENTHAL. It makes a difference to me in this respect. The applicant is really not the judge of what he should answer, because he is in an atmosphere where he is soliciting a job. Now, there has been much testimony as to whether that job is a right or privilege. This is for another essay. But when he fills out a medical form and answers questions to a doctor, he is putting it on a line wherein he accepts all inquiries concerning his physical health. He does not know that these questions are directed toward that end. He is not sure of that, when he answers this test.

Dr. CARP. I would like to answer this in two ways.

First of all, I would like the committee to differentiate between the Peace Corps' selection process, that phase of the process wherein we use these tests, and the typical competitive situation where an applicant is applying for a job.

Selection of volunteers in the Peace Corps during training is not the same kind of environment as a competitive job seeking situation. One of the purposes of the training program with respect to individual evaluation is to make it a cooperative enterprise between the volunteer and the Peace Corps staff, to really evaluate him in terms of the requirements of the job overseas, not only the technical requirements but the personality, emotional requirements of 2 years of service in a foreign country. It is as much the trainee's responsibility to evaluate both his own commitment to this kind of an activity and his own fitness for this kind of an activity, without anybody feeling that, if either the Peace Corps or the individual decides that this is really not the kind of thing that he should do for the next 2 years, this is any reflection whatsoever on his fitness or suitability for any one of hundreds of thousands of any other kinds of jobs and situations including——

Mr. ROSENTHAL. How does he know that by taking this test?

Dr. CARP. He know this first of all before he takes this test. The purpose of psychological testing in the Peace Corps is explained to him, explained with him. He knows when he goes in if there are a hundred trainees in a program, that our job is not to pick the 75 best trainees to send overseas and leave the 25 poorest ones home. Our job is to send overseas all the qualified trainees, and if all 100 of them are qualified, nobody is more delighted than the Peace Corps.

So it is not a question of whether I have to prove myself better than somebody else in order to qualify. The problem is to convince both myself and the staff that I am qualified.

The Minnesota Multiphasic Personality Inventory, to get to the second part of your question, is not a subterfuge or another way to get at a physical examination. It is not a physical examination. We are really not concerned with the factual truthfulness of an individual's response to a question. This is his feeling, his attitude, his opinion of the question—even in some respects it is what he is willing to admit to somebody else in this medium.

Now, to the extent that research and practice and experience indicate that these kinds of responses are in fact useful in evaluating people, then the instrument becomes useful.

It is the Peace Corps' experience, as well as, I think, the experience of many people, that the test or the profiles used in this way are in fact useful, and I emphasize the word "useful." They are not determinative. They do not prove that the individual is actually this or that. And the Peace Corps would certainly never base its decision on whether an individual goes overseas solely on the basis of his response to the MMPI. But it is true, we have personal experience to back us up, that we can help to identify people through the use of these tests whom everybody would agree it is wrong to send overseas. And there is some likelihood that if we did not use the test, we might have in fact sent them overseas, both to their own harm as well as that of the Peace Corps and the country overseas.

Mr. ROSENTHAL. I think you testified earlier, doctor, that you had been associated with the selection of candidates in the space program; is that correct?

Dr. CARP. Yes, sir.

Mr. ROSENTHAL. Did you use this test with those candidates?

Dr. CARP. Yes, sir.

Mr. ROSENTHAL. And what was your experience there as compared to the Peace Corps?

Dr. CARP. Again, since the environment, the way in which they were used, was very similar to the way in which they are used in the Peace Corps, they were a useful additional bit of information. Again, they were not determinative in any case.

Mr. ROSENTHAL. Could you relegate some percentage degree of importance to the results of these tests as ranked with other considerations—personal interviews or experience backgrounds, or direct answers?

Dr. CARP. Well, I hope I do not appear to be resistant, but I really cannot, because the way in which they are used in the Peace Corps makes it impossible, in one sense, to assign percentage values.

My own feeling is—and this is strictly my personal feeling—if, say, in the present program year we will give this test to about 9,200 people—if it helps to keep from going overseas only 5 individuals who really should not go overseas, the test is well worth the cost and effort. Now, I think it is many more than 5. But I personally would be satisfied if there were only five, because the test is really used in a protective sense rather than in an eliminative sense.

Mr. ROSENTHAL. There is a line of philosophy that disagrees with that in a somewhat related situation. The U.S. Supreme Court—many Justices have said that if we let five criminals go by protecting the rights of society, we have done the right thing.

If we are invading the rights of many just to save from making the mistake in letting the five go overseas, I am not particularly impressed with that.

But going off on another tack, there has been testimony before the committee now, that in addition to the question of the violation of privacy, there are some grave doubts as to the usefulness, as to the validity, as to the integrity of these tests themselves.

You, I assume, take exception to that.

Dr. CARP. Yes, sir.

Mr. ROSENTHAL. And that is based on your own personal experience?

Dr. CARP. Not only my own personal experience, but on my survey and knowledge of the research literature and on my survey and knowledge of the way in which the test is used for the purposes for which the Peace Corps uses it.

There are many, many instances in which this test, like many other instruments, can be improperly used or misused.

The Peace Corps takes great care, for example, that only professionally qualified psychologists are involved in that phase of the selection process which involves the use of psychological tests.

I think a careful reading of all of the literature on tests such as the Minnesota Multiphasic Personality Inventory, will indicate that neither the developers of the test nor the Psychological Corp. which sells the test, recommends its mechanical use in this kind of a situation. And the Peace Corps' decision and practice in the use of the test was with the full knowledge of the kind of situations in which its use is appropriate, and those in which it is inappropriate. I would not like to be on record as defending its use in all conceivable kinds of situations.

Mr. ROSENTHAL. Thank you, Mr. Chairman.

Mr. JOSEPHSON. Mr. Chairman—before Mr. Rosenthal finishes his questioning—I want to make clear, if I could, one point, and that is with respect to our authority to agree to the printing of the unscored items in the record. We have been discussing this over the weekend with the lawyers who represent the Psychological Corp. You are probably familiar with the firm—Judge Rifkind's firm in New York. Mr. Morris Abram is one of the two lawyers concerned with this particular matter, and Mr. Howard Seitz is the other.

The Peace Corps does not own this test. We buy it from the Psychological Corp. They own the copyright on it, and they have other property interests in it.

One of the conditions under which the test is sold is that questions and answers, including practice questions and answers, may not be reproduced without written permission. So we really are not in a position where we have authority to agree or not to agree to the reproduction of any of the questions in the record of this committee.

However, I have talked to the chairman and to Mr. Cornish about the willingness of the Psychological Corp. to discuss issues such as these with the committee, and I have suggested that if the committee were interested in such a discussion, I am sure the Psychological Corp. would cooperate. Mr. Seitz will be getting in touch with Mr. Cornish this afternoon to see if they could work out some mutually acceptable arrangements along these lines if the committee thought it was important.

Mr. ROSENTHAL. Did you discuss with Judge Rifkind and his partner the constitutional matters, such as invasion of privacy, and solicit their opinion on this subject?

Mr. JOSEPHSON. Not over this weekend. But when we were first advised of the committee's inquiry, I did discuss these matters with Morris Abram, and in that connection, Dr. Bennett, who is the president of the Psychological Corp., has, I know, prepared a statement. I know Morris has reviewed that statement. It does go into these issues. And I believe that it is Morris' opinion—although he ought to speak for himself—that he does not believe that the kind of use to which the Peace Corps puts the Minnesota Multiphasic Personality Inventory, and the circumstances under which the Peace Corps uses it, involves any unreasonable invasion of privacy.

Mr. ROSENTHAL. This is a variation of the end which justifies the means.

Mr. JOSEPHSON. No; I don't think so, Mr. Rosenthal. I think there are many situations in which there are public policies that cut different ways, and where one must strike a balance. I believe the posture of the Peace Corps here is one of being very concerned with the clear mandate, if you will, that we received from the Congress to select and send overseas as volunteers only those who are clearly qualified to withstand all the stresses of Peace Corps service, and on the other hand the clear public policy in favor of individual privacy. We are trying to strike a reasonable balance between those two policies.

Mr. ROSENTHAL. Thank you, Mr. Chairman.

Mr. GALLAGHER. Mr. Reuss.

Mr. REUSS. Mr. Chairman—I just heard counsel's statement about their reluctance or unwillingness to allow publication in the printed record of the answers to the 566 questions.

I would want to respect that reluctance. But I would suggest that, after we finish the public examination of these witnesses, that we go into executive session and have them present to us the answers that we may look at them and that we exercise our discretion not to include those in the printed record, so that their copyright arrangements would be respected.

Mr. JOSEPHSON. Mr. Chairman, if I could speak on that point.

In the course of my discussions with the chairman and the staff this morning, it was suggested that one possible solution would be to make available to the committee on a basis that was acceptable to the Psychological Corp. this information. My personal opinion is that that can be worked out, and that either the Peace Corps or the Psychological Corp. would be agreeable under conditions to make available to the committee this type of information.

I have tried to get hold of Mr. Seitz to make sure that the Psychological Corp. had no objection to this. From the point of view of our relationship with the Psychological Corp., I am almost certain it has not. But I expect to be able to get a hold of Mr. Seitz some time today and be in a position to make available to the committee that booklet under certain conditions.

Mr. REUSS. Mr. Chairman, that sounds like progress, and certainly will be satisfactory to me.

Mr. GALLAGHER. I think it is, Mr. Reuss. The Chair is concerned about two problems. One is the problem of copyright and, secondly, with the ethics of Dr. Carp. And I think that may well be a way in which we can obtain full access to the information we seek.

Mr. REUSS. I do have a question or two.

First I would like to congratulate you, Mr. Berlew, and your associates on the forward-looking statement you made. It seems to me this is definite progress.

I would like to ask Dr. Carp a little bit about the basis of the statement you made today, and which you made Friday, that personal experience backs up the proposition that these tests are really helpful. I think that is a fair paraphrase of what you said.

Let me first call your attention to Mr. Berlew's excellent statement the other day, in which he lists the items in the comprehensive selection process. I will just read them.

References, evaluations from instructors during the 10- to 12-week long Peace Corps training program, the opinions of host country nationals participating in a training program, peer ratings

that means what your fellow Peace Corps trainees have to say about you—

health examinations—

which, if I may say so, seem to me a better way of getting at this obsession with bowel movements which seems to run through the 566 questions—

observations and interviews by qualified and experienced psychologists, performance in the various components of training, including technical skills, psychiatric interviews when indicated, and review of the full field investigation conducted by the Civil Service Commission and in some cases by the Federal Bureau of Investigation.

All of those things I have mentioned seem to me excellent and entirely proper in carrying out the mandate of the Congress.

We do want, and happily we have gotten, a marvelous set of young men and women who have gone overseas with the Peace Corps.

My question however is this:

I should think that any abnormalities, or anything requiring a a close psychiatric look at a trainee, would be very, very likely to come out through any one of these dozen or more methods that you have set forth here, and I wonder, therefore, what you really gain by giving everybody the Minnesota Multiphasic Personality Inventory.

Now, as a result of today's action you have cut it down a good deal, and indeed I would hope that there would be a very widespread and hopefully universal attitude on the part of Peace Corps trainees that they do not propose to submit to this indignity, and that they doubt its value, and hence "thank you very much" aren't going to take it, and thus the thing would wash out that way.

But leaving that aside, what proof is there that the Minnesota Multiphasic Personality Inventory test has in fact caught a potential troublemaker that would not have been caught by the dozen or more legitimate methods of ascertaining possible abnormalities that you have listed?

Dr. CARP. In reviewing our experience, in preparation for appearance before this committee, we went through the folders, the information we have, on a sample of volunteers and we identified in our own records, calling on people who had participated in the Peace Corps' selection process, cases which fall in three categories. Category 1 I would call individuals where really the first indication that they should be studied more intensively from the standpoint of their emotional health was their performance on the Minnesota Multiphasic

Personality Inventory. The second group is a relatively large group, thank goodness, whose performance on the MMPI indicated relative normality, and whose subsequent behavior and performance indicated normality. A third group is one in which all of the other information we had on the individual created some doubts in the selection board's mind, as to whether the individual should go overseas, and in which the MMPI helped to clear up these doubts and kind of tilted the scales in the direction of—well, I think we should send him overseas.

Now, we do not have a precise count, because we are not primarily a research organization, of how often these 3 categories of incidents have occurred in the 14,346 volunteers who have gone overseas, and the 4,716 who have not gone overseas. But I assure you that there is a considerable body of opinion in the Peace Corps that a sufficient number of examples occur in the first and third category that we would in fact give up something if we did not use this test.

Now, to say that the individuals in the first category, for whom the first indication was their performance on the MMPI, would never have been identified during the 12-week training program, is a difficult statement to make, because we don't know.

Mr. REUSS. When do you have the MMPI in the training period?

Dr. CARP. Usually during the first week.

Mr. REUSS. Well, that is the answer right there.

Dr. CARP. This is because from the Peace Corps' point of view it is extremely economical, both of the trainee's time and of the staff's time. This is one of the MMPI's great advantages—that it is objective and takes little professional time for the scoring of the test. It takes professional time and experience for interpreting the test. But you get a relatively large amount of information at relatively small cost.

Now, to have a psychiatrist or a psychologist in individual face-to-face confrontation read every one of these items to an individual is certainly conceivable. However, I would think it would be uneconomical and a relative waste of highly qualified expensive staff time.

This is one of the reasons for the development of these group administrable tests—economy in time and effort with relatively no sacrifice, the way the Peace Corps uses it, in accuracy.

Mr. REUSS. Before I yield to my colleague, Mr. Rosenthal, I do want to announce that I am going to come back at you now with the suggestion that really you do not have any proof that the MMPI discovers something that would not otherwise be uncovered. But I just want to have you get ready for that.

I will now yield.

Mr. ROSENTHAL. I just have one question.

How many psychologists do you have on the staff reviewing these tests?

Dr. CARP. At every training program we have an average of 1 psychologist for every 50 to 60 trainees. This is the psychologist at the training institution who is most intimately connected with the training program.

In addition, we have a consulting psychologist who chairs our selection boards for about every hundred trainees.

Mr. ROSENTHAL. Thank you.

Mr. REUSS. Now, let me go through these three categories with you.

First of all, let's take the third category—those about whom some doubt of possible abnormality has manifested itself, but who have been cleared up by the MMPI.

I would have no particular objection to that use of the MMPI and someone who has been rated by objective methods as possibly suffering from psychological disturbances.

I would hope that if they are really suffering from psychological disturbances, or appear to be, their methods of clearing them of a different and better nature than the MMPI would be used. But at any rate, to give this to people who are already classified as "possibly disturbed" is, I think, more understandable.

Then we have the large category of those who do not display any abnormality at all, and who also passed the MMPI with flying colors. That is the larger category.

Then you have the category you named first, and that is the one we are interested in, of those who the first indication of whose abnormality was given by the MMPI. But you substantially vitiate this when you say, as you do, that you give them the MMPI right after they arrive. That is before any of the dozen or so processes of eliciting disturbance has had a chance to operate.

Therefore I do not really think, with all due respect, that the Peace Corps has shown to my satisfaction that the MMPI has caught one single case that would not otherwise have been elicited, unless you keep the MMPI results locked up for 12 weeks and then only look at them at the end, and if you could establish in those case histories that there had been absolutely nothing abnormal reported by the host-country nationals, the instructors, the fellow students, the doctors, the health examinations, the psychologists, and so on.

Is that not so? Doesn't this claim of practical verification pretty much wash out?

Dr. CARP. I don't believe so. The whole problem of the nature of proof is difficult. My colleague suggests that maybe for discussion we might give you some of the facts in one individual case in which we feel that the MMPI was useful, and with your permission I will read it.

Mr. REUSS. This will be the case of X?

Dr. CARP. Yes—we call him No. 5.

This 20-year-old man was invited to an agricultural program as a small industries specialist. His performance in training ranged from adequate to outstanding. The staff saw him in a generally favorable light, describing him as competent, able, flexible, and willing. His peers also reacted favorably to him.

The CSC report was generally positive. It indicated that the subject had been adopted by an uncle who others saw as demanding more than the subject was able to produce. He in turn was seen as responding by working to the best of his ability.

By contrast, the MMPI was indicative of either a psychotic or of an adolescent without focus. The MMPI yielded scores of 70 or above on scales 4, 5, and 9, indicating an individual who rejects authority and is somewhat disorganized and and hyperactive in thought and action. In addition, the relationship of scale 7 to 8 indicated that the individual may have some looseness in thought.

These results were substantiated in psychological interview and by other psychological tests which indicated very low frustration tolerance, low superego strength, suspiciousness, insecurity, lack of criticalness, tension, and uncertainty of self.

In view of the discrepancies between performance in training and the psychological evaluations, projective techniques and a psychiatric consultation were requested. They confirmed the presence of a psychotic process in the subject, rather than the identity diffusion of adolescence.

Based on the above findings, the subject was separated at the Second Intermediate Advisory Selection Board for reasons of personality unsuitability. In the exit interview, the professional opinion was shared that the trainee had undergone great perturbation and was just beginning to work it through. This was confirmed by the subject who shared his own concerns about his behavior and the fact that he now had some understanding of a very confused and anxiety-provoking period in his life.

The MMPI made a significant contribution in this case and was protective to the individual. His behavior was such that he might have been selected had we not been alerted to look more closely at his dynamics. To have subjected this individual to additional stress at this period of his life may have resulted in a psychotic decompensation of serious proportions.

Mr. REUSS. When was this selection-out process effort—how many weeks? You say the second selection board. When does that occur?

Dr. CARP. This is probably at about 16 weeks.

Mr. REUSS. At the end?

Dr. CARP. No. The middle.

Mr. REUSS. I was a little confused. Toward the end there you said that his behavior had deteriorated? I thought you said that he was grateful because he realized his behavior had been odd.

Dr. CARP. That's right. In the exit interview. "The professional opinion was shared that the trainee had undergone great perturbation and was just beginning to work it through." In discussing the reasons for his selection, he had an interview with the senior psychologist who tried to explain to him why he was selected out in such a way that there would not be traumatic injury to the individual. This is what he is trying to say in this statement—that he tried to explain to the individual why he was not being selected to go overseas, and he said that the subject agreed.

"This was confirmed by the subject" who shared his own concerns about his behavior—and the fact that he now had some understanding of the very confused anxiety-provoking period in his life.

Mr. REUSS. All right. That is case history No. 5.

How many other case histories among the 19,000 Peace Corps trainees are there, which you assert—in which you assert abnormality was discovered only by the MMPI, and would not have been discovered otherwise?

Dr. CARP. I would have to go through our 19,603 folders, which I have not done, or have somebody go through them.

I would say there are a significant number but a small percentage.

However, I am reluctant to eliminate the use of any device or procedure which can help in not sending even one of these people overseas.

We are dealing with human lives here. We send some of these people overseas, even doing everything we can, who should not be sent. We see what this does to them.

With the responsibility given to me, with due regard and concern that I do not hurt anybody, I do not want to send one individual overseas who may become psychotic primarily because of the situation which the Peace Corps put him in. And I take this responsibility very seriously, sir, because I know what it can do.

Mr. REUSS. Yes, I am sure you do. However, what I wanted was evidence additional to case No. 5, if you have it, which would bear out your assertion that there was a broad body of experience in the Peace Corps which shows that this test is valuable in discerning psychoses that would not otherwise be selected.

Dr. CARP. Remember, we did not say we discerned a psychosis. We did not say that this individual was psychotic. We did say that——

Mr. REUSS. I thought you said in this case history——

Dr. CARP. No, sir.

Mr. REUSS. The words I jotted down were "adolescent" and "psychotic." Would you refer back to those?

Dr. CARP. Yes, sir, I will. "They confirm the presence of a psychotic process in the subject rather than the identity diffusion of an adolescent." This does not mean this is an individual who must be immediately institutionalized and classified as legally psychotic or legally insane.

Mr. REUSS. Well, but that is entirely different. The word "psychotic" does not mean that one has to be institutionalized.

Dr. CARP. Right.

Mr. REUSS. Well, I invite you to file for the record any additional case histories in substantially the form that you have here presented which tend to show, as I agree case history No. 5 tends to show——

Dr. CARP. We have half a dozen or so which we have prepared. But this is by no means exhaustive. These particular cases were arrived at by phoning psychologists who had had contact with recent Peace Corps programs and asking them to indicate cases in which they had felt it was useful.

Mr. REUSS. Will you file whatever you have, whatever the basis for your assertion that this is a good discoverer of potential psychosis, which would not otherwise be discovered—cases analogous to case No. 5.

Dr. CARP. Yes.

CASE STUDIES ILLUSTRATING THE USE OF PSYCHOLOGICAL TESTS IN PEACE CORPS VOLUNTEER SELECTION

GROUP A: MMPI FLAGGED A SERIOUS PROBLEM THAT MIGHT OTHERWISE HAVE BEEN MISSED

Case No. 1

This trainee, a 22-year-old, male, college graduate, was invited to a teaching program where his performance was adequate but not outstanding in the first half of the program. His peers tended to ignore rather than reject him, and while a number of them nominated him as adaptable on the peer nomination form, he ranked close to the bottom of the group in terms of number of nominations for success.

He made a generally good impression on the FAO in his initial interview, although the FAO had some concerns about his stability because of the nomadic pattern of his life. His MMPI profile was bizarre, featuring extreme elevations on the schizophrenic, psychopathic, femininity, and depression scales. Because of this unusual test record, the FAO referred the trainee to the psychiatrist for an early interview.

The psychiatrist was impressed by his flat, unemotional responses and depressed air. The interview revealed that he had experienced much family strife and had turned away from his father to identify with a rather unstable teacher, whose wandering career he was seeking to emulate by entering the Peace Corps. He had experienced a period of depression as a student for which he had been treated in a university counseling center.

At the midboard, the psychiatrist disqualified him, with the FAO concurring, saying that he had a history of depression, was currently depressed, and had a significant potential for depression and psychosomatic disorders in reaction to the stresses of an overseas assignment.

Because contact had been established early, the trainee had developed a comfortable relationship with the psychiatrist and was able to discuss his future plans realistically both with him and with the FSO.

Case No. 2

This 21-year-old male junior came from a culturally rich but somewhat sheltered family background. He was an "A" student in college and had been looking forward for 3 years to joining the Peace Corps. He enrolled in the advanced training program for juniors and was considered by the trainees and staff as one of their outstanding possibilities. However, at least one member of the host country national staff expressed reservations but "didn't know why."

The MMPI revealed a masculine-femininity score of extreme elevation in relation to other scores which were within the normal range. For the assessment officer this was the first indication of some potential difficulty of feminine interests. Before the clinical interview this observation did not seem to be in keeping with his behavior at the training site.

However, during the clinical interview the assessment officer inquired about his "social relationships" and the trainee indicated that "everything was fine." But bearing in mind the MMPI, the assessment officer prodded a bit and suddenly the trainee volunteered the information that he had found "a new found freedom in sexual affairs." Upon further discussion the trainee disclosed that he had had recent homosexual experiences, but that he regarded these as merely exploratory and nothing serious.

On the advice of the field selection officer, the assessment officer confronted the trainee with the observation that, although this type of exploration is not unusual among boys just reaching puberty, it was a concern when it occurred in somebody of his age. During further interviews the trainee began to analyze feelings and thoughts concerning this behavior, and the selection board which met at the end of his advanced summer training recommended also that he seek professional help during his senior year in college. At the end of his senior year another evaluation of the seriousness of this activity will be undertaken.

On the basis of the trainee's record and his performance in training, it was unlikely that this information would have come to light but for the question raised by his MMPI scores.

Case No. 3

This 20-year-old female college junior was in the advanced training program for juniors and seemed to be getting along fairly well in training, although she was having some difficulties in learning the foreign language. Her peers seemed to rate her in the middle of their own group but surprisingly few of the other trainees seemed to know her.

The MMPI had elevations on the manic depressive, schizophrenic, and psychosthenia scales, sometimes referred to as the psychotic triad. This indicated the possibility that this girl was functioning well only on the surface, and that when she met with a stress situation she might not be able to handle it successfully.

On the basis of his interviews and observations, the field assessment officer felt that she was making an effort to blend into the group rather than risk engaging in any personal stressful situations. She seemed to be making sure that nobody paid too much attention to her. In an effort to verify the MMPI's results, the assessment officer introduced some stress in an interview and observed that the trainee became anxious very quickly.

As a result, the Finald board's recommendation was that this trainee seek psychotherapy at her school. She agreed to this, and an initial report from the school indicated that she is presently under therapy. Whether these problems can be resolved or not will take an evaluation from the school and in her further training upon graduation.

Case No. 4

This 21-year-old trainee came from a rather isolated, smalltown background. He attended three colleges, changing his major from forestry to English and finally dropping out because he was not sure what he wanted to do. He was invited to a rural community development project. Although quiet in classes, he performed adequately in training.

In this case the MMPI first identified the problem that led to his deselection from the program, although no behavior in training set him apart from the others. His MMPI profile shows exaggeratedly high scores on the psychothenia, schizophrenia, and psychopathic scales raising the possibility of extreme anxiety and possible psychotic disorganization.

He was referred to the project psychiatrist. The psychiatrist's conclusion was that the trainee evidenced symptoms of latent schizophrenia which posed too great a risk of a psychotic breakdown under the stresses of overseas Peace Corps

service. He was therefore separated from the program, but in view of his failure thus far to manifest any overt psychotic symptoms it was recommended that he be reconsidered after a year and invited again if his activities in the interim were not indicative of emotional instability.

Case No. 5

This 20-year-old man was invited to an agriculture program as a small industries specialist. His performance in training ranged from adequate to outstanding. The staff saw him in a generally favorable light, describing him as competent able, flexible, and willing. His peers also reacted favorably to him.

The CSC report was generally positive. It indicated that the subject had been adopted by an uncle who others saw as demanding more than the subject was able to produce. He, in turn, was seen as responding by working to the best of his ability.

By contrast, the MMPI was indicative of either a psychotic or of an adolescent without focus. The MMPI yielded T scores of 70 or above on scales 4, 5, and 9, indicating an individual who rejects authority and is somewhat disorganized and hyperactive in thought and action. In addition, the relationship of 7 to 8 indicated that the individual may have some "looseness" in thought. These results were substantiated in psychological interview and by other psychological tests which indicated very low frustration tolerance, low superego strength, suspiciousness, insecurity, criticalness, tension, and uncertainty of self.

In view of the discrepancies between performance in training and the psychological evaluations, projective techniques and a psychiatric consultation were requested. They confirmed the presence of a psychotic process in the subject rather than the identity diffusion of adolescence.

Based on the above findings, the subject was separated at the second intermediate advisory selection board for reasons of personality unsuitability. In the exit interview, the professional opinion was shared that the trainee had undergone great perturbation and was just beginning to work it through. This was confirmed by the subject who shared his own concerns about his behavior and the fact that he now had some understanding of a very confused and anxiety-provoking period in his life.

The MMPI made a significant contribution in this case and was protective to the individual. His behavior was such that he might have been selected had we not been alerted to look more closely at his dynamics. To have subjected this individual to additional stress at this period of his life may have resulted in a psychotic decompensation of serious proportions.

GROUP B: MMPI IDENTIFIED A PERSONALITY PROBLEM THAT WAS CONFIRMED BY OTHER DATA

Case No. 6

This 26-year-old married man with experience as an elementary school teacher was invited to a teaching program.

His MMPI profile looked like that of an effeminate, anxious, obsessive-compulsive type individual who was somewhat depressed and socially introverted. This combination caused the assessment staff to look more closely at his dynamics. In assessment interviews, the field assessment officer found the subject to be rigid, passive, inarticulate, and anxious. He expressed serious concern over the diseases he might contact in an oversea assignment. As a result, he was referred for a psychiatric consultation.

The CSC investigation was consistent with the MMPI findings. The trainee was an elementary school teacher who was described by his principal as "working and playing too hard." Other referrents referred to his "compulsion to help," his "introversion," "nervousness," and "short temper." Respondents were also aware of his anxiety over diseases and his "visions of dying of disease" in a Peace Corps assignment.

The subject was psychiatrically disqualified because of his neurotic symptoms. The MMPI had correctly identified the problem and was corroborated by the clinical observations. The wisdom of selecting this trainee out was further validated in the termination interview where the subject and his wife described their marriage as unstable and characterized by bickering and fault findings. They explained that although they had been married 2 years, the marriage had never actually been consummated.

Case No. 7

This Peace Corps trainee was a 24-year-old girl who had graduated from an excellent university. Her college grades were exceptionally high and her references were very favorable.

The field assessment officer interviewed her following his review of the psychological test data which indicated the possibility of emotional instability. The schizophrenic and manic scales of the MMPI were elevated, suggesting that she might behave impulsively with a great flurry of energy and little realistic purpose. In addition, the test data from the Edwards Personality Preference Inventory pointed toward unusual emotional dependency upon heterosexual relationships. During the interview, the trainee disclosed the fact that her mother was an alcoholic of long standing, and her father was an immensely successful architect who devoted all of his energies to his profession.

As her mother's problems with alcohol became more and more serious, her father devoted less and less time to the family. The girl, then, was left to grow up without the emotional support of either parent and the result was a bubbly, vivacious, "everything's grand" sort of person on the outside, but a desperately lonely, insecure, and starved for affection person on the inside. She cried uncontrollably during the better part of two interviews as she told of her unhappiness. Unfortunately, her emotionally deprived life made her particularly vulnerable to anyone who was willing to take advantage of her deep-felt need for affection.

She was referred for psychiatric evaluation, where the fragile nature of her adjustment became even more apparent. At the midboard the psychiatrist indicated that he intended to disqualify her because of the likelihood that she would develop neurotic symptoms under stress of an oversea assignment. Academically, she had done well in the program, but she was strongly rejected by her peers. Rather than wait for a psychiatric disqualification, the board decided to select her out of the program on grounds of personality unsuitability.

Case No. 8

This 23-year-old man was invited to a school construction training program where his performance in training was variable.

His MMPI profile featured a very low score on the K scale, implying emotional bankruptcy. The rest of his profile showed a peak on the depression scale accompanied by elevated scores on the paranoia and psychasthenia scales, suggesting a depressed, somewhat anxious individual.

On the basis of his interviews, the field assessment officer reported the trainee as earnest and unpoised. He saw him as slow, deliberate, determined, and as working hard for modest rewards. In general, he was described as passive.

Faculty predictions of success tended to be unusually low, even in subjects where he was earning good grades. Peer ratings indicated that he was well liked as a person but was not perceived as an individual who would be successful as a Peace Corps volunteer.

The full field investigation indicated that the trainee was somewhat limited in ability and was self-deprecating in his manner. His low self-esteem appeared to be dramatically indicated in two arrests, one as a minor in possession of alcohol and the second for drunkenness on a public street.

Based on the consistency between the MMPI and all other data, the subject was separated from the program for personality unsuitability at the time of the Intermediate Advisory Selection Board. The MMPI contributed substantially to the observation that the subject did not have the resources to protect himself under the rigorous conditions in the host country.

Case No. 9

This 21-year-old girl was invited to an agriculture training program where her performance was erratic. The training staff reported that she had a good deal of ability but was inattentive, uncooperative, and unresponsive to authority. The peer ratings indicated her lack of acceptability to others, thought to be a function of her crude behavior.

The psychological test results were consistent with the behavioral data. The MMPI showed the 9–4 peaks and 2–6 depressions characteristic of manics and acting out psychopaths. In addition, the relationship of 7 to 8 indicated that the subject's intellectual controls were insufficient. Other psychological tests indicated manic behavior, exhibitionism, dominance, and low superego strength.

Psychiatric study resulted in the project psychiatrist recommending disqualification based on the subject's lewd, seductive, and insensitive behavior. No action had been taken on this request at the time of the selection decision.

Her CSC investigation indicated that the subject was often viewed as "immature," "unstable," "unsettled," and "flighty." It confirmed the erratic performance pattern and lack of respect for authority.

Based on the consistency of all of the data, the subject was separated from the program for personality unsuitability at the time of the First Intermediate Advisory Selection Board.

Case No. 10

This 21-year-old girl was invited to participate in a nursing program. In training, her performance was adequate, but faculty evaluations of her probable success as a Peace Corps volunteer were unusually low. She was perceived as insecure about her nursing performance and defensive regarding the quality of her previous nurse's training. In addition, her performance in several other areas was described as variable. Under psychological stress, she developed many physical concomitants, including fainting.

Her MMPI profile was that of an acting out psychopath. The elevations of 4 and 9 combined with the depressions on 2 and 0 and the secondary peak on 6 are classic. In addition, the relationship of 7 to 8 indicates a lack of sufficient intellectual controls and some looseness. The elevation of 3 indicates some tendency to resort to hysterical defenses (such as fainting).

On the basis of his interviews, the FAO described her as a rigid personality, at times very dogmatic and strongly defensive of her views. She showed strong feelings of rejection, of not belonging, and considerable suspiciousness of others. In turn, she reacted with hostility. She seemed to express little warmth in her feelings toward others. At times she was brusk and mocking in manner, particularly in discussing ideas or personalities with which she disagreed. The peer ratings reflected her lack of relatedness, and she was an isolate on every item.

The subject was separated from the program at the time of the Intermediate Advisory Selection Board as unsuitable for Peace Corps service. Her full field revealed a history of instability and erratic behavior as well as a disturbed parental relationship. Based on the MMPI results, the seriousness of the hysterical defenses and the superficial manner of relating to others, it was determined that the subject would not be eligible for Peace Corps service in the future.

Case No. 11

The trainee was 22 years old and was one semester short of a B.A. in history. He had MMPI highs on scales reflecting withdrawal tendencies (Sc) obsessive-compulsiveness (Pt), self-abasement (F), and high activity needs (Ma). The elevation and inter-relationships between these scales tended towards possible schizophrenic tendencies.

On the basis of the MMPI results, the field assessment officer referred the trainee for psychiatric consultation. The psychiatrist found that the trainee was not then psychotic but that his emotionally deprived early life was such as often precedes schizophrenia.

In the following weeks the field assessment officer observed him closely. The trainee evidenced increasingly disordered behavior. He often cut classes. When he did attend meetings he was disheveled and unkempt in his appearance. If corrected, he explained he was sick, did not know of appointments he was to keep, etc. In some instances he told conflicting accounts of his actions to different authorities. He could not relate well with his peers, and he withdrew behind a cloud of excuses at the slighest external pressure.

Because of all these factors, plus resulting poor grades, he was selected out. He was given a time limit for reapplying to the Peace Corps with the hope he would mature and/or seek therapeutic help.

GROUP C: MMPI AND RESULTING ATTENTION CONTRIBUTED TO SELECTION OF A TRAINEE WHO MIGHT OTHERWISE HAVE BEEN SELECTED OUT

Case No. 12

This 21-year-old man had completed 3½ years of college, had been active in field sports, and was interested in working with young people. He was invited to a YMCA training program. His performance during the first part of training was sluggish, obviously poorly motivated, and observations from many instructors were quite negative. Judging by such reports alone, he would undoubtedly have been selected out.

Test data in this particular case were a major consideration in the decision to keep the trainee in the program following intermediate board. All tests showed normal responses. Concern over future goals was indicated, as well as apparent

distrust of "authority." His responses to the incomplete sentence blank were open, straightforward, indicative of great intrinsic motivation to "succeed" in life. The SVIB pattern indicated a high degree of social service interest. The MMPI revealed a fairly normal home conflict pattern with aggressiveness toward authority resulting.

The major effort following intermediate board deliberations was to determine the quality and quantity of this trainee's motivation, as well as his response to "authority."

As training progressed it became increasingly apparent, through personal interviews, written reports and peer statements that his commitment to the Peace Corps, as well as understanding of his personal goal had been greatly enhanced.

On the basis of the test findings, his self-professed growth of determination to succeed if given the opportunity as a PCV, and a positive change during training in his attitude toward "those in charge," board action was to select him for overseas duty as a PCV.

Case No. 13

This trainee was invited to an agricultural extension training project and assigned to a poultry raising specialty for which he had an excellent background of experience.

His performance in course work during training was adequate, in spite of his spotty academic history and the modest academic aptitude shown by ability tests. In the poultry class he was outstanding. Because of his blunt, outspoken manner, both the instructors and his peers in the program reacted strongly to him. He tended to be either rejected as a marginal candidate for Peace Corps service or nominated as outstanding.

His MMPI showed an extreme elevation on scale 4, raising the possiblity of an undercontrolled, antisocial mode of adjustment. Scales 2 and 6 were elevated to a degree uncharacteristic of pathological cases, however, and suggested that his aggressive energy was well moderated. His scores on the Myers-Briggs type indicator indicated that he was likely to be a practical, critical, analytic person in his approach to problems.

His life history and the concerns he expressed in interviews with the FAO indicated that he was an adventurous, sociable, individualistic person who, indeed, possessed a considerable fund of hostility but who was quite consciously seeking to expand his awareness of other people through firsthand experience in foreign cultures.

The project psychiatrist interviewed him because of the possibility of poor impulse control raised by the MMPI, but cleared him as an original young man whose considerable aggression was usually directed along constructive lines.

While the selection board was seriously concerned about this trainee's impulsivity and aggressive manner, it was reassured by his agricultural skill and by the favorable aspects of the reports by the FAO and the psychiatrist. He was rated 5 and sent overseas where he has been working successfully for over a year.

Case No. 14

This 24-year-old man was invited to a math-science teaching program. His performance as an undergraduate had been marginal, but after a year of employment as a research engineer he returned to school as a full-time graduate student and teaching assistant. The full field report indicated that he was seen by friends, coworkers, and supervisors as a shy, reserved man who doesn't make a strong initial impression but who is calm and friendly and wears well in the long haul. He was uniformly described as a highly dependable worker.

He made a favorable impression on the FAO at the beginning of the program as a reserved, sober, serious man with strong social service motivation. On the basis of his MMPI profile, however, which featured an elevated score on scale 2 and suggested both a high potential for depression and a tendency to feel isolated and alone, the FAO referred him to the project psychiatrist. The information developed as a result of this early referral possibly saved the trainee from deselection. At the very least, it contributed to a more confident selection decision than would have been made otherwise. The psychiatrist's findings were that depression and isolation were in fact central concerns for the trainee but that the conflicts about his relations with his parents which had aroused these reactions had been largely resolved. The pattern of his life history indicated positive growth away from the self-doubt and uncertainty which had previously limited his behavior.

In training, his academic performance was adequate and he was seen as a conscientious, highly motivated trainee by his instructors. In practice teaching

he was seen as well prepared in his subject but as lacking in force and not projecting himself well. Among his peers he was initially isolated but showed increased acceptance by the end of the program.

The selection board was much concerned about his ability to develop adequate teaching skills and to relate effectively to host country nationals. The board was reassured, however, both by the psychiatrist's testimony concerning his recent growth and potential for further development and by the indications of highly appropriate motivation reported by the FAO. On the latter score, his profile of scores on the strong vocational interest blank (high on math-science teaching and on social service areas in general) supported his own statements in indicating that he would find many rewards to sustain him in the job assignment planned for him. He was selected for enrollment as a volunteer.

Case No. 15

When this young man came to the training program he did not look like a very good prospect. He was quiet and somewhat withdrawn. He was ill at ease and hardly participated in social activity. In an interview, he indicated that he never felt comfortable with people—he always felt left out. He admitted that this had been a life-long pattern with the exception of his last term at college. In that recent experience he felt he had good social relationships. There was real question about how effective he might be with the nationals of the host country since he could not communicate effectively with the other trainees or the staff.

Testing (MMPI, Edwards) confirmed the observations that he lacked aggressiveness in social situations, that he tended to play a passive role and that he had deep feelings of worthlessness. The tests also pointed up his high achievement goals, his willingness to endure difficulties and a stick-to-it-iveness that was likely to be helpful in rough situations. There were also indications of more social sensitivity than he manifested.

At the midselection board it was decided that he be given an opportunity to continue training since these positive aspects of his personality could perhaps be brought out with proper guidance.

In the next several weeks this man "blossomed" and began to show the qualities that were noted only on the tests. His quiet strength showed in innumerable ways. He was willing to put forth extra effort, he was helpful and cheerful under adverse conditions. He began to be more assertive and to take positive leadership roles. It was clear in this instance that the test instruments indicated potential behavior patterns which were not available through direct observation. This man ended training with a board rating of 5. His final selection was made on the basis of his behavior rather than test scores; however, his test scores were extremely useful in helping to decide what his potential was and also to give the staff clues in helping him overcome his sense of inadequacy.

Mr. BERLEW. Mr. Chairman, I wonder if I could elaborate a little bit to Congressman Reuss, to give some idea of those factors which lead those of us who are laymen to agree with Dr. Carp's general conclusions that the MMPI is important.

Sometimes we make management judgments, naturally, that are not based on exhaustive research, but based on the best judgment that we have, based on experience.

I suppose we have had well over a thousand selection boards in the history of the Peace Corps. I have sat on about four of them—as a layman, as a representative of the country program.

I can recall during the course of those four selection boards several cases where the MMPI was a factor in arriving at a decision—either negative or positive—about a particular individual. It was not for me to decide what that MMPI score meant. We relied on the professional judgment in that respect. But this did come into play in making an overall evaluation.

Mr. REUSS. Those cases, of course, as far as you know could have been cases where the evidence of possible psychotic behavior emerged from some part of the training process other than the MMPI.

Mr. BERLEW. Certainly entirely possible, Congressman. That leads me to the second point I wanted to make.

Dr. Carp and his associates have told us—and I have no reason to disbelieve them—that neither the results of the MMPI nor the results of the psychiatric interview, nor the performance during training, are as good a way of determining whether the person is likely to have psychotic tendencies as the three of those combined. I just use those three for an example. They each build on the other, and each complements the other. Therefore, if we are trying to make the effort to find the best way of making this type of judgment, we feel we ought to use all of these procedures, within reason. That is what we have done.

Mr. REUSS. To make my position clear, as I have said, I have no particular difficulty with that third category of using the MMPI as an additional piece of litmus paper after and above those other tests. But what I am still not convinced of is that it is worthwhile giving it to 19,000 people in order to discover case history No. 5 and some four or five other case histories. I am not at all sure that it justifies the universal use of the test which you have been doing.

Mr. BERLEW. I want to be perfectly clear that Dr. Carp's position here is understood. These represent a very small sampling—very small sampling. How many total cases did you look at?

Dr. CARP. I don't know the number; I am probably not going to be popular at the Peace Corps, but I will be popular with myself. If this were the only case that we had ever identified with the MMPI, I would feel it was worth it.

Mr. GALLAGHER. Well, Mr. Berlew, I would like to say that statistically you are bound to get some hits. Even the Mets get a few once in a while. But the thing that I worry about is the inverse ratio of qualified people who may well be prevented from serving in the Peace Corps as a result of this margin of error that you allow or accept under the test. If you take 10 or 11 percent factor, as we brought out before, it may well be there are 4,600 people or so.

Dr. CARP. May I discuss that point just a bit, sir?

Mr. GALLAGHER. Yes, sir.

Dr. CARP. The Peace Corps procedures are set up deliberately to minimize the likelihood that a false positive, an individual getting a poor score or profile on the MMPI, would unjustly or unfairly or unreasonably be eliminated. That likelihood is very, very, very, very, very small, because of all the other elements in the selection process, because such decisions are not based on one individual's opinion, and because the selection process is consecutive, sequential, and deliberative. For example, if I felt that for everyone we identified like case 5 we also prevented 5, 10, or 20 qualified people from going overseas, I would by no means take the position that I do. But if an individual's performance on the test looks deviant, he is interviewed by a psychologist, he is interviewed by a psychiatrist, his behavior and training are very carefully gone into, and there is very little likelihood of this kind of false positive occurring with the Peace Corps' use of the MMPI.

I would like to convince the committee that this is in fact so.

Mr. GALLAGHER. We are very happy to hear your statement. Of course, there has been some expertise involved in challenging this statement you have just made.

Dr. CARP. What I have read in the papers, at least, and the testimony I have had access to, does not really refer to the Peace Corps' use of the MMPI.

Mr. GALLAGHER. It was testing in general.

Dr. CARP. I would like to differentiate markedly between the way we use them and the way X or somebody else might use them.

Mr. REUSS. Yes. If I may speak on that—since I have been pursuing this matter with various agencies—I do want to say that the Peace Corps' use of the multiphasic test is vastly different and less noxious than the use of it by the Department of Labor, to name one, where the application of the test was used without appeal or anything else to keep people from even being accepted for training. As you correctly point out, the most this does is to flag you that something may be worth looking into, and this is, I agree, a vastly different use.

I still think you are in possession here of a questionable and possibly dangerous instrument.

The whole point of my questioning has been—and the questioning of the subcommittee—has been to urge upon you the greatest care, an urging which at least has been in part responded to by the statement Mr. Berlew made here today.

One thought occurs to me.

I do not think that the Peace Corps would suffer a bit if in the interest of practical research you, for a 2-month period sometime, for a class or two of the Peace Corps put the MMPI into cold storage, don't use it as a universal, use it simply where evidence of atypical behavior comes up, anyway.

I have a hunch, based upon the fact that so far I have heard of only one case, case No. 5, which has actually caught somebody, that the dragnet would not otherwise have caught. I have a hunch that this would not impair the quality of young people you are sending abroad with the Peace Corps. You might gain more through the elimination of these questions than you would lose.

Dr. CARP. This is a study that has been suggested. Maybe if we get our research funds back, it might be one that we can carry out in the next fiscal year.

Mr. GALLAGHER. You might have some extra money if we authorized you to do without these tests.

