

THE RIGHT OF PRIVACY
or THE RIGHT TO BE LET ALONE

I have selected a subject uniquely personal in nature and one that affects every one of us. The Right of Privacy or as someone called it, "The Right to be Let Alone."

The privacy of a citizen's home and thoughts is the greatest distinction of a democracy from a totalitarian state, symbolized most vividly by the curtain on the voting booth. Its origins do not lurk in the gloom of the far past, for if we go to England, the source of common American Law, we shall not find it. And, it is odd that the British who really fasten themselves in behind walls and gates and hedges and who live quite impregnably, have no law on the right of privacy. Even the tribe knew no privacy, and even the lord of the feudal manor lived in a swarm of servants, children and relatives, often all of them sleeping around the edges of the big hall where the fireplace was. In the days of the 18th century, as Lewis Mumford has pointed out, a lady's bedchamber still served as a reception room for her guests. Privacy became valued as individualism and the ego became valued. In earlier times, retreating into solitude was a religious act; now privacy became a devotion in the new secular religion of the self.

The climax of privacy came for the Western middle class in the early 20th century, with the heavily built and uniformly heated house. Gradually, in architecture and in imagination, the wall gave away to the window. Now the dining room became a corner of the living room, the family room opened off the kitchen, producing an illusion of greater space- and less privacy. Probably, the bathroom remains the last fortress of the individual.

It was not until the development of the camera that the modern assault on privacy began. Its Plymouth Rock was the publication of an article in the Harvard Law Review in 1890 by Professor Samuel D. Warren and Louis D. Brandeis. Warren had just married Miss Mabel Bay-

in such blue blood items naturally reported their activities in lurid details. This annoyed Warren, who took the matter up with Brandeis. The result was the article in the Harvard Law Review. The author's key point, which Brandeis re-emphasized later from the Supreme Court bench: "The right to life has come to mean the right to enjoy life—the right to be let alone. Since that time some thirty states, including Kentucky, have recognized a right of privacy as common law, and seven states have enacted specific statutes protecting the individual's privacy.

This paper is not concerned with admissibility of evidence illegally obtained or wiretapping or search and seizure. Neither am I concerned here with unfair competition, breach of copyright, libel or slander or a host of other familiar legal principals. I am concerned with the incursions into the personal affairs of individuals, and the inquisitorial pressures of modern society.

The recent outburst of electronic devices, have resulted in the rules becoming paralyzed. Radio, television, and a host of detectional apparatus now threaten even the privacy of the bedroom and the closet for what is whispered now can be amplified from the housetop. With the constantly expanding mass-communications media, the protection of privacy has become more urgent. The ease of electronic snooping has become part of folklore. Everyone knows that any telephone can be linked to a tape recorder, and pictures can be taken in the darkest bedroom. Such tactics range now from divorce cases to industrial espionage. Time magazine recently reported a female working in San Francisco for the Internal Revenue Service who wore a tiny transmitter concealed in her brassiere. She would encourage her prey to put his head on her bosom, thereby assuring perfect reception.

Scientists forecast even more startling ways of snooping, including a device that could pick up vibrations of voices in a room blocks away. Also to be reckoned with are the "mind drugs" which make possible the ultimate invasion of a man's privacy: penetration of his brain.

the garbage of people under investigation. When is such snooping justified in the interests of society and how should it be controlled? It is admitted there is a difficult line of distinction to be drawn and maintained between the individual's right to seclusion and the right of the public to be informed or protected.

The right of privacy is violated whenever something unique about an individual- his face, his name, or even his dog's likeness, is taken by another without his consent and revealed to the public gaze in order to enrich the misappropriator. Of course, there are some among us who actively relish the idea of having a picture or name used used publicly, even in the advertisement of some unsavory product. These people are concerned more with the right to make money from NOT being let alone. In recent years entertainers have been loud in their pleas for privacy, including a Frank Sinatra, who will take a 20 year old actress on a yacht trip and then complain that the press is invading his private life.

