

problems to confront with respect to the liberties which each of us enjoys.

Conditions within our society change, there are new demands for various activities to be undertaken by Government, ways of conducting our economic affairs and our private institutions change, and so that which was a source of little trouble in one generation may assume great significance in another.

I think our Founding Fathers at the time of writing the Constitution did not think of privacy as being a serious problem. The whole constitutional arrangement was one intended to guarantee as wide an area of freedom as was possible.

You may recall that Hamilton and Madison, in opposing initially the inclusion of a bill of rights in the Constitution said that one of the dangers of a specific enumeration of rights was that some other rights of equal value or even greater value might not be protected by the Constitution. On the other hand, they recognized there were serious demands that certain rights be placed as amendment or a series of amendments to the Constitution, so we have our first 10 amendments, but privacy was not an acute problem because of the nature of our society.

We were a few million people, strung in a sparse way along the eastern coast. The basic activity of the country was farming and my own impression is that people who lived in rural areas generally are not terribly concerned with privacy. They are more apt to seek the comfort and friendship of others because of the distances which separate them. But my general approach has been in such writing as I have done, and that on which I am still working, is that the Constitution taken as a whole, and the 1st and the 5th and the 4th and the 14th amendments particularly spell out a safeguard for the privacy of individuals.

By privacy in this sense, I mean the freedom or the liberty to determine to what extent you will share your life, your activities, your ideas, your thoughts, and sensations with others.

Had the Founding Fathers—of course, this is a game everyone can play and one can never be so positive, but I assume that had they foreseen the developments of recent decades in this country a statement of a right to privacy would have found explicit inclusion in the Bill of Rights.

I take my theme from Brandeis in arguing that constitutional limitations or putting it more positively, the guarantee of individual rights, must be approached in the same positive rational spirit that we approached the question of the powers of the National Government or the powers of our State governments in the light of changing conditions. That is, the commerce power is something different today from what it was in 1800. And similarly, the limitations of the Bill of Rights must be adapted to the specific form which the dangers and the problems take at the present time.

It seems to me that it is in that spirit that some of our justices and some of our courts have approached this problem and I don't want to mislead you by saying at the present time the U.S. Supreme Court or the Federal or State judiciaries have adopted this position in any explicit fashion. Yet I think that, as I tried to show in my article, we are moving very much toward a position that I think the Supreme Court will take in giving to the fourth amendment the