I think we have a vested interest in this test. Question 255 still remains part of the test, "Sometime at elections I vote for men about whom I know very little" and 256, "The only interesting part of newspapers is the funnies."

Since these remain part of the test, I am wondering what kind of response might be required here that would show whether a person is psychotic or adolescent.

Mr. Collins?

Mr. COLLINS. I would like to go back to what Mr. Reuss brought up here about when these tests are given. You say they are given at the start of the training. This is after they are on board?

Dr. CARP. Yes, sir.

Mr. COLLINS. Now, their preemployment or standardized or routine investigation has been conducted, is that correct?

Dr. CARP. No. An individual is invited to training on the basis of references, aptitude test scores, academic record, work history, et cetera, where it is appropriate. The civil service background investigation has not been done and is not available prior to invitation.

Mr. COLLINS. You mean prior to the start of training?

Dr. CARP. Once an individual is invited to training and accepts the invitation to training, then we give his name and background to the

Civil Service Commission, and the civil service background investigation is started. Usually this is available either shortly before or many times during the training program itself. But the background investigation is not part of the information we use in deciding whether to invite or not.

Mr. COLLINS. That was going to be my question.

Now, do you take this background investigation into consideration along with your psychological testing?

Dr. CARP. Yes, sir.

Mr. COLLINS. What weight would that have?

Dr. CARP. This is difficult to say.

The chairman of the selection board, the field selection officer, is required to and does in fact read the report of the civil service investigation. He is the only one with access to this particular bit of information.

The statistical weight given to this would be impossible to parcel out. In rare instances the information in the civil service background investigation would be sufficient to clearly indicate that the individual should not go overseas no matter what his performance and training was, and the field selection officer has the authority to make this decision.

In other respects it gives him a pattern or a history of the behavior of the individual to date which is supplementary to the information acquired during the training process.

Mr. COLLINS. Thank you. One more question: When these tests are given, what other tests are given at the same time?

Dr. CARP. The other tests are left to the discretion of the field selection officer and the field assessment officer at the training site. They include about half a dozen commonly used tests which he may administer without prior approval of the Peace Corps. If there are tests other than this, he must obtain the Selection Division's permission to use these tests. Tests that are not on the approved list.

Mr. COLLINS. I am not speaking just of psychological tests. I am speaking of what other tests are given at the same time. Are they given aptitude tests?

Dr. CARP. No. The aptitude tests are given in the pretraining phase.

Mr. COLLINS. Then this would stand out in my life, if I were an applicant—I would know that I was taking a psychological test.

Dr. CARP. You would know it, because we told you. We do not try to disguise it.

Mr. COLLINS. Am I told that this is not for competitive purposes, but for protective?

Dr. CARP. Right.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. GALLAGHER. Mr. Cornish.

Mr. CORNISH. Mr. Berlew, do you have any figures on the purchase price and the cost of administering and evaluating these tests which you can provide the subcommittee?

Dr. CARP. Yes, sir; we can provide you this. I guess I am told I should not trust my memory when we can get accurate information at a later date. We will provide it for the record.

Mr. CORNISH. We have been speaking of 19,000 trainees. I understand the figure is more like 20,000.

Mr. BERLEW. There have been something like 19,000 or 20,000 persons invited and actually gone to training; 14,000 to 15,000 have successfully completed training.

Mr. GALLAGHER. The other day we were advised there are approximately this year 9,100.

Mr. BERLEW. We expect 9,100 to 9,200 trainees to enter training this year, and they will all take the test; 19,603 trainees have now been in the Peace Corps as of May 1.

Mr. CORNISH. I wonder, Mr. Chairman, if we could insert the cost figures at this point in the record.

Mr. GALLAGHER. I think we should have the total cost figures, in the overall testing procedure, and then the averaged-out cost per trainee on this particular test.

Mr. BERLEW. We would be glad to provide that, Mr. Chairman.

(The information referred to follows:)

Estimated cost per trainee of administering and evaluating the MMPI	$6.53
Test materials	.08
Scoring	.60
Administration	.05
Evaluation	5.80

The Peace Corps does not have adequate data on which to base an estimate of the costs of any other field selection psychological testing. The estimated cost per trainee of such testing materials and scoring is $1.54, the yearly and cumulative cost for administering the MMPI to Peace Corps trainees. The MMPI has generally been administered in all Peace Corps training programs, although a few trainees might never have been asked to take it.

As of August 31, 1965, 25,894 Peace Corps volunteer applicants had been registered for Peace Corps training since the Peace Corps began: 915 in 1961, 4,421 in 1962, 4,950 in 1963, 8,080 in 1964, and 7,528 so far in 1965. The annual and cumulative cost for administering the MMPI to all Peace Corps trainees at $6.53 per trainee would, therefore, be as follows:

1961	$5,974.95
1962	28,869.13
1963	32,323.50
1964	52,762.40
1965 [1]	49,157.84
Cumulative cost [1]	169,087.82

[1] As of August 31.

Two things should be noted about these figures. First, almost 90 percent of the cost of administering and evaluating the MMPI is for the time of the field assessment officer needed to evaluate the profiles. Substitution for the MMPI of a psychiatric interview for each trainee would, we estimate, cost about $15 per trainee. Furthermore, in the judgment of the psychologists and psychiatrists participating in Peace Corps selection programs, the MMPI is preferable to a psychiatric interview to accomplish the limited but important purpose for which the MMPI is used in Peace Corps selection: helping objectively to identify persons who may have or develop serious personality disorders.

Mr. CORNISH. In Dr. Carp's testimony on Friday, he stated that because the MMPI involves personal matters:

It is only given by the field assessment officer. He, as we have seen, is always a qualified and experienced psychologist. He is trained to respect the confidentiality of an individual's MMPI profile. Only two other persons have access to that profile—the Peace Corps field selection officer, who is also a highly qualified and experienced psychologist, and if the profile suggests that a psychiatric interview is warranted, a medical doctor trained in psychiatry.

I wonder, under your new procedures, whether you intend to maintain that safeguard on persons who actually see the test forms?

Mr. BERLEW. Correct. I think with one exception—the test answer sheets will be sent into Peace Corps Washington where they will be opened by Dr. Carp and other professional psychologists.

Dr. CARP. Not me personally.

Mr. BERLEW. For destruction purposes. They will not be interested in looking at them.

Mr. CORNISH. Now, I am going to pose a theoretical situation here, just to get your reaction to it.

Suppose between the time that a Peace Corps volunteer trainee took this test and the time his test answers were destroyed, that a Federal investigator arrived on the scene and wanted to examine the answer sheet. What would be the position of the Peace Corps in that instance?

Mr. JOSEPHSON. Mr. Cornish, if I may answer that question.

Mr. CORNISH. Yes, sir.

Mr. JOSEPHSON. We take the position that files such as the confidential psychological file developed by the psychologist during training, the medical file developed by the doctor during training—since so often they involve matters that are of a personal and private nature, they may even involve information that has been given under circumstances in which the customary privileges apply, is not available to investigators.

You may recall I even made the point that when the Peace Corps considers hiring someone who has been a volunteer, we do not permit those responsible for that decision to have access to any of this information.

Mr. CORNISH. What I am trying to get at here is actually to see there is as little chance as possible of anyone violating the integrity of these answer sheets. Am I correct in that assumption? Can you make that assurance?

Dr. CARP. Yes, sir.

Mr. BERLEW. Yes, sir.

Mr. ROSENTHAL. May I ask this one question? Supposing an investigator for an unnamed House committee came around and wanted to see the answers, what would you do?

Mr. JOSEPHSON. Well, that raises one of the age-old matters of friction between the executive and legislative branches. We, I think, would make an effort to deal with a responsible member of that committee, probably the chairman, to ascertain the reason for the inquiry. I think we would endeavor to discover if the information could be made available to the chairman personally on a basis that could insure its confidentiality.

Mr. ROSENTHAL. Has this ever happened?

Mr. JOSEPHSON. I can recollect one case in the history of the Peace Corps in which this has happened, and we were able to work out arrangements with the committee which satisfied us that the confidentiality of this information would be respected, and that the committee had a good purpose in seeking the information.

Mr. ROSENTHAL. Did you advise the Peace Corps applicant that this procedure was being entertained?

Mr. JOSEPHSON. One of the factors which led us to make that decision was that it was she who had requested the inquiry. If that had not been the case, I doubt if we would have decided it this way.

Now, if it did not work out, as I am sure you are familiar both President Kennedy and President Johnson have made it clear that questions involving—and here I use a phrase that I hate to use but I must use it—executive privilege are to be decided by them. If we had difficulties in this area, we would refer the matter to the White House.

Mr. CORNISH. Did you wish to make a further comment on that?

Mr. BERLEW. No, I think that covers our position.

Mr. CORNISH. During your attendance on Friday, we got into quite an exchange, quoting George Bennett, president of the Pschological Corp., and we traded quotations. I just want to give you another one today, to get your reaction to it, especially Dr. Carp.

It seems that in June of 1959, when Martin L. Gross, who also appeared before the subcommittee, wrote an article in True magazine, criticizing personality testing, that sparked a letter to the editor from Mr. Bennett, who is president of the Psychological Corp. In this letter he states that in his opinion, and I quote:

> Where there is an incentive to give other than truthful answers, the process deteriorates into a guessing game, the outcome of which is dependent upon the subject's recognition of the desirable response and his willingness to misrepresent himself.

I wonder if you would care to comment on that, in light of the trainee who comes and takes the test and examines each question in the light of how he thinks the test giver would really like him to answer the question, so that it would not reflect unfavorably on him.

Dr. CARP. There is very little doubt in my mind that the very bright, reasonably bright individual, who takes the test with this attitude could create a false impression. I am not sure at the moment—it is not unlikely that he would be picked up on the L scale and the K scale, the validity scales of the test.

Mr. GALLAGHER. What are those scales?

Dr. CARP. The lie scale and the correction scale. But the whole atmosphere of Peace Corps testing as opposed to other situations is that this is an opportunity for the individual to help both himself and the Peace Corps to find out if this is in fact the kind of thing that he should do.

I am well aware of the problems of faking in the traditional selection competitive situation, and I would tend to agree with Dr. Bennett. The Peace Corps situation is more akin to the traditional counseling situation, where both parties are trying to find out what is true or what is best for the individual, and the motivation is not to deceive but to inform.

Mr. CORNISH. Well, then, I gather from your statement that hopefully if the trainee did manage to answer the questions in such a sequence that he was able to give a false impression, that perhaps his real nature might be revealed in some of these other procedures that you follow to check his behavior and personality background.

Dr. CARP. Correct.

Mr. CORNISH. Thank you.

Mr. GALLAGHER. We left hanging an inference the other day which the Chair would like to correct.

This was your statement, doctor, the other day.

> Mr. Shriver has already described generally the Peace Corps' selection process. Let me turn to the use of personality inventories.

The selection of people is a young science. No one selection tool even begins to approach perfection. That is why the Peace Corps' selection is deliberately structured to bring to bear many different selection tools. As Mr. Shriver testified, no one element of this process is determinative, but each makes a definite and distinctive contribution to the process.

In our judgment, the Peace Corps would be derelict in its responsibilities if its selection process deliberately failed to employ any one element of that process, including personality inventories properly used by qualified persons. Indeed, in 1961, the House Foreign Affairs Committee specified that during Peace Corps training each applicant will receive "psychological and psychiatric tests."

As one who was on the Foreign Affairs Committee then and now, that is not entirely accurate. What we did was to print up the recommendations of the agency, without passing judgment on them to provide information to the House of Representatives. The quote that appears there, "psychological and psychiatric tests" is one that appears from the committee report which merely printed the recommendations of the Peace Corps.

The House Foreign Affairs Committee did not prescribe psychological and psychiatric tests. I would like the record to show that clearly.

Mr. GALLAGHER. Could the Peace Corps apprise this subcommittee of cases in the future where someone has refused to answer the questions and then has not been eliminated from the program?

Mr. BERLEW. Yes, we will do so.

Mr. GALLAGHER. We would like that. And secondly, it is our hope that while you have made great progress, and we certainly commend you for eliminating 185 of these questions, there are still 371-some-odd that are still in there, and perhaps you could take another chop at most of these questions in the future as you reevaluate the entire worth of the questions that do remain.

The Chair would like to commend the Peace Corps for taking such major steps to protect the right of privacy. As I understand it, no individual trainee will be compelled to answer any of these questions in the future.

Mr. BERLEW. That is right.

Mr. GALLAGHER. And if he does consider this an invasion of his privacy, this will not be used as adversely against him in his desire to serve.

Mr. BERLEW. Yes, sir; that is correct.

Mr. GALLAGHER. The Chair feels that the Peace Corps has made a major step and has taken many precautions that should serve as guidelines in the future for the protection of an individual's privacy.

The problem that we have been concerned with is that these tests work on a norm and are graded in a variation from that norm. They may indeed be helpful in deciding the directions of particular groups, but in my opinion, when you get right down to the individual, I seriously question the validity of their use by the Government.

We are here today, however, not to question the validity of the test as an aid to psychological or psychiatric assessment of an individual. This subcommittee is interested in the protection of the individual and his privacy. From that point of reference, the Chair would like to compliment the Peace Corps and the director, Mr. Shriver, and you gentlemen who have appeared here today for the reforms which you have instituted to protect the individual and his privacy.

Are there any further questions?

Mr. ROSENTHAL. The only thought that I have, Mr. Chairman—I concur fully in everything that you have said, and I want to commend the chairman for taking a prodigious leap forward in this special inquiry. I want to specifically commend the members of the Peace Corps who, in my judgment, have entertained a rather enlightened view about the whole subject—certainly more enlightened than other witnesses from other Federal agencies we have had.

What I worry about constantly is not only the question of invasion of privacy, but the fact that we are getting a mechanical society, that we are trying to make everybody some deviant from the norm, that we are trying to push the whole mass of the American public into a funnel, push them all into the wide end of the funnel and have them come out pretty much the same from the narrow end of the funnel.

I doubt if this is really what any of us—obviously neither you nor I want this.

As President Kennedy said, we ought to make this world safe for diversity. I think this applies to our domestic society as well.

So that these tests that relate little differences from the norm kind of scare me, and I hope we don't develop a mechanical kind of society where you are going to push a button and a man is going to respond in some way that you have already predicted in advance and that if he does not he won't be chosen for an important role in our society.

Dr. CARP. We certainly share your concern, and there are many debates and discussions of this in the Peace Corps.

We have been criticized, I think unfairly, internally for producing in our jargon the bland volunteer. So we are now making a special effort to insure that the widest variety of individual differences can, in fact, succeed or have a chance to succeed in the Peace Corps.

Again, in our own jargon, here we talk about the high-risk, high-gain individual. And this is the one that we are looking for. We are not looking for the mediocre or the norm.

I think Mr. Berlew has had more contact with this particular concept and may want to add a few remarks of his own.

Mr. BERLEW. I just wanted to say that anyone who has had the opportunity of dealing with 300 volunteers overseas would not be too concerned about their conforming to any norm. I mean that quite seriously. It is a very interesting and very enlightening experience. But it is not a normal type of experience.

Mr. ROSENTHAL. You see—when we originally started, we acknowledged, all of us, that the Federal Government really sets the tone for society. If the Federal Government permits incursions and invasions into privacy, all the other organizations, commercial organizations, are going to think this is a standard that they can follow. So that we have an additional responsibility, beyond efficiency within the immediate organization, which is to set this tone or standard of constitutional preservation, this deep dedication we have to the Constitution.

Thank you very much, Mr. Chairman.

Mr. GALLAGHER. Thank you, Mr. Rosenthal.

It may well be that if some of the campuses do run out of programs to protest, this might be a good start for another march. [Laughter.]

Dr. CARP. We understand there were pickets marching outside the American Psychological Association Building. [Laughter.]

Mr. GALLAGHER. I am glad that the rippling effect of the subcommittee is streaming in the right direction. [Laughter.]

(The following article later appeared in the New York Times.)

[From the New York Times, Sept. 5, 1965]

PEACE CORPS PSYCHIATRIC TESTS CALLED ESSENTIALLY IRRELEVANT

(By Natalie Jaffe)

CHICAGO, September 4.—Psychiatric evaluations of the mental health of Peace Corps volunteers were found to be essentially irrelevant in predicting the young teachers' actual performance in Africa.

The American Psychological Association, at its 73d annual meeting here, heard Dr. M. Brewster Smith of the University of California outline today his studies of the first group of Peace Corps teachers in Ghana. Dr. Smith said the mental health stereotype of the sociable, self-confident, well-rounded, well-adjusted Peace Corps worker may have to be abandoned as a measure of competence in favor of more sensitive judgments of commitment and interest.

"The current preoccupation with identifying the disturbed puts to single-minded an emphasis on one set of liabilities without attending to assets appropriate to a job," he said.

EARLY ASSESSMENT

"So long as the volunteers were competent teachers and interested in Africa, their quirks didn't matter," Dr. Smith said in an interview after his address.

He based his address on a study of 45 volunteers, both before and after their 2 years of teaching in Ghana, conducted under a contract with the Peace Corps.

Dr. Smith, a psychologist, is a fellow of the Center for Advanced Study in the Behavioral Sciences at Berkeley, and a special research fellow of the National Institute of Mental Health.

While the volunteers were in training at Berkeley, each was seen in two 50-minute interviews by seven, psychiatrists from the Langley-Porter Neuropsychiatric Institute.

On one of the predictions they made, called psychological effectiveness, high ratings were given to "the optimally adjusted personality as viewed by clinical psychologists—what amounts to a mental health stereotype," Dr. Smith said.

INTERVIEWS IN GHANA

After the volunteers had been in Africa for a year, Dr. Smith and an associate Dr. Raphael S. Ezekiel of the University of Michigan, went to Ghana and held long, informal interviews with the young teachers at their schools.

The psychologists made another trip at the end of the second year. Both sets of interviews were recorded.

In the interviews, the volunteers discussed their jobs and how they felt about themselves and Ghana.

Back at Berkeley, Dr. Smith's research teams analyzed the interviews and broke them down into components—65 describing personal attitudes and 64 describing performance inside the classroom and out. These components were subsequently rated by 12 advance graduate students in psychology who had never met the young teachers.

"The psychiatrists' mental health ratings had a close to zero correlation with our criterion measures of competent performance," Dr. Smith reported.

TEST DISCREPANCIES

He said he found the discrepancies "not surprising, in view of the psychiatrist's professional training, their responsibility for weeding out disqualifying pathology, and their essential ignorance of the situations the volunteers faced."

No one, even in the Peace Corps administration, he added, knew exactly what was in store for the volunteers when the program first began.

He emphasized that since the final evaluations were based mainly on interviews with the volunteers themselves, the comparisons of prediction and performance could be challenged for their objectivity.

But Dr. Smith said he was "well satisfied" with the honesty and informality of the interviews.

As an example of "one splendidly successful volunteer," Dr. Smith described one young man who failed to impress anyone at Berkeley.

"He was quiet, a loner, not interested in girls and socially awkward. But he got to Ghana and discovered he had a vocation for teaching," the psychologist noted.

"The experience even carried over," Dr. Smith added. "He's now working in a special field of education here and is very effective. What we had missed was his readiness for commitment. It doesn't matter that he isn't hail fellow well met."

Mr. GALLAGHER. The subcommittee stands adjourned, subject to the call of the Chair.

(Whereupon, at 3:50 p.m. the subcommittee adjourned, to reconvene subject to call of the Chair.)

SPECIAL INQUIRY ON INVASION OF PRIVACY

WEDNESDAY, JUNE 23, 1965

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVASION OF PRIVACY
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:15 p.m., in room 2203, Rayburn Office Building, Hon. Cornelius E. Gallagher (chairman of the subcommittee) presiding.

Present: Representatives Cornelius E. Gallagher, Benjamin S. Rosenthal, and Frank J. Horton.

Staff members present: Norman G. Cornish, chief of special inquiry; Miles Q. Romney, associate counsel, Government Operations Committee; and Raymond T. Collins, minority professional counsel.

Mr. GALLAGHER. The subcommittee will come to order. I am authorized by my two colleagues, who are tied up on the floor and will join me, to start our hearing in the interest of time, and the fact that we have some distinguished witnesses here today whom we do not wish to detain longer than necessary. The Chair has a brief statement that he would like to make at the outset.

This hearing is a continuation of a special inquiry under the House Committee on Government Operations into the subject of invasion of privacy as it is related to the efficiency and economy of certain Federal investigative and data-gathering activities. Today we will take a look at the 1964 Census of Agriculture, especially that section which requires farmers, under penalty of law, to answer detailed questions about their outside income and provide the same information for all persons living in the farmhouse. Prior agricultural censuses have not asked for such information, although less detailed information on personal income has been sampled in the regular census covering the general population.

The committee's interest in this subject dates back several months. Last year, it received a complaint from a Pennsylvania farmer who objected to a new section of the farm census questionnaire because it sought information on the outside income of everyone living in the same house as the farm operator. The farmer who wrote the subcommittee said he thought questions about farm income were proper, but details about his outside income constituted an invasion of privacy in his view.

Section 11 of the 1964 Census of Agriculture, which was sent to a 20-percent sample of all farm operators plus operators of all farms of 1,000 acres or more, asked for the following information regarding each person 10 years of age or older living in the farmhouse:

1. The total wages or salary, commissions, and tips from all jobs off the farm before taxes and deductions.

2. Total income from any nonfarm business or professional practice after business expenses.

3. The total of all social security payments, pensions, veterans' payments, unemployment compensation and welfare payments.

4. The total of all rent for farm and nonfarm property, interest, dividends, soil bank payments, oil lease, and miscellaneous income from other sources.

In addition to information about income, the farm operator also had to provide the ages, the amount of education, and the number of days worked off the farm for all persons living in the farmhouse. Presumably, if he did not know the answers from his own knowledge, he had to ask the persons involved to give him the information.

I am sure that many persons would not object to this. On the other hand, I am equally certain there are persons who would. Privacy is a relative thing. Each person makes his own decision as to what personal information he will share with another; and, as we all know, this varies greatly, depending on the relationship of others and the circumstances in which the information is sought and given.

In my opening statement at the start of this special inquiry early this month, I expressed the hope that the Federal Government would take the lead in helping to protect the right of each individual to decide himself what he wants to keep private. Ordinarily, he should not be put in a position of being forced to give information which may be no one's business other than himself. Moreover, there is the important question whether the Government should, as a matter of policy, ask others to invade the privacy of individuals even though the information may be valuable and necessary to the Government. It is usually possible to ask the person directly involved, instead of someone else. Procedures could presumably be worked out to insure and facilitate this. They could make it crystal clear that if any person living in the farmhouse objects to giving the farm operator the information, he would be welcome to file it separately and away from the eyes of others.

The Pennsylvania farmer who complained to the subcommittee also indicated he felt the detailed information sought on outside income was beyond the needs of the farm census. This, I am sure, is a debatable question, but should be given consideration. Perhaps the Government could well do without these details and content itself with a total figure for outside income alone. Perhaps not. Our inquiry is trying to emphasize that the Government should weigh the need for information against protecting the right to privacy. This is a delicate balance sometimes. But the measure should be taken, deliberately and consciously.

To discuss these questions, the special inquiry has invited leading officials of the Bureau of the Census, the Department of Agriculture, and the Bureau of the Budget. We welcome them and hope, that by working together, we can perhaps do more to preserve the right to privacy without detriment to the legitimate needs of the Government for information.

Now the Chair would like to call, and ask that they testify together, Mr. A. Ross Eckler, Acting Director, Bureau of the Census, Department of Commerce; Mr. C. Kyle Randall, Chief of the Farm Income Branch, Economic Research Service, Department of Agriculture; and Conrad Taeuber, Assistant Director, Bureau of the Census. I would also like to insert in the record at this point the text of section 11 of the 1964 Census of Agriculture questionnaire:

Section 11.—PERSONS LIVING IN HOUSE OF FARM OPERATOR

333. We would like to ask you for a list of and several questions regarding the persons now living in the house in which you live. First, we would like to have the name of each person now living in the house in which you live.

(Instructions: List the name of the person in charge first and then other persons living in the house. If the place is operated by partners, enter the name of the partner in Column 1 and write "partner" in Column 2 and list after the name of the partner, the name of each person living in the house in which the partner lives.

In Column 5, enter for the highest grade of school completed, a number as follows: For no grade completed or only kindergarten completed, enter 0. For elementary school enter the number of grade completed, such as 1, 2, 3, 4, 5, 6, 7, or 8; for high school, enter 9, 10, 11, or 12 depending on the highest grade completed; for 1, 2, or 3 years of college completed, enter 13, 14, or 15; and for 4 or more years of college completed enter 16. Include in Column 6 as farmwork or chores, work in fields, milking, feeding and care of livestock and poultry, care and repair of equipment and buildings, keeping farm records, and planning and supervising farmwork.)

	Name (List person in charge first. Include everyone who usually lives in the house in which the farm operator lives. Do not include college students away at school, persons away in the Armed Forces, and persons away in institutions.) (1)	Answer these questions for each person: Relationship to person in charge? (Write wife, son, daughter, father, hired man, partner, etc.) (2)	Sex? (Write M for male and F for female.) (3)	Age at last birthday? (4)	What was the highest grade (or year) of school ever completed? (See instructions above.) (5)	Answer these questions for each person 10 years old or more: How many hours did this person work on this place at farmwork or farm chores last week? (6)	On how many days did this person work off the place in 1964— At farmwork or another farm? (7)	At nonfarm work? (8)	How much did this person receive or will he receive in 1964 from— Wages or salary, commissions, and tips from all jobs before taxes and deductions, etc.? (Do not report income from this farm.) (9)	Working at own nonfarm business or professional practice (report net income after business expenses)? (10)	Social Security payments, pensions, veterans' payments, unemployment compensation, and welfare payments? (11)	Rent for farm and nonfarm property, interest, dividends, Soil Bank payments, oil leases, and other sources? (12)	
V01	1.	Person in charge				None ☐			None ☐ $ .00	None ☐ $ .00	None ☐ $ .00	None ☐ $ .00	V01
V02	2.					☐			☐ $ .00	☐ $ .00	☐ $ .00	☐ $ .00	V02
V03	3.					☐			☐ $ .00	☐ $ .00	☐ $ .00	☐ $ .00	V03
V04	4.					☐			☐ $ .00	☐ $ .00	☐ $ .00	☐ $ .00	V04
V05	5.					☐			☐ $ .00	☐ $ .00	☐ $ .00	☐ $ .00	V05
V06	6.					☐			☐ $ .00	☐ $ .00	☐ $ .00	☐ $ .00	V06
V07	7.					☐			☐ $ .00	☐ $ .00	☐ $ .00	☐ $ .00	V07
V08	8.					☐			☐ $ .00	☐ $ .00	☐ $ .00	☐ $ .00	V08
V09	9.					☐			☐ $ .00	☐ $ .00	☐ $ .00	☐ $ .00	V09
V10	10.					☐			☐ $ .00	☐ $ .00	☐ $ .00	☐ $ .00	V10

Mr. GALLAGHER. Gentlemen, under the rules of the committee I would ask you to be sworn. Raise your right hand. Do you solemnly swear to tell the truth, the whole truth and nothing but the truth so help you God?

Mr. ECKLER. I do.

Mr. RANDALL. I do.

Mr. TAEUBER. I do.

Mr. GALLAGHER. Thank you. Please be seated. The Chair welcomes you gentlemen. We appreciate the cooperation we have received from your Departments. Please proceed.

TESTIMONY OF A. ROSS ECKLER, ACTING DIRECTOR, BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE; ACCOMPANIED BY C. KYLE RANDALL, CHIEF, FARM INCOME BRANCH, ECONOMIC RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE; AND CONRAD TAEUBER, ASSISTANT DIRECTOR, BUREAU OF THE CENSUS

Mr. ECKLER. Thank you, Mr. Chairman. I should also like to introduce my colleague, Dr. Conrad Taeuber, who is our Assistant Director for demographic fields.

Mr. GALLAGHER. You are welcome, Doctor.

Mr. ECKLER. We appreciate the very balanced statement with which you started the presentation, Mr. Chairman, and with your permission we will read our own statement prepared in response to your inquiry.

Mr. GALLAGHER. Please proceed.

Mr. ECKLER. We welcome the opportunity to appear before this subcommittee and to discuss with you some of the questions which have been raised concerning the census of agriculture. The Bureau of the Census is continually mindful of the questions that may be raised concerning its efforts to provide information that is needed by Government, business, and all other agencies and persons concerned with the functioning of the American economy.

Information concerning agriculture has been collected since 1840. The growing need for such information led to the establishment of a separate census of agriculture, and, beginning with 1920, Congress put this census on a 5-year basis. With the rapid changes that are taking place in American agriculture, there have been many new demands for information for the census. The growing concern with farm incomes and the welfare of farm people has led to increasing need for information relating to the incomes of farm families. Although there has been a growing degree of commercialization and specialization in agriculture, with production increasingly concentrated in relatively large units, there has also been a trend toward combining living on a farm with work off the farm. Sometimes nonfarm work is done by the operator himself, sometimes by other members of the family, who may bring in more cash than is received from the sale of farm products. In a recent report on the expanding and the contracting sectors of American agriculture, the Department of Agriculture states:

> The minimum size of farm necessary for economic survival would be considerably larger than it now is if it were not for an increasing reliance of farm operators on incomes from nonfarm sources. In 1959, nonfarm income accounted for about 20 percent of the total income of farm operators in the expanding sector, and nearly 60 percent of that of operators in the contracting sector.

For some time censuses of agriculture have included a question which asked the operator for the number of days he worked off the farm during the year preceding the census. This provided only a part of the information that was needed and users of the census began calling for more information on this aspect of farm life.

The 1950 Census of Agriculture and the 1950 Census of Population and Housing were taken at the same time. As part of the tabulation program, it was possible to combine information on income and economic activity of farm people from the census of population with information from the census of agriculture. The results proved so useful to Government agencies, farm organizations, and others interested in agriculture that the Bureau of the Census was urged to repeat this special tabulation following the 1959 Census of Agriculture and the 1960 Census of Population and Housing.

When plans were formulated for the 1964 Census of Agriculture, careful consideration was given to the fact that if information concerning the nonfarm activities and income of farm people were to be available, it would have to be collected as part of that census. The desirability and feasibility of adding these questions was carefully reviewed, as were all other parts of the 1964 census, with an advisory committee which consisted of representatives of the following organizations: American Farm Bureau Federation; National Council of Farmers Cooperatives; National Grange; National Farmers Union; National Association of State Departments of Agriculture; Farm Equipment Institute; Association of State Universities & Land Grant Colleges; Agricultural Publishers Association; American Petroleum Institute; American Farm Economics Association; Rural Sociological Society; American Statistical Association; and U.S. Department of Agriculture.

In addition, a technical subcommittee was established, consisting of representatives of the U.S. Department of Agriculture and the Bureau of the Census, to give careful consideration not only to the needs for the data, but also to the best means of obtaining them.

It was decided that the questions on income included in the 1964 census should follow as closely as possible the pattern of questions used in the 1960 Census of Population. It was recognized that some modifications would need to be made in order to take into account the special circumstances of farmers. The Bureau's experience in collecting income data over many years has shown that there is a danger of forgetting relatively infrequent or incidental items, and that the quality of the income data is improved if the questions are formulated in a way that helps the respondent remember by inquiring specifically about a number of sources from which income may be secured. Accordingly, wages or salary are distinguished from income from a person's own nonfarm business or profession, and these, in turn, from other sources of income. For most people these other sources include social security payments, pensions, veterans' payments, welfare payments, and the like, but in the case of farmers there may also be income from rental of farm or nonfarm property, soil bank payments, oil leases, and similar sources. Therefore, it was decided that these latter should be listed separately. However, the farmer was asked to report only the total for each of the four major types of sources.

From our experience in censuses and surveys, we have found that it is necessary to collect information about each member of a house-

hold, rather than asking one person for summary figures about all members of the household. We recognize that by dealing with each member of the household we are including lodgers and other persons who are not members of the operator's immediate family. However, the number of these persons is very small. Only about 3 percent of farm families have such persons living with them. We would be receptive to a suggestion that persons who are not members of the farm operator's family be excluded from this part of the census.

Census law provides that respondents must answer questions on the census form fully and truthfully to the best of their ability and, also provides assurance that any information given to the census must be accorded confidential treatment. The instructions to enumerators in the 1964 Census of Agriculture provided that if a respondent was unwilling to give the information to the enumerator, he might give it to the crew leader, or send it directly to census headquarters. In the 1960 Census of Population, we had made arrangements under which persons could supply income information directly to the Bureau if they were hesitant to give it to the local enumerators. It would be feasible to make such provisions for direct reporting to the Bureau more explicit in the next census of agriculture, if the members of the subcommittee feel that it would be useful to do so.

Mindful of the demand on the public for information, the Bureau of the Census has continually sought methods for reducing the burden without significantly impairing the value of the statistics. In accordance with the provisions of the basic Census law, title 13, United States Code, extensive use has been made of sampling. The data called for in section 11, along with sections 9, 10, 12, and 13, of the 1964 Census of Agriculture are collected from a sample which includes all farms with 1,000 acres or more, and 20 percent of all other farms. As in other censuses and in surveys, the selection of the sample farms was done in an entirely objective manner.

We are keenly aware of the fact that a census can be taken only with widespread public cooperation. This means that the questions that are asked must, on the whole, appear to the respondent to be reasonable. Regradless of the questions asked, occasional objections and criticisms are to be expected, but we have been gratified to find that the objections are very infrequent and that in most cases persons who initially objected to giving the information do provide it when the purpose and character of the census are more fully explained to them.

The Bureau of the Census has given considerable attention to the statistical use of administrative records in lieu of collecting data directly. We have also found that self-enumeration is often as effective a method for uses in censuses. We plan to study intensively the use of these methods in the next census of agriculture.

Our advisory committee consists of representatives of farmers and of organizations that serve farmers, as well as statisticians, economists, and other professional workers who make use of the data. We try to find a balance between the needs for data and the problems of the persons who are expected to supply the basic information. We would welcome the committee's suggestions on better ways of meeting these dual objectives. Thank you, Mr. Chairman.

Mr. GALLAGHER. Thank you very much, Mr. Eckler. Mr. Randall, would you care to give your statement before we start the questioning?

Mr. RANDALL. Thank you, Mr. Chairman.

This statement refers to the need for questions on off-farm income, section 11 of the 1964 Census of Agriculture.

Rapid changes are occurring in the structure of American agriculture and in the income of farm people. One of the significant changes is the increasing importance of nonfarm income of the farm population. It is clear that for many farm people, off-farm income rather than farm income, determines their income status. In 1964, it is estimated that on a national basis, nonfarm income of farm people totaled $6.9 billion and accounted for approximately one-third of the personal income of the farm population.

In preparing estimates of income from farming, we have a rather comprehensive statistical system of regular reports on production, marketing, and prices of farm production from the Statistical Reporting Service. I hasten to add, however, that these reports are highly dependent on benchmark data from the Census of Agriculture.

In making estimates of the nonfarm income of farm people, the basic data are much more limited. We start with a limited amount of benchmark data obtained through censuses and sample surveys. From these, we make annual estimates on the basis of changes in related statistical series.

This brings us to the question of why it is important to obtain information on the different components of off-farm income of farm people rather than a global total. We need the information on the components separately because these components do not necessarily all change from year to year in the same fashion.

It should be noted that information on income of farm operators from sources other than the farm operated was obtained in some detail for 1955 and 1960 through census sample surveys. The data obtained for the four components included in section 11 of the 1964 Census of Agriculture will provide an additional benchmark and materially improve the basis for annual estimates in the intercensal years.

In order to make good estimates of the total in years when sample survey or census data are not available, we need to make separate estimates for each of the components. For example, wages and salaries account for a substantial part of the total amount of off-farm income. We estimate changes in this component on the basis of changes in wages and salaries generally. Different series are used to estimate changes in the other components of off-farm income. Making separate estimates for the components and adding them together results in a better estimate than would attempts to estimate changes in the total with no information on the components.

I mentioned censuses and sample surveys as the only source of benchmarks for these kinds of data. I should qualify that by saying the census of agriculture is the only source that provides the kind of geographic detail that is needed, particularly in relation to farm poverty areas. It is only from the census of agriculture that we can obtain data on off-farm income in relation to other important farm characteristics.

There is a general consensus that aggregate farm income statistics are not enough. Decisions on policy for commercial agriculture and programs for farm and rural people require accurate and representative information on the income of people on farms classified by size of operation and efficiency.

In summary, accurate estimates of income of the farm population including income from off-farm sources, are important tools in making decisions on present and future policies for agriculture including policies regarding opportunities for all people in rural areas. The relationships between income from farming and nonfarm sources in relation to the size and other characteristics of the farming operation are important aspects of the information. Data on the important components of off-farm income separately provide a better basis for estimating off-farm income for years other than census years than would a single figure for off-farm income. The census of agriculture provides a better source for obtaining these data in the detail that is needed than would any other alternative that is now available to us. That completes my statement, and I thank you, Mr. Chairman.

Mr. GALLAGHER. Thank you very much, Mr. Randall. Do you have a statement, Doctor?

Mr. TAEUBER. No, sir.

Mr. GALLAGHER. One of our concerns, and perhaps you touched on it in your statement, has been the placing of a person on a farm in a very awkward position, whereas he must relate very intimate details to the head of the household or the head of the farm. We would have a suggestion to make, and that would be that if this information is required, and is legitimate-type information, which we don't question at this point, whether or not it would be possible for him to mail this information directly to the Department rather than have it handled through several people on the farm.

Therefore if you do have a lodger or someone who lives on a farm who might want to cooperate but at the same time not fully disclose his position, would it be possible that he would be able to mail his financial statement, if that is required, directly to the Bureau.

Mr. ECKLER. Mr. Chairman, that would be a possible arrangement for future censuses. As we noted, the enumerators were instructed respecting hesitation on the part of families to report in the way that we suggested. We did not have a form made available for the purpose. This could be provided, so that anyone in any case where a question was brought up, we could carry out this procedure.

We did something like this in the 1940 Census of Population, where income was first collected, and people were able to report directly. I would note that this is a little more expensive procedure, because it involves more paperwork and special handling, but we too are concerned with being responsive to the protection of individual privacy where it is a problem, and we think if there would be relatively few cases that would take advantage of this arrangement, that we can do that and would be glad to have your recommendations in that direction, Mr. Chairman.

Mr. GALLAGHER. The Chair would like to make that recommendation, even though it might entail a little additional expense. The expense would serve a constitutional purpose in that that person who would be affected by it would be entitled to the same treatment as the head of the farm for which the money is being expended. Therefore one of the great concerns that we have is that in the interests of efficiency and expense, we sometimes are prone to violate the privacy of, as you point out here, only 3 percent of the farm families who have such people living with them.

Even if it was one person, I think that we have a right and a duty to protect that individual person. So the Chair will be very happy

if we could make arrangements to adequately protect people who feel that it is their business, and their business only, as to who this information is passed along to, and who also have a desire to cooperate with the Government.

Mr. ECKLER. We will take that into account in planning our next census, Mr. Chairman.

Mr. GALLAGHER. In the 20-percent sample which involves section 11 of the census questionnaire, were there any particular States selected for this purpose?

Mr. ECKLER. No, sir.

Mr. GALLAGHER. And if so which ones were they?

Mr. ECKLER. This was 20 percent distributed throughout all the States. This is one schedule in five, so it was not concentrated in particular areas but was intended to be the most efficient 20-percent sample we could devise, and therefore was very widely distributed geographically.

Mr. GALLAGHER. And all States were included?

Mr. ECKLER. Yes, sir.

Mr. GALLAGHER. You mentioned the review process regarding questions before they are approved for inclusion in the farm census. What consideration is given to whether an individual question constitutes an invasion of privacy? What is the extent of concern in this area?

Mr. ECKLER. I think we recognize, as you say, privacy is a relative matter. Your statement I think put that very well. And almost any question will be regarded as an invasion of privacy by a few people. There is no doubt about that. So that we know that it is not possible to devise a census which does not have an occasional objection.

One of the factors in planning any census is the experience of the past, and we tend to look at the questions which are used in the preceding census as our general guide to the kinds of information that might be considered for the forthcoming census.

Now in the case of Agriculture, where you have an economic activity that is changing quite substantially, the Department of Agriculture is even better aware of that than we are, certain types of questions which would have been included in earlier censuses are no longer needed, and certain new ones are required.

We are particularly sensitive I think to the need for one person to report on information that he has to collect from someone else. This kind of question comes up frequently in the work that we do other than our censuses or in surveys, so that if it is the kind of information which the head of the household would not know, would have to ask from nonrelated members, there is always some sensitivity involved in this.

As we pointed out here, it was a very infrequent case involving 3 per 100. We are moving toward getting a greater proportion of the information filled out by the person himself.

We are making greater use of forms which can be sent out on a mail basis and filled out by the individual, so that this we believe gives a greater chance for a response from the individual, and has the element of protecting privacy and also has the element of getting more accurate information because the individual is better able to report than someone else for him.

So we do give a good deal of consideration to this matter of invasion of privacy, and the kinds of questions which we think will raise serious objections. Is there anything you would like to add to this, Dr. Taeuber?

Mr. TAEUBER. If I could, Mr. Chairman, just point out that this advisory committee to which reference was made also includes some farmers, and I recall very well that a number of times in the discussions in the committee some member of the committee would turn to another member of the committee and say, "As a farmer, you are going to have to fill this out. Would you be willing to do so?" The representatives from the farm organizations would be expected to bear this element in mind, if we should happen to fail.

While Dr. Eckler was talking, my mind went back to some of the advisory committee meetings, and I think if you could have been present you would have agreed that to some extent, perhaps not as fully as is desirable, but to some extent this question kept being raised formally in the discussions. Many questions that were proposed did not make the grade, in part because there was a feeling this was not a proper type of question to put in this setting of a census of agriculture where the replies are compulsory.

There was no question the information might be desirable. It was argued vigorously at times that it would be desirable. But this was over the line where the committee felt, and we felt, that we had any business to put the farmer in the position of having to answer the questions.

Mr. GALLAGHER. When you make a recommendation, and you do have a consensus of the advisory committee, is the question or the form of question subjected to a reviewing authority before the questions are made part of the questionnaire that people are compelled to answer?

Mr. TAEUBER. The determination in the first instance is made by the Director of the Bureau by delegation from the Secretary of Commerce, and then, as is true of all public use forms, in compliance with the Federal Reports Act, these are reviewed by the Bureau of the Budget, the Office of Statistical Standards before we are in a position to say that this is a part of the census questionnaire.

Mr. GALLAGHER. Then you allow the question of privacy really to be reviewed by the Bureau of the Budget?

Mr. TAEUBER. This I am sure is one of the considerations that they would raise.

Mr. GALLAGHER. I would think they would be more interested in the budgetary aspects than of the privacy of individuals.

Mr. TAEUBER. Perhaps the Office of Statistical Standards would want to respond to this directly, but that Office is much more concerned with the statistical project and the aspects of the impact on the public than they are with the budgetary aspect of it.

Mr. GALLAGHER. I know that is correct, and one of the things that worries this special inquiry, is that there is a general tendency to allow the Bureau of the Budget to worry about all sorts of things other than their statutory duties, which are budgetary, not necessarily a policymaking institution, where one would be overly concerned with the privacy of individuals.

I was interested in your statement earlier that this does not affect very many people. If it affects one or two, I think we have a great concern.

Yesterday I had a conversation with Admiral Rickover, who was discussing the psychological personality type test, and it was his opinion that if he had to take the MMPI as a prerequisite to entering Annapolis, that he would never have made it, and therefore that would have been one individual that would have been precluded from service in the U.S. Navy, and the country would have suffered a great loss. In fact, he had a suggestion on personality testers, that we put them all on an island, give them a lot of red crayon to play with and test each other and let the rest of the Government get on with its business.

So the concern is, if this does affect one or two people, that we are then concerned. But I wonder whether or not you can totally rely on this aspect of questioning, and allow that to be a prime consideration of the Bureau of the Budget, or whether in fact it should not be a prime consideration of the agency itself.

Mr. TAEUBER. Let me add one other element in this.

Having gone through this review process, which takes many, many hours of discussion, both within the staff and with this advisory committee and with the Department of Agriculture in detail, we then put together a trial schedule. We take it out into the field, and test it. We did this in 12 different parts of the country. We simply selected sample counties. We hired enumerators, and we went out as observers, and tried this out, just to see what are the reactions of the people who are going to be asked to answer these questions. In the light of that, some questions are dropped, some are modified.

If we run into real resistance or objection or misunderstanding, misinterpretation, other difficulties, this would lead to a reconsideration on our part before the thing is made final.

Mr. GALLAGHER. Do you run into any resistance?

Mr. TAEUBER. Very, very little.

Mr. GALLAGHER. Would this be due to apathy or that people are conditioned to answering questions?

Do you view this as a healthy thing or an unhealthy thing, that people do not resist Government intrusion?

Mr. TAEUBER. We have not put that type of question to them.

Mr. GALLAGHER. I think if I were boarding in a house on a farm, and the farmer came down and said "Friend, I want a full disclosure of all of your assets, all of your income, everything about you," I think that I would find that objectionable, and 3 percent of the farm population are subjected to this.

Mr. ECKLER. Mr. Chairman, I think I would like to withdraw from defending that particular element of the farm schedule.

I think that this is the kind of thing that did not get to my personal attention as a detail. Some of these things do come up as a result of this kind of inquiry and others. I believe that we ought to have that kind of mechanism for direct reporting as you suggest if we must collect that.

