additional disclosures that would better enable the public to evaluate the import of the propaganda." [585]

Imposition of Consequences for Holding Certain Beliefs.— Despite the *Cantwell* dictum that freedom of belief is absolute,[586] government has been permitted to inquire into the holding of certain beliefs and to impose consequences on the believers, primarily with regard to its own employees and to licensing certain professions.[587] It is not clear what precise limitations the Court has placed on these practices.

In its disposition of one of the first cases concerning the federal loyalty-security program, the Court of Appeals for the District of Columbia asserted broadly that "so far as the Constitution is concerned there is no prohibition against dismissal of Government employees because of their political beliefs, activities or affiliations." [588] On appeal, this decision was affirmed by an equally divided Court, its being impossible to determine whether this issue was one treated by the Justices.[589] Thereafter, the Court dealt with the loyalty-security program in several narrow decisions not confronting the issue of denial or termination of employment because of beliefs or "beliefs plus." But the same issue was also before the Court in related fields. In *American Communications Ass'n v. Douds*,[590] the Court was again evenly divided over a requirement that, in order for a union to have access to the NLRB, each of its officers must file an affidavit that he neither believed in, nor belonged to an organiza-

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[585] Meese v. Keene, 481 U.S. 465, 480 (1987).

[586] Cantwell v. Connecticut, 310 U.S. 296, 303 (1940).

[587] The issue has also arisen in the context of criminal sentencing. Evidence that racial hatred was a motivation for a crime may be taken into account, Barclay v. Florida, 463 U.S. 939, 949 (1983); Wisconsin v. Mitchell, 508 U.S. 476 (1993) (criminal sentence may be enhanced because the defendant intentionally selected his victim on account of the victim's race), but evidence of the defendant's membership in a racist group is inadmissible where race was not a factor and no connection had been established between the defendant's crime and the group's objectives. Dawson v. Delaware, 503 U.S. 159 (1992). *See also* United States v. Abel, 469 U.S. 45 (1984) (defense witness could be impeached by evidence that both witness and defendant belonged to group whose members were sworn to lie on each other's behalf).

[588] Bailey v. Richardson, 182 F.2d 46 (D.C. Cir. 1950). The premise of the decision was that government employment is a privilege rather than a right and that access thereto may be conditioned as the government pleases. But this basis, as the Court has said, "has been thoroughly undermined in the ensuing years." Board of Regents v. Roth, 408 U.S. 564, 571 n.9 (1972). For the vitiation of the right-privilege distinction, *see* "Government as Employer: Free Speech Generally," *infra*.

[589] Bailey v. Richardson, 341 U.S. 918 (1951). *See also* Washington v. McGrath, 341 U.S. 923 (1951), aff'g by an equally divided Court, 182 F.2d 375 (D.C. Cir. 1950). Although no opinions were written in these cases, several Justices expressed themselves on the issues in Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1951), decided the same day.

[590] 339 U.S. 382 (1950). In a later case raising the same point, the Court was again equally divided. Osman v. Douds, 339 U.S. 846 (1950).