

and economic well-being, which compels government to seek information to guide legislative and administrative action.

In an increasingly interdependent society, devoted to the scientific solution to many human as well as material problems, governmental agencies and a wide variety of nongovernmental institutions seek more and more information about human activity, attitudes, and demands.

In an age marked by specialization in virtually every field, the use of larger and larger units for carrying on economic, political, and social activities, it becomes a natural way of thought to see the individual human as a number, a file, a dossier, whose life and personality are captured by the volume of collected data.

The apparent increase in crime and use of modern technology by criminals has been countered by police use of modern means of surveillance and crime solution. Threats to national security have resulted in the widespread employment of security checks for Americans holding certain governmental, or sensitive private positions.

Modern business and other organizations go to great lengths to insure that their recruits are well fitted for the positions they will fulfill, and in some instances maintain a close watch on their private and organizational lives in the interests of the institution.

Even in the absence of the kind of empirical data which would permit accurate assessment of the adverse effect of these developments on individual and group privacy, there is sufficient information available to justify concern and to underscore the value of inquiries, such as that presently being undertaken by this committee, into the precise nature and extent of invasions of privacy in public and private life.

In many ways, the term "privacy" is an unfortunate way of capsulizing an effort to define limits on the intervention of governmental and nongovernmental actions into the affairs of individual citizens or their lawful associations. There is a coldness, an antiseptic quality associated with the term that fails to convey its importance as an individual and social value.

I think that the great Justice Brandeis came closest to identifying the true nature of privacy as a "right" in his famous Harvard Law Review article, written in collaboration with Charles Warren, published in 1890 ("The Right to Privacy," 4 Harvard Law Review (1890)), and in his powerful dissent in the *Olmstead* case in 1928 (*Olmstead v. United States*, 277 U.S. 438).

In his article, Brandeis thought that the prying of scandalmongering newspapers into the private social life of prominent citizens violated their right to privacy.

Although the authors seem in retrospect to have given insufficient weight to the values and traditions that surround "freedom of press," their sensitive and imaginative perception of the threats to privacy arising from "the intensity and complexity of modern life" and their call for legal protection through legislation and court action mark the beginning of serious awareness of the problem. The tort of privacy has now been recognized in a majority of States and there have been over 350 decided cases involving the civil wrong of "invasion of privacy."

But of greater significance, in my opinion, is the slow, halting evolution of a constitutional "right to privacy" stimulated by Brandeis' prophetic opinion in dissent in *Olmstead*.

You will recall that this case arose out of the Federal Government's efforts to convict a large-scale bootlegger in the State of Washington, and specifically, the use of evidence obtained by the tapping of his telephone line, this in a State which had a law forbidding wiretapping.

By a 5-to-4 vote the majority of the U.S. Supreme Court held that wiretapping was not an unreasonable search and seizure, and hence not prohibited by the fourth amendment guarantee.

While Holmes, dissenting, decried the role of the Federal authorities in the "dirty business" of breaking State law, Brandeis, dissenting, stressed what to me is clearly the proper principle in interpreting constitutional grants of power and limitations in power.

Pointing out that the Court had construed powers broadly to meet conditions unanticipated by the framers, he argued that "clauses guaranteeing to the individual protection against specific abuses of power must have a similar capacity of adaptation to a changing world" (277 U.S. 438 at 472).

Decrying the narrow, mechanical approach of the majority, Brandeis argued that the framers "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