I have a personal question I would raise as to whether that needed to be a part of the census of agriculture. It was put in there, and there were very few objections, as I said before. But in this particular case it is much harder to defend. And the mechanism ought to have been available so that the boarder or lodger could have reported directly.

But even more than that I would raise a question as to whether we could not have limited this to members of the farm family, rather than the farm household.

Mr. GALLAGHER. I personally feel that would be more desirable.

Mr. ECKLER. Yes.

Mr. GALLAGHER. It might even keep a fellow's monthly board at a steady rate rather than the farmer finding out he could pay a little more.

Mr. ECKLER. Yes.

Mr. GALLAGHER. But over and above the issue of privacy, Mr. Randall, what happens in the Agriculture Department on this type of thing?

Do you rely on the Bureau of the Budget to check out this type of policy or review it?

Mr. RANDALL. Mr. Chairman, our involvement in this situation starts with our suggestions as to the kinds of data that we would like to have collected in the census of agriculture.

Our interests specifically in this off-farm income is a result of requests from our administrators and from others for this kind of estimate. We participate in a Department-wide review of all the suggestions that are made for questions to be included in the census of agriculture, and the result of this consideration in the Department then goes to the advisory committee that Mr. Taeuber mentioned, for consideration there.

Our primary interest is consideration of how badly we need the data in relation to other types of data that are being requested, since there is always a need in the mind of at least some person for several times the amount of data that can actually be included in the census questionnaire.

Mr. GALLAGHER. You rely on the advisory commission and the advisory commission relies on the Bureau of the Budget to review this.

I am wondering whether or not we could in fact reverse the procedure, so that you people yourselves have this uppermost in your minds, along with the necessity of obtaining data.

I am wondering whether or not we could enlarge the advisory committee to include a person whose main function would be to serve as a watchdog on matters involving invasion of privacy. I'm thinking of someone with one of the bar associations, knowledgeable on this problem, or a university professor.

Mr. RANDALL. From the Department's point of view, I see no reason why this could not be done, Mr. Chairman, but I do not want to leave the impression that the Department is completely unmindful of the question of privacy.

Mr. GALLAGHER. Oh, no, the special inquiry is aware of this.

What the special inquiry objects to frankly is allowing a little too much room for shifting or, rather, allowing the responsibility to repose in the Bureau of the Budget on matters relating to privacy.

As a Member of the Congress, I would think that the Bureau of the Budget has all kinds of other problems. I see now they are even going to try and balance the budget this year, so you know they are not going to have much time for that sort of thing.

So the special inquiry feels that you are trying to do a fine job in this, but there are a few holes and this is one of them. One of the

problems of course, is that sometimes the enumerators themselves are neighbors of the people they interview. I realize the law supposedly protects the confidentiality of the information obtained, but I wonder if this is actually the case.

Do you think there is any possibility of some of this information being bandied about in the community?

Mr. ECKLER. Mr. Chairman, if I might comment on that, whenever we get any evidence that an enumerator has not conformed to the law in this, we have an investigation made, and we aim to have action taken.

I think that there are sometimes complaints made that may represent just mischievous gossip and so on. I personally doubt if there is very much of this misuse, but there is the opportunity for it.

Mr. GALLAGHER. What if a farmer should fear this type of thing, or an individual? What steps are taken to protect his privacy?

Mr. ECKLER. If he fears this?

He is supposed to be able to report directly to the crew leader who is the supervisor over the enumerator, or to report directly to the district office under which the crew leaders and enumerators are working.

Now in the future, as we indicated, we have hopes that we may come closer to having this on a mail basis, so that the farmers receive the forms and can mail them directly to the district office and not have them go through an enumerator at all. That would be the means that would be helpful.

Mr. GALLAGHER. The special inquiry would welcome any advancement along this line.

Mr. ECKLER. I think it is an improvement from the point of view that you are expressing interest in, and also from the point of view of efficiency, so it is a direction in which we want to move.

The listing, however, of farm families is a somewhat more difficult matter than the listing of city families, because we do not have equally good means of identifying addresses.

Mr. GALLAGHER. Of course there are many problems there.

Would it be possible—what about a married son of a farmer living in a farmhouse who might not wish to share all of his financial information with his father, or a daughter-in-law who might have built up her standing a little more than she might be entitled to?

For instance, the question on education, or how much formal education she may have had or may not have had. Do these people have an option to protect their privacy in any way?

Mr. ECKLER. I think this same effort that you encouraged us in with regard to the nonrelated people could be extended to the related people, so that in any case where there is any problem, we could have it made clear that separate reports could be made and furnished directly to the district office.

Mr. GALLAGHER. Could we shift the burden a little bit, and advise them affirmatively of this, rather than wait until a problem should arise, and then allow them to take this course?

Could this be made part of the instruction?

Mr. ECKLER. Part of the instructions?

Yes; it could be made part of the general publicity about the census.

Mr. GALLAGHER. Yes?

Mr. ECKLER. Yes; I think that could be done.

If we continue to take it by the conventional enumeration methods, one of the problems is to be sure that each enumerator does tell the farmer of this option. You cannot be sure that he takes the extra time to do that, but you could have publicity which gets this across to farmers.

Mr. GALLAGHER. And you would welcome this suggestion to carry out this type of campaign, publicity campaign?

Mr. ECKLER. I think we would welcome any suggestions the committee wants to give us, Mr. Chairman.

Mr. GALLAGHER. We would like to give you that one.

The special inquiry feels that in the interest of efficiency as we have seen it, there has been a breakdown in this area of concern, and that if we could at least make it a part of the consideration of the census taking, that in the long run we would be serving the country, I think, in a better respect.

Could you advise whether or not, and for the record would you state the law under which the confidentiality of census information is protected?

Mr. ECKLER. Yes.

Basically, it is title 13 of the United States Code; section 9 of that title gives the provisions regarding confidentiality.

Would you like to have that submitted for the record, Mr. Chairman?

Mr. GALLAGHER. Yes; we would like to have it made part of the record.

Mr. ECKLER. You do not want me to read it here?

Mr. GALLAGHER. No. We would like to have you submit that for the record.

Mr. ECKLER. All right, we will be glad to.

(The document referred to follows:)

§9. Information as confidential exception

(a) Neither the Secretary, nor any other officer or employee of the Department of Commerce or bureau or agency thereof, may, except as provided in section 8 of this title—

(1) use the information furnished under the provisions of this title for any purpose other than the statistical purposes for which it is supplied; or

(2) make any publication whereby the data furnished by any particular establishment or individual under this title can be identified; or

(3) permit anyone other than the sworn officers and employees of the Department or bureau or agency thereof to examine the individual reports.

No department, bureau, agency, officer, or employee of the Government, except the Secretary in carrying out the purposes of this title, shall require, for any reason, copies of census reports which have been retained by any such establishment or individual. Copies of census reports which have been so retained shall be immune from legal process, and shall not, without the consent of the individual or establishment concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.

(b) The provisions of subsection (a) of this section relating to the confidential treatment of data for particular individuals and establishments, shall not apply to the censuses of governments provided for by subchapter III of chapter 5 of this title, nor to interim current data provided for by subchapter IV of chapter 5 of this title as to the subjects covered by censuses of governments, with respect to any information obtained therefor that is compiled from, or customarily provided in, public records.

Mr. GALLAGHER. Are there any exceptions to confidentiality of census information?

Mr. ECKLER. There is in title 8, or rather, section 8—I was conferring with Mr. Erickson.

Mr. GALLAGHER. That is different than the old section 8?

Mr. ECKLER. Yes. There is a provision that at the discretion of the director, certain information can be furnished. Suppose we furnish that too. It is a very narrowly defined kind of exception, and I think we ought to supply that to you.

Mr. GALLAGHER. We would like to have that.

Has this discretion ever been exercised?

Mr. ECKLER. Yes, age search information.

(The matter referred to follows:)

§8. Certified copies of certain returns; other data; restriction on use; disposition of fees received

(a) The Secretary may, upon a written request, and in his discretion, furnish to Governors of States and Territories, courts of record, and individuals, data for genealogical and other proper purposes, from the population, agriculture, and housing schedules prepared under the authority of subchapter II of chapter 5, upon the payment of the actual, or estimated cost of searching the records and $1 for supplying a certificate.

(b) The Secretary may furnish transcripts or copies of tables and other census records and make special statistical compilations and surveys for State or local officials, private concerns, or individuals upon the payment of the actual, or estimated cost of such work. In the case of nonprofit organizations or agencies the Secretary may engage in joint statistical projects, the cost of which shall be shared equitably as determined by the Secretary and provided that the purposes are otherwise authorized by law.

(c) In no case shall information furnished under the authority of this section be used to the detriment of the persons to whom such information relates.

(d) All moneys received in payment for work or services enumerated under this section shall be deposited in a separate account which may be used to pay directly the costs of such work or services, to repay appropriations which initially bore all or part of such costs, or to refund excess sums when necessary.

Mr. GALLAGHER. What would be the justification for the exercise of this discretion?

Mr. ECKLER. That this is information which is needed, as it says here for genealogical and other proper purposes. This is at the discretion of the Secretary which in turn is delegated to the Director.

* * * may, upon a written request, and in his discretion furnish to Governors of States and territories, courts of record and individuals data for genealogical and other proper purposes—upon the payment of actual or estimated cost of searching the records and $1 for supplying a certificate.

This is given to the person who supplied the information or his legal representative.

Mr. GALLAGHER. Is that the only exception?

Mr. ECKLER. This is the only exception that exists.

An individual may want this for age, proof of age for purpose of passport or employment certificate, social security, or something of that sort.

We do about 200,000 of those jobs each year.

Mr. TAEUBER. But if I might add, Mr. Chairman, this information is supplied to the individual who initially supplied it to the Bureau, or on his order it may be supplied to someone else. But it cannot be supplied to a third party without the authorization of the person who initially provided it to us.

Mr. GALLAGHER. I see. That is an excellent safeguard.

Mr. ECKLER. And there is one other safeguard I should note. "In no case shall information furnished under the authority of this section be used to the detriment of the persons to whom such information relates."

Mr. GALLAGHER. That would include any investigation being made about the individual, or any matter relating to taxation?

Mr. ECKLER. Right.

Mr. GALLAGHER. Has there ever been an exception made in this?

Mr. ECKLER. Not to the best of my knowledge.

Mr. GALLAGHER. How about to the best of anyone else's knowledge?

Mr. ECKLER. I know of no one who knows of an exception, and I believe that this has been protected in an inviolate fashion.

Mr. GALLAGHER. What would you do if a court order was presented to you for the obtaining of information, say, on family x on a farm?

Mr. ECKLER. In this case there has been an example in which—I do not think the treatment of court orders has been uniform.

Mr. GALLAGHER. They are not?

Mr. ECKLER. Sometimes court orders have been disregarded.

Mr. GALLAGHER. That is one of the things we worry about.

Mr. ECKLER. In at least one case, I believe under a court order, the information on the individual was furnished to the court with a separate statement regarding the statutes and calling attention of the judge as to the conditions under which this was furnished, and I think the transcript was returned unopened.

Mr. CORNISH. You mean the court realized it was asking for information it had no proper authority to get?

Mr. ECKLER. Yes; I believe the only case I know of was turned back to us.

Mr. GALLAGHER. Can any investigative agency of the Federal Government have access to this information?

Mr. ECKLER. No, sir.

Mr. GALLAGHER. Without the express consent of the individual?

Mr. ECKLER. That is correct, sir.

Mr. GALLAGHER. There has never been an exception to this?

Mr. ECKLER. Again, not to the best of my knowledge, and I believe there never has been.

(The following information was later submitted by the Bureau of the Census for inclusion in the record:)

It might be noted that in time of war special provisions may be set up to provide for the transfer of information among Federal agencies. For example, section 1402 War Powers Act, passed March 27, 1942, citation 56 Stat. 176, provided that during this war time Director could turn over or release any records from one agency to another. Under that order—Executive Order 9157 of May 9, 1942, citation 7 F.R. 3505 directed Secretary of Commerce to turn over any of his records under certain conditions. The War Powers Act itself expired May 3, 1947, as to that section.

Mr. GALLAGHER. Mr. Rosenthal?

Mr. ROSENTHAL. I have no questions, Mr. Chairman.

Mr. GALLAGHER. Mr. Romney?

Mr. ROMNEY. Dr. Eckler, I wonder if you could just give us a definition so that our record is completely understandable on what you meant by members of the operator's immediate family. Who are members of the immediate family?

Do they include in-laws, for example?

Mr. ECKLER. All related members who are living with the operator.

Mr. ROMNEY. Does this go to any degree of relationship, uncles, cousins, aunts, grandparents?

Mr. ECKLER. It would include any of those, would it not, Dr. Taeuber?

Mr. TAEUBER. It would.

Mr. ECKLER. When we say immediate family, we are trying to differentiate those from related people who are not living in the household and who may be living somewhere else.

Mr. TAEUBER. Related by blood and marriage or adoption is the standard language we use.

Mr. ROMNEY. I see.

Then I would like to ask this question. You indicated that the sampling that is used in connection with the census is objective. There are now quite sophisticated sampling techniques. They are referred to generally as statistical sampling techniques whereby the use of a very small sample, a relatively small sample, can be very effective in ascertaining the facts concerning a fairly large group or universe, as the term is used.

Does the Bureau of the Census continue to attempt to perfect its sampling techniques with the view to reducing the size of samples in your question that you must use for your questioning?

Mr. ECKLER. The answer is "Yes", and if I might enlarge upon that, Mr. Romney, I believe the Census Bureau has been one of the leading agencies in the Government, perhaps in the world, in the application of sampling to the measurement of economic and social phenomena, and that the contributions which have been made from some of our staff have been widely followed by others, and have made very important advances in the matter of getting information from a sample of the total.

In connection with planning all of these samples, we have one objective, to keep the number as low as possible consistent with the types of data being needed, and the size of this sample, 20 percent, is determined to a very considerable extent by the kinds of tabulations for which we want to present the data for counties and larger areas, and by the detail of cross-tabulation.

If we had a smaller sample than that, it is believed that the reliability of the results would not be sufficient to meet some of the objectives. But our people are working hard on improving methods of sampling, and we believe we have quite highly sophisticated techniques.

Mr. ROMNEY. Have you completed your studies on the relative cost of using mailing techniques for obtaining your information as opposed to the use of individual enumerators, and if so, what results do you have?

Mr. ECKLER. Our studies on the relative costs and efficiencies, the desirability of these approaches, is not yet completed. We have recently had a census in Cleveland which is the second large scale one. There was one in Louisville last year. The results are being analyzed and further work is being done, and some time in the next few months we hope to arrive at a definite position as to what recommendations ought to be made concerning the procedures to be used in 1970, the extent to which mail should be used and we should shift to the new approach.

Mr. TAEUBER. I think I would like to add to that, as part of the 1964 Census of Agriculture, we did select a 17-county area in Indiana and Illinois, in which we did the census of agriculture by mail insofar as possible. But we have not yet been able to get a full picture of the relative costs and the relative efficiency of this operation.

Mr. ROMNEY. Dr. Eckler, I wonder if it would be possible, when you have some fairly definite results, that you can draw conclusions from, if you could supply us with this information, supply the special inquiry with this information?

Mr. ECKLER. We will be very happy to do so, Mr. Romney.

Mr. CORNISH. Mr. Director, you state that the outside income is broken down into categories in order to arrive at a more accurate figure.

Mr. RANDALL. I stated that.

Mr. CORNISH. You indicated it somewhere.

Mr. ECKLER. Yes; I think it is implied also in my statement.

Mr. CORNISH. Both of you did, actually?

Mr. ECKLER. Yes.

Mr. CORNISH. I wonder when the enumerator goes to the farm, could he not ask the farmer if his total outside income figure included all of the items listed in the categories; would this not give you a similar accuracy without a written breakdown on the form itself?

Mr. RANDALL. There are really two problems here as far as I am concerned.

One is the figure for the year of the census itself, and I think Mr. Eckler's questions about details related to that question.

The other question as far as I am concerned, or as far as the Department is concerned, is that we do not have census information or sample information for every year. We do need to make an estimate for every year.

And so, since the components do not necessarily change from one year to the next in the same way, in our opinion at least we can make a better estimate for the years for which we do not have a census figure, if we have the components so that we can take wages and salaries, for example, and estimate the changes in that component, and take income from off-farm business and estimate the changes in that component, and do it with each of these separate components and add them together which gives us a better estimate for the years in between censuses than we could if we just had a global total and were forced to somehow or other estimate how this total changed from one year to the next. This is the importance of the separate components from our point of view.

Mr. ECKLER. I think I would add that, in addition to Mr. Randall's testimony regarding the need for the parts, that the total would also be more accurately obtained if we got the parts and put them together, rather than to do this checklist approach.

I think we cannot be sure that the enumerators will do that very consistently or the person responding will respond very consistently. He will just say yes. We get more complete reports by going through the parts.

Mr. CORNISH. Under the present system, the farm operator indeed provides this information for other people. I wonder if it would not be more accurate, which is one of your objectives as you have just said, if the financial information was gained from the individuals rather than someone else.

Mr. ECKLER. I think it would be.

Mr. CORNISH. And also before you were talking about the fact that there seemed to be very few objections to the types of questions asked on such questionnaires as the farm census. I think this was explicitly pointed to in the sample which was mentioned earlier.

Do you not think also that the American people are so used to being asked to answer question on forms and questionnaires that even if they did have any objections, they probably would just say, "Well, I will just go ahead and answer it because I know if I do not I will get in trouble. I am required under the law to do this. If I protest, I will have to go to court and this is going to cost money, and I really have no way of appealing this."

Do you not feel that the inclination is, whether you like the questions or not, to just answer them and shut up?

Mr. ECKLER. Mr. Cornish, I take a somewhat more optimistic view about our people. I am inclined to think that the greater acceptance of questions and the better cooperation are due to the fact that more and more people realize that a nation like ours needs to have statistics for guidance in many decisions, decisions that are made at the local level, the national level, by businesses, and so on.

They get some exposure to this in the schools through the statistics that the children talk about, and get exposed to, and I believe that the Nation as a whole is getting more sophisticated in this matter and there is a greater acceptance of the fact that when you operate in a free society, you need information about the activities of our economy.

So I am hopeful that it is not just because of a passive acceptance, but rather a belief that this is a part of the duty of citizens in this kind of society.

Mr. CORNISH. I would agree, Mr. Director, that perhaps the citizen might not have any objection to answering all of the other sections of the farm census questionnaire, but possibly he might have a legitimate objection to answering some of the questions in section 11.

This raises the point what happens in this instance, where a person does have what he considers to be a legitimate objection.

Mr. ECKLER. I would like to expand a little bit, and this partly is brought about as a result of some of the chairman's remarks earlier.

I think that the Census Bureau does have a focal responsibility in this matter of considering privacy, and while we welcome the help of the Budget Bureau, which has to review these things, I think that we do have a very key role in this matter. It is forced upon us by just the nature of things. We are in the business of taking censuses and surveys. If we become characterized as an organization that is asking unreasonable things, is improperly guilty of undue prying or anything else, it damages our ability to do our job, which we think is an important job.

So we must be, I think, continuously mindful of the fact that an unreasonable inquiry in one area may affect cooperation in other areas, whether it is a census or whether it is a job we do for another agency. We take all this seriously because we do a good many jobs for other agencies and they sometimes have some questions that we have great concern about. We are the ones that bear the burden, we are the ones that have agents out there asking questions, and we expect to be in business for some time.

So this is a concern. If citizens come to the conclusion that we are asking prying questions, questions not pertinent to the purposes of the job, it will have an effect. We give a great deal of consideration to this, and I think our committee, as Dr. Taeuber says, also gives a great deal of attention to this.

So if there are questions of the type that seem to be completely alien to the inquiry, or an invasion of privacy in a way that has been referred to here earlier today, we want to identify those and we want to take steps to have them eliminated.

Mr. GALLAGHER. The Chair thanks Mr. Eckler for that statement. We certainly concur.

In fact, that was one of the reasons why we wanted to bring out that the information was adequately protected, so that you could carry out your duties more efficiently. This inquiry is concerned with what you said.

In a free society, there are a great many activities that must be measured, but with all the questionnaires and with all of the things that we are swallowing now, there is a very great possibility that we might be questionnairing our way out of a free society, and I think it is a healthy thing if we can continue to review our policies, and if we take a fresh look at where we are headed in this entire area.

I wonder, perhaps in a lighter vein, whether or not the fact these 332 questions must be answered by farmers, could be a reason why more people are leaving the farm?

Another thing, why do you question them merely about Irish potatoes?

Mr. RANDALL. I think the sweetpotatoes are on there some place, are they not?

Mr. GALLAGHER. No, just Irish potatoes.

Mr. TAEUBER. You perhaps have a schedule for a State that does not grow any significant quantity of sweetpotatoes.

Mr. GALLAGHER. Yes; this is a New Jersey questionnaire.

Mr. TAEUBER. The Georgia questionnaire asks for sweetpotatoes as well.

Mr. GALLAGHER. You mean New Jersey merely grows Irish potatoes?

There are a lot of people in New Jersey because there were no Irish potatoes in Ireland, notably my grandparents.

Mr. TAEUBER. The sweetpotatoes must not be commercially significant.

Mr. GALLAGHER. But Irish potatoes are commercially significant in New Jersey?

Mr. TAEUBER. In New Jersey.

Mr. GALLAGHER. And no other potato?

I am glad that the Irish are making a contribution that is significant enough to point out in the questionnaire, that there are no other potatoes.

Mr. CORNISH. Mr. Chairman, during our informal interviews prior to this hearing, we spoke to Mr. Randall and he gave us a rather interesting reaction on some of his personal views in regard to Government questionnaires and other forms that people are often asked to fill out. I wonder if he might be willing to share some of those with us today?

Mr. GALLAGHER. We would be delighted to hear them.

Mr. RANDALL. I will be glad to, Mr. Chairman.

I think my observation, Mr. Cornish and Mr. Romney, was along the line that although I am a statistician by profession, and if people generally could quit answering questionnaires I would be unemployed I guess, I personally react to questionnaires in about the following

manner, and it does not make any difference whether it is Government questionnaires or some other kind.

If I am convinced that the information that is being asked for on the questionnaire is needed and will serve a useful purpose, and is a proper concern of whatever agency is responsible for the questionnaire, I will be glad to fill it out to the best of my ability. But if I think they are asking for information that is not essential to the express purpose of the questionnaire, I will tend to throw it in the wastebasket.

Mr. GALLAGHER. You are fortunate. This is one of the things that we encourage, but unfortunately, many people in Government service until recently, if they did this, would be throwing their career in the wastepaper basket, including some people who worked in very sensitive jobs, who felt that their sex lives and their religious beliefs had no bearing on their typing ability, and did just that, and they ended up where the questionnaire ended up.

So we encourage this kind of thinking, and I am glad that this spirit still prevails. If we could engender a little more thinking like this, perhaps we could not only acquire better and more significant information, but at the same time we would be protecting the individuals involved.

Mr. ROMNEY. I do not know which one of you gentlemen would care to comment on this, but this is a followup on a question that was just asked.

On the farm census form, section 11, there are columns 11 and 12 which seem to have lumped together in them a number of sources of income. I am wondering whether or not it may not have been a rather arbitrary grouping for this reason. Some of these sources of income would tend to be stable or even constant. Others would tend to fluctuate in accordance with the economic conditions.

If the totals of these columns are to be benchmarked for your further statistical analysis, how can they really serve that purpose well when they may consist of categories of income which are not compatible?

Mr. RANDALL. I will comment on that and if any of the rest of you want to comment, that is all right too.

I would say, Mr. Romney, that even this four-component setup is in itself a compromise back from the most desirable situation.

If you had what the statistician himself would really like to have, you would have asked for a good deal more detail. But you have to make compromises between what you want and what seems to be practicable, and this is the compromise that was arrived at through this review in the advisory committee process as giving us as much useful information as possible without becoming unreasonable in terms of the question on the questionnaire.

Yes, you could have asked for additional detail, but you also have to compromise between what seems to be the most desirable from the standpoint of what you need and what is practical from the standpoint of inclusion in the questionnaire.

Mr. ECKLER. You see Mr. Romney is getting to be a statistician. He looks at these parts and sees some behave one way and others in another way, so we ought to have additional categories.

Mr. RANDALL. As a statistician and in charge of making these estimates, if I were asked what I would really like to have, I would and probably did ask for more detail than this. But this is the

compromise that comes out of the need of the statistician and the reactions of the advisory committee and the people in charge of the census as to what is practical to ask people to provide.

Mr. ROMNEY. It may not be a question of whether there should be additional categories. It may be a question of fewer categories. But my basic point is, how can the analysis be meaningful when these individual components in the columns do not seem to be compatible and would fluctuate independently?

Mr. RANDALL. The first two categories are reasonably clear cut, and subject to roughly the same general influence. I mean each one is separate to a set of influences. The last two are not nearly so clear cut.

Mr. ROMNEY. These are the ones I had specific reference to.

Mr. RANDALL. Well, my reaction is, this is not as good as I would like to have, but it is the best they will give me and I make do with the best I can get.

Mr. ECKLER. If I may supplement this, Mr. Romney, I think it is true that whenever a census is taken, it may happen to fall in a year which is high in the business cycle or low in the business cycle or somewhere in the middle. So the results may not be, strictly average.

And in interpreting the results of the census and the benchmarks that are provided, allowance has to be made for the fact that it may be unduly high because we were at a very active period or, conversely, unduly low because we are at a low period. The only way to get away from this is to move toward annual surveys, which would give information for each year, but certainly for a smaller number of geographic areas.

And to some extent the Department of Agriculture does move in that direction with its annual surveys, but this is a good point which you really cannot get away from in any census. You may happen to hit a year which is quite extreme.

Mr. GALLAGHER. Thank you very much, Mr. Eckler and the other witnesses. The Chair would like to thank you for your cooperation and your excellent presentation, and for your willingness to accept the suggestions that we have made, and we would also like to state that we hope there will be an awareness in other agencies of the Government such as you obviously have for this problem, the problem for the need for the collection of information as well as the very great necessity of protecting the people that we are collecting the information on. And so the Chair would like to thank the three witnesses. You are excused.

Mr. ECKLER. Thank you, Mr. Chairman.

(The following were later submitted for inclusion in the record:)

STATEMENT OF ANGUS MCDONALD, DIRECTOR OF RESEARCH, NATIONAL FARMERS UNION

Mr. Chairman, and members of the committee, our attention has recently been called to the fact that certain persons assigned by the Census Bureau of the United States have required farmers to answer certain questions which in our opinion, are an invasion of their privacy. We are referring to questions addressed to farm men and women in regard to income of persons who may be employed by and living in the home of the farmer.

For example, the farmer is required to ascertain the income of such hired men and women in addition to the income derived by employment on the farm. One can easily imagine such questions would prove embarrassing in certain instances,

not only to the farmer and his wife but to those persons living in the home and employed by the farmer. Furthermore, such information might result in some instances in a weakening of the bargaining power of the farmworker. If a farmer has learned that his employee had a sizable outside income he would perhaps be in a position to embarrass the employee by infringing on his rights as a free agent in regard to payment of wages.

In any event, no matter whether such questions resulted in embarrassment or weakening of bargaining position, we consider that such questions may be a violation of the 1st and 14th amendments of the Constitution of the United States. These amendments are fundamental to our liberty and should not be subject to the slightest possible violation.

Violations of the so-called free speech provisions of our Constitution have been a subject occupying more public debate than any other during the last few years.

The passage of the Civil Rights Act, the debate on the pending voting rights law is indicative of the temper of the times which has made farmers and other citizens extremely sensitive to any infringement of their basic liberties.

We therefore urge this committee to make known its disapproval of methods employed to gain census information which are in violation of the spirit, if not the letter, of the Constitution and statutes passed by the Congress.

NATIONAL GRANGE,
Washington, D.C., June 23, 1965.

Hon. CORNELIUS E. GALLAGHER,
Chairman, Special Inquiry, House Committee on Government Operations, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The National Grange strenuously objects to the questions in section 11 of the farm census.

The requirement concerning a breakdown of all off-farm earnings is unnecessarily detailed and requires an unusual amount of work as well as the revelation of personal data not required of other segments of our population. A simple total of earnings should suffice for any purpose the Census Bureau could legitimately have.

The requirement that the farmer acquire the information concerning the earnings of all residents of the house is completely unreasonable in that it makes him legally responsible for acquiring information which he, in turn, has no right or power to acquire. It also places the residents in a position of having to supply highly personal information to someone who is not an officer of the Government.

We consider these requirements to be illegal invasion into the private lives of U.S. citizens, or illegal requirements imposed upon farmers and residents alike in their households and which are unnecessary and inconsistent with the census requirements of other groups.

Respectfully,

HARRY L. GRAHAM,
Legislative Representative.

Mr. GALLAGHER. The Chair would like to call Mr. Edward T. Crowder, Clearance Officer of the Office of Statistical Standards, Bureau of the Budget, and Mr. Carey P. Modlin, Jr., Associate Clearance Officer of the same office.

Under the rules of the committee, you must be sworn.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CROWDER. I do.

Mr. MODLIN. I do.

Mr. GALLAGHER. We welcome you, Mr. Crowder, and Mr. Modlin, to the special inquiry.

Do you have a prepared statement?

Will you please proceed?

TESTIMONY OF EDWARD T. CROWDER, CLEARANCE OFFICER, OFFICE OF STATISTICAL STANDARDS, BUREAU OF THE BUDGET; ACCOMPANIED BY CAREY P. MODLIN, JR., ASSOCIATE CLEARANCE OFFICER

Mr. CROWDER. Yes, Mr. Chairman, we were invited to be on hand and be responsive to two questions.

The first: To what extent does the invasion of privacy enter into the review of questionnaires and reports by the Budget Bureau, and what criteria for approval or disapproval do you apply?

In answer to this, let me say, our review of any questionnaire or report involves a weighing of benefits against burdens imposed on respondents and costs to the Government. Among the elements of impact on the respondent, we consider the sacrifice of privacy and the degree of such sacrifice, taking into account the voluntary or mandatory character of the response.

Almost any questionnaire or report involves some loss of privacy. This is true of the income tax form. It is also true to some extent of census inquiries, financial reports from business, and application forms filed by job applicants or applicants for some privilege or benefit.

The issue therefore is never simply one of whether there is or is not a loss of privacy but of whether a particular question is reasonable and warranted in view of the purpose for which the inquiry is designed and the conditions under which it is carried out.

While our reviewing staff is quick to identify questions of an unusually intimate nature, we customarily pursue the issue in terms of whether the question serves a legitimate purpose, is technically sound for accomplishing that purpose, and provides appropriately for confidentiality.

As a result, our records will not show that a question has been eliminated or amended solely on the grounds that it is an invasion of privacy; they will show instead that the action was based on our conclusion that the question was not reasonably related to a justifiable purpose or was not technically adequate to serve that purpose.

To understand how this review procedure works in practice, it is necessary to understand the scope of our review authority and to distinguish among the several types of reporting proposals on which we act.

Our review activity under the Federal Reports Act of 1942 covers data collection from the public—specifically any inquiry involving the asking of identical questions of 10 or more persons, companies, or other respondents. Thus some of the activity which has been of particular interest to this committee is not reviewed by us because the subjects are Federal employees rather than members of the public.

Among the reporting procedures that do involve the public, and are subject to our review, and which are most likely to raise questions of an invasion of privacy, one important class is the application for Federal employment.

We concur in the position taken before this committee by Chairman Macy of the Civil Service Commission that personality tests have no legitimate role in regular job application procedures.

On the other hand, it is well known that the Standard Form 57—the application for Federal employment—contains questions of an intimate nature on drinking, arrests, employment experience, et

cetera. Such questions as appear on this form we have examined and approved.

Another important area in which a question of invasion of privacy may be raised is that of research in the field of personality and mental health, best illustrated by the research projects of the Public Health Service. In this area questions of a personal or intimate nature often are involved, but participation is entirely voluntary, and it has been our view that the issue of invasion of privacy does not arise.

These studies, whether carried out directly by Government researchers or through contracts with non-Government research organizations, are evaluated on their merits. We satisfy ourselves that the proposed tests or questions are appropriate in relation to the objectives of the study. If the use of a well-established, standardized test is proposed, we do not attempt to amend it, but only to appraise the appropriateness of its use as a whole in terms of its known attributes and their relationship to the study in question. In making judgments of this sort, we consult experts both within and outside the Government.

In addition to employment application procedures and psychological research projects, there remains a miscellaneous variety of general statistical or administrative reports with respect to which the issue of privacy may arise—census forms, applications for privileges or benefits, surveys of participants in Federal programs, and the like. Here again, we evaluate each case on its merits.

We were also asked to be responsive to the question of what are some examples of how we have amended or disapproved questions which have involved the issue of privacy.

Let me repeat in this connection that such examples as I can cite illustrate not actions in terms of the simple issue of invasion of privacy, but judgments as to appropriateness and technical adequacy.

Item 1: We received a proposal to administer a well-known standardized personality test to 6- to 12-year-olds in connection with a health examination survey. We questioned the appropriateness of this particular test for children as young as 6 years. Consultation with psychologists confirmed the view that the test, however valid for other purposes, was not appropriate in this case, and it was disapproved.

Item 2: In a recent review of a group of naturalization and visa application forms we questioned the propriety of requiring a report of all cases of "offenses" against the law regardless of whether they had resulted in arrest or conviction. We were able to work out with the Immigration and Naturalization Service some modification of the original language, but the INS demonstrated that they were governed by the requirements of their statute and that little could be done amendment to existing law.

Item 3: About 15 years ago we worked with the Civil Service Commission in revising Standard Form 57 to make certain questions on personal conduct more realistic, less burdensome, and less likely to evoke false answers—as in the case of the question requiring a listing of all traffic violations regardless of seriousness.

Item 4: We have recently reviewed the application form for counselors to disadvantaged youth under the CAUSE II program of BES. This questionnaire was designed to obtain information on the socio-economic background of the applicant and his ability to understand

the youths with whom he would be working, and contained a number of questions not ordinarily asked in such forms. We questioned the appropriateness and usefulness of a number of items. We agreed that a number of them are proper in this context. We were not persuaded as to the appropriateness, usefulness, or clarity of a number of the questions. Some were amended and about 25 were eliminated.

Item 5: A study of unemployed Studebaker workers in South Bend in its original form contained a battery of psychometric questions. These were all eliminated on the grounds that their technical validity for the study had not been established.

Item 6: The Public Health Service proposed to administer to a group of normal male citizens a personality test designed to test changes in personality in dope addicts when certain central nervous system drugs were administered. The purpose of this was to establish a comparison between results obtained from a normal and from an addicted group. The normal subjects were, as part of the battery, to answer questions about physical symptoms of addiction. The men chosen in the sample were to take the test at their own convenience and were not to discuss it with their wives. The plan appeared to us to have technical deficiencies, such that it would not result in unbiased information. The agency ultimately withdrew its request for approval.

Item 7: A special survey of civil defense local officials was proposed by the Defense Department with the object of throwing light on what makes for effective civil defense activity and leadership. We insisted on the deletion of questions on the religious and political affiliations of the respondents as irrelevant.

Mr. CORNISH. When did that review take place in CAUSE II?

Mr. CROWDER. This was within the last few weeks.

Mr. CORNISH. Was this following the hearings that were held before the special inquiry here?

Mr. MODLIN. The answer is "No." It occurred before.

Mr. CORNISH. Thank you.

Mr. CROWDER. That concludes what I had prepared.

Mr. ROSENTHAL. Mr. Horton?

Mr. HORTON. I do not have any questions.

I am sorry I was not here during the early part of the testimony.

Mr. ROSENTHAL. Mr. Romney?

Mr. ROMNEY. Mr. Crowder, would you please expand somewhat on the term you have used as one of your criteria, "appropriateness." This is obviously quite a general term, and I wonder if you would relate it to something more specific.

Mr. CROWDER. The point I was making was simply that any question must be judged in terms of what it is intended to do, and whether that objective is a legitimate objective and whether the question actually accomplishes it.

Now, to use one of my examples, the Federal application form for employment, certain questions on personal conduct are admittedly personal, and yet I doubt if there could be much argument that they are appropriate to the purpose of the form and legitimate.

Mr. ROMNEY. You used this also in connection with your description of your decision on some of the CAUSE II questions, and said you questioned the appropriateness, usefulness, and clarity of a number of the items.

What did you mean in this connection by appropriateness?

Mr. CROWDER. Let me make a general answer and then, if it is desirable, Mr. Modlin, who happened to work on that one, may expand.

There were a great many questions in the CAUSE II application, and they appeared, a number of them, to us to have a very questionable value. We looked at the multiple-choice alternatives, and it was not at all clear what a good answer or a bad answer would be. We were not persuaded that the answer would be discriminating with respect to any legitimate purpose of the question. We debated with the sponsors and in a number of cases they withdrew the questions.

Mr. MODLIN. Let me be specific in an illustration.

One of the questions that was eliminated asked for the definition of the word "pressed" that would be given by "a poor city boy." This was essentially the way the question was asked. One of the major objectives of the entire questionnaire is to identify persons who are familiar with or who came from disadvantaged backgrounds, and the "poor city boy" is at least one way of getting at this.

Three of us were discussing the question and two of us were very dogmatic that we knew the answer, and the third one was dogmatic that he knew the answer, too, except that it was not from his own experience. It was from what experts in the field had told him. We all three had different definitions of the word. So in that case it did not seem appropriate to retain the question, because there could be varying appropriate or correct answers depending on the background, in a geographic sense, of the persons answering the question.

It so happened that one of us was from the South, and another was from the North. Our dogmatic, different answers reflected our different geographic origins. The third one, speaking as the expert in this case, said that "pressed" has an entirely different meaning to a poor city boy.

Mr. ROMNEY. Would this not also fit under the question of clarity of usefulness?

Mr. MODLIN. The question was perfectly clear to all three of us. It would not serve the intended purpose adequately, and therefore one could say that it was deleted because it was not useful, as well as not appropriate.

Mr. ROMNEY. In your discussion I have not yet seen how the element of invasion of a person's privacy becomes a part of the general issue of appropriateness.

Could you comment on whether it is a part of this factor of appropriateness?

Mr. CROWDER. Let me comment on that, Mr. Romney. I think it could be put this way: that the issue of privacy is implicit in very many questions that go beyond impersonal facts that are completely devoid of any such implications of intimacy.

When we identify a question which does have a certain degree of intimacy, we give it a particularly hard look, and the issue then is, is it warranted in this case to ask this intimate question? So that the actual review proceeds in terms of the justification for it, and we end up with a judgment as to whether it is legitimate under these circumstances to pry this deeply into the respondent's affairs; and we may decide that it is or that it is not.

This is somewhat parallel to another issue that is also implicit in a questionnaire, namely, the burden of filling it out. There is some

burden involved in filling out any questionnaire, and here also we ask ourselves whether the purpose to be served warrants the imposing on the respondent of this burden, which may be moderate or very great, as the circumstances may vary.

Mr. ROMNEY. When you receive a questionnaire or form for clearance, what consultation, if any, do you have with the agency which is proposing the form or questionnaire on all points, and in particular the issue you have just talked about, namely, privacy and appropriateness?

Mr. CROWDER. Let me outline our general procedure and how this fits into it. These proposals come to us formally through the Government mail in a prescribed form with a statement outlining the nature of the proposal. They are registered in our so-called clearance office. They are assigned to that member of the staff whose assignment covers the area in question, and this staff member studies the dockets at an appropriate time, in terms of his own work program; he consults the sponsors, and asks questions which have occurred to him from his review of the dockets.

There are some cases that are so simple that no questions occur, and these go through rather quickly. There are many cases where questions do occur. Sometimes they are answered over the telephone; sometimes there are meetings with the sponsoring agency. Sometimes there are interagency meetings, if more than one agency is involved, and in a number of cases there are meetings with outside advisory groups. This is particularly true of inquiries going to business. But there is a great deal of variation and flexibility in the review process.

I can say simply that our reviewers identify the issues that seem important, and they pursue them with the sponsoring agency and with any other interests or agencies that are involved.

Mr. HORTON. Mr. Crowder, do I understand that your special function in your office is sort of a clearinghouse for all these questionnaires by all the agencies of Government?

Mr. CROWDER. That is right.

Mr. HORTON. I mean if I went down to your office, I would be able to find all the questionnaires that all the agencies and offices of Government are asking and sending out?

Mr. CROWDER. You would find a file of all active repetitive forms, and a record of the surveys, the single time surveys, that have been made.

Mr. HORTON. Do you have a lot of these in your office?

Are there great numbers of them or are there very few?

Mr. CROWDER. The number of active forms, which is our unit of counting, at the moment is in the neighborhood of 4,600.

Mr. HORTON. Do you mean to tell me that there are 4,600 different questionnaires that go out from different agencies of Government?

Mr. CROWDER. You would not call all of them questionnaires, I do not believe. They are what we call "report forms." They are instruments which ask questions, and some of them are no bigger than a postcard and some of them are 40 pages long. But there are that many.

Mr. HORTON. Would this, like this Department of Commerce, Bureau of Census questionnaire, have gone through your office, too?

Mr. CROWDER. Yes.

Mr. HORTON. I did not mean to interrupt your questioning, but I would like to ask a few questions. Were you finished?

Mr. ROMNEY. Yes, sir.

Mr. ROSENTHAL. Proceed, Mr. Horton.

Mr. HORTON. I was interested in your testimony with regard to what you do in more or less approving these forms, and your technique for this, and then also the statement that you made with regard to some of these so-called intimate questions.

Do you have a large number of these questionnaires that ask these so-called intimate questions?

Mr. CROWDER. Well, if we mean questions of the type illustrated by the examples I have given, I would say not a large number, but I am not prepared even to estimate the number. This would take a little research in the files.

Mr. HORTON. I do not have a copy of your statement so I am not sure just which ones you refer to, but what is your definition of an intimate question?

Mr. CROWDER. I am afraid I do not really have one. It is just a feeling that one has about certain questions. Some of them everyone would agree are intimate and some of them, like name and address, are not, and in between there is a vast range of questions about which people would differ.

Some people I know regard their occupation as somewhat private, and I would not myself. It is a hard term to define, and I guess we do not really have a formal definition of it.

Mr. HORTON. I am curious as to the number of instances, if you know, where your agency has turned down some of these questionnaires or taken out some of these questions, and I am more interested in the type of personal question that one might conceivably construe as an invasion of privacy, asking personal questions about one's family, and I do not mean the number of children he has or anything like that, but on his thoughts and opinions about different matters.

Mr. CROWDER. Well, what I had particularly in mind in the statement that I have just made was on the one hand the personality test, which has been of particular interest in the hearings of this committee, and on the other hand a group of questions about personal behavior, religion, political affiliation and various other aspects of life which are commonly regarded as private and which no one should be prying into without good reason.

Beyond that, I am afraid I do not have anything very specific as a definition.

Mr. ROSENTHAL. Mr. Cornish?

Mr. CORNISH. Thank you, Mr. Chairman.

Mr. Crowder, you seem to have just a wealth of information on many of the subjects that we are vitally interested in because your office does serve as some sort of a clearing operation for these forms and questionnaires. But tell me this:

Does the Bureau of the Budget take the responsibility for determining whether Government questionnaires constitute an invasion of privacy?

Perhaps I can help you on this. Or do you serve simply as a backstop on this? Is this not the primary function of the agencies involved?

Mr. CROWDER. Let me phrase my answer this way: We have an overriding responsibility for the review and approval of Government

questionnaires, with few exceptions which we need not worry about in this context. That is to say, we are obliged to inquire into whether the questionnaire is justified and technically adequate. Any question which bears on those issues we must consider.

We have not in our procedures formalized a set of rules about the invasion of privacy.

Mr. CORNISH. I understand that. You put that under the category of appropriateness.

Mr. CROWDER. Is is implicit in what we do, but we do not have a set of written staff rules on it.

Mr. CORNISH. But now if an agency came to us and said, "Well, we expect the Bureau of the Budget to review our questionnaires from the standpoint of invasion of privacy, we do not generally do that," would that be a correct situation?

Mr. CROWDER. I would say no.

We feel that the issues that concern us are, most of them, perhaps not all of them, issues which should be of equal concern to the sponsoring agency, and certainly this is one.

Mr. CORNISH. As a matter of fact, you review every Government program, do you not?

Mr. CROWDER. You mean the Budget Bureau?

Mr. CORNISH. The Bureau of the Budget.

Mr. CROWDER. Yes, but in a different sense.

The office that I represent has a function somewhat apart from the regular well-known budget function. It is called the Office of Statistical Standards. It is in the Budget Bureau because the Budget Bureau is the management arm of the President.

Mr. CORNISH. I will put it this way: Do you feel that the Bureau of the Budget has a special responsibility in regard to forms and questionnaires in determining their appropriateness?

Mr. CROWDER. Yes.

Mr. CORNISH. That it does not have perhaps in relation to other Government programs?

Mr. HORTON. Mr. Chairman, I think a new field has been opened up here and I feel that there ought to be more questioning on this, and perhaps we ought to have the witness make available to the staff, so that we can have a basis for further questioning, whatever forms and whatever information they might have filed in their office now, especially on these current forms.

As I understand the witness's testimony, he has in his office, or under his control, all these questionnaires that we have been asking about. So I think it would be appropriate to ask this witness to come back after the staff has had a chance to take a look at the information that they have in the office, so that we could have an opportunity to have further questioning.

Mr. ROSENTHAL. Mr. Crowder, you will make those materials and documents that you have in your office available to the staff, and you will be available for consultation and you will be, I assume, available to come back before the subcommittee to perhaps answer further questions that the staff may develop after these meetings with you?

