

(e.g., judges) to compel witness testimony or authorize information-gathering surveillance with probable cause? This second objection is less plausible than the first. As was noted in the initial clarificatory section of this essay, the above pro-surveillance argument is a *conditional* argument, such that *if* it is ever morally permissible for an agent of the State (e.g., a judge, or a prosecutor) to secure information from a witness about past events, *then* it is morally permissible for her to use State surveillance devices to secure the same information. For the antecedent clause of this argument to be true all that needs to be true is that *in at least one case* it would be morally permissible for a judge to secure information from a witness. And this latter claim is very plausible indeed, for both rights theorists and consequentialists alike. To see this, assume that Lee Harvey Oswald really was innocent of the assassination of John F. Kennedy, and, to prove his innocence, needed to secure the photograph that was taken of him standing in the doorway to the Texas School Book Depository at the time of the shooting. Assume also that the owner of this photograph disliked Oswald, and wanted to see him wrongly convicted. Here, it would clearly be morally permissible for the judge in Oswald's case to require that the owner of the photograph produce it in evidence. This claim becomes even stronger if the production of this photograph would cost its owner nothing but the frustration of his desire to see Oswald wrongly convicted; if, for example, the judge sent a messenger over to the house of the owner of the photograph to collect a copy of it, that he paid for this, and so on. Of course, extreme libertarians who oppose *any* form of interference by the State in the lives of its citizens would still hold that even this minimal interference in the life of the owner of the photograph is morally impermissible, and that under no circumstances should private individuals be required to give up any information, or any evidentiary items, that they might happen to possess.²⁴ It is not easy to provide a definitive rebuttal to this extreme libertarian position.²⁵ However, the advantages that this strict libertarian position possesses in terms of its ease of defense are, for most persons (rights theorists and

consequentialists alike), greatly outweighed by its highly counterintuitive results. (Or, at least, results that are counterintuitive to everyone *but* an extreme libertarian!) It is simple to construct examples in which the ill effects that result from a person's refusal to produce an item of information in evidence are vast, and where the costs to him of supplying this information are tiny. Imagine, for example, a case in which ten men will be executed for a crime that they did not commit unless a man who for idiosyncratic reasons of his own dislikes discussing what clothes he wore in the past discloses to their judge which clothes he wore on the day of the crime. In this case the clothes that the uncooperative witness wore are, for some reason, crucial to establishing whether it is the accused, or another group of ten men, who committed the crime in question. Clearly, in this case it would be counterintuitive to claim that the judge was not justified in requiring this man to reveal what clothes he wore on the day in question. As examples such as this multiply against the extreme libertarian's position, with the ill effects of the failure to produce the information increasing, and the costs involved in its provision decreasing, the claim that it is not morally permissible for a judge to impose the costs in question on the person withholding the information becomes increasingly implausible. And, once one accepts that for *any* case outlined in an example such as this, it would be morally permissible for a judge to secure the information in question, then one will have granted the truth of the antecedent claim on which this conditional argument in favor of surveillance rests. That is, once one grants that for any given case that it would be permissible for a judge to secure the withheld information, then one must also grant that it would be permissible to use State surveillance to secure the same information. And, since the State cannot tell where or when the actions or events that this information pertains to would occur, one would then also have to grant that the State would be justified in gathering information about *all* actions and events that occur, with, of course, the proviso that it can only *access* that which it is morally permissible for it to access. Unless one wishes to endorse the extreme libertarian's highly counterintuitive claim