

against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.”

Brandeis concluded that “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” (at 478).

In an article published in 1962, “The Constitutional Right to Privacy in the Supreme Court” (1962 Sup. Ct. Rev. 212) I traced the development of fourth amendment doctrines and concluded that the Supreme Court had not yet embraced the Brandeis position though several judges had expressed their agreement with Brandeis and their disapproval of the *Olmstead* holding.

I suggested in that article that the curious twisting and turning in the development of search and seizure law had obscured the purpose of the 4th amendment protection and that a more useful approach was to conceive the right to privacy as set forth by Brandeis as part of the essential liberty safeguarded against State action by the due process clause of the 14th amendment and against national action by the 5th amendment clause.

In subsequent research which is not yet completed, I have tried to show that if “freedom to travel,” is part of liberty, “the right to privacy,” a guarantee against unjustifiable intrusion into one’s thoughts, emotions, sensations—the right to be let alone unless there is a rational and important countervailing interest, can be spelled out of a combination of several clauses of the Constitution, including the 1st, the 4th, the 5th, and the 14th amendments.

And one can make a good case that a freedom from unjustifiable intrusion is central to the very notion of a constitutional order in which the importance and dignity of every individual is central, in a political system based on the concept of government derived from the consent of the governed.

But wholly apart from the constitutional basis (or assuming for the moment that there is no constitutional basis of a right to privacy), I would suggest that a government devoted to freedom and recognizing the dignity and importance of every individual should seek to safeguard all reasonable claims to privacy against private invasions, should avoid intrusive action on its own part, except where strong justification existed.

I am not suggesting a once and for all definition of the right nor is it appropriate to catalog all of the possible claims that can be made and which may deserve protection. What is required is an inventory of the activities of public and private agencies that raise privacy and dignity issues.

In each instance the justification for the intrusive action should be made explicit so that it may be evaluated, while at the same time, alternative less intrusive measures may be substituted. For in many instances, it will be found that men of good will, eager to perform their own function as efficiently as possible have simply failed to take into account the adverse effect of their actions on those affected.

Whether through the use of excessively prying items on questionnaires used by educational or other institutions, failure to maintain strict confidentiality of Government file items that may embarrass citizens, overzealous investigation of welfare recipients, or over aggressive law enforcement procedures, invasions of privacy have seemingly become part of the American scene.

The numerous new forms of intrusive surveillance through the medium of electronic eavesdropping, the use of long-range cameras and other optical equipment, and the computerized auditing of transactions, greatly enhance the ability to invade the privacy of all of us, whatever our status and activities.

The way to proceed is through a careful examination of present or potential invasions of privacy at all levels of Government, in a wide variety of private enterprises and institutions.

It is easy to compile a list of sensational acts of invasion of privacy in a Nation as large and active as ours, but a sober response to the present situation and that of the portending future requires a realistic assessment of present activities and discernible trends. This committee can take a giant step toward solution to problems that must be solved if the privacy element in our freedom is to be as meaningful in the future as we should like to believe that it has been in the past.

Mr. GALLAGHER. You may proceed.

Mr. BEANEY. I think it is a great privilege to be asked to appear before this subcommittee, which in my humble judgment is concerned with one of the acute problems facing the American people today. As I suggested, each generation of Americans has a different set of