(The information was provided to the staff.)

Mr. CROWDER. Yes, of course.

Mr. ROSENTHAL. With that understanding, you are excused and the special inquiry is adjourned.

(Whereupon, at 4 p.m., the subcommittee adjourned.)

SPECIAL INQUIRY ON INVASION OF PRIVACY

THURSDAY, SEPTEMBER 23, 1965

HOUSE OF REPRESENTATIVES,
SPECIAL SUBCOMMITTEE ON INVASION OF PRIVACY
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2203, Rayburn Office Building, Hon. Cornelius E. Gallagher (chairman of the subcommittee) presiding.

Present: Representatives Cornelius E. Gallagher, Benjamin S. Rosenthal, and Frank J. Horton.

Also present: Norman G. Cornish, chief of special inquiry; Miles Q. Romney, associate general counsel, Government Operations Committee; and J. Philip Carlson, minority professional staff.

Mr. GALLAGHER. The subcommittee will come to order. The Chair has an opening statement to make before Dr. Ianni will testify.

Today's hearing is a continuation of a study by the special inquiry of the House Committee on Government Operations on the subject of invasion of privacy as it is related to certain investigative and data-gathering activities of the Federal Government. At our previous hearings, we examined the use of personality tests and questionnaires by Federal agencies in the employment picture. Two of our witnesses today intend to address themselves to that same matter.

However, the special inquiry also is interested in the use of personality tests and questionnaires in federally financed research activities. This is an equally important matter.[1] Our investigation of this subject shows that such tests have been given to hundreds of thousands of school children and college students across the country as a part of research projects sponsored by the Federal Government. Sometimes they are given to a vast sample involving half a million youngsters in many States, such as in Project Talent. In other cases, they are limited to certain regions, States, school districts, and individual schools.

The tests also vary in nature. Some are very intrusive in that they ask young people to answer intimate questions about their families, sex experience, religious views, their own personal values and other matters normally regarded as solely the private business of the individual. Others ask personal questions but attempt to keep invasion of privacy at a minimum. In some cases, parents are made aware of this testing and their permission and cooperation are actively sought. But in other cases, they have no knowledge whatsoever that their children are being asked such questions.

Staff investigators of the special inquiry have examined a number of these projects to determine whether Federal agencies are giving ade-

[1] See article entitled "Privacy and Behavorial Research" reprinted from the Columbia Law Review, November 1965, on p. 359 of the appendix.

quate attention to protection of privacy. The element of consent has been a prime consideration. Because of the nature of these tests, we feel that informed parental consent is necessary in research projects which involve school children under college age. When the Federal Government is participating in such research, we believe that such testing should be strictly voluntary and this should be made clear to all persons concerned, including the researcher, the school authorities, teachers, and parents.

Early in August, I, on behalf of the subcommittee and my colleagues, Mr. Rosenthal and Mr. Horton, wrote a letter to the U.S. Commissioner of Education, the Honorable Francis Keppel, noting the concern of the special inquiry on this matter and urging the adoption of new policies and guidelines to strengthen what we consider to be the right to privacy. The Office of Education shared our concern and immediately went to work to take such steps.

I would like the Chief of Special Inquiry to read into the record the exchange of this correspondence at this time.

Mr. CORNISH. This letter is dated August 6, 1965, and is addressed to the Honorable Francis Keppel, Commissioner of Education, Department of Health, Education, and Welfare, Washington, D.C.

DEAR MR. COMMISSIONER: As you know, the special inquiry of the House Committee on Government Operations has been conducting an investigation of the problem of invasion of privacy as it is related to certain investigative and data-gathering activities of the Federal Government.

One of our most recent concerns has been the use of personality tests and questionnaires in research projects sponsored and financed by grants and contracts under the U.S. Office of Education. Many of these tests and questionnaires, which are given in schools across the country, ask students to answer intimate questions about their family life, sexual experience, religious views, their own personal values and other subjects normally regarded as solely the private business of the individual.

Inasmuch as the Federal Government is involved in this activity, it is our belief that new provisions should be added to the grants and contracts to make certain that protection of individual privacy is guaranteed at all times.

The provisions we propose would apply only to those projects involving (1) personality testing, and (2) questionnaires which elicit personal information beyond the ordinary needs of school administration.

The safeguard we propose should make it clear to all concerned that:

(1) The tests and/or questionnaires are strictly voluntary.

(2) Parental consent must be obtained in those cases involving students below the college level.

(3) A copy of the test and/or questionnaire is available for inspection by the parents in the event they wish to look at it before deciding whether to give consent.

(4) Parents be given a clear idea of the nature of the test and/or questionnaire when consent is sought. For example, they should be told the instrument asks questions about the student's sex life, family matters, religious views, etc.

We understand, of course, that this safeguard would require the researcher and school authorities to spend some additional time explaining the purpose of the project to parents. In the end, we believe it will result in greater support for, and understanding of, the research effort. At the same time, in those cases where parents do object, the right to privacy will be fully protected.

In addition, we urge that the problems of invasion of privacy be given specific consideration at the time a grant or contract is submitted for approval.

Joining with me in this request are the other members of the special inquiry, the Honorable Benjamin S. Rosenthal, the Honorable Frank J. Horton, and in connection with this particular investigation, the Honorable Henry S. Reuss.

Your office has been most cooperative in making available project files and other information to our staff investigators who have been studying this matter. We greatly appreciate the time and effort which has been expended.

With kind regards.

Sincerely yours,

CORNELIUS E. GALLAGHER,
Chairman, Special Subcommittee on Invasion of Privacy.

Mr. Chairman, the reply was dated August 27, 1965, addressed to the Honorable Cornelius E. Gallagher, House of Representatives, Washington, D.C.

DEAR MR. GALLAGHER: Thank you for your August 6 letter about provisions to guarantee protection of individual privacy in research projects financed through the Office of Education. May I say that we agree with you on the importance of these safeguards and controls to assure that the rights of the individual are protected.

We are now in the process of incorporating such provisions in the instructions for making application for support from our Bureau of Research and also in the grant and contract instruments. These seem to be the most appropriate ways to assure that researchers and school authorities are aware of problems related to possible invasion of privacy when they develop their proposals and also that the matter is given further attention at the time agreements are drawn.

I am pleased to know that your investigators found our staff helpful and assure you of our continuous cooperation.

Sincerely yours,

FRANCIS KEPPEL,
U.S. Commissioner of Education.

Mr. GALLAGHER. I think the result, which is being made public for the first time, is a major advance. I might say I am delighted that Dr. Francis Ianni, who is Acting Associate Commissioner for Research of the Office of Education, is our first witness. Dr. Ianni played an instrumental role in the adoption of these new policies. I think the Congress and the American people owe both Dr. Ianni and Commissioner Keppel a vote of appreciation.

In accordance with the rules of the inquiry, I would ask you to be sworn, Doctor.

Whereupon, Dr. Francis Ianni was called as a witness and, having been first duly sworn, testified as follows:

TESTIMONY OF DR. FRANCIS IANNI, ACTING ASSOCIATE COMMISSIONER FOR RESEARCH, OFFICE OF EDUCATION; ACCOMPANIED BY DR. HERBERT CONRAD, PROGRAM EVALUATION OFFICER FOR THE BUREAU OF RESEARCH

Mr. GALLAGHER. Doctor, you have a statement?

Dr. IANNI. Yes. I have with me also, Dr. Herbert Conrad, Program Evaluation Officer for the Bureau of Research, and he is the chairman of our committee which looks over proposals when they come in with questionnaires.

Mr. GALLAGHER. We are delighted to have you with us.

Dr. IANNI. Mr. Chairman and members of the Committee on Government Operations, in a letter of August 27 to the Honorable Cornelius E. Gallagher, chairman of the special inquiry of the House Committee on Government Operations, Commissioner Francis Keppel briefly expressed the position of the Office of Education regarding the "protection of individual privacy in research projects financed through the Office of Education." The purpose of the present statement is to restate and amplify this position.

The Office of Education recognizes the essential need to protect the public against questionnaire items which needlessly infringe on individual privacy. Both preventive and remedial measures have been in effect in our research program to eliminate such questions. We are presently adding additional steps to strengthen these measures. Preventively, instructions will be included in announcements to

prospective applicants for research funds, making clear that the Office of Education will carefully review all questionnaires submitted to it, to prevent injuring public sensitivities in such matters as the challenging of established morals, the invasion of privacy, the extraction of self-demeaning or self-incriminating disclosures, and the unnecessary or offensive intrusion of inquiries regarding religion, sex, politics, et cetera. In addition, the non-Government consultants who pass upon applications will be alerted to the importance attached to enforcing these instructions to applicants. Where the questionnaires are not fully developed until after project approval, the questionnaires will be examined by a special Internal Clearance Committee already established within the Office of Education. This committee will normally comprise at least three senior staff members (including, as Chairman, the program evaluation officer of the Bureau of Research); in difficult cases, the Chairman will call for the judgment of additional members and, if necessary, for the judgment of the Associate Commissioner for Research and the Commissioner of Education.

The procedure briefly sketched above indicates the importance that the Office of Education attaches to this matter. At the same time, the matter should be seen in proper perspective. In the first place, in very few projects supported by the Office of Education are questionnaires employed; and where questionnaires are employed, they attempt usually to collect objective information, such as the number of librarians, the academic qualifications of teachers, the kinds of courses offered in certain professional curriculums, figures on costs, et cetera. Out of the first 800 projects supported by the cooperative research program, for example, only 25 projects—or 3 percent—made use of personality questionnaires. Even in these cases, the issue of privacy is attenuated by the fact that, in the research studies supported by the Office of Education, the responses are used solely for statistical purposes and are not identified with any particular individuals. For all practical purposes, the individual's identity is "lost" in the statistics and the responses are fully as confidential as, say, responses made by persons answering census questions on age, marital status, education, employment, and income.

Let me also say that there is another side to this matter. Schoolchildren—and their parents—should respect and honor knowledge and learning; and they should be willing to cooperate in efforts to extend knowledge and learning which are essential to the advancement of the entire human race even when, individually, they gain no immediate personal benefits from doing so. Some such cooperation is essential if education is to be advanced as much and as rapidly as it must be.

The safeguards against the abuse of questionnaires may be classified as "professional," "institutional," and "governmental." Professional ethics help greatly to keep questionnaire items within reasonable bounds. Our various educational institutions, both public and private, have historically well protected their children against potential damage from researchers who may be excessively zealous. Finally, in the case of Government-supported research, the review panels and examining committees—and the diligence of congressional inquiries such as yours—exercise a restraining influence. In this connection, it deserves notice that the entire present governmental effort is coordinated by the Office of Statistical Standards, in the Bureau of the Budget.

In considering what is an undue intrusion of privacy, appropriate consideration must be given to the scientific need for the information. One can readily err in the direction either of excessive restriction or excessive leniency. At one extreme, merely asking a child for his age might be considered an intrusion of privacy, when the child is decidedly overage for his grade. Conversely, in an elaborate or comprehensive study of predelinquency, confined to a small number of intensively studied cases, it might be essential to seek more details about a child's activities and attitudes than would ordinarily be appropriate.

In determining the desirability of obtaining parental consent, the analogy with medical practice may be useful. Where a child is entrusted to a physician's care by the parent, the parent's consent to the particular methods of examination and treatment may be taken for granted, when the physician follows standard practice. Similarly, when a school superintendent or principal follows standard practice in encouraging his teachers and pupils to contribute briefly to educational research by answering the questions that are asked, it does not seem necessary to seek parental consent for each child who cooperates. The test or criterion is whether the questions which the researcher proposes to ask are factual, are not self-incriminating, and are similar to questions which have commonly been asked without ill effect in school systems in the past. Certainly, the large and valuable investigation called Project Talent, including over 400,000 pupils, would have been markedly hampered and probably rendered infeasible, if individual parental consent had been required before the project was undertaken. Ordinarily, it is much simpler to insist on the special scrutiny and, if necessary, the elimination of unessential or offensive questionnaire items in the first place, before the questionnaire is approved for use; and this is the current practice of the Office of Education. However, parental consent is another safeguard against the unjustifiable intrusion of privacy; and this safeguard will also be required by the Office of Education in all cases where it appears appropriate or necessary.

Thank you, Mr. Chairman.

Mr. GALLAGHER. Thank you, Doctor.

Dr. Ianni, I might say that the Office of Education is not the only Federal agency which has utilized personality testing, the questionnaires, in its research efforts. I might say that an overreliance on that, being coordinated by the Office of Statistical Standards and the Bureau of the Budget, is one of the reasons why this query has reviewed the entire matter.

At one time the Bureau had under its supervision and approval some 6,000 different questionnaires. Therefore, unless we do provide adequate safeguards, it is quite likely that at some point along the line the protections against intrusions won't be sufficient in order to get rapid approval of a particular set of questionnaires and therefore we welcome your statement.

I do feel, however, that in your last paragraph there appears to be an invitation not to obtain parental consent, as you say here, "In all cases where it appears appropriate and necessary."

Could you please define a little more clearly whether or not parental consent will be mandatory or whether it will be obtained where it appears appropriate or necessary?

Dr. IANNI. Let me see if I can draw the distinction between these situations. We presently review all questionnaires which come to the Office of Education. As a necessary first course, before we approve any research project, consent has to be obtained from the school system where the school system is going to be used for research, let's say, by an investigator who is present at a university.

Now, we subject all of these questionnaires to review by the Internal Clearance Committee and we feel that preventive measures are perhaps the best to use in this particular situation. So we would review these very carefully.

There are certain situations where obtaining direct parental consent could conceivably create considerable difficulty. One obvious situation would be where the research deals with mentally retarded youngsters or with individuals who are mentally ill, or where the sample contains so many cases that this could create some difficulty. We would prefer in these situations to insure that the children's involvement is voluntary but without demanding individual parental consent as a preceding concern for the Office of Education. And we would leave this to the school system to obtain.

Mr. GALLAGHER. Well, I can't envision the propriety of a retarded child volunteering without parental consent.

Dr. IANNI. May I ask Dr. Conrad to comment on this? He has been reviewing these proposals all along and could give some better evidence than I can.

Dr. CONRAD. Well, most of the questionnaires—in fact all that I have seen lately—have not asked questions of a psychiatric nature. They have not asked about religious feelings, and I haven't seen any on the area of sex, and so on. I know that a good many of the questions that have been submitted on a sheet here are bad examples with a very strong psychiatric flavor. We would eliminate such questions because we don't believe that questionnaires can take the place of a psychiatric interview.

There are other ways of getting this kind of information. The questionnaire is not the appropriate way to do it, as we see it.

Now, in the case of an examination in depth, if the questionnaire method were used, we would certainly require that the parental consent be obtained. But if, on the other hand, a child is asked to give his age, residence, and asked whether he likes school, what subjects he likes best, what kind of occupation he thinks he will go into—which is the kind of question that is most common—these are, so to speak, everyday questions and we feel that the child ought to cooperate in answering such questions to help advance knowledge, and that parental consent, specific parental consent, won't be necessary, and parents would be surprised to receive such a request.

Mr. CORNISH. Doctor, these are the instances where you won't ask for parental consent, is that right?

Dr. CONRAD. Yes.

Mr. CORNISH. The instances where you will ask for parental consent are the areas where you get into sensitive questions such as on sex and religion, and so forth? That is the distinction you make?

Dr. CONRAD. That's right, sir. We in general would prefer that such questions not be asked by questionnaire method. Such information is not best obtained by questionnaire methods.

Mr. GALLAGHER. Doctor, I would not want to suggest in any way what questions should be asked or what questions shouldn't or are relative to the advancement of whatever particular project you may have in mind. But I do think that it is necessary to define when parental consent will be obtained and perhaps we are not talking of the common questions of where do you live and how do you like school. We are talking of the uncommon questions that are becoming common.

These questions here that do pertain to religion, family, family relations, racial groups, all of these questions that we have here were obtained from your files and therefore how strongly or how often they are used is something that someone in your office is aware of. It is the answers to these questions that we feel stongly are intrusive and violative of one's privacy and parental consent should be obtained.

Dr. CONRAD. We will eliminate these questions. The kind of questions you see here were asked in studies prior to Dr. Ianni's administration and prior to any participation I had in the enterprise.

Mr. GALLAGHER. You are now reinforcing your statement by saying that this type of question with regard to religion, race, family relationships, will now be eliminated?

Dr. CONRAD. I would say with regard to family relationships; with regard to religion, let me qualify and say that questions on feelings about religion won't, in general, be permitted without parental consent. But in the matter merely of religious affiliation, as to whether preference is Catholic, Protestant, so on, we have required that an alternative be offered, "prefer not to answer," as a specific choice available to the individual responding. Ordinarily, when a person is answering a questionnaire, nobody knows whether he answers a particular question or not. He is not under pressure from the teacher to answer a particular question, and if he has the alternative, "prefer not to answer," it seems to me this covers the situation.

We have not had any questions on religious feeling, such as belief in the nature of God and one's closeness of feeling with God, and so forth. We have had only the question of religious affiliation and we insist the choice be offered, "prefer not to answer."

Mr. GALLAGHER. There is another entire area here we feel is intrusive. Questions about one's relationship with parents, what their income is estimated at by the children, what kind of house they live in, "I am fairly happy with my home life," the type of questions the average child would innocently answer, from which answers could be drawn an entire script of "Peyton Place," and this is the type of thing that we are finding very objectionable to have the entire family history of individual children become part of the discussion group in the faculty centers and it is in this type of thing that we are directing our attention to.

We feel that parental consent should be required and parental knowledge prior to that consent should be obtained.

Is this your understanding?

Dr. IANNI. We are saying the same thing. There are some items which are perhaps better gathered by means other than questionnaires, by depth interviews, for example—and we have consistently attempted to encourage these techniques in our studies. But where we feel there is the possibility of intrusion into privacy, we will insist on parental consent in these situations.

Mr. CORNISH. Dr. Ianni, that includes, of course, some of the commercial personality tests that we have discussed?

Dr. IANNI. Yes.

Mr. CORNISH. Mr. Chairman, the staff has prepared two sets of examples taken from the various tests which have been given under grants and contracts from the Office of Education. I ask that they be inserted in the record at the appropriate place along with two letters from the Office of Education.

Mr. GALLAGHER. Without objection, it is so ordered.

(The documents referred to follow:)

The following are examples of intrusive questions contained in various personality questionaires which were a part of federally financed research projects in schools and colleges:

How large a savings account do you have?
1. (I do not have a savings account.)
2. less than $50
3. $50 to $200
4. $200 to $500

What is *your* religious preference?
1. Protestant
2. Catholic
3. Jewish
4. other religion
5. (I have no preference)

How often do you attend religious services?
1. regularly each week
2. occasionally
3. seldom
4. never

To which racial group does your *father* belong?
1. White
2. Negro
3. American Indian
4. Oriental (Chinese, Japanese, Korean, etc.)
5. (other—specify on answer sheet)

To which racial group does your *mother* belong?
1. White
2. Negro
3. American Indian
4. Oriental (Chinese, Japanese, Korean, etc.)
5. (other—specify on answer sheet)

How much education does your *father* have?
1. some grade school
2. graduated from grade school
3. some high school
4. graduated from high school
5. business or training school after high school
6. some college
7. graduated from college
8. graduate or professional school after college

How much education does your *mother* have?
1. some grade school
2. graduation from grade school
3. some high school
4. graduation from high school
5. business or training school after high school
6. some college
7. graduation from college
8. graduate or professional school after college

What is the religion of your family?
1. (They do not have a religion.)
2. Protestant
3. Catholic
4. Jewish
5. mother and father of different religions
6. (other religion—specify on answer sheet.)

How do you feel about the size of your family's income?
1. proud
2. satisfied
3. indifferent
4. dissatisfied
5. ashamed

How would most people in the community classify the social standing of your family?
1. as one of the highest in the community
2. above the average family in the community
3. about the same as the average family in the community
4. below the average family in the community
5. as one of the lowest in the community

How do you feel about the social standing of your parents?
1. proud
2. satisfied
3. indifferent
4. dissatisfied
5. ashamed

Major decisions in my family are usually made by:
1. father
2. mother
3. some other person
4. discussion and common agreement

As to my relationship with my *father:*
1. We are very close and affectionate
2. We are close, but seldom show affection
3. We are neither close nor affectionate
4. He is indifferent to me
5. He seems to dislike me

As far as I am concerned, my relationship with my *father* is:
1. Completely satisfactory
2. fairly satisfactory
3. neither satisfactory nor unsatisfactory
4. somewhat unsatisfactory
5. completely unsatisfactory

As to my relationship with my *mother:*
1. We are very close and affectionate
2. We are close, but seldom show affection
3. We are neither close nor affectionate
4. She is indifferent to me
5. She seems to dislike me

As far as I am concerned, my relationship with my *mother* is:
1. completely satisfactory
2. fairly satisfactory
3. neither satisfactory nor unsatisfactory
4. somewhat unsatisfactory
5. completely unsatisfactory

When you consider the education of your parents, the books and magazines they read, the radio and television programs they prefer, etc., how would you classify the cultural level of your home?
1. among the least cultured in the community
2. below the average home of the community
3. just average
4. above the average home of the community
5. among the most cultured in the community

How do you feel about the cultural level of your home?
1. proud
2. satisfied
3. indifferent or resigned
4. dissatisfied
5. ashamed

Which of the following is the *best* description of how you feel about your life at home?

1. I am completely happy with my life at home and can see practically no way of improving it
2. I am happy with my life at home, but there are ways in which it could be improved
3. I am fairly happy with my life at home, but there are many ways in which it could be improved
4. I am unhappy with my life at home because so many things are wrong.
5. I am unhappy with my life at home and wish I could go away.

What is your father's religious preference?

A. Catholic
B. Protestant
C. Jewish
D. Other
E. No preference

What is your mother's religious preference?

A. Catholic
B. Protestant
C. Jewish
D. Other
E. No preference

Which of the following is the *best* description of your "dating"?

A. I am going "Steady"
B. I have quite a few dates, but no "steady"
C. I have occasional dates, usually with the same person
D. I have occasional dates, usually with different persons
E. I seldom or never have dates

How many times a month do your parents (or guardians) have friends in their home for parties or other social affairs?

A. 5 or more
B. 3 or 4
C. 1 or 2
D. Less than one
E. Never

Has your mother ever worked outside your home?

A. No
B. Yes, regular part-time work
C. Yes, occasional part-time work
D. Yes, regular full-time work
E. Yes, occasional full-time work

How long has your mother worked outside your home?

A. Has not done this
B. 12 months or less
C. 13 to 24 months
D. 25 to 36 months
E. 37 months or longer

What kind of car does your family own?

A. A new expensive car
B. A new medium- or low-priced car
C. A used car
D. A foreign car
E. A sports car

What is the present value of your parent's home?

A. Under $7,500
B. $7,600 to $15,000
C. $15,100 to $22,500
D. $22,600 or over
E. Not home-owners

Mark *all* of the items which you have at home

A. Telephone
B. Piano
C. Television
D. Phonograph
E. Two or more radios

A. Electric dishwasher
B. Electric or gas refrigerator
C. Hi-fi set
D. Movie camera
E. Vacuum cleaner

A. Two or more bathrooms
B. Air conditioning
C. Sterling silver
D. Home freezer
E. Wood or oil stove

A. Two or more cars
B. Running water
C. Electric lights
D. Typewriter
E. Bicycle

A. A tennis racket
B. Golf clubs
C. Vegetable garden
D. Pictures or tapestries
E. Horses

A. Silo
B. Plow
C. Tractor
D. Fruit trees
E. Wall-to-wall carpeting

A. Hand tools
B. Electric tools
C. Dictionary
D. Encyclopedia
E. Wall safe

A. A room of my own
B. A study desk
C. A recreation room

In which of the following activities has your mother been active?

A. Church or religious groups, teaching Sunday school
B. Card clubs
C. Parent-Teacher Association
D. Women's club
E. Sewing club

A. Dramatics or little theatre groups
B. Political groups
C. Labor union
D. Golf, tennis, or country club
E. Band or orchestral group

A. Professional organization
B. Charity drives

A. Social club
B. Study, art, or civic club (league of Women Voters, WCTU, DAR, Lincoln Club, Jeffersonian Club, etc.)
C. Trade organization
D. College or university alumni club
E. Management association

In which of the following has your father been active?

A. Church or religious clubs
B. Teaching Sunday school
C. Card club
D. Parent-Teacher Association
E. Dramatics or little theatre group

A. Political group
B. Labor union
C. Band or orchestral group
D. Social fraternal clubs (Masons, Elks, dance, etc.)
E. Study, art or service club (Rotary, Jacksonian, Lincoln, Lions, Kiwanis, Rotarians, Chamber of Commerce)

A. Trade organization
B. College or university alumni club
C. Management association
D. Professional organization
E. Charity drives

A. Sports or athletic clubs (hunting, fishing, golf, tennis)
B. Baseball, football, or other team sports
C. Active military reserve unit
D. Veteran's club (American Legion, Veterans of Foreign Wars, etc.)

Which of the following magazines does your family subscribe to or purchase regularly?

A. Atlantic Monthly
B. Fortune
C. Harper's
D. National Geographic
E. Reader's Digest

A. Saturday Review
B. Time
C. American Home
D. Better Homes and Gardens
E. Field and Stream

A. Good Housekeeping
B. Esquire
C. Life
D. New Yorker
E. Parent's Magazine

A. Physical Culture
B. Popular Mechanics
C. Saturday Evening Post
D. House Beautiful
E. House and Garden

A. Hygeia
B. Ladies Home Journal
C. Business Week
D. Look
E. McCalls

A. U.S. News and World Report
B. Popular Science
C. Nations Business
D. Newsweek
E. Photoplay

A. Popular Aviation
B. Science
C. Sports Afield
D. True
E. Argosy

A. Breezy Stories
B. Real Detective Magazine
C. Silver Screen
D. Sweetheart Stories
E. True Story

A. Farm Journal
B. Progressive Farmer
C. Successful Farmer
D. Prairie Farmer
E. Farm and Ranch

How many grades of school did your father complete?

1. No regular schooling
2. Less than 7 years
3. 7 to 9 years
4. At least 10 years, but didn't graduate from high school
5. Graduated from high school
6. Some college
7. Graduated from college
8. Don't know

How many grades of school did your mother complete?

1. No regular schooling
2. Less than 7 years
3. 7 to 9 years
4. At least 10 years, but didn't graduate from high school
5. Graduated from high school
6. Some college
7. Graduated from college
8. Don't know

How often do your parents (one or both) go to church?

1. More than once a week
2. About once a week
3. About twice a month
4. About once a month
5. Several times a year
6. About once a year
7. Less than once a year

How often do you go to church?

1. More than once a week
2. About once a week
3. About twice a month
4. About once a month
5. Several times a year
6. About once a year
7. Less than once a year

How does your home compare with the homes of other young people you know?

1. My home is neater and cleaner than most
2. It is about average
3. It is less clean and neat than the average

Do you respect your mother's opinions about the important things in life?
1. Not at all
2. Very little
3. Somewhat
4. Very much
5. Completely

How close do you and your *father* feel toward each other?
1. Not at all close
2. Not particularly close
3. Moderately close
4. Quite close
5. Extremely close

How often do your parents quarrel or argue with each other?
1. Very often
2. Frequently
3. Now and then
4. Very seldom
5. Never

How happy do you think your parents' marriage is?
1. Quite unhappy
2. Slightly unhappy
3. Somewhat happy
4. Fairly happy
5. Very happy
6. Completely happy

In general, would you say your home life is more happy or less happy than that of other young people you know?
1. Much more happy
2. Quite a bit more happy
3. A little bit happier
4. About average
5. A little less happy
6. Quite a bit less happy
7. Much less happy

When your parents aren't around and you think they will never find out, how often do you do things they would not approve of?
1. Very often
2. Frequently
3. Once in a while
4. Very seldom
5. Never

In general, what kind of a reputation do you think your family has in the community?
1. Very good; a top family
2. Above average; looked up to
3. About average; fairly good
4. Just so-so
5. Rather poor reputation

In the following test, students were asked to give one of five responses. They were: false or does not apply, generally true but of no concern, true but of little concern, true but of much concern, and true and of greatest concern:

I am ashamed sometimes of the way my parents behave.
Housekeeping in our house is disorderly.
Some of my family members do not know good table manners.
My parents quarrel and fight much of the time.
Our family seems to have more problems than others in our neighborhood.

In another test, students also were asked to signify one of five answers which described the degree of how they actually felt about the following statements in relationship to themselves:

I don't seem to have very much basic respect for myself.
I live in accordance with the idea that "It is better to have loved and lost than never to have loved at all."
I used to wish very often that my parents and I could be much closer.

Thinking back, in a good many ways I don't think I have liked myself very well.

My parents and I may get along all right on the surface, but down deep I wonder if we even know each other.

When I think about the kind of person that I have been in the past, it doesn't make me feel very happy or proud.

In the following test, students were asked to complete the sentence "with the first word that comes to mind." They were instructed not to use more than one word:

My childhood was _____.
My father _____ me.
My _____ sometimes gets me into trouble.
Secretly, I often dream of _____.
God is _____.
If only my parents were more _____.
Men often _____ women.
I feel _____ when I think of myself as a woman.
My father's chief fault is his _____.
I hope I never _____.
My mother's chief fault is her _____.
_____ makes me furious.
_____ is disgusting.
I don't like to think about _____.

The following are examples of questions from two commercially published personality tests used in educational institutions as part of federally financed research projects:

TRUE OR FALSE?

Once in a while I think of things too bad to talk about.
Evil spirits possess me at times.
I believe in a life hereafter.
I believe my sins are unpardonable.
I have been disappointed in love.
I dream frequently about things that are best kept to myself.
I believe there is a devil and hell in afterlife.
Religion gives me no worry.
I feel sure there is only one true religion.
I deserve severe punishment for my sins.
I am a special agent of God.
Christ performed miracles * * *.
I pray several times a week.
I read the Bible several times a week.
I like movie love scenes.

Students also have been asked to indicate whether they are troubled by the following problems:

Deciding whether I'm really in love.
Wondering whether to go steady.
Wondering if I really know my prospective mate.
In love with someone of a different religion.
Wanting love and affection.
Disappointed in love affair.

Too deeply involved in love affair.
Having to break up love affair.
Petting and necking.
Thinking too much of opposite sex.
Wondering how far to go with opposite sex.
Finding it hard to control sex urges.
Repelled by thoughts of sexual relations.
Needing information about sex.
Being too inhibited in sex matters.
Being underdeveloped sexually.
Fear of having a child.
Lacking in sex appeal.
Having a troubled or guilty conscience.
Afraid of being found out.
Sometimes dishonest.
Having unusual sex desires.
Bothered by sexual thoughts or dreams.
Worried about the effects of masturbation.
Sexual needs unsatisfied.
Sexually attracted to some of my own sex.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF EDUCATION,
Washington, D.C., March 29, 1965.

MR. NORMAN CORNISH,
Chief of Special Inquiry,
House Committee on Government Operations,
Washington, D.C.

DEAR MR. CORNISH: The following information is provided in response to your request for information related in uses of personality tests or psychological inventories in research supported under the cooperative research program.

A. Confidentiality and anonymity:

Confidentiality and anonymity are assured to individuals, institutions, associations, and even governmental units who are respondents in research. This is a firm rule of all reputable researchers and research organizations and is adhered to as firmly as in the Census Bureau, Social Security Administration, or the Internal Revenue Service.

By statute, the cooperative research program can only contract with the universities, colleges, and State departments of education. These organizations not only conduct research, but also generate and receive from various sources confidential reports and records about staff and students. Funds from the cooperative research program allow these organizations to collect additional data which in some cases including personality data but persons conducting the research are constrained by the same ethical considerations, confidentiality, and anonymity, in this case, as are exercised in all their professional relationships and judgments.

Moreover, researchers are interested only in valid and reliable relationships among specified variables. Individual names are not of interest and are not coded. Code numbers only are used to collate data for analyses.

In addition, the process by which research proposals are evaluated and screened for contracting is based upon procedures which protect against unethical practices in research. All proposals are reviewed by Office of Education staff and by recognized experts in the field of the proposed study, the latter usually being staff members of colleges and universities. Only proposals recommended favorably by advisory panels are supported. Part of the review process includes assessment of the appropriateness and scientific value of data gathering instruments.

A further protection to potential respondents, especially schoolchildren, is the requirement that researchers must obtain cooperation from schools in which they wish to collect data. Schools are free to cooperate with or to refuse to participate in a study or to require revision of questionnaires before allowing their use. And many schools exercise this prerogative.

B. In the period from July 1, 1959, to June 30, 1964, 25 of the 626 projects supported by the cooperative research program involved assessment of personality characteristics. The negotiated cost of studies in which personality factors were main considerations was $1,548,473. Of this amount an estimated $399,456 was used for the collection and analysis of personality data. These amounts do not include Project Talent.

C. Project Talent is a long-term longitudinal study with a national sample representative of America's high school children in the 10th through 12th grades in the year 1960.

A comprehensive aptitude and abilities test battery was developed and standardized using this sample. Followup studies are designed to obtain accurate and reliable knowledge of what the post-high-school experience and achievements have been. The data for this project are typical of the kinds of student personnel data used in the average American high school. Specimens of the tests and the questionnaires are appended. The Project Talent researchers have adhered to an inflexible policy of maintaining absolute confidentiality and anonymity of data.

Of the almost $1.4 million that has been invested in the original collection of data for Project Talent, it is estimated that 2 percent of approximately $28,000 of the total was used for the collection and analysis of personality data.

The Office of Education also supported a 1-year followup of persons included in the original Project Talent sample. No personality tests or inventories were included in the followup investigation.

D. During the period July 1, 1959, to June 30, 1964, 217 research and dissemination projects concerned with new educational media were initiated under title VII of the National Defense Education Act. Of these projects four involved assessment of personality characteristics. The cost of these four projects was $238,657. Of this amount approximately $7,159, or 3 percent, was used for the collection and analysis of personality data.

Sincerely yours,

RALPH C. M. FLYNT,
Associate Commissioner,
Educational Research and Development.

List of projects

Project No.	Contractor and address	Investigator	Duration
906	University of North Carolina, Chapel Hill, N.C.	Richard L. Simpson	May 1960–September 1964.
954	Florida State University, Tallahassee, Fla.	Wallace A. Kennedy, Vernon Van Des Riet, James C. Whites, Jr.	September 1960–December 1961.
961	Syracuse University, Syracuse, N.Y.	Catherine S. Chilman	October 1960–September 1962.
1008	University of Georgia, Athens, Ga.	Joseph C. Bledsoe	September 1960–August 1962.
1018	University of Puerto Rico, Rio Piedras, P.R.	Millard Hansen	September 1960–September 1962.
1060	University of Southern California, Los Angeles, Calif.	Phillip R. Merrifield, Sheldon F. Gardner.	July 1960–August 1961.
1168	University of North Carolina, Chapel Hill, N.C.	Charles E. Bowerman, Ernest Q. Campbell.	September 1961–August 1965.
1186	California State Department of Education, Sacramento, Calif.	Nadine Lambert	August 1961–October 1962.
1218	Johns Hopkins University, Baltimore, Md.	James L. Kuethe	July 1961–October 1961.
1286	University of Michigan, Ann Arbor, Mich.	Warren A. Ketcham	September 1961–August 1964.
1329	Oklahoma States University, Stillwater, Okla.	Robert E. Sweitzer	September 1961–August 1962.
1351	Texas Christian University, Fort Worth, Tex.	Saul B. Sells	September 1961–August 1966.
1352	University of Illinois, Urbana, Ill.	Robert L. Spaulding	October 1961–October 1962.
1353	University of Southern California, Los Angeles, Calif.	William Larson and others	April 1962–September 1963.
1411	University of Illinois, Urbana, Ill.	Raymond B. Cattell	September 1961–August 1964.
1592	Southern University, Baton Rouge, La.	Comradge L. Henton	May 1962–April 1964.
1636	Michigan State University, East Lansing, Mich.	Wilbur B. Brookover, Don E. Hamachek, Jean Le Pere.	April 1962–September 1964.
1717	University of Florida, Gainesville, Fla.	Ira J. Gordon	October 1962–January 1964.
1770	Carnegie Institute of Technology, Pittsburgh, Pa.	Rachel Inselberg	August 1962–May 1964.
1781	University of Texas, Austin, Tex.	Robert F. Peck	September 1962–June 1967.
2016	Northern Illinois University, Dekalb, Ill.	Erwin J. Lotsof, William H. James.	September 1963–August 1966.
2438	State Department of Public Instruction (for Wayne County School District), Lansing, Mich.	Allen L. Bernstein, June P. England, J. Edwin Keller.	
2615	University of Southern California, Los Angeles, Calif.	Newton S. Metfessel	May 1964–April 1966.
2616	University of Texas, Austin, Tex.	Beeman N. Phillips	July 1964–August 1966.
226	University of Pittsburgh, Pittsburgh, Pa.	John C. Flanagan and others	July 1957–June 1962.
D-040	New York State Education Department, Albany, N.Y.	Benjamin Cohen	October 1961–September 1963.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF EDUCATION,
Washington, D.C., June 30, 1965.

Mr. NORMAN CORNISH, *Chief of Special Inquiry,*
House Committee on Government Operations,
Longworth Building, Washington, D.C.

DEAR MR. CORNISH: We are happy to provide additional information requested regarding use of personality inventories in projects supported by funds from the cooperative research program and new media research program (title VII, NDEA), Office of Education. Information about the cooperative research projects is listed first.

Specimen of the personality inventories for three of the cooperative research projects which are the subject of the memorandum are not yet accessible because these studies have not yet been prosecuted to the point that the specimen have been sent into this office.

Enclosed as exhibit I is a list of 17 commercial personality inventories used in 11 of the cooperative research projects discussed in the letter sent to you on March 29, 1965. These personality inventories are available through commercial outlets and are so widely used that the cooperative research program does not have copies on hand. Descriptions of these personality inventories are given in "The Fifth Mental Measurements Yearbook," Oscar Krisen Buros, editor, Gryphon Press, Highland Park, N.J., 1959.

Also enclosed are 17 specimens of the personality inventories used in 13 of the 25 cooperative research projects about which information was sent to you previously.

In addition, earlier assessment indicated that four projects initiated under title VII, NDEA included use of personality inventories. One project used the "California Test of Personality and the Mooney Problem Check List" (both listed previously). Another used the "DF Opinion Questionnaire," by J. P. Guilford, Paul Christensen, and Nicholas Bond, published by the Sheridan Supply Co. (a copy was not in our files) and the "College Questionnaire" (see p. 194 of the enclosed report for Project 221). In another study, the "Omnibus Personality Inventory," published by the Center for the Study of Higher Education, University of California, was used, and in the final study, the "Stern Activities Index," by George G. Stern, Syracuse University, was employed; however, we have no copies of these instruments. If we can be of further assistance, please let us know.

Sincerely yours,

RALPH C. M. FLYNT,
Associate Commissioner for
Educational Research and Development.

EXHIBIT I

Commercial tests used in Office of Education research projects

Author(s)	Name of study	Publisher
Elizabeth T. Sullivan, Willis W. Clark, Ernest W. Tiege.	California Short-Form Test of Mental Maturity.	California Test Bureau.
Louis P. Thorpe, Willis W. Clark, Ernest W. Tiege.	California Test of Personality 1953 revision.	Do.
David Wechsler	Wechsler Intelligence Scale for Children.	Psychological Corp.
Elizabeth T. Sullivan, Willis W. Clark, Ernest Tiege.	California Test of Mental Maturity.	California Test Bureau.
Harrison G. Gough	California Psychological Inventory.	Consulting Psychologists Press, Inc.
H. H. Rommere, Benjamin Shumberg, Arthur J. Drucker.	SRA Youth Inventory	Science Research Associates.
Ross L. Mooney, Leonard V. Gordon.	Mooney Problem Check List 1950 revision.	Psychological Corp.
Guy E. Buckingham	Personal Adaptability Test	Public School Publishing Co.
Starke R. Nathaway, J. Charnley McKinley.	Minnesota Multiphasis Personality Interview.	Psychological Corp.
Joice B. Stone	S-O Rorschach Test	California Test Bureau.
Lauretta Bender	Bender-Gastalt Test Visual Meter Gastalt Test.	American Orthepsychiatric Association, Inc.
Louis P. Thorpe, Charles E. Meyers, Marcella Ryser Sea.	What I like to do: An Inventory of Children's Interest.	Science Research Associates, Inc.
Ernest W. Tiege, Willis W. Clark.	California Achievement Test 1957 edition.	California Test Bureau.
Truman L. Kelley, Richard Madden, Eric F. Gardner, Lewis M. Terman, Giles M. Ruch.	Stanford Achievement Test 1953 revision.	Harcourt, Brace, & World, Inc.
Lewis M. Terman, Maud A. Merrill.	Stanford-Binet (revised Stanford-Binet Intelligence Scale, third revision).	Houghton Mifflin Co.
Gwen Andrew, Samuel W. Hartwell, Max L. Hutt, Ralph E. Walton.	The Michigan Picture Test	Science Research Associates, Inc.
George G. Stern	Stern Activities Index	Psychological Research Center.

Mr. ROSENTHAL. Doctor, I am somewhat hazy and dubious about parental consent, because it seems to me when you ask a parent for consent, he ought to know what he is consenting to. In the situations you have dealt with, when you ask for parental consent, do they have any idea at all what they consent to?

Dr. IANNI. Our definition of parental consent includes the word "informed." We feel they should be informed of the types of tests used.

Mr. ROSENTHAL. How extensive is the information you give to them prior to their executing the consent?

Dr. IANNI. This is a new procedure to us. We are working on it at the present time. They should know the types of tests used, the purpose of the research, the fact they will be kept confidential, and try to relate all of these factors to the specific purpose of the test.

Mr. ROSENTHAL. Are you in the process of preparing an information sheet or something of that nature that you will give?

Dr. IANNI. We are working on this at the present time. We would, however, have to handle this on a project-by-project basis because the questionnaires developed sometimes are considerably different from one research project to another.

Mr. ROSENTHAL. We have investigated Peace Corps tests. These youngsters gave their consent implicitly by attending the testing session. But this still didn't waive any constitutional invasions of the rights of privacy, and I am extremely dubious whether the parent, without a complete and exhaustive knowledge of what test will be given, can waive that right of invasion of privacy.

I assume this is something you will look into?

Dr. IANNI. Yes, sir.

Dr. CONRAD. May I say that every educational institution is supposed to impart knowledge and it is also supposed to contribute to the advancement of knowledge. And if the school system does not contribute to the advancement of knowledge, it is falling short of one of its purposes.

In the advancement of knowledge sometimes a child needs to learn to cooperate. He ought to learn to honor some social values, to recognize, for example, the value of the Red Cross. That has nothing to do with reading, writing, and arithmetic. But the child must be developed into a social person, a good citizen; and the schools use the Red Cross and disaster relief and so on as a means of getting the child to actively become a good, cooperative citizen.

Now, the advancement of learning, the advancement of knowledge, of educational knowledge, is something that the schools also have an obligation to think about, and there is a certain balancing between——

Mr. ROSENTHAL. They don't have the obligation at the expense of the Constitution, though.

Dr. IANNI. We agree with that.

Dr. CONRAD. I am not opposed to the Constitution. The Constitution, as I understand it, mentions religion, and we have been extremely careful to insist that nobody be asked a question on religion unless they were explicitly willing to answer. They have the alternative to "prefer not to answer."

Mr. ROSENTHAL. Let me ask one other question.

I always wonder about the psychological background of the people who make up these questions. On page 9 of the memorandum the committee staff prepared, of what we considered to be objectionable questions, I wonder if you could draw any inference from the fact, for example, that they haven't included Playboy magazine among those that persons subscribe to in our home.

Do you think there is any significance to something like that?

Dr. IANNI. It could either be a function of the fact that the test developer had never heard of Playboy—which is improbable.

Mr. GALLAGHER. Then he is in need of personality testing.

Dr. IANNI. Or it could be that the purposes of the research simply didn't include this as a possibility.

Mr. ROSENTHAL. Even though—I have no commerical interest in the magazine. I understand it has a large circulation. I just wondered if——

Dr. IANNI. I think there is probably an easier answer. That is, that many of these examples in the memorandum are drawn from early in the history of the research program. And conceivably—I don't know how long Playboy has been in existence, but this may have been before Playboy's time.

Mr. ROSENTHAL. So that assuming that to be so, you won't want to draw any inference concerning the psychological background of the person who prepared such a question?

Dr. IANNI. Not on that basis, no.

Mr. GALLAGHER. It might be included under (*a*) Breezy Stories. That is listed.

Doctor, we are interested in your statement of the contribution to the advancement of knowledge, but we feel that these tests shouldn't be used in the advancement of gossip and therefore make the advancement of knowledge counterproductive to the intent of the child developed.

Mr. Horton?

Mr. HORTON. Thank you, Mr. Chairman.

I am not sure, Doctor, that I quite understand the difference between your procedure now and the procedure which you had been practicing. I don't think it is spelled out.

Dr. IANNI. In the past our review of proposals was handled primarily by consultants from outside the Office of Education. We had a system wherein the proposal was reviewed by a panel of 5 to 10 experts who reviewed it from the point of view of the scientific merit of the research.

Now, wherever this committee did feel there was some question of policy they could refer this question to the Office, which could then be resolved by the staff.

The new policy involves the setting up of an internal committee of staff members of the Office of Education who look at research projects from the point of view of policy, including possible intrusions into privacies.

