

fore, a positive claim to a status of personal dignity—a claim for freedom, if you will, but freedom of a very special kind.

The way in which the choice between disclosure and non-disclosure is exercised, and the extent to which it is exercised, will vary with each individual, and with each institution. Indeed, the choice will vary in the same individual from day to day, and even on the same day, in differing circumstances. Thus, flexibility and variety are faithful companions of the concept of privacy.

III. THE SCIENTIFIC CHALLENGE

The claim to privacy will always be embattled—its collision with the community's need to know is classic and continuous. Man has always lived in a community, and the community has always required some forfeiture of freedom, including that of privacy. It is, indeed, a fact of life that there has never been a condition of complete privacy for the individual insofar as he is a normal man living with other men. At one time or another, privacy has yielded—as it must—to the positive group needs for security, for order, for sustenance, for survival. The degree of privacy granted throughout history to an individual by one or another community has varied markedly with the nature of the political system, the economic level, the population density, and the characteristics of the environment.

It should also be recognized that not every threat to private personality is a matter of sufficient concern to warrant social protection. Similarly, not every technical trespass is serious enough to warrant social redress. The test is always this: is the threat or the invasion unreasonable, or intolerable?

Today, there are those who point an accusing finger at science and argue that science now poses an unprecedented and grievous threat to the privacy of personality.²³ The argument, while clearly exaggerated, is not implausible. Modern acoustics, optics, medicine and electronics have exploded most of our normal assumptions as to the circumstances under which our speech, beliefs and behavior are safe from disclosure, and these developments seem to have outflanked the concepts of property and physical intrusion, and presumed consent—concepts which have been relied on by the law to maintain the balance between the private personality and the public need. The miniaturized microphone and tape recorder, the one-way mirror, the sophisticated personality test, the computer with its enormous capacity for the storage and retrieval of information about individuals and groups, the behavior-controlling drugs, the miniature camera, the polygraph, the directional microphone (the "big ear"), hypnosis, infra-red photography—all of these, and more, exist today.

All of these significant advances are capable of use in ways that can frustrate an individual's freedom to choose not only what shall be disclosed or

23. See, *e.g.*, PACKARD, *THE NAKED SOCIETY* 5 (1964).