In this incredibly nosy world, we have created, one runs the risk of being thrust into the public eye without his consent. If you have a picture taken, and the photographer decides to display it in his shop window, in order to advertise, you might take offense. It has happened. With the advertising fraternity in our society destroying so much of the taste of the marketplace, we must come to grips with the testimonial printed without permission. Suppose you wake up some morning and find your picture on 25,000 flour bags. Or find your mother's face on a package of rat poison? Or suppose your family were drys and you find your dead father's picture on a gin bottle?

One of the more interesting and amusing cases on this subject of being libeled by lens is that of Burton vs. Crowell Publishing Company, in which the lens defamed the victim as a result of an optical illusion. An advertisement for Camel cigarettes contained a posed and undoctored photograph of a gentleman steeplechase rider, carrying his saddle. By accident of the pose, the white saddle girth was positioned so that upon casual inspection it appeared to be an abnormally long and large bodily appendage of Mr. Burton, who brought suit on account of the insufferable gibing of his friends. Even though he had consented to be photographed, it was held that he was entitled to recover by being

has the absolute right to be let alone. It is fundamental and essential in organized society that everyone shall respect the rights and properties of others. Indeed, all the earlier cases on privacy turned on property rights.

The right of privacy does not prohibit any publication of matter which is of public or general interest. For instance a statesman, author, artist, or inventor, who asks for and desires public recognition, may be said to have surrendered this right to the public. The right of the press to publish and the public to know any significant fact is taken to be paramount, and in the case of public figures, almost anything can be significant, right down to the exact state of the President's intestines.

In 1955 Barnes and Company published a book entitled "Golf with the Masters," which contained a 12 page layout of photographs and commentary on Ben Hogan, even though he had refused them publication rights. In the resulting suit, the Court held he had no right of privacy having become a "public figure" but awarded him \$5,000.00 for his "right to publicity." One attending a public event such as a professional football game may expect to be televised in the status in which he attends. But he may not be picked out of a crowd alone, thrust upon the screen and unduly featured for public view.

Our forefathers were voluminous letter writers. In the days of Madison, Jefferson and Adams, letter writing was a serious art and certain questions were raised early. Who was the rightful owner of a letter- the sender or the recipient? Was the receiver under an obligation to safeguard the letter- Keep it confidential? Could the sender later reclaim the letter. It became the law early that the recipient actually owned the letter but that the author could withhold its publication. Still unsolved are such questions as whose consent is needed, if any, to publish letters, recently found, written by President Cleveland, F.D.R. and John Kennedy. We must draw the line between the interests of the original writer, the recipient, and the general interest of society and the appetite of scholars and the public at large for legitimate access to knowledge.

the privacy of Sir Winston's oil paintings before they were exhibited in a London gallery? Or after their display? Some of these matters remain unanswered. Indeed, each person should have the right of determining, ordinarily, to what extent his thoughts, sentiments and emotions shall be communicated to others. It should make no difference whether it be by word or by sign, in painting, by sculpture or in music. Neither should it depend upon the nature or value of the thought or emotion, nor upon the excellence of the means of expression. The same protection should be afforded to a casual letter or a valuable essay.

Congress is currently considering a gigantic data bank which would store in one hundred square feet of space every known fact concerning every U. S. citizen drawn from social security files, military records, census responses, school records, credit agencies, court records, tax returns, etc., and present them to the inquiring bureaucrat at the push of a button. It is submitted that such a system would make Orsen Wells look like a little leaguer. I suppose it would only be a matter of course that a new Bill of Rights would protect the individual whose file is probed too often or by unauthorized personnel. Like a fly in amber, a person who made a mistake in his youth, could be plagued a lifetime, by a touch of the button. This computerized depository of information would include everything from medical records to school grades from kindergarten to college- and much more. According to Representative Cornelius Gallagher, chairman of the subcommittee which considered the proposal, personality traits, income and employment information, and practically any other aspect of his life would be reduced to electronic tape. Such a Big Brother concept is extremely dangerous to individual liberties. Why should a computer be the guardian of such personal histories? Certainly they lack judgment and divulge their data to anyone able to push the correct button and they certainly lack the human quality of being able to evaluate the information they contain. Individual liberties are being sacrificed to the

computer. Efficiency in this case would be bought at a dear cost to individual privacy.