Mr. HORTON. Then it is my understanding from what you have just said that you did have a group that was without the Education Department that was passing upon these projects, but now you have a so-called in-house——

Dr. IANNI. In addition to the outside technical reviewers.

Mr. HORTON. It is my understanding that the in-house operation will function in each and every application for a project.

Dr. IANNI. Yes. We actually have two separate internal committees. One which reviews every project and a separate internal committee which reviews those that include questionnaires or similar tests.

Mr. HORTON. Are there projects which go to the questioning of children in grammar school as distinguished from high school and as distinguished from college groups, and if so, would you put a special emphasis on checking any type of project that would be involved in the grammar school as opposed to the high school and college level?

Dr. IANNI. Well, I think we would check all of them but we could obviously put more emphasis on one level than another.

Mr. HORTON. Is it your intention to do that?

Dr. IANNI. I think yes, we probably would.

Mr. HORTON. Do you have projects that go to the questioning of children in grammar school as separate from high school?

Dr. IANNI. We have very few of these actually. Most of our research which involves questionnaires deals with high school students. Project Talent, for example, which we mentioned before, which is the largest one we have, dealt exclusively with high school students. Very few deal with elementary school students.

Mr. HORTON. Now if you had a project which was going to have a questionnaire which would be in the personality or psychological testing field, then it is my understanding that you would require by contract parental consent prior to the taking of the test by the children involved.

Dr. IANNI. That's correct.

Mr. HORTON. And this would involve informing parents?

Dr. IANNI. Yes.

Mr. HORTON. Your answer to Mr. Rosenthal, I didn't detect from your answer that they would be given an opportunity to see the specific test that the children were going to be taking. Is it your purpose, or is it your intention that they would be given an opportunity to look at the specific test?

Dr. IANNI. This again is a situation which would, I think, differ in various cases. I think we would have to always let the investigator know his responsibility for this. In many cases I think this would probably mean that the research won't be conducted because there are situations where disclosure of the items in a test would so seriously reduce the effectiveness of the research that the research probably couldn't be conducted. But in those cases where we did insist on it, it would be in the principal's office.

Mr. HORTON. And it is also my understanding from your testimony that you will be very careful with regard to any type of questioning of students in any of these project tests.

Dr. IANNI. Yes, sir. I would prefer to say we will continue to be careful. I think we have been careful in the past. This is not—this element of care is not new for us. I think some procedures are new, but we have continuously been aware and worried about this situation, and I think we would continue to be so in the future.

Mr. HORTON. We have been talking about research projects that are approved by the Office of Education. Are there other types of testings that you approve? Do you, as the Office of Education, approve tests that are given in the State systems or in special school programs?

Dr. IANNI. No, we don't. I think this is something else important to point out: our program is a research program and consequently this deals only with the research use of personality tests and with questionnaire items.

Mr. HORTON. Thank you.

Mr. GALLAGHER. Doctor, if we could just narrow into it, will there be an opportunity for a parent to review a test when he is put on notice that his child is going to be subjected to a test?

Dr. IANNI. This would have to be a determination made in each individual case and I frankly wouldn't want to say that in every case we would insist on the test itself being shown to the individual parent.

Mr. GALLAGHER. Will the scope of the test be disclosed to a parent?

Dr. IANNI. Yes. The area of the testing, why it is necessary for the research, how it relates to the research objectives will be made available, but I simply don't see where in each case it would be necessary to make available the test itself.

Mr. GALLAGHER. Would a parent of a child, if upon making inquiry as to what the contents of the test were, then be in a position to have his child excused?

Dr. IANNI. Yes. He always has this.

Mr. GALLAGHER. Without the child being looked upon as an odd ball?

Dr. IANNI. I don't think so, because where testing is used in our research situations, the confidentiality of who is responding is always respected and consequently the child really wouldn't be ostracized as a result of this because the list of students to be used is not known to the general student body.

Mr. GALLAGHER. I am sure that by and large what you have just mentioned here are adequate safeguards and new procedures will implement these safeguards, but the subcommittee has a somewhat nebulous opinion when you get into specific areas of testing.

Just looking through the book at some of the tests here, there was one given on the personality attributes associated with various mechanisms of masculine identification. This was given to kindergarten boys.

Now the whole area of this type of thing would seem to me there ought to be full disclosure to a parent that this child of 5 years old is to be tested on his masculinity. You can get into many problems on this type of thing. It is this area that concerns me. There are others in the booklet here. But it would seem to me that a child could be made subject to witticisms throughout the school if the clinical relationship and nature of the testing weren't adequately safeguarded. Do you feel that in this type of thing, and most of these others, that privacies will now be protected?

Dr. IANNI. Yes, sir.

Mr. GALLAGHER. That a parent will have a right to know——

Dr. IANNI. I think the key to the issue is the voluntary nature of the test. This is the principal safeguard.

Mr. GALLAGHER. Voluntary nature of the test plus the parental request?

Dr. IANNI. That's right.

Mr. GALLAGHER. Parental consent, informed, as you said before. Informed parental consent.

Dr. IANNI. Yes.

Mr. HORTON. How can a child in kindergarten give his consent?

Dr. IANNI. This is the consent of his parents, not the child.

Mr. HORTON. In other words, the voluntariness of the test is gaged by the parent and not by the child involved.

Dr. IANNI. Yes.

Mr. HORTON. Is this true in grammar and high school levels?

Dr. IANNI. Yes, sir. Our understanding was everything below the college level.

Mr. GALLAGHER. Your new statement of policy, it is our understanding that parental consent, informed parental consent will now be part of the testing——

Dr. IANNI. Where questions of intrusion or privacies are involved.

Mr. GALLAGHER. In all areas below college level?

Dr. IANNI. Yes.

Mr. ROSENTHAL. Doctor, after you have prepared this memorandum that you are going to deliver to the parents prior to obtaining their consent, could you send us over copies of it, as many as you prepare, so we can include it in our files?

Dr. IANNI. I would be happy to.

Mr. CORNISH. Doctor, in giving the parents information about the testing when consent is sought, I assume that parents will be told in the first instance that their children are going to be asked questions about their family relationships, their religious views, their sex experiences. In other words it will be spelled out in terms so that parents will be able to have a very clear idea of what the questions are going to be. They are not going to be just told it is a personality test.

Dr. IANNI. These will not be global generalizations.

Mr. ROSENTHAL. Do you think the parents will help the children prepare for the test?

Dr. IANNI. Perhaps by reading Playboy, sir. I don't know.

Mr. ROSENTHAL. That is one-upmanship.

Mr. GALLAGHER. Would that be included in Project 1770 that I mentioned, a determination of the masculinity of kindergarten boys?

Dr. IANNI. Yes, sir; I think so.

Mr. CARLSON. No questions.

Mr. GALLAGHER. The U.S. Public Health Service and the National Science Foundation also have supported projects involving such tests. I am hoping that these two agencies will adopt policies and guidelines similar to yours.

Frankly I don't think it should be necessary for Congress to write protection of privacies into law regarding these matters. Federal agencies should be the first ones to take a strong stand in favor of individual rights. The Office of Education has done this, and the committee wishes to commend the Office for its progressive thinking and its interest in advancing the cause of scientific knowledge without jeopardizing the rights of the individual. I hope the Public Health Service and National Science Foundation will follow your lead.

We thank you very much for your statement of policy and for your appearance here this morning.

Mr. GALLAGHER. The Chair would like to call Dr. Arthur Brayfield.

Dr. Brayfield, as the executive officer of the American Psychological Association, we welcome you this morning.

Whereupon, Dr. Arthur H. Brayfield was called as a witness and, having been first duly sworn, testified as follows:

Mr. GALLAGHER. Doctor, you may proceed. Do you have a prepared statement?

Dr. BRAYFIELD. I have a prepared statement, sir.

Mr. GALLAGHER. Fine, please proceed.

TESTIMONY OF DR. ARTHUR H. BRAYFIELD, EXECUTIVE OFFICER, AMERICAN PSYCHOLOGICAL ASSOCIATION

Dr. BRAYFIELD. My name is Arthur H. Brayfield, Mr. Chairman. I am the executive officer of the American Psychological Association. I appreciate the invitation to appear before this committee and present this statement on behalf of the association.

Congressman Gallagher, I should like to express my appreciation to you personally for your kind cooperation with the invitation I extended you some time back to prepare a statement of your position, ideas, et cetera, with respect to this question for publication in our association journal, the American Psychologist, which will, in its November issue in some 186 pages, devote itself to the question of personality testing and public policy and I certainly appreciate your help and cooperation.[1]

The association, founded in 1892 and incorporated in the District of Columbia in 1925, is the major psychological organization in the United States. With a membership of more than 25,000 members, it includes most of the qualified psychologists in the country. The objectives of the association are to advance psychology as a science and as a means of promoting human welfare.

The American Psychological Association is hopeful that this hearing and others will assist in the further development and use of effective and responsible personnel procedures by Government agencies. Our members share your concern that such procedures shall give full recognition to the constitutional and human rights of present and prospective Government employees. We are grateful for the opportunity to appear here today, and we would like to offer the services of our organization in any way in which they would be helpful to you.

Most of our individual members are familiar with tests, and psychologists are quite concerned that the right tests be used for the right purposes in the right way.

Indeed, the preamble to our ethical standards, which binds all of our members, clearly commits us to this interest and concern. I quote:

> The psychologist believes in the dignity and worth of the individual human being. He is committed to increasing man's understanding of himself and others. While pursuing this endeavor, he protects the welfare of any person who may seek his service or of any subject, human or animal, that may be the object of his study. He does not use his professional position or relationships, nor does he knowingly permit his own services to be used by others, for purposes inconsistent with these values.

There can be no question that any injustice which vitally affects the career of even one government employee is a serious matter. Most of psychology is directly related to the essential uniqueness of each human individual and our ethical code is built around the inviolable rights of a human being to be treated with full recognition of his dignity and worth in psychological research and psychological services. In many respects these are old issues to us. We have long endeavored to set forth the strictest standards preserving human rights, and no psychologist needs to be told that these standards apply to every human being with whom he comes in contact professionally, and must be observed with particular care in the case of those who are emotionally disturbed, those who are in trouble, those who, in a career situa-

[1] See article entitled "Why House Hearings on Invasion of Privacy," on p. 397 of appendix.

tion, are being given a special examination, and the young and immature.

We welcome the interest of the public and of congressional committees in these matters, and while we feel that some of the current criticism is misinformed, we take it all in all as an evidence that the American citizen still treasures his right to be left alone in certain matters which should be his to decide.

In our view, one of the major and crucial tests of the effective functioning of a democracy is the extent to which its citizens are able to use their skills, talents, and abilities in order to realize their own potentialities and to contribute to the common welfare.

A second test is the extent to which a democracy's social institutions, social structures, and specific organizational units function effectively to achieve their missions and goals and, in the process, enable individuals to realize their potentialities and contribute to the common welfare.

In this view, a democratic society is concerned with the wise and humane use of its human resources.

It is in this context and perspective that psychological assessment procedures must be viewed and evaluated. The furtherance of these objectives of a democratic society has motivated much of the work on test development and is central to the professional use of assessment procedures. It is our hope that these tests have contributed to the wise use of human resources for productive purposes.

Psychological tests have made an enormous positive contribution toward securing human rights for all human beings, and they have been of great value to all kinds of minority groups. When a member of a minority group takes the same test as everyone else he may be judged on a much better basis than if he were to be interviewed personally by someone who might be biased.

Most persons realize that competitive examinations of all kinds, including psychological tests, have helped minorities, but it is sometimes overlooked that they have helped women and old people and sometimes young people and sometimes handicapped people who are able to demonstrate through standardized tests that they can do a job. There is simply no question that, although these tests can be abused by persons ignorant of their proper role, tests have been used to help the realization of human rights of millions of persons, and, above all, they have helped our country to utilize more fully its most priceless resource, the human talents of all its citizens.

It may be useful at this point to digress for a moment and briefly record a few facts about the history of the development and use of psychological tests.

In their origin, they were developed as instruments for the scientific study of individual differences. Curiously, the first experiments upon individual differences in a psychological function were made by an astronomer, Bessel, who had noted the earlier dismissal of an astronomer's assistant for errors in observation. Beginning around 1820, Bessel experimented upon himself and colleagues and found a wide variation in speed of response. This was the beginning of what is now a vast literature of the measurable differences among human beings.

This line of investigation was picked up by psychologists and furnished the foundation for subsequent work in mental measurement.

The study of psychological variability gained recognition as a field for scientific investigation with the publication in England in 1883 of Francis Galton's classic "Inquires Into Human Faculty and Its Development." The impetus for work in differential psychology in the United States was furnished by a paper titled "Mental Tests and Measurements," the first use of this terminology, by James McKeen Cattell in 1890. By 1910 Whipple had published a two-volume "Manual of Physical and Mental Tests."

These are the scientific origins. Interest was soon aroused in the practical uses of these measurement procedures which had been developed for strictly scientific purposes. In 1904 the French Minister of Public Instruction sought to find ways of insuring the benefits of education for educationally retarded children. This humanitarian concern led Alfred Binet in 1905 to publish his now famous individual test of intelligence. By 1910 Munsterberg, at Harvard, was able to write a book on industrial psychology which summarized the application to that date of psychological testing in business and industry. And then came World War I and the wide-scale use of psychological testing in the U.S. Army. It was at this time, incidentally, that personality testing received increased attention.

However, it is not my purpose to trace in detail this history. I do want to make these points:

1. Psychological testing, historically and presently, is closely related to questions of scientific interest and therefore ordinarily has had to meet rigorous requirements as a tool for research.

2. The utility of psychological testing in practical matters affecting human welfare was early recognized.

3. Psychological testing has a reasonably long history during which many technical, scientific, practical, and ethical problems and issues have been identified, recognized, and in some measure resolved.

Now I should like to turn again to the major questions of this hearing.

It is at this point that the unique contribution of the psychologist becomes apparent, for it is he who has insisted so vigorously that all personnel procedures should be able to demonstrate their effectiveness. That is, the psychologist requires evidence that the use of any given personnel procedure be demonstrated to have a relationship to the outcome of the employment process—to predict subsequent job performance.

A central question is: "What does a test score mean?" The rationale of the answer is straightforward although the procedures for answering the question in any given instance may be complicated. In general, the relationship which has been observed to exist between one's relative standing on a test—that is, scores—and some human performance—that is, transcribing shorthand notes—or some status—that is, success or failure in law school—or some mode of behaving—that is, hypersensitive, suspicious—tells what the test score means. That is, responses in the test situation are shown to be related to responses or behavior outside the test situation.

Let me illustrate by describing a rigorous "test of the tests" which was conducted in the Air Force during 1943–45.

A sample of more than 1,000 men was selected by representative AAF examining boards throughout the country without reference to their test scores—the test battery included tests of coordination and

speed of decision, intellectual aptitudes and abilities, perception and visualization, and temperament and motivation; that is, personality, which were combined into a single score. All men who met the physical standards of the medical examination were accepted and sent into pilot training; their test records were sent to headquarters and were not made available to the training schools. These are the results:

Not 1 of the 125 men with the lowest combined aptitude score was successful in flying training.

Only 4 percent of the 391 men with low aptitude scores were able to complete the full course of flying training.

Of the 468 men with medium aptitude scores, 30 percent were graduated.

Of the 158 high aptitude men, 65 percent were graduated.

It is clear from these data, which constitute a rigorous "test of the tests," that important improvements in training efficiency resulted from the use of these objective selection procedures. The meaning of the scores on the test battery is reasonably clear. They were related to success in training. Incidentally, other studies demonstrated their relationship to bombing accuracy and to the accident rates.

This research investigation also illustrates that tests are not perfect but that they may lead to a marked improvement in personnel decisions over decisions made on the basis of conventional personnel procedures. In this instance, 25 percent of the entire group, selected by conventional methods, were graduated. If only men with high aptitude scores had been selected, 65 percent would have graduated. This represents a tremendous savings in time, materials, and money.

Obviously, I could also illustrate instances in which tests have not been effective. It is the responsibility of the test user to know from research what tests are effective for what purposes under what conditions.

I should like now to present our recommendations and views on the need for legislative action on these matters.

In our view, legislation may define the roles and functions of psychologists in the Federal Government; it should not dictate the methods and procedures for carrying out these roles and functions. These methods and procedures are more properly reserved to professional judgments. Such a canon of professional autonomy does not, of course, preclude the use of commonsense by the individuals concerned. Nor does it suggest an indifference to the important question of individual rights with which this committee is quite properly concerned—as are the members of our association.

It does seem to us, however, that there are several ways in which the Government could strengthen its assessment procedures and safeguard the rights of individuals subject to them.

The underlying theme of our recommendations or suggestions is that professional competence should systematically be put at the service of the Government to develop guidelines for psychological assessment practices, to carry out such procedures, and to review such programs and procedures.

Specifically, the Government might act to:

1. Insure that all nonresearch test use and psychological assessment such as is not under the direct cognizance of the Civil Service Commission should be under the direction of highly qualified staff psychologists directly responsible to operating or line administrators.

2. Maintain a review or appeal procedure for personnel decisions in which psychological test data and psychological assessment have had an important part, perhaps with the possible use of an outside panel composed in part of psychologists.

3. Establish an interagency committee on assessment composed of representative agency psychologists. This committee would share experiences and formulate guidelines for sound practices.

4. Establish an advisory panel to such an interagency committee, composed of recognized psychologists from outside Government to periodically review agency assessment procedures and programs and to assist the committee in its activities.

5. Establish a task force under contract with the National Academy of Sciences—National Research Council, perhaps in conjunction with the Division of Behavioral Sciences of the NRC, to survey and evaluate current agency assessment procedures and practices and to make recommendations.

A task force, under the direction of an eminent psychologist and public figure such as, say, the present president of the Carnegie Corp., the vice president of the Rockefeller Institute, the executive officer of the American Association for the Advancement of Science, or a recent National Medal of Science recipient, would bring superb scientific and professional resources to the task.

I might just interject at the time I prepared this I mentioned the president of the Carnegie Corp. I was not aware he was about to be appointed to a Cabinet officership in the Government and is thus unavailable. He is a psychologist.

Mr. GALLAGHER. How do you view this appointment? You point out he is a psychologist. Do you think he will agree with us or psychologists?

Dr. BRAYFIELD. I'm inclined to say that is his problem.

Mr. GALLAGHER. But you do say it is a problem?

Dr. BRAYFIELD. I think his appointment was a most distinguished one on the part of the Government in that he brings to the position great competence and great integrity and I'm sure that because of his background he will be particularly sensitive to the issues to which this committee addresses itself.

Mr. GALLAGHER. I'm very happy to hear that.

Dr. BRAYFIELD. Such a task force would start with the advantage of having available to it the considerable preliminary work of this subcommittee and its staff on these matters. One would hope that the final recommendations of this committee might be deferred until the findings of such a task force were reported to it.

6. Provide for continuing empirical research on the effectiveness of the personnel procedures used in those agencies where psychological assessment is an integral part of the procedures.

It has now been almost 4 months since this subcommittee held its first hearings on this topic. And meanwhile, Senator Sam Ervin's Subcommittee on Constitutional Rights has held thoroughly prepared hearings on the same subject. Perhaps you would be interested in an appraisal of these recent events.

First, I believe that a useful purpose has been served by reminding all of us—Government officials, professionals, and the public generally—that we must subject our personnel procedures to continuing review—and I have just suggested several arrangements for effectively doing this.

Second, the misconception that there is a wholesale use and abuse of personality testing in Government has been shown to be false. It is simply not true that these personality tests have been widely used throughout the Government as a regular condition for employment. They have been used in the Peace Corps where the Congress expressly asked the Peace Corps to be sure that the persons sent abroad were emotionally suitable. Mr. Shriver and others have testified that the selection procedures used by the Peace Corps, which were mainly devised by psychologists, have been unusually successful.

These tests are very rightly used by the Department of Defense at places like atomic bomb installations where you need to know that the men near the master controls are of sound personality and character, and will not panic under stress.

A few sensational statements have been made which have implied that the U.S. Government has been embarked on an enormous program of asking people applying for all kinds of jobs, all kinds of questions and then letting the answers to these questions be passed around loosely in Government offices. In the course of these investigations our top officials have talked to the top officials in the offices mentioned and it is crystal clear that there has not been any such widespread use of personality tests, and of course there consequently has not been any widespread misuse of these tests. I repeat, there has been no widespread use and there has been no widespread misuse of personality tests in Government employment situations.

Further, our association and its ethics committees have received no well-documented account of any injustice or gross invasion of privacy; our staff members, including the secretary of our national ethics committee, have gone through the transcript of both the House and Senate committees investigating these matters and we do not find there has been any widespread abuse of psychological tests in the Federal Government. Our ethical code binds every member of the APA and we will not tolerate any person in psychology misusing private information or permitting it to leak to the damage of some person's reputation or career. I urge this committee and its staff to report to our association, in complete confidence if they wish, any case in which they have found a psychologist has been an accessory to mishandling of confidential information. Meanwhile, our investigative machinery is alert to watch for misuse of any psychological tests.

Third, as evidenced by the statement presented on behalf of the U.S. Office of Education, this committee has extended its interest to the use of personality tests in research grants and contracts with investigators outside the Government whose quest for new and useful knowledge is supported in the public and national interest by Federal funds. As I noted earlier, psychological tests originated as instruments for scientific research. Thus we have a very real interest in their present-day use in research.

This is a new development and one which, in my view, gives added significance and urgency to our recommendation for a task force composed of top level professionals and public figures with a comprehensive charge which would include research.

With all due respect to this committee, I must state my personal view that it does not appear to me to be a workable procedure for it, in effect, to negotiate with individual Government agencies, agency by agency, on the technical considerations which underlie the research of

responsible investigators. Research is a highly individualistic matter and I very much doubt that general prescriptions can be written which will do justice to the good intentions of this committee, to the welfare of individuals serving as research subjects, or to the production of new and useful knowledge.

In research, as in personnel procedures, I am sure that our common aim is to achieve a proper balance among a variety of important considerations. To this end, the American Psychological Association offers you its cooperation and its resources.

Thank you for the opportunity to appear here today.

Mr. GALLAGHER. Thank you very much, Doctor.

We were very happy to grant your request to give a statement on behalf of the association that you represent.

Dr. BRAYFIELD. Pardon. For the record, I think that it was not a direct request from us. We have discussed this, but I should not wish to be in a position of requesting an appearance. We are very pleased to be here.

Mr. GALLAGHER. I am not sure whether you requested it or not, but I recall your asking me for the opportunity of making a statement. I was very happy on behalf of the special inquiry to afford you the opportunity.

Dr. BRAYFIELD. We are pleased to be here.

Mr. GALLAGHER. We are on some slippery area if we misunderstood each other. Perhaps that is the greatest misunderstanding of psychological testing.

I would like to say, Doctor, that I don't know what you consider a widespread abuse or would consider a widespread abuse of personality testing.

Dr. BRAYFIELD. Sir, I would consider that in the instance that a single employee of the Federal Government is in some substantial way damaged personally through the use of personality tests, that is a very serious matter and warrants our immediate concern.

Mr. GALLAGHER. That was the concern of this subcommittee. How widespread or what numbers would indicate widespread use would all differ. The fact of the matter was that there was and is a growing use of this type of testing. We have not been opposed whatsoever to the advancement of scientific knowledge on the part by psychological testing. What we have directed our efforts toward was the widespread abuse in our opinion of the personality type of test that has become and that has been growing as a condition precedent to Government employment in recent years, and has been growing unchecked without any proper guidance enunciated by the agencies in the Government.

As a result of this committee's work, we now have a directive by the Civil Service Commission on the use of personality testing. We have never been opposed to the type of testing that one would be required to determine dexterity, or ability to perform a task.

Under psychological testing, where there is a question of mental balance, we ourselves have urged a psychological evaluation would be helpful as long as it remained in the clinical confidentiality of the psychologist and patient, or client, or whatever he may be referred to as, employee. But these tests have become part of the file, they have been part of the following file, the questions may vary.

Your association says that dependent on the scale of an evaluation that one particular answer to one particular question might not be very important, but an individual's response to a particular question that may follow him for the rest of his career is important. There have been people who have lost jobs as a result of a refusal to answer some questions regarding their personal life. Some of these people have now been restored to their positions. I am not sure what part of the record you have read, but the fact of the matter is that if you think, it is serious enough to make these suggestions, which we welcome, by the way, and welcome very much, it was serious enough for Chairman Macy, John Macy, to define what the problem was and to lay down guidelines to correct the problem which this subcommittee is quite satisfied with.

As far as the Peace Corps is concerned, they overnight eliminated 195 questions out of 460, all related to the area that this subcommittee was interested in. So there was a problem, a very serious problem, that you yourself recognize, that the association recognized.

We have never been opposed to psychological testing per se. We have been strongly opposed to the use of personality testing as a way not only to determine a person's attitudes, but to determine how a person might think at some future date to some given situation. We feel that this is wrong to determine whether a person may join a union or intends to join the NAACP. The type of questions, thousands of these questions that have been thrown back and forth in Government circles without any great check being placed upon them—and I am happy that you indicated awareness of this problem and a desire to cooperate to protect the privacy of individuals.

This has been the very purpose of this inquiry, not to impede science, not to slow down scientific research, but rather to accept it, to accelerate it properly so that the beneficiaries of scientific research will at some time be able to benefit from the research rather than be condemned to a status of nonperson at some foreseeable future which seemed to be the path we were on in this particular area of interest.

Mr. Cornish?

Mr. CORNISH. Dr. Brayfield, how do you feel about the question of consent given to taking a personality test which is possibly intrusive? I am talking about the situation outside the clinical situation.

Dr. BRAYFIELD. This is the research situation?

Mr. CORNISH. Yes. I know the association, for example, has given great time and consideration to the question of confidentiality in testing, and I think rightly so. But has the association really directed itself to the issue of consent as well as confidentiality?

Dr. BRAYFIELD. I wish there were a simple response. If there were, the problem would probably not be very significant.

The fact that there is no simple response does indeed indirectly attest to the significance of the question. I think I would sort out my views in the following way: (1) I very much doubt that you can write a general prescription that would cover the issue; (2) and this is a basic question—I think that you have to weigh the relative values as does an investigator in the more generally established and recognized areas of medical research, as to the values to be derived from the research being undertaken; and (3) I think, as has been the primary concern of your committee, that you have to weigh the question of the

rights of the individual who is subject to the inquiry, who cooperates and participates in the research.

In most instances a responsible investigator would either in a general way or in a specific way address himself to the question of consent. Partly you have an age factor, a maturity factor as influencing your decision. As I suggested, you have the question of the significance of the possible discovery of information or new knowledge to be obtained. You are really posing one of the real judgmental tests that any investigator is faced with, and interestingly, although there is no consent involved, you have some highly related question in the use of animals which is always of great concern to research people.

I face the question not only as a professional in the field but I face it as a parent. I have four children and I have raised the question of my children's participation in research and, for myself, I have resolved the question that in many instances of research I am not bothered about the problem of consent. It turns out that I am more bothered in this particular instance with the use of personality tests in school settings by school personnel, and there my children are instructed to be very "cagey" simply because at the present time there are not sufficient numbers of really professional people making use of such materials in the public schools.

Mr. GALLAGHER. If I could interject now at the number of the problem that concerns us, not the competency of psychologists, but the use of psychological and personality testing by those who are unskilled or unknowledgeable or incompetent.

Dr. BRAYFIELD. This is the thing that has disturbed us all. The fact that there has——

Mr. GALLAGHER. A mass use of this type of thing.

Dr. BRAYFIELD. One of the interesting situations a psychologist faces is that he is criticized because he knows too much and does too much and is criticized because he doesn't know enough. I would rather get the criticism of knowing too much and being highly competent—and our problem is we have, unfortunately, access to professional materials on occasion by persons who are not professionally competent to use the materials. It is true in industry as well as schools.

Mr. GALLAGHER. This is the problem.

I would like for the record to include that we have never, at any point along the line, tried to exercise any judgment on the competency or efficiency of psychologists, or criticize the psychologists to any extent. We have been highly critical of the use of personality tests that have been put together by psychologists and allowed to be distributed to incompetent people who make evaluations and judgments.

Dr. BRAYFIELD. This certainly isn't speaking as a psychologist, but what we are dealing with really is a high moral question and I look to see what social institutions have been evolved to deal with the moral questions.

On the one hand you have professionals and their internal controls. On the other hand you have some kind of social control via government. And on the other hand, in one sense, as the ultimate arbiter of the great moral issues of this or any other times you have the law.

We have discussed this whole general area at length with our general counsel, Judge Thurman Arnold and his staff, and we come to a real

appreciation of the problems that the law has had, which is institutionalized human wisdom in many respects, and we come to see the very great problem they have.

I have searched for a definition of invasion of privacy that I could be assured would have a reasonable chance of holding up in court. And you know better than I do, particularly as a lawyer, the very great difficulties of arriving at such a decision and one that would be sustained at the highest levels of the court.

Mr. GALLAGHER. We are not seeking to lay down inflexible guidelines. We do feel that basic values and sections in testing should be made more explicit so that they will be kept at a high level of consciousness in the minds of both the Government officials and researchers. That has been what this subcommittee has attempted to do, to bring to the surface some of the problems that people in Federal Government and other employment have been having with the moral issues that surround the inefficient or incompetent use of personality tests by those not competent to evaluate it. We have never questioned the need or the use or the desirability of psychological relationship at some particular point as long as that relationship would remain a clinical and confidential one.

Mr. ROSENTHAL. Doctor, I think you said in the beginning of your testimony that psychological testing has helped certain minority groups attain positions based on their absolute skills rather than any extraneous factors.

Yet I remember in the MMPI and some other tests that were given, that there seemed to be a number of questions which would clearly indicate the racial or social character or background of the person taking the test which in my judgment would have clearly excluded that person from consideration. I don't remember the questions.

Do you resent the background? With many people living in one apartment or one room, "was your neighborhood shabbier than other neighborhoods," questions of that type. I find an inconsistency between the little experience we had reviewing that test and the testimony you have given here this morning.

Dr. BRAYFIELD. Your problem always takes you back to the use of the materials. We finally discovered poverty in America. Those of us who date back to the early thirties and didn't even have a house window to jump out of, let alone a 40-story office building, kind of feel like it is the old days, and we feel more at home again that there is recognition of such a thing as poverty and there is such a thing as discrimination and deprivation.

One of my concerns, very seriously, is how we can get the kinds of useful knowledge that will make it possible to better design social programs of all kinds, whether they be training or the enhancement of motivation. In my view the biggest problem in working with underprivileged groups of all kinds, be it minority or any other label, is how to instill in them some real feeling of wanting to be a part of our society and to get a little of the "striving" syndrome into it, if you will. It is such a subtle thing that you are led into inquiries.

It now seems reasonably well established that a major part of the problem with respect to Negroes and their motivation—I am thinking of the younger people now—is the lack of a father figure. The lack of a father physically present and the lack of a father psychologically present.

It is well established that the Negro social system at the lower income economic levels is essentially a matriarchy, and you get a different kind of person coming out of that environment if his identification has been with a mother rather than with a father figure.

If you can't ask the right question, how are you going to get the knowledge that enables you to really know the significance of the problem of how one adopts the male role and how one adopts the female role, and how one takes on some of the characteristics that seem particulary appropriate in our society for an underprivileged kid? How can you design the educational programs and training programs and counseling opportunities and the kinds of relationships the kid has in his family? In other words, how can you be useful in the interest of an underprivileged kid if you don't have a real basic understanding of the phenomena, and this, I think, is the point we hang up on when we get into the research side, because it is indeed some of these things that on the surface we find often significant.

The question of family relationships, sexual practice and so forth, and religious values, if you will, are important. There certainly is sufficient evidence that they have a bearing on what this kid is going to be and what society can provide for him in the way of education and training and all the rest.

Mr. ROSENTHAL. Let me be specific. This is a rather lengthy answer to my question.

Dr. BRAYFIELD. I am a former teacher, so cut me off at any time.

Mr. ROSENTHAL. All right. One of the important factors is this seeing which way the person or youngster goes toward his male or his female characteristics. Following that psychological interest on the MMPI was a question "Who do you think is more masculine, Washington or Lincoln"? Now, the subcommittee itself has been wrestling with this for months.

Dr. BRAYFIELD. This is why you were interested in the answer sheet, wasn't it?

Mr. ROSENTHAL. Still we have never really resolved that. It seemed to me that not only was there presumably an answer that Washington was associated more with war and soldiers and that he was more masculine, but that certain groups would tend to favor Lincoln with having no masculine tendencies, and this led me to believe there were many, many errors in this kind of testing and that this compounded with the violation of an individual's constitutional rights permitted me to feel there was great doubt in the practical use of these tests.

Do you agree with me that maybe there is an intermixture of discrimination against groups when you are simply trying to find out this masculine-feminine tendencies?

Dr. BRAYFIELD. You made it more specific.

Mr. GALLAGHER. Sonny Liston would say "Lincoln." He would get a minus on the masculine-feminine scale. Now he would not exactly be considered feminine.

Mr. ROSENTHAL. As far as we know, that is.

Dr. BRAYFIELD. As far as we know, that's right. Well, I know first that discrimination is all-pervasive and we are all discriminated against. Blonds are discriminated against, for example. Obese individuals are discriminated against. You name the characteristic and the individual possessing that is discriminated against by someone.

I think you are asking for a technical consideration because I have to give it to you in terms of a technical consideration. That particular item has been shown to differentiate among a group of persons whom it was reasonably clear were masculine in their makeup and a group whom it was reasonably clear were feminine in their makeup. Now, if there were a single question asked that was relevant to that discrimination, that distinction, then you would be in trouble because indeed I could conceive that a Negro might well take Lincoln as his hero, but if you add in 30 or 40 other items that are not subject to that kind of bias, then you have control for bias and this is one of the technical problems you have always got, that of how to control for bias.

Bias is, in someone's definition, always there, and this is why you have to technically randomize the opportunities for bias to occur in order to get a useful measure that will indeed have some relationship to whatever the characteristic is, or kind of behavior is, that you are trying to get at.

Mr. ROSENTHAL. Let me just ask only one more question because I know I have abused my time privilege. It seems to me when you come down to the basics of the thing, there is a need to balance the scales of justice. On one side is what you presumably indicate is scientific progress in research and movement of groups and so forth. On the other side is the invasion of privacies in its constitutional derivatives. At what point do you balance the scales of justice in favor of science and against the Constitution? Or do you?

Dr. BRAYFIELD. Well, you don't, of course. You work out an accommodation process of some kind that fluctuates back and forth, is what you really do. You almost have to have confidence in the honesty and integrity of individuals, and many of us have sufficient experience in human affairs that our confidence, I must say, is sorely tested from time to time.

Mr. ROSENTHAL. In whose confidence are we talking? The examiner, the person responding to the test questions, the reviewer? Who precisely do you mean?

Dr. BRAYFIELD. Well, I start first with the nine wise men on the Supreme Court, because I have said earlier that is where our fundamental moral issues get spoken to eventually. It may take a hundred years, as it did with the question of discrimination. It took a hundred years for that one to get resolved by the Supreme Court in 1954. And we are going to have to be patient and wait.

I think a lot of people are involved. I think, for example, that a school board in Kansas has a stake in this question and I think that there, locally, there is going to be some resolution of it. I think it will be resolved, responded to in part by professionals. I think it has been responded to by your committee which has served the function which I think is a very, very valuable function to keep all participants on their toes.

I don't think you have the wisdom to resolve the problem, very frankly, because I know psychologists don't have the wisdom to do it, and I am not sure the Supreme Court has.

Mr. GALLAGHER. Is that a measured judgment on who has the ability?

Mr. ROSENTHAL. Thank you, Mr. Chairman.

Mr. CORNISH. Doctor, would it be unfair to say that generally speaking you feel that on the issue of consent that this is a matter which should be left to what we would hope to be the wise judgment of the investigator?

Dr. BRAYFIELD. I think that would be my fundamental response, yes.

Mr. CORNISH. I think this is probably where a basic difference between us comes in, because I think that the members of the subcommittee probably feel that consent of the individual or his parent should be required wherever possible and that is where, actually, we have the major difference of opinion.

Dr. BRAYFIELD. I would probably behave in the way in which you advocate, but I would want just a few degrees of freedom where in a particular instance I might feel that a lot of other factors overweighed the consent requirement. One of the things that impresses me in Government agencies on the research side is the extensive review procedures that have been worked out. The projects I have seen helped by having review procedures. But those committees work this way. Those committees themselves feel restricted if there is a highly specific condition that is stated; it comes down to a best judgment sort of thing.

Mr. GALLAGHER. One of the things that comes to my attention in these research projects is the revolving chair factor of people in Government this year giving grants to people out of Government and people on the other end being in Government next year giving grants to people who are then out of Government, a Joe and Charley type of thing, that perhaps there is an inbred confidence among the grantors and the grantees that professional confidences will be respected and on that ground alone, having reviewed some of the correspondence in grantsmanship, I think it is necessary that some guidelines be laid down.

We are not trying to lay down inflexible guidelines, but some guidelines should be directed to this program.

Mr. CORNISH. I know the American Psychological Association is a private organization, but you do receive some financial support from the Federal Government in the form of grants, do you not?

Dr. BRAYFIELD. Yes.

Mr. CORNISH. Do you have any idea what that amounts to in a total, say, for the current year?

Dr. BRAYFIELD. Yes. We have an NSF grant which is in support of a scientific information exchange project. People all over the country are in one sense submerged in scientific information, and we have attempted to see what are the best ways of getting scientific information communicated where it would do the most good and where it can really be brought to bear on a particular investigator or particular practitioner's needs.

This has turned out to be an extremely valuable project in opening up some new channels on the problem. This runs—probably about $100,000 from NSF this year.

Mr. CORNISH. Perhaps in the interest of time——

Dr. BRAYFIELD. Total figure this year runs about $250,000 of Federal grants.

Mr. CORNISH. I wonder, could you provide for the record a list of the grants which you have received from the Public Health Service

and the National Science Foundation and other Federal agencies, say, over the past 5 years?

Dr. BRAYFIELD. I would be pleased to file my entire set of budgets for the last 5 years so that you can get some view of the relative proportion. In 1966, our total gross financial activity will be in the neighborhood of about $2½ million of which, as I indicated, about $250,000 will be Federal grant funds.

There is one thing I want to make clear for the record, because I am aware that at least one scientific and professional society in this city didn't wisely husband its resources and as a result was largely dependent on Federal grants. We use grants for the multiplier effect to make our own dollars go further and more usefully.

(The information referred to follows:)

AMERICAN PSYCHOLOGICAL ASSOCIATION,
Washington, D.C., November 12, 1965.

Mr. NORMAN CORNISH,
Staff Director and Chief Investigator,
Subcommittee on Government Operations,
Rayburn Building,
Washington, D.C.

DEAR MR. CORNISH: Attached is the breakdown of figures on Federal grants and contracts which the American Psychological Association has received over the past 5 years, plus the figures for 1965 covering to September 30, as requested by your committee during my testimony. This is a followup to my previous letter on expenditures in response to your telephoned inquiry (via Mr. Romney) for a report on total grants as distinguished from expenditures.

During the 5-year period from 1960 to 1964 the American Psychological Association was awarded grants and contracts from Federal agencies amounting to $1,752,835 of which $90,000 was transferred to the University of Maryland. Federal funds expended during that period amounted to $1,314,014 of which $44,452 was returned to the U.S. Public Health Service. It should be noted that the difference in awards and expenditures for any given period is a function of the date when an award is made. Portions of it may carry over into another time period. During this same period the American Psychological Association funded $5,518,600 expenses from its own funds. In addition, APA expended $98,986 of non-Federal grant funds and it invested $960,809 of its own funds in the development of a new headquarters building in Washington.

In summary, during this 5-year period, 1960–64 inclusive, APA expended $7,847,957 of which $1,269,562, or 16 percent were Federal grant or contract funds. In 1966 APA currently has budgeted expenses of $2,239,200 of its own funds and estimates that it will spend about $225,000 in Federal grants and contracts, which represents 9 percent of the total expenditure.

Funds received from grants have been expended on special projects.

Attached is a detailed sheet of figures giving the names of projects, the amounts received from grants and grant expenditures year by year.

Sincerely yours,

ARTHUR H. BRAYFIELD,
Executive Officer.

American Psychological Association, annual grant and contract awards and expenditures, Federal Government agencies, period Jan. 1, 1960, to Sept. 30, 1965

Name of grant	1960	1961	1962	1963	1964	Jan. 1 to Sept. 30, 1965	Total
I. AWARDS							
U.S. Public Health Service:							
Training program in clinical psychology	$26,000	$34,055	$34,055	$34,055	$34,055	$34,055	$196,275
Research in psychological aspects of rehabilitation	15,532	-------	6,500	-------	-------	-------	22,032
Travel to International Congress of Psychology, Bonn, Germany	5,000	-------	-------	-------	-------	-------	5,000
2d Conference on Research in Psychotherapy	14,547	-------	-------	-------	-------	-------	14,547
Support XVII International Congress of Psychology, Washington, D.C	-------	-------	50,500	-------	-------	-------	50,500
Special international activities in psychology	-------	-------	42,600	19,300	-------	-------	61,900
Research and demonstration in pupil personnel service [1]	-------	-------	[1] 90,000	-------	-------	-------	90,000
Conference on Professional Preparation of Clinical Psychologists	-------	-------	-------	64,770	-------	21,713	86,483
Travel to Congress of Applied Psychology, Yugoslavia	-------	-------	-------	-------	14,115	-------	14,115
Total, U.S. Public Health Service	61,079	34,055	223,655	118,125	48,170	55,768	540,852
National Science Foundation:							
National Scientific Register	17,428	21,745	19,273	28,520	20,760	24,000	131,726
Visiting scientists to colleges program	25,030	23,130	23,130	23,875	23,875	20,955	139,995
Publication of "A Career in Psychology"	-------	4,600	-------	6,900	-------	-------	11,500
Visiting foreign scientists program	-------	56,160	-------	17,770	8,885	-------	82,815
Production of film series "Focus on Behavior"	-------	148,240	187,770	29,400	-------	-------	365,410
Coordinated study of information exchange in psychology	-------	167,760	69,900	-------	302,600	-------	540,260
Travel to VIII Inter-American Congress in Psychology, Mar del Plata, Argentina	-------	-------	-------	5,000	-------	-------	5,000
Support XVII International Congress in Psychology, Washington, D.C	-------	-------	36,000	-------	-------	-------	36,000
Support of Publication of Abstracts	-------	-------	-------	-------	-------	68,500	68,500
Total, National Science Foundation	42,458	421,635	336,073	111,465	356,120	113,455	1,381,206
Total, Federal Government grants	103,537	455,690	559,728	229,590	404,290	169,223	1,922,058
II. EXPENDITURES							
See enclosure for details	56,888	209,488	[1] 444,946	[1] 350,183	252,509	231,005	1,545,019

[1] This grant was transferred to the University of Maryland by U.S. Public Health Service. APA disbursed $548 of the grant fund and returned the balance of $44,452 of the $45,000 of grant funds received prior to the transfer.

Mr. GALLAGHER. Doctor, in evaluation of these tests, does your association farm them out for evaluation?

Dr. BRAYFIELD. No. What you have available to you to evaluate any particular test—what you have is your own knowledge of the research literature that deals with that test. About every 3 years there is published, under private but nonprofit auspices, a mental measurements yearbook. It has about 1,200 pages each year in which at least 2 highly competent people will evaluate a given test.

Mr. GALLAGHER. Are they paid for this?

Dr. BRAYFIELD. Yes, you get a copy of the mental measurements yearbook free. You are paid at the rate of about 4 cents an hour, is what it turns out. Those persons who participate as reviewers.

Mr. GALLAGHER. Well, if a series of tests were done at Bayonne High School, and then they were sent into your association headquarters——

Dr. BRAYFIELD. They don't come in to us.

Mr. GALLAGHER. Who would they come to?

Dr. BRAYFIELD. They don't go to anyone.

Mr. GALLAGHER. Who would make the evaluation? These tests are sealed, aren't they?

Dr. BRAYFIELD. Yes.

Mr. GALLAGHER. And someone is paid to evaluate them?

Dr. BRAYFIELD. Well, let me tell you—I won't take but a second.

Mr. GALLAGHER. Good.

Dr. BRAYFIELD. A few years ago there was a particular occupational interest inventory which I summarized by saying, one, I was using it extensively as an example in my class of utter foolishness; and, secondly, I ended that the only appropriate evaluation was caveat emptor—so you get that kind of evaluation from the mental measurements yearbook. It is a hardhitting, objective-type evaluation.

There is no single governmental agency or profit or nonprofit organization that reviews all tests that come out other than this one mental measurements yearbook, the "Buros Mental Measurements Yearbook". It was carried on the shoulders of one dedicated individual for about the last 18 years, and he got the cooperation of about 600 people at about 3 cents an hour.

I would like to say——

Mr. GALLAGHER. We have a copy over here.

Dr. BRAYFIELD. In testimony before Senator Ervin's committee, one of my colleagues strongly urged that the National Bureau of Standards establish a test review unit. I have no objection to that. I first made the suggestion in 1939.

Mr. GALLAGHER. Thank you very much, Doctor.

Mr. HORTON. Your association, of course, does not in the first instance prepare these so-called personality tests, do they?

Dr. BRAYFIELD. No.

Mr. HORTON. Do you have any mechanism in your association for checking the content of such tests? Are they submitted to your organization on any sort of a basis, voluntary or otherwise?

Dr. BRAYFIELD. No. Our role is to provide standards, as in this new document which first came out in 1954, and this is a revised one that is just now at the printer's, which gives the best judgment of the technical people in the field as to what standards tests should meet.

Our internal procedure for enforcing this is the same procedure that any professional, law, medicine, what have you, has, and that is through our ethics committee operation where a person——

Mr. HORTON. What do your standards say with regard to these so-called personality tests that involve personal and intimate knowledge, especially about sex, religion, and that sort of thing?

Dr. BRAYFIELD. It would show up in our ethics code which says the psychologist who practices his profession shows sensible regard for the social codes and moral expectations for the community in which he works. A psychologist must recognize that his running counter to accepted moral and legal standards may involve his clients, students, or colleagues in damaging personal conflicts and

impugn or damage his own name as well as the reputation of his profession.

Mr. HORTON. You don't get involved in the——

Dr. BRAYFIELD. We don't evaluate the test materials themselves as to whether they are "good tests" or "bad tests."

Mr. HORTON. Do you say anything in your standards about questions regarding sex or religion?

Dr. BRAYFIELD. No, sir.

Mr. HORTON. You just have a general statement?

Dr. BRAYFIELD. That's correct.

Mr. HORTON. Do you say anything in your standards, or do you take any position, with regard to these tests being given by others than those qualified in the field of psychiatry or psychology?

Dr. BRAYFIELD. Yes. We take a strong position on that as to who is technically competent and what qualifications they must have.

Mr. HORTON. What is that position?

Dr. BRAYFIELD. There are four classifications and the completely unstructured personality test used for clinical assessment would require a Ph. D. and so many years of supervised training experience.

The next category would take a structured personality test such as the MMPI and require the Ph. D. and so many years of supervised experience.

Then you go down to the fourth category which would take account of an achievement test, for example, where a classroom teacher with a course in educational measurement would be felt to be qualified to administer a classroom achievement test.

Mr. HORTON. That doesn't have anything to do with personality testing.

Dr. BRAYFIELD. No.

Mr. HORTON. In this personality testing, do you take any position with regard to who should administer that?

Dr. BRAYFIELD. It is not that concrete. Let me give you what it would operationally work out as. A person with a master's degree in psychology and with a year of supervised experience would be thought competent to administer a personality test in an industrial situation where it had been demonstrated by research to have some relationship to subsequent performance on the job. What you really run into——

Mr. HORTON. It would still have to have some psychological training, though.

Dr. BRAYFIELD. Yes, correct. It is when the tests get out and get in the hands of someone else that we have a problem.

Mr. GALLAGHER. This is our problem. The Government, in the use of these tests, has not met the high standards that you yourself have set down by your association. We have felt that these tests, the answers to these tests in the hands of incompetent people are about as safe as a loaded gun in the hands of a child. This has been our feeling.

Dr. BRAYFIELD. I think your problem is a little more specific. The Civil Service Commission has a highly competent staff of psychologists who know this field backward and forward, but not all agencies—there is an excepted service and classification, and not all agencies need to clear through the Civil Service Commission. This is why I felt that we should make the recommendation that there should be

an interagency council of psychologists and that that council should have an outside advisory group.

Mr. HORTON. You would be even concerned within a governmental department having in-house groups, so to speak, pass on these personality tests who didn't have any training or background, wouldn't you?

Dr. BRAYFIELD. Yes. I mentioned, for example, there are four classifications that would apply to how complex a personality assessment procedure you can use. I personally would be guilty of unethical conduct if I attempted to operate at level 4. I am not a clinician and that is the level that is really called for. I can operate at level 3 as an industrial personnel psychologist. So that you have very clearly understood that you restrict your practice in terms of what you are competent to do.

I won't say that the procedure operates perfectly, because that would be a stupid statement. Go to law or medicine or any profession, it is clear that you have problems.

Mr. HORTON. Is it your experience in your association that these tests are submitted to the association for some type of review or examination?

Dr. BRAYFIELD. No; the closest thing to it may be that we publish 13 scientific journals, and many critical articles on tests. You will find research reports that give you important information about a specific test, but we have no central bureau of standards for tests—I think the notion you are essentially presenting is a clearinghouse, a central place for review and evaluation, and we simply don't have it.

Mr. HORTON. You are concerned primarily about the commercialization in this field. As I understand it, there are a number of corporations that are selling these tests and that sort of thing. Is your association concerned about this?

Dr. BRAYFIELD. Very much. The leverage you have is your ethical control. If you find a publishing house, and there may be one or two instances perhaps, where they don't have Ph. D. psychologists on the staff, I would strongly suspect that it is a fast-buck concern.

Mr. HORTON. Do you have any recommendations with regard to whether or not the Congress should become interested in this aspect of it? Do you anticipate or do you expect, or do you feel that this has gotten to such a point that there is danger to the welfare of the people in this country, with regard to this type of testing?

Dr. BRAYFIELD. I won't make that strong a statement.

Mr. HORTON. How would you characterize it?

Dr. BRAYFIELD. I would not be indisposed to seeing a task force, as I have suggested, of highly competent professionals and distinguished public figures, to look at the field of testing and look at that particular question as to whether or not there should be—I can see a possible role for the National Bureau of Standards in the area just as there is a drug unit that reviews materials.

Mr. HORTON. At the present time there is no bureau of standards in this field?

Dr. BRAYFIELD. That is correct.

Mr. HORTON. And it is kind of grown up like Topsy, and it is your feeling, or your association's feeling, that there should be some type of standard or presumed line for these testings?

Dr. BRAYFIELD. Speaking not in my official capacity, but I can tell you a personal rule of thumb I use with respect to a test publishing

house. If the test publishing house employs outside salesmen, I am cautious about it.

Mr. HORTON. Some of them do this?

Dr. BRAYFIELD. Yes, sir.

Mr. HORTON. Is this widespread or unique?

Dr. BRAYFIELD. One house covers the entire country, and another house has probably a dozen people out on the road.

Mr. HORTON. Why does that concern you?

Dr. BRAYFIELD. It concerns me because these people are not necessarily technically competent to advise and consult with respect to the professional use of personality tests. We may find ex-school superintendents, ex-guidance counselors, what have you, in those capacities?

As I say, I am not speaking in an official capacity.

Mr. GALLAGHER. We share a coincidence of concern in this particular area. This is one of the things that has come to the attention of this subcommittee.

Thank you very much, Doctor.

Mr. ROMNEY. I have two questions. I am hopeful perhaps we can cover them in a very brief time.

Would you tell me please, Dr. Brayfield, what activities you include in the term "psychological assessment?" I refer to the term as you have used it on the page containing your recommendations.

Dr. BRAYFIELD. Yes; psychological assessment I would include as a level that operates under the following conditions: Where your objective is to identify individuals suitable to perform in a given situation where an analysis of the job in its setting specifies the nature of the performance and behavior required by the job—but where you don't really know all the details of the operating situation and where you have no research evidence of the use of a personality inventory, or any other kind of assessment materials that it is related to job success. My best illustration would be the selection of the astronauts before they ever took off.

This was a real "iffy" thing and it required a massing of all kinds of information in which personality inventories were just one small part. All kinds of performance tests, stress situations, physical examinations.

By assessment I mean a global, overall approach to human beings.

Mr. ROMNEY. Do you include clinical situations within this sphere?

Dr. BRAYFIELD. Yes.

Mr. ROMNEY. Doctor, you have made reference to the Fifth Mental Measurements Yearbook, and you described it as hard hitting and objective.

I think it would be useful to put into the record some excerpts from this with respect to certain tests. I have picked these out as tests which happen to have come to our attention as being well-known tests, and I think the fact that these opinions of the reviewers are so widely divergent poses a very difficult problem for all persons concerned with the use of tests.

The first that I would like to refer to is the California Psychological Inventory. One reviewer, a well-known educator, describes in conclusion this test in the following language:

It is conceivable that there may be a role for a personality inventory developed by the procedures and following the rationale of the CPI. However, this re-

viewer feels that the role will not be that of providing a clear, efficient and simple personality description.

By contrast, another reviewer speaking to the same test has a different outlook. He says:

By both objective and subjective evaluation the CPI appears to be a major achievement. It will surely receive wide use for research and for practical applications.

However, the reputation of the second reviewer is not so well known as the reputation of the first one. I submit this creates a problem unless someone——

Dr. BRAYFIELD. I interpreted they were both favorably disposed toward the CPI.

Mr. ROMNEY. No.

Dr. BRAYFIELD. The second person comes right out and says it. That is the difference

Mr. GALLAGHER. The other fellow doesn't come right out and say it?

Mr. ROMNEY. These are contrasting views.

Dr. BRAYFIELD. I think they are contrasting styles of writing more than views, but you will certainly get divergent opinions. There is no question. Just like the 200-to-200 vote in the House a few days ago.

Mr. ROMNEY. The first reviewer said:

It is conceivable there may be a role for personality inventory developed by the procedures in following the rationale on the CPI. However, this reviewer feels that the role will not be that of providing a clear, efficient, and simple personality description.

I don't read that as being favorable.

Dr. BRAYFIELD. It is a theoretical position and one person says the rationale is not a useful one from the standpoint of psychological theory. He doesn't say the test is no good. He is talking about the theoretical orientation of the man who developed the CPI. That is what he is doing.

Mr. GALLAGHER. What he is doing is really saying that he sees no real use for it, to boil it down. There may be a use but he hasn't found it.

Mr. ROMNEY. Another one quite commonly referred to is the Kuder preference record. A reviewer sums this one up in the following language:

In summary, because of the weaknesses discussed above, the reviewer is of the opinion that the Kuder preference record-personal is of only limited value. Counselors using it should guard carefully against overinterpretation.

We have the well-known Minnesota Multiphasic Personality Inventory——

Dr. BRAYFIELD. Where was the second example by contrast?

Mr. ROMNEY. I didn't find one. Only one review is given.

The Minnesota Multiphasic is summed up by the first reviewer in the following language:

Another relevant question in regard to clinical use of the MMPI is whether the game is worth the candle in terms of time consumed in scoring and interpreting the test. Aside from literally scores of hours which a conscientious MMPI user must now take to acquaint himself with the theory and practice of the test, he must also spend from 2 to 3 hours checking, profiling, analyzing, and comparing each protocol in relation to the material in the manual, the atlas, basic readings, and various other MMPI researches. It is to be wondered whether the clinical

psychologist who cannot, in equal or less time, get more pertinent, incisive, and depth-centered personality material from a straightforward interview technique, is worth his salt.

On the whole, one must have considerable respect for the amount of time and effort that have gone into MMPI research since the first studies on it appeared in 1940. This time and effort has borne sufficient fruit to make it now appear that the instrument is quite useful for many kinds of group discrimination.

About its usefulness for individual clinical diagnosis, the present reviewer, for one, is still far from enthusiastic.

Another reviewer sums up this one in little more favorable terms, although I don't mean to imply that the first reviewer was completely unfavorable:

This instrument is probably the most carefully constructed and thoroughly researched inventory available for personality assessment. It is likely to be an increasingly useful clinical tool.

The point of all this is clear, that within the profession itself there is a wide divergence of opinion as to individual tests, their purpose, their utility, their theoretical foundation.

Now, to return to the recommendations that you have made that there be agency staff psychologists and interagency committees of psychologists and advisory panels of psychologists, does not the fact there is in the profession considerable disagreement about individual tests, and I am sure you will agree about the theory of testing, pose a real problem to getting a workable system, or a workable committee or panel that will be actually more than a debating society?

Dr. BRAYFIELD. Well, the fundamental split is that there are psychologists who know measurement and make use of tests, and there are psychologists who feel they themselves are such finely calibrated instruments that they would never make use of tests. I think it would be useful to have both types on the advisory committee.

Mr. GALLAGHER. Thank you very much, Doctor.

Mr. GALLAGHER. Professor Freedman, do you have a prepared statement?

Mr. FREEDMAN. I have, in part, but I am going to interject.

Mr. GALLAGHER. Would you proceed.

STATEMENT OF MONROE H. FREEDMAN, ASSOCIATE PROFESSOR OF LAW, GEORGE WASHINGTON UNIVERSITY

Mr. FREEDMAN. Mr. Chairman, this committee has done outstanding service in its thorough investigation of psychological testing, which has become increasingly and alarmingly prevalent not only in Government employment but also in private industry and education. The serious abuses inherent in such testing are of deep concern to conservatives and liberals alike, since the political philosophy of both groups is founded on the major premise of the dignity of the individual.

Significantly, strong objections to such testing have already been expressed in magazines ranging from the National Review to the New Republic.

The Minnesota Multiphasic Personality Inventory (MMPI) is one of the most widely used tests of this kind. It contains 566 questions, which are all to be answered true or false, "quickly and without thinking or deliberation." These questions illustrate the propensity for psychological questioning to intrude into areas formerly reserved for the privacy of such confidential relationships as husband wife, priest and penitent, or doctor and patient.

To show briefly the kinds of subjects that are covered, I have selected only a few illustrative questions:

A. Questions relating to private thoughts.

"I think of things too bad to talk about."

"I dream frequently about things that are best kept to myself."

B. Questions relating to religion.

"I believe there is a God."

"I believe in the second coming of Christ."

"Christ performed miracles such as changing water into wine."

"I go to church almost every week."

"I believe there is a devil and hell in afterlife."

C. Questions relating to sexual matters.

"I am worried about sex matters."

"I wish I were not bothered by thoughts about sex."

"When a man is with a woman he is usually thinking about things related to her sex."

"There is something wrong with my sex organs."

D. Questions relating to family matters and social life.

"Some of my family have habits that bother and annoy me very much."

"My relatives are nearly all in sympathy with me."

"My parents often objected to the kind of people I went around with."

"I loved my father."

That last question raises an interesting issue as to the quality of this kind of test and the suggestion that Congressman Rosenthal made earlier that the testmakers themselves may be in need of psychological help. The question is true or false, I loved, in the past tense, my father. It is possible to say no, that you never loved your father. It is possible to say yes, I loved my father, implying that you do so no longer. It is impossible to answer that question in such a way as to indicate you have always loved your father and still do.

Let me assert emphatically at the outset that the supporters of this kind of examination have failed to carry the heavy burden of proving that such questions have any significant relationship to fitness for Government, or any other employment.

Although they talk in terms of scientific knowledge, there has been no true scientific support of these tests by means of control studies or test validation. Moreover, not a single supporter of the tests has had the candor to reveal to the subcommittee the ease with which most—probably all—of such tests can be coached or faked. Perhaps most important, the testers can never tell us the number of sensitive, decent, self-respecting citizens who are lost to Government employment because they prefer not to subject themselves to the indignities of psychological testing, and who therefore do not apply.

I have heard too many psychiatric experts under oath in court disagree with each other's diagnosis, each relying upon individual psychiatric interviews, to put any faith in the accuracy of short-answer written tests, which are admitted inferior to interviews.

Even in the few short statements presented in these hearings the scientific experts have disagreed in their scientific conclusions.

Dr. Al Carp of the Peace Corps, for example, while admitting that the questions relating to religion and sex are "not only personal but unpleasant as well," nevertheless defended these questions as necessary to psychological testing.

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.

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

new surroundings or tolerance of stress may well be used tomorrow to assess any number of other personality characteristics, including submissiveness, rebelliousness, responsiveness to suggestion, loyalty, dependence on authority, political reliability, et cetera.

The questions directed at schoolchildren, for example, regarding what magazines their parents read have potential parallels to the duty of the child in Nazi Germany and Communist Russia to report on the political inclinations of their parents.

Is it better for a parent to read Business Week, National Review, of the New Republic? The testers don't tell us.

Nor does it suffice to say that a particular test was designed only for a specific harmless purpose. A test developed for one purpose may ultimately be found to have a number of other uses—or, worse yet, may be imagined to have other uses—not contemplated originally.

It is of critical importance, therefore, that modern computer technology makes it possible to analyze, store, and retrieve quantities of data that would have been impossible to use on a comprehensive basis formerly. Thus, a central law enforcement agency can today compile dossiers of the most extensive and intensive type. The ready availability of psychological tests of tens of thousands of our citizens is, therefore, not the least frightening aspect of the impact of modern technology on the relationship between State and citizen.

The unconstitutionality of such questioning is not limited to the fourth and fifth amendments. The numerous questions regarding religious beliefs and practices violate the first amendment as well.

The Government cannot, as a condition of employment, inquire into such matters, as has been held by the Supreme Court in the *Torcaso* case. Needless to say, I am not made easier on this score by the strangely phrased assurances of a leading psychological testing expert that "not every aspect of religion is at times symptomatic of mental illness."

On occasion, the supporters of such tests have disingenuously contended that "there are no wrong answers" to the questions asked.

First, the average examinee does not know this, and could not be expected to believe it with certainty even if told it. Why else would he be asked whether he believes in God (the very question held unconstitutional in *Torcaso*) unless the inquisitor is interested in his giving the correct answer?

Second, are we—any more than the examinee—to believe that it is really a matter of indifference whether the answer be yes or no?

And is the Congress of the United States prepared to go on record as endorsing the "scientific" conclusion that there is no correct answer to the question of the belief in God?

It has been occasionally suggested that Government employees forfeit their constitutional rights when they apply for work.

Justice Holmes, while he was sitting on the Supreme Judicial Court of Massachusetts, came to this conclusion, holding in the *McAuliffe* case that a citizen has a constitutional right to speak but no right to be a police officer. Apparently few are aware, however, that Justice Holmes appears to have rejected his earlier position, and that the Supreme Court of the United States clearly has done so.

In direct response to the McAuliffe notion, the Supreme Court has held:

> We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant * * * ."

Similarly, Justice Frankfurter has observed:

> * * * It does not at all follow that because the Constitution does not guarantee a right to public employment (the Government) may resort to any scheme for keeping people out of such employment. * * * To describe public employment as a privilege does not meet the problem.

Concurring in this development, the editors of the Harvard Law Review have noted that the logic of the *McAuliffe* decision threatens "dangerous consequences" to fundamental liberties. Accordingly, the Court has developed the doctrine that "unconstitutional conditions" may not be imposed on the grant or retention of a privilege. In a leading case in this development, Justice Holmes dissented, relying on the *Prewitt* case. However, in *Terral* v. *Burke Construction Co.*, Justice Holmes was a member of a unanimous Court that expressly overruled the *Prewitt* case and firmly established the rule that the Government may not condition the grant of privileges upon the relinquishment of constitutional rights.

There is, therefore, no merit today, if there ever was, in the contention that the protections of the first, fourth, and fifth amendments do not extend to Government employees.

A similar contention has been raised, however; that is, that the examinees consent to these violations of their fundamental rights. The first answer is that consent is meaningless unless the examinee knows what he is consenting to. He may know the questions, but he does not know the answers, the purpose for eliciting the answers, the inferences that might be drawn from his answers, nor the significance of the inferences. Many such tests, if not all of them, depend in part for their success on the ignorance of the examinee as to what he is being tested about. Truly informed consent requires advance disclosure of the psychological inferences to be drawn.

The second answer to the contention is that the job applicant who wants the job is not truly a free agent.

Mr. Shriver has testified, for example, that Peace Corps volunteers consented to testing and that he receives few complaints about it.

The reason for this is expressed eloquently by a young lady who served with the Peace Corps for 2 years, and who is entirely in sympathy with the Peace Corps, but who is distressed by the psychological testing to which she was subjected. She wrote in part:

> A Peace Corps program is not like applying for a job. For all intents and purposes, you are in the job. For the recent college graduate it is his first job, and if he is deselected, he has failed at his first job. For the more experienced, it means quitting a previous job, getting rid of an apartment, and making other financial arrangements. The PCV is on trial. He is made to feel insecure. Most important, he has invested himself emotionally and financially by entering training. He is reluctant to jeopardize his investment in any way.
>
> It is hardly surprising, therefore, that there would be very few complaints. It would take a particularly strong and sophisticated person to complain without the fear of being found to have "personality difficulties." The trainees are extremely hesitant to call attention to themselves in that way.

In fact, I once met Mr. Shriver briefly. I mentioned the tests, and he said, "Yes, they are spooky," and looked away as if he were preoccupied with more important matters. At that point I did not have the strength and sophistication to persist without feeling like a troublemaker. Nevertheless, I felt that a strong conviction had been charmed into betrayal. One reason Mr. Shriver has received so few complaints is that it would take an exceptional person not to be overcome by his charisma.

The psychological tests, however,

I am still reading from her letter——

Mr. ROSENTHAL. This is a letter addressed to whom?

Mr. FREEDMAN. To me, by a former Peace Corps volunteer, and one who is as gung ho on the Peace Corps as anyone can be. She thinks it is the greatest thing this Government has done in recent years, but she was deeply offended by the tests and wrote to me about them.

The psychological tests, however, raised problems ranging from simple insult to a stripping away of one's privacy and dignity and self-respect. They don't need to know that much about me to assess me as a volunteer. I can assure you from personal experience that many Peace Corps volunteers found their training to be a horror of Orwellian thought control.

That is the end of the quote from her letter.

Finally, we are told that such testing is in the interest of the United States, the interest of the Peace Corps, or "perhaps most important * * * (in the Peace Corps) volunteer's own interest"—and Justice Brandeis spoke eloquently to this issue also.

Experience—

he wrote—

teaches us to be most on our guard to protect liberty when the Government's purposes are beneficient * * * The greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well-meaning but without understanding.

We might further observe that it is somewhat presumptuous to suggest that only some Government employees are of such vital importance to the national interest to warrant psychological testing Are Peace Corps volunteers more important than Congressmen? Are HEW Secretaries more important than Senators? What is the logic that excuses the President's Cabinet from questioning so vital to national welfare?

Indeed, can we really afford to have a President, in the most trying and important job in the world, who is less psychologically and emotionally stable than a Peace Corps volunteer?

If the tests are all we are assured they are, surely not a single public official should be immune.

It seems to me, Mr. Chairman, that we have gotten our values badly skewed up, when we can be more concerned with screening out an occasional psychologically inadequate employee than we are with the gross affronts to personal dignity that are perpetrated against large numbers of other citizens in the process.

In view of the some of the testimony I have heard, it seems necessary to return to elementary truths: The end does not justify the means. Whatever dubious good may come from dissecting, cataloging, and evaluating the most personal thoughts and beliefs of individual citizens, it will never justify the great injury done to all of us, individually and as a society, in the process.

Accordingly, Mr. Chairman, I would respectfully urge that this subcommittee draft and propose legislation prohibiting interrogation

of Federal employees, of private employees under industrial personnel security regulations, and of schoolchildren in federally financed research projects without truly informed parental consent, by the use of questions relating to religion, politics, personal thoughts or habits, private family matters, and sexual matters. Such legislation is essential. We cannot rely upon self-regulation by those men (in Justice Brandeis' gentle but devasting phrase) "of zeal, well-meaning, but without understanding."

Nor can we rely upon sensational assurances of changed test policies. The policy rescinded with fanfare during congressional investigation today can readily be quietly restored tomorrow.

Moreover, it is important that the Congress express our national public policy on this issue through legislation. I commented a while back to one of the proponents of psychological testing that only a professional Peeping Tom could compose and administer such a test. He replied with equanimity that it is not unlawful to be a Peeping Tom. I submit to you, Mr. Chairman, that it is time that these practices be declared unlawful, and the professional Peeping Toms be eliminated from positions of such high authority and such great power in our Government.

I am grateful to you for the opportunity to testify today.

Mr. ROSENTHAL. Thank you very much. I would say that you have a very potent statement and a very clear position. I wonder if I could break it down into two categories, though.

Unquestionably, based on your experience as a lawyer and law professor, you feel that the psychological tests are an invasion of privacy, and, for that reason alone, would be sufficient to eliminate them and legislate them out of business.

Mr. FREEDMAN. Yes, sir.

Mr. ROSENTHAL. Is it your opinion that they are inadequate for the purpose they pretend to meet, that they don't even qualify as a sound scientific means?

Mr. FREEDMAN. Absolutely, and I am speaking now also as one who, for over 10 or 11 years, has been involved as a consultant to the Educational Testing Service concerning, in part, psychological testing, and I am familiar with test validation and other means of checking out whether a test should be used before it is used to count.

For example, when we give the law school admission test, we do not use a question on that test for score until it has been given and checked against actual law school performance. It has never been done in Government service, that one of these tests has been given and then checked out against performance before it was used to screen people out. They are using these tests to screen people out without even knowing whether the test is valid for that purpose.

Mr. ROSENTHAL. To what do you attribute this enormous growth of the use of psychological testing?

Mr. FREEDMAN. I think part of the problem is the large volume of personnel problems and a desire to simplify these problems by giving a quick test, running it on a machine and getting a quick answer.

I think, however, we have also built a kind of idol of the scientist, and in this area it is totally unjustified.

Dr. Brayfield talks about people unqualified to give the test. I am not satisfied that those people who Dr. Brayfield would like to give the test are people with whom I would be satisfied as competent.

It is too much of a temptation for a man who is offered an important post with an important Government agency, asked to formulate or find a written short-answer test that will solve all of the agency's problems, it is too much of a temptation to him to pick up the nearest available test and start giving it wholesale.

Mr. ROSENTHAL. Do you think high-level Government officials fall back on this as an easy way to solve otherwise difficult personnel problems?

Mr. FREEDMAN. I think that is part of the difficulty, and I think also there has been simply uncritical acceptance of the purported scientific conclusion that these tests work.

Mr. ROSENTHAL. Take the case of the Peace Corps, and you referred to Dr. Carp's testimony, which I remember well. The Peace Corps started from scratch. They had to have an enormous program of enlisting people and, of course, Congress was interested in them getting bright, dedicated, zealous young people who would promote a good image of the United States overseas and they had to recruit a large number of people in a hurry.

I assume their position is that this mass testing permitted them to eliminate those people who wouldn't fit the general category of the type of person they were interested in, and that had they had to resort to individual interviews, they would have been years in getting cranked up a program that they got started in a matter of months.

In this case, didn't the testing, assuming it has some degree of validity, serve a useful purpose?

Mr. FREEDMAN. On the basis of your assumption, perhaps, but we will never know whether the people who were screened out were the worst or the best.

In addition, the fact is that the Peace Corps has a 3-month training program under which the volunteers are under the most intensive scrutiny. Of all the agencies in the Government that do not need this kind of half-baked written short-answer machine-graded test, the Peace Corps is the one that needs it least, because they have the fullest kind of FBI investigation, interviews, and a 3-month training program.

Mr. ROSENTHAL. I want you to realize for the moment I might be the devil's advocate for the sake of developing the record here, but they contended that one of the reasons that they had such a low grade of failures on the job was their high degree of selectivity they used to which the testing contributed substantially.

Mr. FREEDMAN. That, they don't know. They had a high degree of success and I am very happy for it, but in my judgment the test was, at most, of minimal assistance, a makeweight on the scale when you consider the full field investigations that were made on these people, the 3-month training program under scrutiny, and the opinions that were solicited from the people who were supervising the training as well as from the volunteers about each other.

Mr. ROSENTHAL. Maybe they eliminated large numbers of trainees from the training program, which was probably a very responsive kind of program. In other words, after we had invested 2 months of training in an individual, to then exclude him from the program, we would have lost a great deal of money.

Mr. FREEDMAN. That may or may not be true. Again, we don't know because it has never been proven out. It was an assumption.

The assumption was acted on. I do know from the same young lady who wrote this letter that she has spoken since with a large number of other fellow former Peace Corps volunteers who agree with her completely. I know that in a recent training program what she referred to as a very high-powered couple from two of the best universities in the country dropped out of the program voluntarily because they objected to what she has referred to as "the horror of Orwellian thought control" that they were being put through.

Mr. ROSENTHAL. One of the objections you had to the testing was that the answers could be kept and maintained for other purposes after the initial testing was concluded.

Now the Peace Corps has told us that immediately after they had compiled the answers, that they would be destroyed or burned so they couldn't be used for any secondary purposes.

Mr. FREEDMAN. That may or may not be true in the Peace Corps today. But whether it is true in other agencies is problematical. Whether it will be true in the Peace Corps tomorrow is just as dubious.

That policy, just as it was announced in connection with these hearings, could be changed tomorrow and no one would know the difference and no one would be violating any kind of obligation in doing so.

Mr. ROSENTHAL. At any rate, to put your testimony in simple terms, even if these tests had some degree of scientific success or reliability or dependability, you strongly oppose the use of them purely on constitutional grounds.

Mr. FREEDMAN. On constitutional grounds and on the related grounds that we are committed to a free society, the kind of society that respects the thoughts and emotions of the individual. That concept is perhaps the most important thing that distinguishes us from the totalitarian government, and to interfere with that kind of personality identity is the most horrendous kind of thing the Government can do.

Mr. HORTON. Professor Freedman, you referred to the statement of Justice Brandeis with regard to one of our greatest dangers and stated this was in the encroachment by men of zeal, well meaning, but without understanding. Brought to my attention is a project which was approved in 1960 by the Office of Education, which I think is a good example of misguided scientific research zeal.

This project was approved in 1960 by the Office of Education and it did not then, and I am sure does not now, condone this type of thing that I am about to describe.

They did not have knowledge of it until the final project was submitted in 1963, and I hope that the current procedure they talked about this morning will reduce the chances of something like this happening again, and reduce them to a minimum.

Incidentally, this project received a payment from the Office of Education of some $17,750. The title was "Education Aspirations and Attitudes of Married Undergraduate College Students Compared to Unmarried Undergraduate College Students," with an analysis of certain associated variables.

Now, it involved administering questionnaires to a random sampling of married and unmarried undergraduate students. It was submitted to these students on a voluntary basis and the questionnaires were then followed up by a personal interview.

Many of the questions are extremely intimate, penetrate deeply into marital and premarital relationships, including sexual activities and religious background and birth control matters and such family background matters as religious and personal attitudes and economic circumstances.

I would like to just refer to a few of them. There are about 115 of these questions.

No. 25, in reference to where you and your wife live at present, check the statement which most nearly describes your situation. "We are living together." "We are living separately because she goes to another college." "We are living separately because we do not have jobs in the same city." "We are living separately because we do not get along well together." "We are living separately for another reason." And then, "What is the reason?" And there is a blank left for that.

Thumbing on through, I have just picked out some—I will not read all of the questions except just to read the top part of it:

Question 42, "Did you have any particular difficulty in paying for any special category of family needs?" It lists some eight or nine special family needs that are fairly close to a marital situation.

No. 63, in reference to planning for the size of your family, check all that apply. "I do not believe in planned parenthood." Then it has other questions that relate to that type of thing.

Our chief source of information about planned parenthood has been—I do not believe in it—friends, neighbors, relatives, et cetera.

Then, under family background: "What is your religious affiliation at present?" "What religious atmosphere were you brought up in?" "What is your mother's religion?" "What is your father's religion?"

Then it goes on: "What is your parent's income at present?" "How old was your father when he got married?" "How would you rate the happiness of your parents' marriage?" "How do you view your own childhood?" "Happy most of the time?" "About an equal mixture of happiness and unhappiness?" "Unhappy most of the time?"

"How old were you when you first went steady?" That is, went only with one girl, with at least two dates a week for at least 3 months at a stretch, and had an understanding with her that she was your steady. It starts out at age 10 and goes to age 22.

I don't know what happens before or after.

"With how many different girls did you go steady?" There is a blank left for that. A small one.

No. 96, "How old were you when you first had nocturnal emissions?"

No. 97, "How old were you when you first kissed a girl, aside from a kissing game at a party?"

Then it gets a little bit personal.

No. 98, "How old were you when you first had experience in premarital—like petting? For example, touching a girl's breast?"

No. 99, "How old were you when you first had experience in premarital heavy petting? Genital contact short of intercourse."

Then it goes on, and I will skip some of the others because they get a little bit more personal.

No. 104, "My mother's attitude toward our getting married while I and my wife were still in college was"—and there are certain questions

there. "My father's attitude." "My mother's attitude toward our marriage is now * * *."

No. 107, "My father's attitude toward our marriage is now * * *."

No. 109, this asks for the main reason why they got married. One was: "My wife was pregnant." Then it goes on for 115 questions.

Now the thing that is disturbing about this was that the persons who took the examination were informed this was a very confidential type of examination that they were taking. They were also informed that they would have this personal interview afterwards, but then, these were the instructions given to those who were to make the interviews, and this is the point I tried to get across, that sometimes they overused this zeal. It says: "Read filled in questionnaire first." That is the questionnaire they filled out. "But don't 'let on' that you have." That is underlined. Then it says: "Supposedly anonymous." It goes on and states the basis for their personal interview.

This is the type of thing that was approved as a project. It shows the most intimate type of questioning and it also certainly was a violation of the confidence that those who participated—this happened to be in a rather large university up in the Northeast, not too far from my district.

Now this is the type of thing we are talking about.

Mr. FREEDMAN. Yes; it is. It is an extreme example, but it is.

There was a reference earlier to Playboy magazine. In view of the kinds of questions the psychological testers are interested in, it might be well to appropriate money to supply them all with copies of Playboy and then they might feel free to leave the rest of us alone in our private lives.

Mr. HORTON. I don't want to pass on the merits of the magazine, but I do feel this is certainly without the bounds, and this was a project approved by the Government. I am certain it is not happening now, and we had testimony today that it won't, but it does indicate that these things can be carried to extremes and it does also point out the point that you are making, that if these things are given, there certainly should be protection for the confidential nature of this, and that, in and of itself, it seems to me, is a violation of the Constitution, especially where people do volunteer to give this information on that type of a basis. Their rights are certainly being invaded when this information is being made available to a person who is going to question them, and I assume those who were questioning had qualifications to qualify themselves for making this type of personal interview, but again I am not sure.

Mr. FREEDMAN. I think, also, it is worth pointing out that the problem is not always revealed in such blatant questions as you read. The questions can appear to be entirely harmless and to have nothing to do with anything that anyone cares about, and the psychologists, in their wisdom, have decided that they can draw inferences about your sex life, loyalty, religion, whatever it may be, by asking questions that appear to have nothing to do with these things.

At the Educational Testing Service, for example, some years ago, I was told about a personnel manager in a very large industrial plant in one of the Southern States, who asked the apparently innocuous question of every potential employee: "Are you right handed or left handed?" Of course, everyone consented to answer that question.

No one knew that, in the judgment of the personnel manager, left handedness was a sure sign of emotional instability. Now, there is a plant, therefore, of 2,000 people, in which there is not a single left-handed individual. That is kind of a simple illustration. But the inferences can be much more serious and much more far reaching than those.

Mr. CORNISH. Would you agree, Professor Freedman, that perhaps many of these questions would not be harmful at all if they were used strictly for a psychological examination? But there are a number of questions on these questionnaires and tests that if used for another purpose other than the one they were originally intended for, would possibly affect them adversely.

As a matter of fact, some of the questions on the Minnesota Multiphasic Personality Inventory are crimes, in themselves, per se, are they not, in some jurisdictions?

Mr. FREEDMAN. Yes, sir.

Mr. CORNISH. I wonder also if you would agree with me that the invasion of privacy takes place at the point the question is asked rather than at some later point?

Mr. FREEDMAN. Yes, I do. I think that that is the most offensive aspect of it, or at least the threshold offense. Now, of course, it gets much worse as in Congressman Horton's example where people are assured this is going to be confidential and that confidentiality is violated, and you have learned of that instance. There may be any number of others that we have not heard about. But I do agree that the very asking of these questions is offensive.

There is something we call in educational testing the feedback effect. For example, one of the reasons we ask questions about English language on the Law School Admission Test is to feed back to the students an awareness of the fact that in law schools we do want people who are well trained in English, and having seen that they get questions involving their English ability, we hope, and in fact it has proved out, that they take more courses in English than we might otherwise have done.

Now the feedback effect that you can get with some of these other questions is a very dangerous thing. For instance, "What magazines are read in your household?" People may well start being concerned about whether it is better for their children's benefit in their academic careers that they get U.S. News & World Report around the house instead of the Nation; or the New Republic instead of National Review, and in that way there is a degree of political control that is highly undesirable.

That is only one illustration of a potential feedback in this kind of question.

Mr. CORNISH. You heard Dr. Brayfield testify that in his view it was perhaps best to leave many of these matters to the wisdom of the psychologists and the people who give these tests to determine the ethics involved. Do you feel that there is a matter of public policy involved here when Federal funds are utilized in these activities?

Mr. FREEDMAN. Very clearly; yes. I don't know how Dr. Brayfield goes about selecting his qualified people. I suspect that one of the qualifications is that they be dues-paying members of the American Psychological Association. But a Ph. D. does not guarantee wisdom,

and it certainly should not be a license for "Peeping-Tomism" of the most offensive kind.

In all honesty, I would rather have somebody looking in my window than in my mind.

Mr. ROMNEY. Just for the record, I want to refer to one of the standards legal reference works, "American Jurisprudence," which, under the subject heading, "Disorderly Conduct," has this statement, from page 100, volume 17:

> Peeking into the windows of an occupied lighted residence at the hours of night when people usually retire by one who has no business there constitutes indecent or insulting conduct or behavior within the meaning of an ordinance relative to disorderly persons and an improper or unlawful purpose is not necessary to constitute the offense.

I merely cite that to remove any implication that your acquaintance's reference to "Peeping Tomism" not being unlawful is, in some jurisdictions at least, not true.

Mr. FREEDMAN. Yes; I am aware of that. I appreciate your mentioning it, and, indeed, I did not mean to encourage anybody to look in my window.

Mr. ROMNEY. One brief question: Where a set of questions verges into an area which is constitutionally protected and these questions are asked of minors, do you think that the parents should be regarded as being able, in law, to waive any constitutional right that is involved, waive it on behalf of the minor child?

Mr. FREEDMAN. I would be inclined to say yes. In all honesty, I have not given that considerable thought, but I would say, at least, there should be knowing waiver by the parent, and, again, by "knowing" I do not mean general information about what a great test this is, or even reference to some specific questions or areas to be covered, but the parent should also know what kind of inferences are going to be drawn about his child from these questions and answers and what use those inferences are going to be put to.

Again, the question may seem entirely innocuous, and yet, the interviewer may be trying to find out whether the child is emotionally unstable or Lord knows what else.

Mr. ROSENTHAL. Thank you very much.

The subcommittee stands adjourned.

(Whereupon, at 1:20 p.m. the subcommittee adjourned.)

(NOTE.—Selected portions of the transcript of these hearings were published independently by a professional association in November 1965. These numerous and often extensive extracts were printed without benefit of available witnesses' and Members' corrections of the reporter's transcript.)

APPENDIX

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PRIVACY AND BEHAVIORAL RESEARCH†

OSCAR M. RUEBHAUSEN* AND ORVILLE G. BRIM, JR.**

A successful society is marked by an ability to maintain a productive equilibrium between numerous competing forces. The goal of our own federal political system is to assure for the individual an ample range of freedom, and an ample opportunity for diversity. By tradition and conviction our form of democracy jealously seeks to protect the individual from accumulations of power. This protection finds its expression, for example, in the separation of powers in government, the divorce of church and state, the civilian control over the military, and in the working of both the labor and antitrust laws against the concentration of economic power.

The familiar and constructive tension which exists between science, with its need to be free and open, and society, with its need for restrictions on individual freedom, is thus only one of many examples of conflicting forces that must be held in balance to assure individual dignity, creativity and well-being in our society. This tension between society and science extends to all the disciplines in the social, physical and life sciences. It affects the practitioner as well as the research investigator.

Examples of this tension are many, and one of the most familiar is the conflict of secrecy for purposes of national security with the free dissemination of knowledge. This conflict is especially complex since dissemination of knowledge is essential to the very developments in science, in industry, and in government upon which the security of the nation ultimately rests. Additionally, there is the equally familiar conflict between proprietary interests and the disclosure of scientific knowledge. The private property interest at odds with disclosure may be personal or institutional, commercial or non-profit, but the conflict is essentially the same. In each of these two illustrative areas of conflict, tension still exists, but accommodations, imperfect as they may be, have been worked out to balance the competing needs and to serve the public interest.

There is, however, another area of tension involving the freedom of science which is not nearly so well recognized. This is the conflict of science and scientific research with the right, not of private property, but of private

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* Member of the New York Bar; Chairman, Special Committee on Science and Law of the Association of the Bar of the City of New York. With the support of the Carnegie Corporation of New York, the Special Committee is engaged in a study of the impact of modern science and technology upon privacy. This article is one product of that study.

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personality.[1] And it is to this particular conflict in values that this article is addressed.

I. The Moral Claim to Private Personality

Although scholars may trace its origins into antiquity, the recognition of a moral claim to private personality is relatively modern. For most of our recorded history, privacy was not physically possible in either the home, or the place of work or of public accommodation. Furthermore, privacy of belief or opinion clearly was not respected until the last few centuries. The record of autocratic government, both temporal and spiritual, is long and disheartening. Robert Bolt, in his moving drama, *A Man for All Seasons*, had the doomed Sir Thomas More say to his inquisitors: "What you have hunted me for is not my actions, but the thoughts of my heart. It is a long road you have opened. For first men will disclaim their hearts and presently they will have no hearts. God help the people whose statesmen walk your road."[2]

Three of the great forces that have nourished the modern claim to privacy are science, the secularization of government, and political democracy. It was, for example, science that brought about the industrial revolution and made privacy physically possible. Consider, as a small sample, what steam heat and plumbing have done to the design of our homes and to the manner of our living in them. Further, the separation of church and state encouraged pluralism as well as diversity in religious belief. And it was political democracy that in the last analysis truly elevated the concept of the essential worth and dignity of the individual to the place it now holds in the western world.

It is therefore only in the last few centuries that the primacy of the individual has emerged, has been articulated by philosophers, reflected in political institutions, and implemented in law. Although the moral claim to a private personality has developed along with the claim to individual freedom and dignity, such development has proceeded at a slower rate, perhaps because the western preoccupation with private property as the tangible expression of the dignity of the individual has tended, for more than a century, to obscure the claim to private personality on which the claim to private property was based. Not only did the interest in private property obscure the human claim to privacy but, over the years, it tended to define the claim itself.

Thus, in the absence of trespass, bodily injury, theft, or tangible damage measurable in money, as in the case of defamation of reputation, our law has often failed to perceive injury to the private personality. This has led to such legal anomalies as now exist with electronic eavesdropping devices. Thus, if an eavesdropping device is placed next to a wall by a police officer, or brought into one's room concealed on the person of an invitee, then, under present

1. See generally Shils, *Social Inquiry and the Autonomy of the Individual* in The Human Meaning of the Social Sciences 114 (Lerner ed. 1959).
2. Bolt, A Man For All Seasons, Act II, at 157 (Random House 1962).

federal law, there has been no affront to an individual's constitutional rights. Yet, should the device be a spike microphone and penetrate an apartment wall by only a few inches, then a trespass has been committed and the fourth amendment violated.[3]

Just fifty years ago Dean Roscoe Pound published a paper in the *Harvard Law Review* on "Interests of Personality."[4] There he identified the claim to private personality as "the demand which the individual may make that his private personal affairs shall not be laid bare to the world."[5] But though he thought the interest was clear, the law, he found, had been slow to recognize such an interest and raise it to the dignity of a legal right.[6]

Even had society's developing awareness of the claim to privacy not been blunted by the then dominant commercial concern for tangible property as evidence of personal worth, the establishment of a right of private personality was destined to be slow. For this there are a number of reasons. The right of privacy is largely a subjective, incorporeal right, difficult to identify and incapable of measurement. Other more definable values—such as freedom of speech—loomed larger a century and less ago. Until recently, furthermore, science had not provided the devices which, circumventing the old concepts of property, make surveillance possible without an actual trespass. In addition, the modest range of governmental activities of a half century and more ago made the threat to the individual from government seem negligible. The formidable attributes of concentrated economic power were, also, only beginning to be appreciated. Indeed, the aggressive spirit of individual self reliance which prevailed in America would have made society's concern for the private personality seem incongruous.

It is reasonable, moreover, that the claim to privacy should evolve slowly, for privacy is in conflict with other valued social interests, such as informed and effective government, law enforcement, and free dissemination of the news. Whenever competing rights and values confront each other, it is always a slow and arduous process to evaluate the claim and counterclaim in real life situations. This process, however, is a classic function of the law. In time, therefore, the boundaries between the permissible and unreasonable

3. Lack of trespass was cited by the Supreme Court in refusing to invalidate the use of a detectaphone on the outer wall of a hotel room, Goldman v. United States, 316 U.S. 129 (1942); see United States v. Pardo-Bolland, 348 F.2d 316 (2d Cir. 1965), *petition for cert. filed*, 34 U.S.L. WEEK 3081 (U.S. Sept. 2, 1965) (No. 521); in allowing the use of a concealed transmitter by a government undercover agent in a suspect's laundry, On Lee v. United States, 343 U.S. 747 (1952); and in upholding the use of a concealed recorder by a tax agent in a suspect's place of business, Lopez v. United States, 373 U.S. 427 (1963). In Silverman v. United States, 365 U.S. 505 (1961), the decision excluding evidence was based on the actual penetration of an apartment wall by a spike microphone which, by making contact with a heating conduit, enabled the police to overhear every word spoken within the house.

4. Pound, *Interests of Personality*, 28 HARV. L. REV. 343 (1915).

5. *Id.* at 362.

6. To the extent that the claim to privacy has not yet been recognized or protected by law it cannot, at least in a technical legal sense, be called a "right."

interferences with privacy will be delineated just as hosts of similar conflicts have been resolved in the past.