Lack of privacy is not calculable in terms of physical space only. Edward Hall, the Anthropologist, in his book, The Hidden Dimension, points out that people and animals have a sense of psychic space, which differs from race to race and from species to species. Americans waiting for a bus will automatically space themselves several feet apart; Arabs will cluster. In studies conducted on animals, Hall notes that a population crisis occurs when this sense of psychic space is invaded by overcrowding. The birth rate drops and animals die—apparently from stress alone. It is suggested that the same could occur with modern society.

We are constantly being invaded by the doorbell ringer, the telephone—and few Americans can resist the imperative of a ringing telephone, and the TV. The mail box is constantly flooded with printed sales gimmicks. How did they know you just bought a new car, or that your daughter is getting married? Much of this type information is available from county court clerks, data information collectors such as the credit bureau with its scandal sheets, listing marriages, divorces, lawsuits and just who obtained the latest home mortgage in the community. The number of unlisted telephones increase annually in Christian County—apparently, we are willing to pay an extra charge levied by the telephone company simply for the Right to be let Alone by Telephone. Recently the U. S. public learned however, that the most avid eavesdropper of all is good grey Mother Bell—The American Telephone and Telegraph Company. Missouri's Senator Edward Long recently stated in the Senate that A T & T monitored 36 million calls in 1965 and no phones were exempt. A T & T calls it "service observing," a sort of quality control system conducted in 2200 locked listening rooms across the United States. When the Senate launched its inquiry into privacy last June, A T & T changed its monitoring equipment to permit Bellwether to catch only the first 12 seconds of a long distance call. Nevertheless, Long still intends to propose comprehensive legislation to protect our citizens' privacy.

Two words suggest the two limits of privacy: alone and loneliness. As a functioning individual, man demands moments when he can be alone. But he does

the benefits which he receives as a member of society. But he is NOT presumed to surrender ALL those rights, and the public has no right to invade that domain which he has reserved unto himself. It is an absolute right, like the right of personal security and liberty. The individual has the right to enjoy life in any way that may be most agreeable and pleasant to him, according to his temperament and nature, provided such enjoyment does not invade the rights of his neighbor or violate public law or policy.

The stumbling block which may have been encountered in the way of a recognition of the right of privacy has been that it would curtail the liberty of speech and of the press. These rights are preserved in our Constitution in uttering, writing, and printing ones sentiments, subject only to the limitation that in so doing, he shall not be guilty of an abuse of this privilege by invading the legal rights of others.

The biggest legal milestone in this field was last year's Supreme Court decision in Griswold vs. Connecticut,^{which} overthrew the states law against the use of contraceptives as an invasion of marital privacy and for the first time declared the "right of privacy" to be derived from the Constitution itself. The Court held this anti-use law invaded a protected area of privacy and association.

What form will this young right of privacy have in its maturity? The answer is difficult to predict. It does seem probable that individuals will rely on the right more heavily as time goes on in order to keep their individual outlines from merging with the commonweal. In 1961 President Kennedy extracted commitments from his household staff not to disclose publicly what went on within the domestic wing of the White House. It appears that as the nets of public snoops are thrown around us in everwiddening arcs, we will be drawing lines and digging in. It is encouraging that United Nations has included a declaration

I understand a member of the Atheneum, Mr. George Boone, was instrumental in inserting a provision in the new proposed Kentucky Constitution which states "The people shall be secure in their persons, houses, papers and possessions from interception of telegraphic, telephonic and other electronic means of communication, and from interception of oral and other communications by electric, electronic or mechanical means."

Perhaps the only possible answer is that privacy must be fought step by step; the door closed, the questionnaire ignored, the mass resisted, the television camera outstared, the moment of silence stolen and cherished. It may be loneliness or selfishness, but if the dignity of man is to be preserved and his self respect retained, the door must be closed for only in the healing and sometimes illuminating moments of privacy can a man make himself truly fit to live with others.