Although the claim to private personality has yet to reach its destined stature in our law,[7] it has become a moral imperative of our times. Reflecting the ethical values of our civilization, it flows, as do most of our values, from our concept of the essential dignity and worth of the individual. In discussing this concept in 1958, Pope Pius XII made the following perceptive observations:

> There is a large portion of his inner world which the person discloses to a few confidential friends and shields against the intrusion of others. Certain [other] matters are kept secret at any price and in regard to anyone. Finally, there are other matters which the person is unable to consider.[8]

Pope Pius then concluded:

> And just as it is illicit to appropriate another's goods or to make an attempt on his bodily integrity, without his consent, so it is not permissible to enter into his inner domain against his will, whatever is the technique or method used.[9]

While Pope Pius' ethics and logic seem persuasive, it is nonetheless a fact that the protections afforded private personality are not yet comparable to those granted private property.

The rules for the protection of private property—whether in ideas, creative works, goods or real estate—have over many decades received extensive legislative and judicial attention. These rules are imbedded in the common law and they have often been elaborately developed, as in our systems of copyright and patent law. Moreover, the manner of the taking of private property for a paramount public purpose has been a matter of intense and continuing national concern. Early evidence of the reverence with which private property has been viewed is found in the constitutional provisions against "unreasonable searches and seizures,"[10] against the quartering of soldiers "in any house without the consent of the Owner,"[11] against the deprivation of property without due process of law, and against the taking of "private property . . . for public use, without just compensation."[12] These

7. By contrast with American legal development, it has been said that ". . . the trend in the foreign legislation is towards an outspoken protection of the rights of personality. We find the expression of this common concern in the Civil Code of Liechtenstein (1926), in the Italian (1942) and Greek (1946) codes, in the reformed Japanese code (1948) and the recent Egyptian and Philippine codes, and in a project of law in the German Federal Republic." Janssens, *European Law Includes Rights of Personality*, Va. L. Weekly, April 29, 1965, p. 1. See also Krause, *The Right to Privacy in Germany—Pointers for American Legislation?*, 1965 DUKE L.J. 481.

8. Address to the Congress of the International Association of Applied Psychology, April 10, 1958.

9. *Ibid.*

10. U.S. CONST. amend. IV.

11. U.S. CONST. amend. III.

12. U.S. CONST. amend. V.

constitutional protections have been judicially elaborated over decades of concentrated attention to the proper equilibrium between an identified public need and the claim to private property.

There has been no comparable abundance of legislative or judicial attention to the balance between the public need and the claim to private personality. The application of the first, fourth and fifth amendments of the federal constitution to the claim to private personality is in a very early stage of evolution.[13] More than thirty states have now recognized some form of a common law right of privacy; four have created at least a limited right by statute.[14] Yet, another four states have rejected the existence of a right of privacy at common law,[15] although the rejection may be more verbal than substantive.[16] Thus, in terms of a sophisticated system of protections for the claim to private personality—protections discriminatingly balanced to permit reasonable interference with privacy in appropriate circumstances—it is clear that our law has not yet matured.

II. The Nature of Privacy

What then is this emerging claim to private personality?

Private personality is as complex and many-faceted as human beings themselves, but two principal aspects of the claim to privacy are clear. The one most frequently expressed is the "right to be let alone." This facet of the claim to privacy, first formulated by scholars[17] and repeated by judges,[18] was given widest currency by Justice Brandeis in his magnificent dissent in the *Olmstead* case.[19] But there is another, and obverse, facet of the

13. The law on this issue appears, however, to be in an active phase of transition. See, *e.g.*, Judge Sobel's opinion in People v. Grossman, 45 Misc. 2d 557, 257 N.Y.S.2d 266 (1965) and Justice Brennan's dissent in Lopez v. United States, 373 U.S. 427, 446 (1963). See also the new constitutional right of privacy announced by Justice Douglas in Griswold v. Connecticut, 381 U.S. 479 (1965), and Massiah v. United States, 377 U.S. 201 (1964) (sixth amendment held to have been violated when an eavesdropping device was used to elicit information from a defendant in the absence of counsel).

14. See, *e.g.*, the listing in Prosser, *Privacy*, 48 Calif. L. Rev. 383, 386-89 (1960). For a better analysis, see Bloustein, *Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser*, 39 N.Y.U.L. Rev. 962 (1964). See also Hamberger v. Eastman, 206 A.2d 239 (N.H. 1964); Truxes v. Kenco Enterprises, Inc., 119 N.W.2d 914 (S.D. 1963).

15. See Prosser, *supra* note 14.

16. In New York, for example, where the common law right to privacy is thought not to exist, the same result may be reached by more tortuous routes—*e.g.*, actions for libel, slander, trespass, or unfair labor practice, or the common-law remedy to safeguard mental tranquility from the intentional infliction of distress. See Battalla v. State, 10 N.Y.2d 237, 176 N.E.2d 729, 219 N.Y.S.2d 34 (1961); Scheman v. Schlein, 35 Misc. 2d 581, 231 N.Y.S.2d 548 (Sup. Ct. N.Y. Co. 1962). See also Restatement (Second), Torts § 46 (1965), and especially the caveat and comment thereon. Consider also the possibility of basing civil remedies on criminal statutes such as N.Y. Pen. Law § 738 (eavesdropping) or § 834 (holding a person up to ridicule). See Restatement (Second), Torts § 286; see also Reitmaster v. Reitmaster, 162 F.2d 691 (2d Cir. 1947).

17. See Cooley, Torts 29 (2d ed. 1888).

18. See, *e.g.*, Roberson v. Rochester Folding Box Co., 171 N.Y. 538, 544, 64 N.E. 442, 443 (1902).

19. Olmstead v. United States, 277 U.S. 438, 478 (1927). See also Warren & Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890).

claim to privacy which has yet to receive equal attention: it is the right to share and to communicate.[20]

Each and every one of us is well aware of this complicated, ambivalent personal need to communicate and, the correlative need, even while communicating, to hold back some area, at least for the moment, for ourselves. Our personal experience is supported by the behavioral scientists. They have documented our need both to share and to withhold.[21]

We need to share in order to feel a useful part of the world in which we live; we need to share in order to test what we truly believe, to obtain the feedback from others which will shape our thoughts, support our egos, and reduce our anxiety. Communication is a form of nourishment, essential to growth and, indeed, to survival. In fact, we are told that if an individual is deprived of all sensory intake and thus isolated from all meaningful association with his environment, he promptly becomes thoroughly disoriented as a person.

Yet, as human beings we also need to withhold—and this for a variety of reasons. There are some things we cannot face and therefore suppress. There are other facts or fears that, although not suppressed, we neither prefer to know nor wish to discuss. Then, too, there are ideas or beliefs or behavior that we are not sure we understand or, even if we do, fear that the world may not. So to protect ourselves, or our processes of creativity, or our minority views, or our self-respect, all of us seek to withhold at least certain things from certain people at certain times.

Psychologically, then, privacy is a two-way street consisting not only of what we need to exclude from or admit into our own thoughts or behavior, but also of what we need to communicate to, or keep from, others. Both of these conflicting needs, in mutually supportive interaction are essential to the well-being of individuals and institutions, and any definition of privacy, or of private personality, must reflect this plastic duality: sharing and concealment.

It follows that the right of privacy does not deal with some fixed area of personal life that has been immutably ordained by either law, or divinity, or science, or culture, to be off-limits and private.[22] The essence of privacy is no more, and certainly no less, than the freedom of the individual to pick and choose for himself the time and circumstances under which, and most importantly, the extent to which, his attitudes, beliefs, behavior and opinions are to be shared with or withheld from others. The right to privacy is, there-

20. See Shils, *supra* note 1, at 156.

21. On the importance of individual (and collective) secrecy in social relationships, see THE SOCIOLOGY OF GEORG SIMMEL 307-44 (Wolff ed. 1950).

22. Yet, it is to be expected that particular cultures will, from time to time, reach a consensus on definable areas that are deemed to be private. Such a consensus is likely, however, to be both temporary and limited.

fore, a positive claim to a status of personal dignity—a claim for freedom, if you will, but freedom of a very special kind.

The way in which the choice between disclosure and non-disclosure is exercised, and the extent to which it is exercised, will vary with each individual, and with each institution. Indeed, the choice will vary in the same individual from day to day, and even on the same day, in differing circumstances. Thus, flexibility and variety are faithful companions of the concept of privacy.

III. The Scientific Challenge

The claim to privacy will always be embattled—its collision with the community's need to know is classic and continuous. Man has always lived in a community, and the community has always required some forfeiture of freedom, including that of privacy. It is, indeed, a fact of life that there has never been a condition of complete privacy for the individual insofar as he is a normal man living with other men. At one time or another, privacy has yielded—as it must—to the positive group needs for security, for order, for sustenance, for survival. The degree of privacy granted throughout history to an individual by one or another community has varied markedly with the nature of the political system, the economic level, the population density, and the characteristics of the environment.

It should also be recognized that not every threat to private personality is a matter of sufficient concern to warrant social protection. Similarly, not every technical trespass is serious enough to warrant social redress. The test is always this: is the threat or the invasion unreasonable, or intolerable?

Today, there are those who point an accusing finger at science and argue that science now poses an unprecedented and grievous threat to the privacy of personality.[23] The argument, while clearly exaggerated, is not implausible. Modern acoustics, optics, medicine and electronics have exploded most of our normal assumptions as to the circumstances under which our speech, beliefs and behavior are safe from disclosure, and these developments seem to have outflanked the concepts of property and physical intrusion, and presumed consent—concepts which have been relied on by the law to maintain the balance between the private personality and the public need. The miniaturized microphone and tape recorder, the one-way mirror, the sophisticated personality test, the computer with its enormous capacity for the storage and retrieval of information about individuals and groups, the behavior-controlling drugs, the miniature camera, the polygraph, the directional microphone (the "big ear"), hypnosis, infra-red photography—all of these, and more, exist today.

All of these significant advances are capable of use in ways that can frustrate an individual's freedom to choose not only what shall be disclosed or

23. See, *e.g.*, Packard, The Naked Society 5 (1964).

withheld about himself, but also his choice as to when, to whom and the extent to which such disclosure shall be made. Notwithstanding the large contribution made by each of these scientific developments to the well-being of man, each is, quite clearly, capable of abuse in its application. And such abuse can occur in industry,[24] in commerce,[25] in the law and by law enforcement agencies,[26] in medicine,[27] in government,[28] and in a myriad of other fields.[29]

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24. (a) For example in personnel selection or retention, *compare* Town & Country Food Co., 39 Lab. Arb. 332 (1962), *with* McCain v. Sheridan, 160 Cal. App. 2d 174, 324 P.2d 923 (1958) (refusal of employees to take "lie detector" tests). Several state statutes prohibit employers from making certain uses of lie detector tests. See, *e.g.*, ALASKA STAT. § 23.10.037 (Supp. 1965); CAL. LABOR CODE § 432.2; MASS. ANN. LAWS ch. 149, § 19B (Supp. 1963); ORE. REV. STAT. § 659.225 (1963); R.I. GEN. LAWS ANN. § 28-6.1-1 (Supp. 1964). In New York, bills to preclude the use of lie detectors as a condition of initial or continued employment are introduced in the Legislature with regularity. In the 1965 session, seven such bills were introduced, see 1965 N.Y. LEG. RECORD & INDEX 1337, and two, after reaching the Governor, were vetoed for "technical defects." See N.Y. Assembly Bill Print No. 4439, passed June 7, 1965, vetoed June 28, 1965 (1965 N.Y. LEG. RECORD & INDEX 865); N.Y. Sen. Bill Print No. 279, passed April 27, 1965, vetoed May 24, 1965 (1965 N.Y. LEG. RECORD & INDEX 29). See also 111 CONG. REC. 15378 (daily ed. July 8, 1965) (a resolution of the Communications Workers of America on invasions of privacy).

(b) For examples, in labor relations, *compare* Chesapeake & Potomac Tel. Co., 98 N.L.R.B. 1122 (1952) (monitoring an employee's home telephone), *with* Eico Inc., 44 Lab. Arb. 563 (1965) (television surveillance of production floor) and Thomas v. General Elec. Co., 207 F. Supp. 792 (W.D. Ky. 1962) (in-plant movies for time, motion and safety studies). See also N.Y. LAB. LAW § 704.

25. See McDaniel v. Atlanta Coca-Cola Bottling Co., 60 Ga. App. 92, 2 S.E.2d 810 (1939) (use of eavesdropping device to obtain evidence for defense of civil action); Schmukler v. Ohio-Bell Tel. Co., 66 Ohio L. Abs. 213, 116 N.E.2d 819 (Ohio C.P. 1953) (use of telephone monitoring to ascertain breach of contract). For the statutes of those states making at least some form of eavesdropping a crime, see note 65 *infra*. For a discussion of some of the ethical issues in personality testing in business, see CRONBACH, ESSENTIALS OF PSYCHOLOGICAL TESTING 459-62 (2d ed. 1960).

26. (a) For examples in the practice of law, see Matter of Wittner, 264 App. Div. 576, 35 N.Y.S.2d 773 (1st Dep't 1942), *aff'd per curiam*, 291 N.Y. 574, 50 N.E.2d 660 (1943) (lawyer suspended from practice for surreptitious use of recording device). The Committee on Professional Ethics of the Association of the Bar of the City of New York has concluded that the use of recording devices by lawyers, without the consent of the person whose conversation is being recorded, violates the Canons of Ethics. See, *e.g.*, Opinions Nos. 832, 836, 13 N.Y.C.B.A. RECORD 36, 568 (1958); No. 813, 11 N.Y.C.B.A. RECORD 207 (1956).

(b) In law enforcement: see DASH, THE EAVESDROPPERS (1959); *Symposium*, 44 MINN. L. REV. 811 (1960). See also N.Y. Times, July 14, 1965, p. 1, col. 3 (use of two-way mirrors and other eavesdropping devices by Internal Revenue Service).

27. (a) In medical research: see Lewis, Restrictions on the Use of Drugs, Animals and Persons in Research (paper delivered at the Rockefeller Institute Conference on Law and the Social Role of Science, April 8, 1965).

(b) In medical practice: see Rheingold, *Products Liability—The Ethical Drug Manufacturer's Liability*, 18 RUTGERS L. REV. 947, 957, 1009 (1964).

28. See STAFF OF HOUSE COMM. ON GOV'T OPERATIONS, USE OF POLYGRAPHS BY THE FEDERAL GOVERNMENT (Preliminary Study 1964), 88TH CONG., 2D SESS. (Comm. Print 1964); House Comm. on Post Office and Civil Service, *Use of Electronic Data Processing Equipment in the Federal Government*, H.R. REP. No. 858, 88th Cong., 1st Sess. (1963); *Hearings Before the House Comm. on Post Office and Civil Service, Confidentiality of Census Reports*, 87th Cong., 2d Sess. (1962); *cf.* United States v. Rickenbacker, 309 F.2d 462 (2d Cir. 1962), *cert. denied*, 371 U.S. 962 (1963).

29. (a) In newsgathering: see the charge of Alex Rose that a *New York Herald Tribune* reporter had rented an adjoining hotel room to eavesdrop on a political meeting. N.Y. Times, June 20, 1965, § 1, p. 46, col. 1.

(b) In public safety: consider the number of apartments, office buildings, hospitals, laboratories, jails, and other public buildings that have electronic systems to cover en-

So may abuse be found in the area with which we are primarily concerned—scientific research. The one-way mirror is a common fixture in facilities designed for bio-medical and behavioral research. Personality and ability tests are as familiar to researchers in these fields as a stethoscope is to the family doctor. The computer and electronic data storage and retrieval have become crucial to the intelligent and efficient use of research data. Socio-active and psycho-active drugs are ever more tempting research tools, as are the concealed camera and the hidden microphone. When these and other scientific and technological advances are used by scientists, they are used by highly trained, well-motivated, professional people for a social purpose on which the community places a high value. But this fact by itself, obviously, does not warrant the invasion of private personality any more than it would warrant the taking of private property or the administration of live cancer cells to a non-consenting patient.[30]

The recent advances in science have made it clear that society must now work out some reasonable rules for the protection of private personality. It is, perhaps, becoming imperative now to define how the interests of the community—whether in scientific research or law enforcement or economic growth—can be accommodated with the need for privacy. The necessity for such an accommodation poses no idle problem. The consequences of the failure to resolve it are predictable: they begin with the recoil and revulsion of the community;[31] they conclude with arbitrary legislation.

There is no doubt as to the community reaction to the administration, even in the name of research, of live cancer cells to unwitting patients. Nor should we expect that the community will be any more tolerant of behavioral research that subjects non-consenting persons to the risk of injurious, though non-fatal, after-effects. Indeed, community sensitivity as to what is reasonable,

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trances, elevators, reception rooms, conference rooms, corridors and tellers' windows with television cameras or sound monitoring and recording systems; also the FAA rule on the installation of voice recorders in the cockpits of large airplanes as proposed, 28 Fed. Reg. 13786 (1963). For the regulation as enacted, see 29 Fed. Reg. 19209 (1964).

(c) In education: see authorities cited in notes 31, 37 *infra*, for some aspects of the use of personality tests in schools; consider also the two-way communication system that enables a school principal to speak directly to a class or, at his choice, to monitor, unobserved and unannounced, the classroom proceedings.

(d) In social welfare: see Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245, 1254 (1965); Sokol, Due Process in the Protection of Adults and Children (paper presented Sept. 11, 1964, at the Northeast Regional Conference of the American Public Welfare Association).

(e) In entertainment: consider the television programs which have used hidden cameras to photograph unsuspecting subjects; see N.Y. PEN. LAW § 834 dealing with exhibitions, and particularly the prohibition of "any act . . . whereby any . . . citizen . . . is held up to contempt or ridicule."

30. See Matter of Hyman v. Jewish Chronic Disease Hosp., 15 N.Y.2d 317, 206 N.E.2d 338, 258 N.Y.S.2d 397 (1965). See also, Carley, *Research and Ethics*, Wall Street Journal, June 10, 1965, p. 1, col. 1; N.Y. Times, March 20, 1965, p. 56, col. 1.

31. See Eron & Walder, *Test Burning II*, 16 AMERICAN PSYCHOLOGIST 237-44 (1961); Nettler, *Test Burning in Texas*, 14 AMERICAN PSYCHOLOGIST 682-83 (1959).

or tolerable, is not limited to situations where physical or psychic injury may be involved.

While neither the most representative nor serious intrusion, a well known example of privacy invasion in the field of behavioral research is the so-called "jury bugging" experiment conducted by the University of Chicago. Financed by the Ford Foundation, this was a scientific inquiry conceived and carried out with the best of professional motivation and skill. Although the consent, in advance, of the court and of opposing counsel was obtained, the surreptitious probing of the individual and institutional[32] privacy of the members of the jury shocked the community when the experiment became public knowledge in October, 1955. Federal and state statutes were promptly passed, in 1956 and 1957, to ban all attempts to record or observe the proceedings of a jury.[33] The New York statute, for example, reads as follows:

> A person:
> . . . who, not a member of a jury, records or listens to by means of instrument the deliberations of such jury or who aids, authorizes, employs, procures, or permits another to do so; is guilty of eavesdropping.[34]

And in New York eavesdropping is a felony punishable by imprisonment![35]

32. Although this article is concerned with individual privacy, the claim to institutional and collective (or group) privacy should be noted. Institutional privacy is more than the sum of the claims to privacy of the members of a particular institution. For example, even had each of the members of the jury in the University of Chicago experiment consented to the recording of the jury room proceedings, the tone of the public response indicates that such recording would still have been viewed as tampering with a sacred institution and, therefore, offensive. See Shils, *supra* note 1, at 132-39. The individual claim to privacy is plainly paralleled by the institutional claim, and both are rooted in the need of an organism to learn and grow by quiet trial and error (sometimes called practice) without loss of dignity or public accountability, or risk of punishment. Both involve the concepts of consent and confidentiality discussed later in this article. But the conditions under which the claim may be asserted—by private institutions as well as public—and the determination of who may consent (if the judge cannot consent for the jury, can the President consent to the disclosure of his cabinet discussions?) raise the privacy issues in a different context worthy of separate analysis. The public accountability of institutions (both government and private) must be weighed and balanced with the institutional need for privacy to maintain their effectiveness and integrity. This is well appreciated by all who are responsible for the destiny of an institution and who have dealt, for example, with journalists' inquiries, congressional investigations, government questionnaires, judicial subpoenas, FBI interviews or stockholders' demands. A recent illustration of a lack of sensitivity to this claim of institutions for privacy is afforded by a bill introduced in the New York State Senate on March 9, 1965 (Senate Print 2832, Intro. 2691) which would have declared "all books . . . bills, vouchers, checks, contracts or other *papers connected with or used or filed* in the office of every authority or commission . . . or with any officer acting for or on its behalf . . . public records . . . *open to public inspection* at all times . . . ." (Emphasis added.)

33. 18 U.S.C. § 1508 (1964); see, *e.g.*, MASS. ANN. LAWS ch. 272, § 99A (Supp. 1964).

34. N.Y. PEN. LAW § 738. The new penal law, effective Sept. 1, 1967, replaced Section 738 with a general provision prohibiting "wiretapping or mechanical overhearing of a conversation." N.Y. Sess. Laws 1965, ch. 1030, § 250.05. The memory of the Chicago experiment lingers on. See the anti-eavesdropping bill introduced in the Minnesota Legislature on March 4, 1965, S.F. No. 915, § 2(d) (Phillips Legislative Service).

35. N.Y. PEN. LAW § 740. The new penal law makes no substantial change in this provision. N.Y. Sess. Laws 1965, ch. 1030, § 250.05.

Another example where neither physical injury nor emotional trauma is necessarily involved is found in personality testing.[36] It requires no Cassandra to predict lawsuits by parents, and a spate of restrictive legislation,[37] if those who administer these tests in schools—even for the most legitimate of scientific purposes—do not show a sensitive appreciation for both individual and group claims to a private personality.

The lesson is plain. Unless the advances of science are used with discrimination by scientists engaged in behavioral research—as well as by other professions, by industry and by government—the constructive and productive uses of these advances may be drastically and unnecessarily restricted by a fearful community.[38]

IV. The Need for Equilibrium

Obviously, as Samuel Messick wrote recently:

> Absolute rules forbidding the use of [personality tests] . . . because they delve into contents beyond the bounds of decent inquiry would be an intolerable limitation both to scientific freedom and to professional freedom.[39]

It should be equally obvious—yet it may not be[40]—that absolute rules permitting professional license, in the name of scientific research, to probe beyond

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36. Lee J. Cronbach, one of the nation's outstanding authorities on psychological testing, in his book, *Essentials of Psychological Testing* (2d ed. 1960) observes:

> Any test is an invasion of privacy for the subject who does not wish to reveal himself to the psychologist. While this problem may be encountered in testing knowledge and intelligence of persons who have left school, the personality test is much more often regarded as a violation of the subject's rights. Every man has two personalities: the role he plays in his social interactions and his "true self". In a culture where open expression of emotion is discouraged and a taboo is placed on aggressive feelings, for example, there is certain to be some discrepancy between these two personalities. The personality test obtains its most significant information by probing deeply into feelings and attitudes which the individual normally conceals. One test purports to assess whether an adolescent boy resents authority. Another tries to determine whether a mother really loves her child. A third has a score indicating the strength of sexual needs. These, and virtually all measures of personality, seek information on areas which the subject has every reason to regard as private, in normal social intercourse. He is willing to admit the psychologist into these private areas only if he sees the relevance of the questions to the attainment of his goals in working with the psychologist. The psychologist is not "invading privacy" where he is freely admitted and where he has a genuine need for the information obtained.

Id. at 459-60.

37. See S. Rep. No. 553, 88th Cong., 1st Sess. 41 (1963) for the legislative proposal (H.R. 4955) of Representative Ashbrook of Ohio. In New York, Assemblyman Russo introduced a bill in 1964 (A.I. 1701) to preclude the testing of a school child without the consent of a parent or guardian.

38. In addition to the restrictions that may be imposed on the uses of science and technology, there should also be considered the prospect of legal liability for any injury that may be suffered from their use. See Rheingold, *supra* note 27; Comment, *Legal Implications of Psychological Research with Human Subjects*, 1960 Duke L.J. 265. See also note 65 *infra* for statutes which make eavesdropping—including eavesdropping by behavioral scientists in the course of research—a crime.

39. Messick, *Personality Measurement and the Ethics of Assessment*, 20 American Psychologist 136, 140 (1965).

40. See a not unrelated discussion in West, The New Meaning of Treason 158-61 (1965).

the bounds of decent inquiry are equally intolerable to a free society and to free men. Absolute rules do not offer useful solutions to conflicts in values. What is needed is wisdom and restraint, compromise and tolerance, and as wholesome a respect for the dignity of the individual as the respect accorded the dignity of science.

If discrimination and discernment are in fact brought to bear, then we can be confident that the advances in science and technology pose no intolerable threat to privacy. Indeed, they promise to contribute more to an understanding of the claim to private personality, to the recognition of its proper limits, and to the protection of its creative integrity than anything in our recorded experience. Worthy of note is Dr. Robert Morison's reminder that: ". . . the sciences are providing more accurate ways of describing moral problems, and are actually calling attention to types of moral problems which heretofore have not been recognized."[41]

It is not enough to be optimistic about the consequences of the tensions between science and privacy. It is incumbent upon lawyer and scientist to accommodate the goals of science with the claim to privacy, and to help articulate the rules and concepts that will maintain both the productivity of science and the integrity of personality.

In his well-known essay *On Liberty*, John Stuart Mill, while concluding that "over himself, over his own body and mind, the individual is sovereign," continued:

> There is a limit to the legitimate interference of collective opinion with individual independence: and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.
>
> But though this proposition is not likely to be contested in general terms, the practical question, where to place the limit—how to make the fitting adjustment between individual independence and social control—is a subject on which nearly everything remains to be done.... Some rules of conduct, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law. What these rules should be, is the principal question in human affairs; but if we except a few of the most obvious cases, it is one of those in which least progress has been made in resolving.[42]

Although more than a century has passed since this pessimistic estimate was made, its essential validity remains.

Our purpose is to identify some of the rules of conduct which, by providing balance and sensitive awareness, can in this century accommodate, and perhaps even resolve, the confrontation of the values of privacy with other values. While the focus here is on behavioral research, it should be empha-

41. Morison, *Foundations and Universities*, 93 DAEDALUS 1109, 1137 (1964).
42. MILL, ON LIBERTY 7-8 (Bobbs-Merrill 1956).

sized again, that this clash with the values of privacy is not unique to behavioral research.[43] The rules of conduct which can accommodate behavioral research to the claims of private personality may, it is hoped, provide useful parallels in other areas.

V. Behavioral Research and Individual Privacy

The traditional methods of behavioral research may, on occasion, involve a violation of the individual claim to private personality.[44] These traditional research methods can be grouped into three broad types: first, self-descriptions elicited by interviews, questionnaires, and personality tests; secondly, direct observations and recording of individual behavior; and thirdly, descriptions of a person by another serving as an informant, or the use of secondary data such as school, hospital, court or office records.

These three major research methods do not necessarily lead to a violation of the claim to privacy. All may be, and most often are, used under conditions of anonymity or individual consent and with strict control over confidentiality. Nevertheless, each method, if improperly employed, can make serious inroads on personal privacy. Thus, some personality tests induce the subject unwittingly to reveal more about himself than he wishes to; carefully designed questionnaires and interview procedures can be used to trap the individual into making public those facts and feelings about himself or others that he would not wish to disclose. Direct observational methods similarly can involve privacy invasion; as, for example, in the use of one-way glass for the observation of children without their knowledge, or in the use of an unidentified participant observer such as a social scientist pretending to be either a patient in a mental hospital or a member of a minority group, or a drug addict among troubled juveniles. Descriptions of one individual by another, either oral or in the form of written records, can also be used in ways that invade the individual's privacy. Illustrative is information elicited from children about their parents' life together, or the description of husbands by wives, or the use of institutional records, originally compiled for one purpose, for quite another. An example of the latter is found when school data are made available to outsiders for research not related to the administration of the educational program. It is the same when welfare data are made available for purposes not connected with the welfare objectives for which they were obtained.

Each of these three basic research methods may engage one or both of the two central—and ethical—issues which are at the core of the relationship between research and personal privacy. These are first, the degree of individ-

43. See notes 24-29 *supra* and accompanying text.

44. They may also involve the invasion of group or institutional privacy. One example is provided by research on minority groups or associations. See note 32 *supra*.

ual consent that exists and, second, the degree of confidentiality that is maintained. The former concerns the conditions under which information is obtained from a person, the latter, the conditions under which the information is used.

Let us consider some of the ways in which these two issues are raised by behavioral research.

In the use of self-description, a privacy issue arises if the individual respondent does not participate willingly, or if he participates without knowledge of the information being elicited from him, or without an understanding of the purposes for which such information will be used. The nature of the private information being yielded can be obscured from the respondent either by direct artifice, by reliance on the respondent's ignorance or his lack of sophistication, or by some form of coercion, employed to enlist his cooperation. Similarly, with direct observations, a privacy issue arises if the examinee does not know he is being observed, or if he is put off by misleading instructions as to the nature or purpose of the observation or the identity of the observer, or if he is an unwitting participant in a deceptively constructed test situation. An examinee, for example, might be the only person not to know that a group of which he is a part is behaving in a planned abnormal manner so as to test his desire to conform. Where informants, or secondary data, are employed, privacy questions can arise in several ways. An inducement to a breach of faith or confidence may be involved; naivete may be purposefully and systematically exploited. Alternatively, the information may have been supplied only because its nature, or the subsequent use to be made of it, were not known to the respondent.

In each of these three research techniques, an additional point of some complexity can be involved: was the privacy-related data obtained originally for a different purpose? For example, we may consent to yielding vital data for the purpose of being admitted to practice law, or society may properly insist on some loss of individual privacy in order to combat disease or other hazards to life or tranquility.[45] In any such case, however, the individual should not then be deemed to have consented, without qualification, to the subsequent use of such data by a credit agency, or by a member of the school board, or even a scientist engaged in bona fide research.[46]

Lawyers are persuaded that they must not talk about their clients' affairs. While this is now a matter of professional ethics, this restraint is rooted in a recognition that any other state of affairs would corrode the trust which is

45. The Public Health Law of New York, for example, requires physicians, and others, to report communicable diseases to the local health officer (§ 2101), permits health officers to seek court orders to compel persons to be examined for venereal diseases (§ 2301), and requires vaccination of school children for smallpox (§ 2130).

46. The New York statute, for example, contains provisions designed to preserve the confidentiality of the private information obtained about the venereal diseases with which a person may be infected. See N.Y. PUB. HEALTH LAW § 2306.

of the very essence of the professional relationship. The effectiveness of the doctor, plainly, is similarly vulnerable if patients ever believed they could not rely on their physicians to respect imparted confidences. In quite another area: what would happen to the process of education if student attitudes, as revealed in the Socratic interchanges of the classroom, were recorded and reported by the teacher and then used for scientific research or for other purposes—such as responding to inquiries by potential employers?

The point, then, is that consent and confidentiality have a pragmatic as well as a moral importance to the pursuit of any profession. The quality and effectiveness of behavioral research will depend, accordingly, on the confidence the public has in the behavioral scientists and in the way they pursue their science.[47]

VI. The Concept of Consent

The essence of the claim to privacy is the choice of the individual as to what he shall disclose or withhold, and when he shall do so. Accordingly, the essential privacy-respecting ethic for behavioral research must revolve around the concept of consent.[48] Taken literally, the concept of consent would require that behavioral research refuse to engage in the probing of personality, attitudes, opinions, beliefs, or behavior without the fully informed consent, freely given, of the individual person being examined. There are, however, several reasons why the concept of consent cannot be so literally invoked in the name of privacy.

In the first place, a rigid and literal insistence on formal consent, in a research context, can readily become unrealistic. In some instances, insistence on consent would shake the validity of the research itself. The very selectivity involved in consent would ensure that the research was based on a biased sample and therefore could not be generalized to a wider population. And where subtle attitudes are being measured, knowledge of, and consent to, what is being sought is almost certain to distort the results. In other instances, the requirement of consent might frustrate the project at the outset.[49] Finally, in many instances a full appreciation of the nature of the research, the purposes to be achieved and the risks involved would be impossible to convey fully, either because of their essential complexity, or because they involve

47. See Gross, *Social Science Techniques: a Problem of Power and Responsibility*, 83 The Scientific Monthly 242 (1956); Mead, *The Human Study of Human Beings*, 133 Science 163 (1961).

48. The tribunal in the Nuremberg trials considered at some length the circumstances under which medical research conducted with human beings would conform to the ethics of the medical profession. It evolved ten basic principles that "all agree . . . must be observed in order to satisfy moral, ethical and legal concepts." The first of these ten Nuremberg commandments was that: "The voluntary consent of the human subject is absolutely essential." II Trials of War Criminals Before the Nuremberg Military Tribunals under Control Council Law No. 10, The Medical Case (United States v. Brandt) 181 (U.S. Gov't Printing Office 1949). See generally Lewis, *supra* note 27.

49. How many people, for example, could be expected to participate willingly in a test to devise a standard of homosexual tendencies? Or to measure intra-family hostility?

unknown factors, or because they are beyond the capacity of the subject to understand.

Any application of the concept of consent as a privacy-protecting test for scientific research is further complicated by the difficult factual problem of assessing, in each particular case, what constitutes consent. When is it informed; when is it freely given; who is entitled to give it? In research situations consent may be given by tacit acquiescence, by explicit oral avowal, by written statement, or it may be implied from the totality of the circumstances. While each of these methods of consent can raise troublesome issues, implied consent is by far the most difficult.

Obviously, in many situations, consent can be fairly implied. Certainly, public figures, particularly those who appeal to the public for elective office, have impliedly consented to the yielding up of some areas of private personality. The comings and goings of a Mayor or Governor, or Hollywood starlet, and a public evaluation and discussion of their strengths and weaknesses in their public roles, are proper subjects of news report, analysis, and research. Similarly when a client seeks occupational counseling from a psychologist, or a parent seeks educational guidance for his child, or when a patient seeks psychotherapy, he has consented to some probing, and revelation, of his private personality.[50] While the combination of circumstances that will warrant the implication of informed consent are myriad, restraint must be exercised not to imply such consent in the absence of reasonably compelling facts. Otherwise, the whole requirement of consent can too readily be rationalized away through implication.

Moreover, consent to the revelation of private personality for one purpose, or under one set of circumstances, is not license to publish or use the information so obtained for different purposes or under different conditions. This is especially so when the operative consent is implied or when it would be reasonable to assume that the initial consent would not have been given for the new purpose or the different situation. Further, varying degrees of consent must be recognized. Consent, however given, may be restricted in numerous ways—as to the methods to be used, the risks to be taken, the degree of information the subject wishes to give or receive, the type of data to be obtained, or the uses to which it may be put.

Another complicating factor in the concept of consent is the determination of whether consent has been freely given or coerced. Torture is an old and well-tried technique for extracting private information—and torture need not be physical. Mental anguish can be just as searing and difficult to endure. The prospect of release from suffering, therefore, is a powerful lever for access to the private area. Its uses for the manipulation of behavior or

50. See CRONBACH, *op. cit. supra* note 25, at 459-62.

the probing for knowledge are not unknown to sheriffs and prosecutors, to personnel directors, school teachers, and parents—indeed, to virtually anyone who has experienced authority. Conversely, its uses are very well known by the jobless, the hungry, the homeless, the ambitious and the young. The obvious cases of physical, mental, economic, or social duress are readily identifiable; but when does a subtle inducement such as the regard of your boss or even of your peers, or some inducement, not quite so subtle, such as an extra point added to your college grade in return for participation in psychological experiments—when do these become tantamount to duress? What about the vast prestige of scientific research itself as a means of persuasion upon the unsophisticated? And when does the relative disproportion between the knowledge, sophistication and talents of the investigator and his subject make the consent of the respondent questionable, however freely and explicitly given? It is all too apparent that the distinction between consent and concealed coercion may often be difficult to establish. This is, however, the type of distinction with which our social institutions, in particular our law and our courts, have a demonstrated competence to deal.

As compared with the complexites of coercion, the problem of identifying the person whose consent must be obtained can, in most cases, be more readily resolved. Normally, when a competent adult is the examinee, or the subject of research, he is the person whose consent must be obtained. If he is not an adult, or if he is not legally competent, then the consent must be obtained from the person legally responsible, namely, a guardian or parent. In the case of children, however, while the legal principles may be clear, a lingering ethical question remains. Should not a child, even before the age of full legal responsibility, be accorded the dignity of a private personality? Considerations of healthy personal growth, buttressed with reasons of ethics, seem to command that this be done. If so, then, in the case of adolescents (and probably even earlier), some form of prior consent to privacy probing should be obtained from *both* the parent and the respondent child.[51]

A special word should be said about anonymity in behavioral research. Frequently it is possible to obtain data of value for behavioral research where the subjects need never be identified by name. National opinion surveys are one example; the use of students in a college classroom may be another. Where anonymity in fact exists, the invasion of privacy involved in behavioral research might well be regarded as *de minimis*. Nevertheless, it must be stressed that anonymity is not a complete substitute for consent.

51. For an interesting commentary on some of the subtle ethical problems involved, see Mace, *Privacy in Danger*, 171 THE TWENTIETH CENTURY 173, 176-77 (1962). Compare State v. Kinderman, 136 N.W.2d 577 (Minn. 1965), where the court held that an adult home owner could effectively consent to a search of his *adult* child's room notwithstanding the absence of *both* a court warrant and the consent of the adult child. This is another instance of a judicial preoccupation with the concepts of property when the claim to privacy is involved. See cases cited note 3 *supra* and accompanying text.

On occasion an individual may feel that his privacy is being invaded when asked to reveal his thoughts or feelings, or to describe his actions, even though he remains quite anonymous to the researcher. It is a fact that many people even under conditions of anonymity resist such revelation to others. So it would seem that, wherever possible, both consent and anonymity should be sought in behavioral research.

The condition of anonymity sometimes is used as a justification for the invasion of privacy in psychological experiments where the subject is deceived as to the meaning of the experiment, or where false information is given to the person so as experimentally to arouse or decrease self-esteem, motivation, or other similar feelings. That the subject remains anonymous, however, can not justify the failure to obtain his consent prior to any such purposeful manipulation of his personality.[52]

Behavioral scientists need no reminder that the concept of consent is not now universally operative as a condition of the research projects on which they are engaged. The use of human guinea pigs is not confined to prisons. Examples of "forced" submission to privacy probes can be found in our hospitals, our schools, our colleges, our social welfare programs, our research institutes, and our institutions for the disturbed, handicapped, or retarded. Such a disregard for the dignity of personality—occasional though it may be—must be guarded against and eliminated by the social scientists themselves.[53] If they fail or refuse to exercise self-control, then the community will inevitably feel compelled to act for itself and legislate for the protection of personal privacy.

While the knowledgeable, freely-given consent of a participant should be a basic ground rule for all behavioral research, there is, of course, a need for exceptions. There must be, indeed, a fundamental exception to cover the many instances where society will accept the invasion of privacy as permissible and reasonable. Thus, when the general welfare requires it and due process is

52. It is apparent that this view is not yet fully shared by the behavioral scientists. For example, Dr. Lee J. Cronbach, who has given thoughtful consideration to the problems of ethics in psychological testing, and who sensitively perceives the ethical issues involved in the use of psychological tests in other contexts, with respect to scientific research, has stated:

> No ethical objection can be raised to the use of subtle techniques and even of misleading instructions when the information so obtained will be used entirely for research purposes, the subject's identity being concealed in any report.

Cronbach, *op. cit. supra* note 25, at 461. Even for research purposes, however, Cronbach raises a caution where the investigator occupies a position of authority over the person being tested. *Id.* at 462.

53. An excellent example of a responsible attitude toward behavioral research in schools is to be found in Kohn & Beker, *Special Methodological Considerations in Conducting Field Research in a School Setting*, 1 PSYCHOLOGY IN THE SCHOOLS 31 (1964). See also Castaneda & Fahel, *The Relationship between the Psychological Investigator and the Public Schools*, 16 AMERICAN PSYCHOLOGIST 201-03 (1961). While neither of these articles deals with the claim to privacy as such, Messrs. Kohn and Beker show a lively appreciation of it, and recognize the importance of consent, anonymity and confidentiality in, and for, behavioral research.

observed, our society permits the taking of private property without consent. There is no reason to doubt that, under similar circumstances, society will permit at least a limited invasion, or taking, of private personality. Circumstances under which the community tolerates the probing into private areas without the consent, and if necessary, without the knowledge of the examinee do, in fact, exist. A number of examples can be easily found in law enforcement, in selection for military service, in social welfare work, in the protection of the public health, in the national census, and in the selection of employees for the Central Intelligence Agency or as airline pilots.

A public trial may also invade the privacy of the individuals involved in the litigation. Yet since our society is persuaded that a public hearing is essential to a fair trial and to social order, it finds entirely reasonable that the individual claim to privacy must yield in this instance. Even here, however, the equilibrium between the competing values is sensitively preserved and there are occasions when the court is cleared, or the testimony sealed.[54]

Even where the public interest may warrant the taking of private property or of private personality, no absolute license is justified. The taking should be reasonable, it should be conducted with due process, and it should be limited to no more than what is necessary for the fulfillment of the public purpose which, in fact, warranted the invasion.

If we apply these principles to behavioral research, it is clear that, in determining whether the interference with the right of private personality is reasonable, one must appraise many diverse factors. They include such matters as whether the research is necessary, or simply desirable; whether the identification of the individual is in fact required for the successful conduct of the research; whether the invasion of privacy is being limited to the narrowest extent possible; whether artifice and the risk of physical or psychological

54. Examples of the range of protections available in the judicial process are:
(a) Court orders to protect confidential information obtained for evidentiary purposes from being improperly used for other purposes. See Covey Oil Co. v. Continental Oil Co., 340 F.2d 993 (10th Cir. 1965), *cert. denied*, 380 U.S. 964 (1965); United States v. Lever Brothers Co., 193 F. Supp. 254 (S.D.N.Y. 1961), *appeal dismissed*, 371 U.S. 207 (1962), *cert. denied*, 371 U.S. 932 (1962). See also N.Y. CPLR § 3103 (preventing the abuse of pre-trial disclosure proceedings).
(b) Statutory provisions relating to the disposition of the evidence submitted to the Tax Court, see INT. REV. CODE OF 1954, § 746; or the reception of certain evidence by the Civil Rights Commission. See Civil Rights Act of 1957, 102(g), as amended, 78 Stat. 249 (1964), 42 U.S.C. § 1975a(e) (1964).
(c) Statutory provisions for the sealing of records in judicial proceedings and limiting access thereto. See N.Y. DOM. REL. LAW §§ 114 (adoption), 235 (matrimonial actions); N.Y. FAMILY CT. ACT § 166 (privacy of records); N.Y. SOC. WELFARE LAW §§ 372(4) (records as to children), 132, 136 (welfare records).
(d) Statutory provisions for the exclusion of the public from court proceedings. See N.Y. JUDICIARY LAW § 4; N.Y. FAMILY CT. ACT § 531 (paternity proceedings).
(e) Statutory provisions restricting the availability of information obtained by the Department of Justice under a Civil Investigative Demand, see Antitrust Civil Process Act § 4(c), 76 Stat. 550 (1962), 15 U.S.C. § 1313(c) (1964), or obtained by the Department of Commerce. See 13 U.S.C. § 9 (1964).
(f) Statutory prohibitions against televising or broadcasting of judicial proceedings, such as N.Y. CIV. RIGHTS LAW § 52.

injury are being avoided; whether the research is being conducted by trained professionals under controlled conditions; whether the paramount public interest favors the research at the risk of a reduction in individual privacy; and whether the paramount nature of the public interest has been explicitly recognized, or otherwise accepted, by the community in its laws, by its codes, through its political action, or in such other laborious ways as social consensus is reached and expressed in a free society.

The analogy between behavioral research in the public interest and investigative visits by welfare agents administering public assistance is pertinent. So are the words of the Deputy Commissioner of the New York City Department of Welfare:

> The fact that public assistance is a statutory right means, therefore, that it is subject to conditions imposed by the Legislature. . . . It means that the Legislature may require that the applicant waive his right to privacy to permit a thorough investigation of his eligibility for public assistance. It means that the applicant must open his home to admit representatives of the Welfare Department to enter and to inquire and to observe. It does not mean, of course, that this permissible and necessary invasion of privacy may go so far as to violate the constitutional right against unreasonable search and seizure. It does not mean that the investigator may enter forcibly and without the consent of the applicant nor does it mean that the investigator may come in the dead of night, but it does mean that the applicant must submit to an investigation and, therefore, to an invasion of privacy which falls short of being unreasonable and that if he refuses to submit and refuses to permit such infringement upon his right of privacy, then he may not exercise his right to receive public assistance. The question, therefore, is wholly one of reasonableness and in this respect there may well be a difference of opinion among people of good will . . . .[55]

A clear and paramount public interest in a particular behavioral research inquiry, in spite of a high cost in human privacy, can no doubt frequently be established. However, the recent emergence of behavioral science knowledge as a potential contribution to human welfare has yet to be matched with an explicitly recognized set of laws or codes or otherwise publicly expressed agreements on the value of different kinds of research. Thus, there are and will be many occasions in which conflict between the individual's claim to privacy and the larger community interest in research for the general good must be resolved—and the method of resolution must be an expression of community consensus.

This concept of consensus is not employed in any formal mechanistic way. In a sense, what is meant is that the issue of paramountcy as between private personality and a particular program of scientific research should not

55. See Sokol, *supra* note 29; see also Coser, *The Sociology of Poverty*, 13 SOCIAL PROBLEMS (Oct. 1965).

be left solely to the decision of the research investigator. There should be some strong element of community approbation; the delicate balancing of the colliding values involved should reflect more than a single point of view.

Community consensus can obviously be expressed in laws, judicial decisions, or political constitutions. But it demands no such formal manifestation, and can also be expressed in far more subtle but equally pervasive ways. For example, consensus can be expressed in the values of our peers as they are articulated to us. Consensus can be formed through the stated views of our opinion leaders whether they be leaders in government or industry, in labor, the professions or the clergy. Consensus can also be reflected in the provisions of collective bargaining contracts between labor and management, in the executive orders or instructions issued by Presidents, cabinet officers, personnel directors, and administrators of all kinds.

Yet, most appropriate for scientific research—as it is for all the professions—is the expression of a consensus on values in a published and operative code of ethics. Such a code yields a triple return—it articulates the values involved, uplifts thereby the awareness and standards not only of the profession but the entire community, and can provide a means for disciplining transgressions within the profession.

Thus, in launching any behavioral research project, the investigator should first determine whether voluntary, informed consent, as well as anonymity, can be accommodated with the integrity of the research. If not, the investigator should then ascertain whether the community consensus approves the conduct of the research, under the proposed conditions, without the actual consent and anonymity of the subjects. As a minimum, this means the knowledgeable concurrence of those responsible for both the research project (for example, the financing institution) and for the well being of the subject (as, for example, the administration of the college he attends). The history of public health and medicine in this country, and earlier in Europe, gives many illustrations of the establishment of just such a community consensus on the invasion of privacy for the general welfare.[56]

One may anticipate that, as behavioral science develops and its contributions to society increase, the democratic process may afford to it more occasions of publicly approved invasions of personal privacy.

VII. The Concept of Confidentiality

Whether private data are collected with consent, or without consent but with society's permission because of the perceived public interest involved, the minimal requirements of privacy seem to call for the retention of the private data in a manner that assures its maximum confidentiality consistent with the

56. See note 45 *supra.*

integrity of the research. Thus, the second privacy issue presented by behavioral research, as it is with all inroads on the private personality, is the issue of confidentiality.

One of the most important ways in which the concept of confidentiality in behavioral research can be served is to seek to design the research so that the responses of the persons providing the data can be anonymous; the design should avoid identifying any individual respondent with a particular response. While this should be possible in all opinion surveys, in many instances the nature of the research will require an ability to identify each respondent with the data elicited from him. This would of course be true in longitudinal studies—as of child growth and development—where respondents must be examined or interviewed a number of times, or in studies of several diverse sets of records which must be matched up to a particular individual.

If full anonymity is not possible in the research design,[57] then there are several other safeguards which should be stressed to provide some degree of anonymity or confidentiality. The first, needing no more than a passing mention, is the integrity of the behavioral research scientist, which, along with his interest in science, must be assumed as a basic prerequisite. The integrity of the professional scientist will assure both his informants and society at large that he will be responsible and will maintain the confidence of any information given to him by identifiable informants. That there are occasional breaches of professional confidence at this level underscores the significance of putting stress on the responsibility of the investigator both during his professional training and throughout his research career.

Another important safeguard for confidentiality can be provided through control techniques. For example, the identity of the respondent may be coded

57. It should be borne in mind that there are various degrees of anonymity in the gathering of research data, and it may be useful to distinguish between them in balancing the values of particular research with the costs in privacy that may be involved. Dr. Isidor Chein, Professor of Psychology at New York University's Graduate School of Arts and Science, in a letter to the authors making this point, identified, among the possible levels of anonymity, the following six:

(a) the particular subject is never identifiable, not even by the investigator or his agents; (b) the particular subject is temporarily identifiable, but his identity is never ascertained up to and including the point at which the data that he has provided are consolidated in some meaningful and interpretable form; (c) the particular subject is temporarily identifiable and his identity is known up to, but not including, the point at which the data that he has provided are consolidated in some meaningful and interpretable form; (d) the particular subject is temporarily identifiable and can be associated with data that are in themselves meaningful and interpretable, but his identity is not ascertained; (e) the identity of the particular subject is known in conjunction with meaningful and interpretable data, but his identifiability and identity are submerged in the treatment of the data from many subjects and his own data are never scrutinized from the point of view of interpreting or drawing any inferences about him or his behavior; and (f) the identity of the particular subject is known in conjunction with meaningful and interpretable data and these data are scrutinized from the point of view of interpreting some aspect of the individual or his behavior, but his identity is thereafter submerged in the collection of similar processes of interpretation for many subjects.

and separated from his response except for the code number. The code, in turn, may be made accessible only to a few of the most responsible officials, or perhaps, only on two signatures or by the use of double keys. Even as elementary a safeguard as a locked file can make for substantial improvement. Penalties within the profession may also be devised for any breach of the confidentiality which should be of the very essence of professionalism.

Another readily available step is the destruction of research data. At the very least, that part of the data which would identify any individual with any portion of it should be destroyed, and destroyed at the earliest moment it is possible to do so. Today, it is quite rare for an institution or an individual scientist to take what is now viewed as a radical step and destroy data which potentially has value over a longer time span. Indeed, behavioral scientists have strong incentives to retain all original research data.[58] Such data can provide information of a longitudinal nature about the development of personality or organizations over time, the early childhood antecedents of career success, the degree of change in interest and attitude from one age to another, the effects of marriage upon personality characteristics and other fascinating problems. There are now great repositories of such data in the United States collected about individuals in schools, both secondary and college, and other institutional settings, which have been maintained because of this natural resistance of the research scientist to discard anything of such potential value. Nevertheless, the maintenance and use of this information for purposes other than that originally agreed to, and the threat to confidentiality inherent in its continued maintenance, strongly suggest that the proper course of the person or institution possessing such data is either to obtain the consent of the individual involved to its continued preservation, or to destroy the data, painful as the latter prospect may be.

It should be emphasized that neither the integrity of the scientist nor the technical safeguards of locks and codes can protect research data against a valid subpoena; such data are at present quite clearly subject to subpoena. In the last analysis, therefore, unless our laws are changed to accord a privileged status to privately given research information, confidentiality can be assured only by destruction of the data. The change in the law required to accord a privileged status to research data can be accomplished by statute. Thus, by statute in eighteen states,[59] a privilege has already been

58. See, *e.g.*, Johnson, *Retain the Original Data!*, 19 AMERICAN PSYCHOLOGIST 350-51 (1964). See also de Mille, *Central Data Storage*, 19 AMERICAN PSYCHOLOGIST 772-73 (1964). The prospect of the use of computers for central recording, storage and retrieval of research data in the behavioral sciences adds a troublesome new dimension to the protection of privacy. Computerized central storage of information would remove what surely has been one of the strongest allies of the claim to privacy—the inefficiency of man and the fallibility of his memory.

59. The eighteen states are: Alabama, ALA. CODE tit. 46, § 297(36) (Supp. 1963); Arkansas, ARK. STAT. ANN. § 72-1516 (1957); California, CAL. BUS. & PROF. CODE § 2904; Colorado, COLO. REV. STAT. ANN. § 154-1-7(8) (1963); Delaware, DEL. CODE

afforded to information received by a psychologist from his client. This statutory privilege does not, however, seem to extend to psychological research.[60]

While statutes may be desirable, they may not always be necessary. A privileged status has been afforded by the common law to communications between husband and wife,[61] and attorney and client;[62] privilege also inheres in constitutional doctrine—as in the privilege against self-incrimination. Thus, it is conceivable that privilege could be extended by the courts to other situations—perhaps in a persuasive case, where a research scientist was willing to resist a subpoena and risk imprisonment, in order to protect the private research data in his possession. While there is a role for the martyr both in science and in law, privilege should not be viewed as a status symbol for the scientist.[63] It should, rather, be a protective shield for his informant. As the law now stands, however, it is apparent that the research scientist who probes in the realm of the private personality, without consent, bears a special and heavy responsibility to the subjects of his research. It is a responsibility for confidentiality which, at present, in the face of a subpoena he may find himself powerless to discharge.

Of crucial importance also to the protection of confidentiality is a sensitivity on the part of the scientist to the limited purpose for which the research data were originally obtained. It is generally accepted that research data should not be published by the investigator with identities of the individual

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ANN. tit. 24, § 3534 (Supp. 1964); Georgia, GA. CODE ANN. § 84-3118 (1955); Idaho, IDAHO CODE ANN. § 54-2314 (Supp. 1965); Illinois, ILL. ANN. STAT. ch. 91½, § 406 (Smith-Hurd Supp. 1964); Kentucky, KY. REV. STAT. ANN. § 319.111 (Supp. 1965); Michigan, MICH. COMP. LAWS § 338.1018 (Supp. 1961); Nevada, NEV. REV. STAT. § 48.085 (1963); New Hampshire, N.H. REV. STAT. ANN. § 330-A:19 (Supp. 1963); New Mexico, N.M. STAT. ANN. § 67-30-17 (Supp. 1965); New York, N.Y. EDUC. LAW § 7611; Oregon, ORE. REV. STAT. § 44.040 (1963); Tennessee, TENN. CODE ANN. § 63-1117 (1955); Utah, UTAH CODE ANN. § 58-25-9 (1963); Washington, WASH. REV. CODE § 18.83.110 (1957).

60. A Montana statute does, however, seem to extend a limited privilege to certain types of behavioral research if conducted by a person teaching psychology in a school. The Montana statute reads as follows:

> Any person engaged in teaching psychology in any school, or who acting as such is engaged in the study and observation of child mentality, shall not without the consent of the parent or guardian of such child being so taught or observed testify in any civil action as to any information so obtained.

MONT. REV. CODES ANN. § 93-701-4(6) (1964).

61. See generally 8 WIGMORE, EVIDENCE §§ 2332-41 (McNaughten rev. 1961).

62. See, *e.g.*, Hurlburt v. Hurlburt, 128 N.Y. 420, 424, 28 N.E. 651, 652 (1891) (dictum). See also Louisell, *Confidentiality, Conformity and Confusion: Privileges in Federal Court Today*, 31 TUL. L. REV. 101 (1956). See generally 8 WIGMORE, *op. cit. supra* note 61, §§ 2290-2329. It is unlikely that testimonial privilege will be judicially extended to situations that do not fully satisfy Dean Wigmore's four conditions for the existence of a privilege: (1) the privileged communication must originate in a confidence that it will not be disclosed, (2) the element of confidentiality must be essential to the relationship of the parties to the communication, (3) the relationship is one which is to be assiduously fostered, and (4) the injury that would inure to the relationship by disclosure of the communication must be greater than the benefit to be gained from its contribution to the disposition of the litigation. *Id.* § 2285.

63. This, nevertheless, seems to be the situation in those eighteen states which accord the privilege only to licensed or registered psychologists. See Geiser & Rheingold, *Psychology and the Legal Process: Testimonial Privileged Communications*, 19 AMERICAN PSYCHOLOGIST 831 (1964).

subjects attached to the data, and there is no reason why this same ethical sense of the confidentiality, or the privacy, of the data cannot be extended to other forms of publication. Thus, it should be part of the responsibility of the research scientist not to make his research data, in which individuals are identifiable, available to others, whether such others be personnel directors, private detectives, police officers, journalists, government agents, or even other scientists.

Assuredly, one can visualize situations in which the release of research data for a use not initially contemplated would, because of the great public interest involved, be socially tolerable. But, just as certainly, it is possible to visualize situations in which it clearly would not. In the latter category, for example, obviously falls the sale of personal information to commercial organizations for subscription or mailing lists.

In determining the proper limits to be placed on the availability of research data, a workable proposition may well be to confine such data to the particular research purpose for which permission was initially obtained, or to a reasonably equivalent purpose. At the least, such a proposition might be accepted as an operative rule in the absence of persuasive considerations to the contrary. Of course, it must be recognized that as an individual may consent to an initial privacy invasion, so may he waive a limitation of that consent to the original research purpose. Care must, however, be taken in such instances not to imply a waiver in situations where it may not have been intended.

As in other affairs, there is, unquestionably, a happy mean between excessive privacy and indecent exposure in behavioral research. One way to begin to establish such a mean is for the behavioral scientists themselves to demonstrate, by codes of ethics and research standards, their own acute sensitivity and concern for the problem. Psychologists have made a start on an enforceable code of ethical standards directed primarily to the client relationship.[64] Other disciplines can learn from their example and all can extend such codes more broadly to behavioral research.

VIII. An Ethical Code

From the foregoing there emerges an outline of the contest between the values of privacy and those of behavioral research. The community is sensitive to both values. Our society will support, and indeed, will insist on, a decent accommodation between them. An accommodation which takes into account the ethical and legal obligations of the investigating scientist can be achieved without diminishing the effectiveness of the scientific inquiry. Scientists who are responsive to the claim of privacy will find themselves pressed to develop

64. See *Ethical Standards of Psychologists*, 18 American Psychologist 56 (1963).

better and more rational research techniques. Their innate inventiveness can be expected to yield new and better research methods.

Not only will the behavioral scientists be inventive in accommodating the competing values of privacy and research, but in doing so they will be more sensitive to the complexities and nuances involved than either courts or legislatures. To be sure, however, judges and legislators do have a supportive role and can be expected to fill it either by correcting abuses or protecting the responsible investigator who operates in accordance with the ethical consensus of the community.

The supportive measures available to the law, several of which have already been mentioned, are numerous and varied. One is the extension of a privileged status to the confidential communication of private information to a behavioral scientist. Another is the provision of civil or criminal remedies for the breach of the right of privacy.[65] A third is to assess and define the contexts in which, or the conditions under which, the cost in privacy is either marginal or *de minimis*, or permissible, because outweighed by the positive gains perceived for society in particular research. A fourth measure is to preclude public officials or employees from disclosing confidential information acquired in the course of employment.[66] A fifth approach is to develop "disciplinary proceedings" to enforce the claim to privacy against

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65. Remedies for the breach of this right are already available in many states:

(a) See the list of states which recognize a common-law right of privacy in Prosser, *supra* note 14, at 386-89.

(b) Oregon and Maryland have statutes which make eavesdropping, without the consent of all persons being overheard, a crime. Neither accords any exemption for behavioral research. Thus, in Oregon, it is unlawful to obtain any part of a conversation by an eavesdropping device "if all participants in the conversation are not specifically informed that their conversation is being obtained." ORE. REV. STAT. § 165.540(1)(c) (1963). Violation of this Oregon statute is punishable by fine or imprisonment and renders the violator liable for damages in a civil suit. ORE. REV. STAT. §§ 30.780, 165.540(6) (1963). In Maryland it is unlawful to use any device "to overhear or record any part of the conversation or words spoken to or by any person in private conversation without the knowledge or consent, expressed or implied, of that other person." MD. ANN. CODE art. 27, § 125A(a) (Supp. 1964).

(c) See the statutes in five other states which make eavesdropping unlawful without the consent of a party to the conversation—again without an exemption for scientific research: CAL. PEN. CODE § 653j; ILL. ANN. STAT. ch. 38, §§ 14-2, 14-4 (Smith-Hurd 1964); MASS. GEN. LAWS ANN. ch. 272, § 99 (Supp. 1964); NEV. REV. STAT. § 200.650 (1957); N.Y. PEN. LAW § 738.

(d) See also the comparable but more limited statutes in six other states: ARK. STAT. ANN. § 41-1426 (1964) (loitering for purposes of invading privacy); GA. CODE ANN. § 26-2001 (1953) (peeping or similar acts tending to invade privacy); N.D. CENT. CODE § 12-42-05 (Supp. 1965) (using any mechanical or electronic device to overhear or record and to repeat with intent to vex or injure); OKLA. STAT. tit. 21, § 1202 (1941) (loitering with intent to overhear and repeat to vex or injure); S.C. CODE ANN. § 16-554 (1962) (peeping or similar acts tending to invade privacy); S.D. CODE, § 13.1425 (1939) (loitering with intent to overhear and repeat to vex or injure).

(e) See RESTATEMENT (SECOND), TORTS § 286 (1965), which reflects the judicial acceptance of such statutory standards as a basis for civil liability.

66. See, *e.g.*, Antitrust Civil Process Act § 4(c), 76 Stat. 550 (1962), 15 U.S.C. § 1313(c) (1964); N.Y. EDUC. LAW § 1007; N.Y. LAB. LAW § 537; N.Y. PEN. LAW § 762; N.Y. PUB. OFFICERS LAW § 74(b).

public officials in some form of mandamus or contempt,[67] and against private professional persons through disbarment or loss of license. Still another possible supportive legal measure is to require registration for the possession of all privacy-invading devices.[68] The alternatives are clearly varied. It should be noted, however, that the existing legislative attempts to prohibit eavesdropping by use of devices have been uniformly defective. The current statutes are either inadequate in scope or indiscriminate in application, or both.

A precondition for the development of a proper balance between the values of privacy and those of behavioral research is the growth, among behavioral scientists themselves, of a heightened sense of their own confidential professional relationship with their informants. One of the best ways of articulating and developing this heightened sense of the confidential professional relationship is through the development and observance of codes of ethics in which the claim to privacy is recognized.

Codes of ethics for the several disciplines of scholarship and research are sound and sensible, and such codes should be general rather than specific, simple rather than complex. A workable code of ethics should be subject to expansion, interpretation, and application in specific cases according to the distinctive character of the research situation.

In accord with this view, seven principles are suggested for inclusion in a general code of ethics for behavioral research:

> *One*: There should be a recognition, and an affirmation, of the claim to private personality.
>
> *Two*: There should be a positive commitment to respect private personality in the conduct of research.
>
> *Three*: To the fullest extent possible, without prejudicing the validity of the research, the informed, and voluntary, consent of the respondents should be obtained.
>
> *Four*: If consent is impossible without invalidating the research, then before the research is undertaken, the responsible officials of the institutions financing, administering and sponsoring the research should be satisfied that the social good in the proposed research outweighs the social value of the claim to privacy under the specific conditions of the proposed invasion. These officials in turn are responsible, and must be responsive, to the views of the larger community in which science and research must work.
>
> *Five*: The identification of the individual respondent should be divorced as fully and as effectively as possible from the data furnished. Anonymity of the respondent to a behavioral research study,

67. The Swedish Ombudsman suggests another interesting possibility. See *A State Statute to Create the Office of Ombudsman*, 2 HARV. J. LEGIS. 213 (1965).

68. Maryland, by House Bill 1197, approved by the Governor on April 8, 1965, added a new ¶ 125D to Article 27 of its Annotated Code and thereby became the first state to require "every person possessing any eavesdropping and/or wiretapping device" to register such device with the State Police. Unless registered it is unlawful to manufacture or possess any such device. It will be interesting to see how vigorously and effectively this new statute is enforced. Will it be applied, for example, as it would seem was intended, to the manufacturers of tape recorders or dictaphones? Or to the lawyers or scientists who use them?

so far as possible, should be sought actively in the design and execution of the study as a fundamental characteristic of good research.

Six: The research data should be safeguarded in every feasible and reasonable way, and the identification of individual respondents with any portion of the data should be destroyed as soon as possible, consistent with the research objectives.

Seven: The research data obtained for one purpose should not thereafter be used for another without the consent of the individual involved or a clear and responsible assessment that the public interest in the newly proposed use of the data transcends any inherent privacy transgression.

Neither these seven suggested principles, nor any other set, will resolve, nor should be expected to resolve, the productive tension between the needs and advancement of science and the vibrant diversity of human personality. If it is correct, however, that there has been a growing imbalance in the relation of science and research to the values of privacy, then either the dignity, diversity and strength of the individual in our free democratic society will be diminished, or society will correct the balance. If the balance is to be corrected—as it will and must be—the lead should be taken by the scientific community through its own codes, its own attitudes, and its own behavior.

[From The Houston Post, June 13, 1965]

PRIVACY INVASION BRINGING UNITED STATES TO BRINK OF ORWELLIAN NIGHTMARE

There is at least one good test of any nation's freedom.

How strongly protected are its citizens' rights to personal privacy?

The question is complex, and leads, as do most good questions, to further questioning.

Can a man privately hold unpopular views without being investigated by one agency or another?

Can a man seek employment for himself without fear that his personal life will be subjected to a harrowing investigation?

Can a man step outside his house or use a telephone without fear that a listening device is taking down his every word?

Can a man be safe from snoopers who—if even for good, just, and impersonal reasons—want to know things about him?

Put it this way:

Is a man entitled in this time and in this place to keep his life to himself?

Privacy is no luxury graciously doled out by a generous government. It is a right that must be zealously protected.

The sad fact is, though, that our right to privacy is being subjected to a serious erosion.

The advance of technology is mostly to blame.

It is now a matter of ridiculous ease to intrude electronically into another's life. If you have the money and the inclination, you can easily buy a snooping device.

You can tap a telephone conversation, or you can listen in on what your neighbor is saying to his wife over there on the patio.

It is all so easy that outlawing snooping devices has become almost impossible. You can make them out of harmless components if that is what you want to do.

There are subtler dangers ahead.

Representative Cornelius Gallagher, Democrat, of New Jersey, whose House subcommittee has held public hearings into snooping, makes this cogent point:

"Advancements in electronics have given new weapons to snoopers of all kinds who feel they must have an intimate look at the innermost secrets of our people.

"Their motivations vary and may even be good, but dark dangers lurk in their conviction that they somehow have the absolute right to know these things.

"Now the magic of computers is helping them gather such a wealth of information from such a variety of sources that all of us may someday stand psychologically naked."

Such an incident popped up in the news last weekend.

It turns out that the Peace Corps has a personality test in which a number of questions require a true or false answer. A congressional committee wants to know the significance of a true or a false answer to such questions as:

"I think Lincoln was greater than Washington.

"I like to praise someone I admire.

"I like to be regarded as physically attractive by those of the opposite sex.

"I like to talk about my achievements.

"I like to listen to or tell jokes in which sex plays a major part."

A Peace Corps witness told the committee that there were no right or wrong answers but each question was part of the whole.

And yet, when the man who originally instituted the tests was asked to answer some of the questions, he replied:

"Now you are invading my privacy."

The whole idea has some amusing aspects when it concerns such exotic devices as a martini with a microphone embedded in the olive, but it is considerably more sinister when people are subjected to lie detector tests to probe their innermost secrets.

It is also questionable when a farm census questionnaire asks farmers to detail their outside income, including the amounts they receive from Social Security, the Veterans' Administration, dividends and interest, and other sources of income.

The Government does indeed need the power to inquire into cases that involve subversion, the national security, or crime, but this should be considered no invitation to snooping of the most casual kind.

Some way—perhaps a constitutional amendment—must be found to build a wall between the snoopers—whether governmental or private—and the citizen of the United States. And it is a matter of considerable urgency.

In the never-never land of snooping, we could stand on the brink of Orwellian nightmare.

[From the Evening Star, May 4, 1965]

TESTS TO THE TEST

Representative Cornelius E. Gallagher has performed a useful service by attacking the psychological tests still being used to pry into the private lives of Government workers and applicants.

The New Jersey Democrat reports that the Export-Import Bank and the State Department have both stopped using the questionnaires, but that one test still in use elsewhere has 300 statements calling for yes or no responses. Among the statements the person being tested is asked to confirm or deny are these:

"I feel very guilty about my sins."

"I am contented with my sex life."

"I sometimes think that I failed in love."

"I feel that my sexual instinct is as strong as my ambition."

These and other questions like them constitute "mental wire-tapping" in the view of Representative Gallagher. He gives as his personal most detestable query the one that asks the subject to agree or disagree with, "I find answering these questions to be a rather unpleasant task."

It is both an unpleasant task and one which our Government certainly should not inflict upon its employees, actual or potential.

Such prurient snooping has sometimes been defended on the grounds that the questions only serve to indicate a pattern of attitudes and are not actually used against the victim. Such a defense misses the point entirely. One would certainly hope the sheets are not used for blackmail or general terrorism. But even if they were thrown away unread, their use would be wrong. Americans should not have to submit to the "unpleasant task" at all.

The Congressman calls the testers "brain watchers" and he has thus put his finger on the undoubted ambition of many specialists in that line of work. Fascinating as it may be in a laboratory, the practice has no place in the U.S. Government.

[From the Wall Street Journal, Sept. 29, 1965]

PEEPING ON THE GRAND SCALE

Psychological testing, like testing for aptitudes, doubtless has it place and uses. But it is a question whether the wholesale peeping into people's minds that is going on in Government, industry, and schools is desirable, necessary or even effective.

Winding up a 3-month inquiry into such psychological and personality testing, a House Government Operations subcommittee heard pleas from a number of witnesses that Congress adopt curbs against the indiscriminate use of the quizzes. It is easy to see why.

The committee found, among other nauseous examples,that employees of the Bonneville Power Administration being considered for promotion were asked questions like "Which would you rather do: (*a*) kiss a person of the opposite sex, or (*b*) experiment with new things. Choose one."

It further learned that the Labor Department last year gave psychological tests to more than 20,000 applicants for counseling jobs in youth opportunity projects. The applicants were supposed to give their reactions to the following kinds of statement: "Most people worry too much about sex," and, "I think Lincoln was greater than Washington."

Moreover, thousands of schoolchildren, under research projects financed by the U.S. Office of Education, have undergone psychological testing in an attempt to probe their attitudes toward sex, religion, and family life.

Perhaps the most extraordinary thing about it all is the docility with which candidates for Government jobs, Federal employees, people in industry—where testing seems on the increase—and schoolchildren tolerate the intimate questioning. Especially with a tool still of dubious value.

One reason, perhaps, is that advanced by Dr. Karl Smith, professor of industrial psychology at the University of Wisconsin: "The American people have been fooled into believing that few simple-minded true-false or multiple choice ques-

tions can be used to forecast the careers of their children in school and in the university and to predict their own careers in work because of two influences: ear of the pseudoquantitative, mental-medical mumbo-jumbo of the psychiatrist and clinical psychologist, and the misleading propaganda of organized psychology in claiming that guesswork and statistical shotgun procedures have medical and scientific significance."

If that is true, maybe what's really needed to bridle the inquisitive testers is not a new law but simply the application of a little horsesense and elementary respect for privacy.

[From the Evening Star, July 1, 1965]

GALLAGHER STYMIES "BIG BROTHER"

(By James J. Kilpatrick)

Under the fourth amendment, as the country's police officials have been sharply reminded in recent years, the people are protected against unreasonable searches of their "persons, houses, papers, and effects." If Representative Cornelius Gallagher, Democrat, of New Jersey, has his way, the people will be protected also against unreasonable searches of their minds.

Gallagher is a 44-year-old lawyer from Bayonne, now serving his fourth term in the House. His voting record depicts him as a total liberal; in all the right-wing political indices, he rates a dead zero. But in his work as chairman of a special subcommittee on the invasion of privacy, he is defending a great conservative ideal—the protection of the individual from oppression by the state.

The astounding thing is that Gallagher already is getting results. Thanks to the persistence of his able subcommittee, and to the companion work of such Senators as Edward V. Long, Democrat, of Missouri, and Sam Ervin, Democrat, of North Carolina, thousands of Federal employees no longer will be subject to the degrading "personality tests" that have been used in the past to probe the private recesses of their minds. Big Brother will not be watching them quite so closely.

Gallagher is not concerned in his investigation with personnel tests intended to measure an applicant's knowledge of a field or his aptitude for a particular job. These he accepts as proper safeguards to the Federal service. His target is the "personality inventory," in which a Federal employee may be compelled to answer such true-or-false questions as, "I love my father. * * * I hate my father. * * * I would like to be a florist. * * * My sex life is satisfactory. * * * I believe there is just one true religion. * * *"

Last year the Department of Labor administered such a test to 21,000 applicants for positions as youth counselors in neighborhood centers under the poverty program. The prospects were given a list of 158 questions that had to be answered yes or no, "Usually I prefer to work with women. * * * I think Lincoln was greater than Washington. * * * I like poetry. * * * When a man is with a woman, he is usually thinking about things related to her sex. * * *"

The Peace Corps has been making extensive use of the Minnesota Multiphasic Personality Inventory, known professionally as MMPI, in which the subject answers 566 true or false statements. These then are scored against various scales computed by the answers of control-groups both sane and insane. Dozens of the questions deal with attitudes toward sex, religion, and bodily functions.

Until Gallagher began firing away, the Government had no consistent policy on the use of these tests. Some agencies used them wholesale, with no real security over the answer sheets. Others used them sparingly, as at Bonneville, with better safeguards. Others used them only in medical examinations where mental illness was suspected.

Now things are looking up. The Civil Service Commission has issued a "restatement" of policy—actually it is a new statement—prohibiting such tests as MMPI except under medical supervision. The Department of Labor has specifically abandoned its 1964 mind-searching. The Peace Corps has ordered that all personality answer sheets in its files be destroyed. The State Department will permit its people, in doubtful cases, to be examined by private psychiatrists rather than by Government doctors. In the future, Gallagher believes, it will not be nearly so easy for prying eyes to find out how a secretary-typist has answered so personal a question as "Do you worry much about sex?"

The Congressman's object is to make the practices of Federal agencies a model for private industry. It is estimated that about half of the country's major corporations routinely use such "personality inventories" in their personnel

programs. No employer, in Gallagher's view, public or private, is entitled to conduct such an invasion of privacy. If we are not to drift into the age of the "computerized man," which Gallagher abhors, great care must be taken to protect the first of all human rights—the right to be left alone.

[From the American Psychologist, vol. 19, No. 3, March 1964]

PSYCHOLOGY IN ACTION—MMPI: PROFESSIONAL USE BY PROFESSIONAL PEOPLE

(By Starke R. Hathaway, University of Minnesota Medical School)

This long letter was prompted by a courteous inquiry that I received. The inquiry referred to the use of the MMPI as an aid in the selection of policemen from among applicants. It was pointed out that there are laws against inquiry about religious affiliation and the specific issue was the presence in the MMPI of items relating to religion.

LETTER TO MR. R

First, I would like to express my appreciation of your reasonably expressed inquiry about the MMPI as possibly offensive in the statements that relate to religious activities and which might provide personal information on which discriminatory acts might be based. Because of sporadic public antagonism to psychological testing, and in view of our mutual concern for our civil liberties, I am going to answer you at considerable length and with unusual care. I shall send copies of this answer to the Psychological Corp. and to others who may be concerned. Let me assure you at the outset that I believe I am proceeding from a considered position rather than from a defensive attitude that could lead me to irrationally protect the MMPI, other such tests, or psychologists in general. I believe that I would be among the first to criticize some of the uses to which tests are put, and some of those who use them improperly. I must also immediately make it clear that I am antagonistic to ignorant attacks upon tests. Tests are not offensive elements; the offensive elements, if any, come with the misuse of tests. To attack tests is, to a certain extent, comparable to an attack upon knives. Both good and bad use of knives occurs because they are sharp instruments. To eliminate knives would, of course, have a limiting effect upon the occurrence of certain hostile acts, but it would also greatly limit the activities of surgeons. I simply discriminate between the instrument and the objectives and applications of the persons who wield it. I am calling attention to the difference between a switchblade knife, which is good for nothing but attack, and a scalpel knife, good for healing purposes but which can also be used as a weapon. I hope that no one will think that any test was devised in the same spirit that switchblade knives were devised. It is absurd if someone holds the belief that psychologists malignantly developed instruments such as the MMPI for use against the welfare of man, including, of course, man's personal liberties and rights. But if the MMPI and such tests have origins analogous to the scalpel, and are really perversely used to man's disadvantage, we are properly concerned. Let me turn to a history of the MMPI items about which you have inquired.

I should begin with an account of the origin of the MMPI itself. I believe I am competent to do this, and I hope you will see that its origins were motivated toward virtue as I have suggested above. In about 1937, J. C. McKinley, then head of the Department of Neuropsychiatry of the Medical School at the University of Minnesota, supported me in a venture which grew out of a current problem in our psychopathic hospital. The problem lay in the fact that insulin therapy as a treatment method for certain forms of mental disease had just become a widespread method of treatment. Different clinics were finding highly varied values. Some reported the treatment to be exceedingly effective; others said it was ineffective. The treatment was somewhat dangerous to patients, and it was exceedingly expensive in terms of hospitalization and nursing care. McKinley happened to be one of the neuropsychiatrists of the time who felt that more careful investigation should be undertaken before such treatments were applied, and in particular before we used them on our patients.

It occurred to us that the difficulty in evaluation of insulin treatment lay largely in the fact that there was no good way to be assured that the patients treated by this method in one clinic were like those treated in another clinic. This was due to the fact that the estimations of the nature of a person's mental illness and of its severity were based upon professional judgment, and could vary

with the training background of the particular psychiatrist as well as with his personal experiences. Obviously, if the patients treated at one center were not like those treated at another center, the outcome of treatment might be different. At that time there was no psychological test available that would have helped to remove the diagnostic decisions of the patients in two clinics from the personal biases of the local staffs. There was no way that our hospital staff could select a group of patients for the new treatment who would be surely comparable in diagnosis and severity of illness to those from some other setting. It became an obvious possibility that one might devise a personality test which, like intelligence tests, would somewhat stabilize the identification of the illness and provide an estimate of its severity. Toward this problem the MMPI research was initiated.

I have established that decisions about this kind and severity of mental illness depend upon the psychological examinations of the psychiatrists and other professional persons. The items upon which the judgments are based constitute the symptoms of mental maladjustment or illness. Such symptoms have for many, many years been listed in the textbooks of psychiatry and clinical psychology that treat with mental disorder. These symptoms are verbal statements from or about the patient. The simplest and most obvious form of these symptoms are statements that confess feelings of unhappiness, depression, and the like. The statements may also be less personal, as in complaints about one's lot in life and about the inability to find employment or the mistreatment by others

In summary, the symptoms of mental illness and unhappiness are represented in verbal complaints or statments that relate to personal feelings or personal experiences or reactions to job and home. It should be immediately apparent that unlike most physical illnesses, these verbally presented complaints or symptoms usually do not permit direct observation by others. If a patient reports a painful nodule or abdominal pain, the reported pain can usually be observed by some physical or nonverbal means that lends credence to the complaint. Many symptoms of mental illness are contrastingly difficult to observe by nonverbal means. It is almost impossible to establish that the person presenting the symptom is actually suffering from a distortion of his psychologically healthy mental state by some psychological complex. There is much arbitrariness even in the statement, "I am unhappy," Frequently no physical observation can be brought to bear upon the statement. The complainant may look unhappy and may even add that he is suicidal, yet friends and the examiner can agree that he is, "just asking for sympathy, is no worse off than the average." There is no way of solidly deciding what the words really mean. This point is crucial to what I am writing. If it is not clear at this point, reference books on semantics should be consulted. S. I. Hayakawa would be a good source.

I know of no method which will permit us to absolutely assess unhappiness or mental illness, either as to kind or severity, unless we start from inescapable symptoms that are verbally expressed and subject to the vagaries in the personal connotations of words and phrases. In initiating the research upon what was to produce the MMPI, we collected as many as we could find of the symptomatic statements recognized by authorities as indicative of unhappiness and mental illness. There were hundreds of these statements. We had at one time well over a thousand of them. Every one of these symptomatic statements had already been written into the literature or had been used as a practical bit of clinical evidence in the attempt to understand patients. I repeat this because I want to thoroughly emphasize that every item in the MMPI came from assumed relationships to the assessment of human beings for better diagnosis and treatment of possible mental illness.

Now with all this preamble I am prepared to discuss the particular items that you have highlighted in your letter. It happens that, among the many items

collected and finally selected to make up the MMPI, there were at least 19 relating to religion in one way or another:

	Male		Female	
	True	No answer	True	No answer
I am very religious (more than most people)	8	9	11	9
Religion gives me no worry	83	4	70	4
I go to church almost every week	42	3	52	4
I pray several times every week	50	3	83	2
I read in the Bible several times a week	21	5	30	3
I feel sure that there is only one true religion	49	8	51	11
I have no patience with people who believe there in only one true religion	56	4	47	10
I believe there is a God	92	5	96	2
I believe there is a devil and a hell in afterlife	63	14	67	14
I believe in a life hereafter	76	12	87	7
I believe in the second coming of Christ	57	18	68	12
Christ performed miracles such as changing water into wine	69	16	77	15
The only miracles I know of are simply tricks that people play on one another	37	10	27	14
A minister can cure disease by praying and putting his hand on your head	4	10	5	11
Everything is turning out just like the prophets of the Bible said it would	52	29	54	32
My soul sometimes leaves my body	8	18	5	12
I am a special agent of God	14	13	16	21
I have had some very unusual religious experiences	20	5	13	2
I have been inspired to a program of life based on duty which I have since carefully followed	42	14	50	15

I have listed these items to remind you again of the ones you cited, and I have added others that may further illustrate what I am saying. Now you have asked why we included these statements on religion among the possible symptoms of psychological maladjustment. Why should these items still appear in the MMPI?

In the first instance, the subject matter evidenced in the symptoms of depressed or otherwise mentally disturbed persons often largely centers in religion. There is a well-recognized pattern of psychological distortion to which we apply the term religiosity. When we use the word "religiosity," we indicate a symptomatic pattern wherein the process of an intercurrent psychological maladjustment is evidenced by extremes of religious expression that are out of the usual context for even the deeply religious person. A bishop friend of mine once illustrated the problem he sometimes had in this connection by his account of a parishioner who had routinely given a tithe as his offering toward support of the church, but who, within a few weeks, had increased the amount he gave until it was necessary for him to embezzle money for his weekly offering. Surely, my friend said, there is more here than ordinary devotion; there is something which should be considered from another frame of reference. In this anecdote there is an element of the symptomatic pattern, religiosity. But, as is true of nearly every other aspect of human personality to which the MMPI refers, no one item will ordinarily establish this distortion of the ordinarily meaningful position of religion. And no one item can be used to detect the problem as it occurs in various persons. Two persons rarely express even their usual religious feelings in identical ways.

It never occurred to us in selecting these items for the MMPI that we were asking anything relative to the particular religion of our patients. It obviously did not occur to us that there were other than the Christian orientation wherein religiosity might be observed. Because of this oversight on our part, several of our MMPI symptoms that we assumed were indicative of religiosity happen to be obviously related to the Christian religion, although we find that most persons simply translate to their own orientation if it is different. I should hasten to add that although these symptoms were hoped to be specific to persons who suffer from religiosity, they have not all turned out that way. Not every aspect of religion is at times a symptom of mental illness. Certainly it is obvious that there is nothing symptomatic in admitting to one's personal acceptance or rejection of several of the items. The point at which a group of items becomes consistent in suggesting symptoms is subtle to distinguish. As my bishop friend's story illustrated, it is not unusual that one contributes to religious work

even though there exists a doubtful extreme. As I will show below, all these items are endorsed or rejected by some ordinary, normal people. If any of the items have value toward clinical assessments, the value comes in combination with other items which probably will not seem to relate to religion.

The MMPI, which started out so small and inconspicuously, has become a world-known and world-used instrument. We did not expect this outcome. If I were to select new items, I would again include items that related to religiosity. I would this time, of course, try to avoid the implication that the religiosity occurred only among adherents to the Christian faith. I am obviously unhappy about the limited applicability of these items, but I am, in the same sense, unhappy about other items in the MMPI. A considerable number of the items have been challenged by other groups from other standpoints. By this I mean only to remind those concerned about these religiosity items that there are frankly stated items on sex, there are items on body functions, there are items on certain occupations; in fact, there are items on most every aspect of psychological life that can be symptomatic of maladjustment and unhappiness. If the psychologist cannot use these personal items to aid in the assessment of people, he suffers as did the Victorian physician who had to examine his female patients by feeling the pulse in the delicate hand thrust from behind a screen. I shall come back to this point later, but it is obvious that if we were making a new MMPI, we would again be faced either with being offensive to subgroupings of people by personal items they object to or, if we did not include personal items and were inoffensive we would have lost the aim of the instrument.

One may protest that the MMPI is intended for the patient, the mentally ill person, not applicants to schools, high school children, or to those being considered for jobs. I cannot give a general defense of every such use, but this is a time when preventive health is being emphasized. We urged everyone to get chest X-rays and to take immunizing shots. We are now beginning to advocate general surveys with such psychological instruments as the MMPI. The basic justification is the same. We hope to identify potential mental breakdown or delinquency in the school child before he must be dragged before us by desperate parents or by other authority. We hope to hire police, who are given great power over us, with assurance that those we put on the rolls should have good personal qualities for the job. This is not merely to protect us, this also is preventive mental health, since modern job stability can trap unwary workers into placements that leave them increasingly unhappy and otherwise maladjusted. If the personality of an applicant is not appropriate to the job, neither employer nor applicant should go ahead. We have always recognizes the employer's use of this principle in his right to personal interview with applicants. Since the items and responses are on record, the MMPI and such devices could be considered to be a more fair method of estimation than the personal interview, and, when they are machine scored, they make possible much greater protection from arbitrary personal judgments and the open ended questions that are standard for personal interviews.

It seems to me that the MMPI examination can be rather comparable to the physical examination for selection of persons. One would not wish to hire a person with a bad heart when the job required behavior that was dangerous to him. I think it would be equally bad to hire a person as a policeman whose psychological traits were inappropriate and then expect him to do dangerous things or shoot to kill as a policeman is expected to do. There is, from physical and psychological examinations, a protection to the person being hired as well as to those hiring him. This is not meant as an argument for the use of the MMPI in every placement that requires special skills or special personality traits. I am arguing a general point.

I would next like to take up MMPI items to bring out a new line of evidence which, I am sorry to say, is not familiar to some psychologists, but which is of importance in giving you an answer to your questions. Turn again to the above items, particularly to the "True" response frequencies. We will look at implications about the people taking the MMPI as we interpret the "True" frequencies of response for these items.

Before we do so, we should consider the source of the frequency figures. The males and females who provided these standard data, which are the basis for all MMPI standards, were persons who came to the university hospitals bringing patients or who were around the hospitals at the time when we were collecting data. Only those were tested who were not under a doctor's care and who could be reasonably assumed to be normal in mind and body. These persons, whom we call the normal adult cross section group, came from all over Minnesota, from

every socioeconomic and educational level; there is reason to believe that they are a proper representation of the rank and file people of Minnesota. It is probably well known that, in the main, Minnesota population was drawn from north European stock, is largely Christian in background, and has a rather small number in the several minority groups. Certainly, it can hardly be said that this population is unduly weighted with extremists in the direction of overemphasis upon religion or in atheism or in other belief characteristics. Probably one would expect this population to be rather more religious than the average for all the States. Finally, the majority of the persons who provided these basic norms were married persons and most were parents. Data given in the table can be found in the fundamental book on the MMPI, "An MMPI Handbook," by Dahlstrom and Welsh (1960).

But now consider the items. Let us assume, as is often naively assumed, that when one answers an item one tells the truth about oneself. Of course, there is no requirement that those who take the MMPI should tell the truth, and this is a very important point. Also, I have tried to establish that truth is a very complicated semantic concept. But let us assume for the moment that people do tell the truth as they see it. Take the item, "I go to church almost every week." According to the data given, 42 percent of the men and 52 percent of the women go to church almost every week. Now these data are representative of the whole State. I am sure that ministers of the State would be gratified if all these people were reporting accurately. Parenthetically, I suppose that "church" was read as "synagogue" or "temple" without much trouble. But I do not know what percentage of people are actually estimated to go to some church almost every week. At any rate I cannot conceive that 42 percent of the men of the State of Minnesota are in church nearly ever week even if 52 percent of the women are. I even cannot conceive that half of the men in Minnesota and 83 percent of the women actually pray several times a week. I might imagine that 21 percent of the men and 30 percent of the women would read in the Bible several times a week. This would represent about one-fifth of all the men and about one-third of all the women. My real impression is that people simply do not know that much about the Bible. However, take the next item. Here it says that one feels sure there is only one true religion. To this about half of the men and half of the women answered true. Perhaps these might be considered bigoted, but what of the ones who have obviously answered false? There seems to be a great deal of religious tolerance here; about half of the persons of Minnesota do not even express a belief that there is only one true religion.

It is true that a high percentage say they believe there is a God. This seems to be a noncommittal item, since most people are aware that God has many meanings. The item which follows it, however, which permits denying or accepting a belief in a devil and hell in afterlife, is quite interesting. Twenty-three percent of men and 19 percent of women reject this belief. By contrast, a life hereafter is denied by 24 percent of men and by 13 percent of women. The second coming of Christ is expected by only 57 percent of men and 68 percent of women if we accept what these figures seem to say. Again, with reversal, Christ as a miracle worker is doubted by 31 percent of men and by 23 percent of women. Stated more directly, 37 percent of men and 27 percent of women come straight out and say that miracles were not performed. The item apparently includes Old and New Testament scources among others. On down in the list, one finds that only 14 percent of men and 16 percent of women believe themselves to be special agents of God.

I think I have gone over enough of these items to provide a suggestion of what I am going to next point out. But I would like to add two more MMPI items in sharper illustration of the point. These two additional items have nothing obvious to do with religion. The first of them is, "I almost never dream," and the second is, "I dream frequently." One of the first things we found in the early studies of MMPI items was that the same person frequently answered "True" to both these items. When asked about the seeming contradiction, such a person would respond, among other possibilities, by saying to the first item that surely he had very few dreams. But, coming to the next item, he changed his viewpoint to say that he dreamed frequently as compared to some of the people he knew. This shift of empnasis led us to recognize that, in addition to the general semantic problem developed above, when people respond to items, they also do not usually respond with the connotations we expect. Apparently, even if the people are telling a truth of some kind, one would need an interview with them to know what they really intend to report by answering "True" or "False." I suppose this is similar to the problem of the oath of allegiance over