

PRIVACY AND THE CONSTITUTION

One of the most important rights in the Bill of Rights is that of privacy.

The Supreme Court of the United States has interpreted this to be implied in each of several amendments to the Constitution. According to the decision in Griswold versus Connecticut, rendered in 1965, specific guarantees "have penumbras formed by emanations from those guarantees that help give them life and substance. Various guarantees create zones of privacy."

While the justices in the Griswold case disagreed about the reach of various amendments as they affected the association of marriage under the Connecticut birth control law, the opinion of the court was consistent with many others in which it found that privacy is an aspect of life necessary to the enjoyment and exercise of the freedoms protected by the Bill of Rights, especially by the first, fourth or fifth amendments.

As early as 1886, the Court stated, in referring to the principles of the fourth and fifth amendments reflected in the early case of Entick versus Carrington: ". . . they apply to all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of life. It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offence which underlies and constitutes the essence of Lord Camden's judgment."

In 1928, Mr. Justice Brandeis referred in the following terms to the broad scope of the protections guaranteed by the fourth and fifth amendments:

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone--the most comprehensive of rights and the right most valued by civilized men. (Olmstead versus U.S., 438, 478)

Congress has received many complaints of governmental invasions of individual privacy. The variety of practices and policies is limited only by the ingenuity and creativity of the officials responsible for them. Their range suggests that there are fashions in follies as in everything else. They run the gamut from mere aggravations, inconveniences, and offenses to the sensibilities, to more serious threats to freedom. They include, but are not limited to, unwarranted surveillance and investigative programs, unauthorized data banks, intrusive questionnaires unnecessary to the needs of government, letter-opening, lie-detectors, psychological tests, unwarranted police entry to dwellings; coercion of public employees to promote political programs of the Administration, and requirements to attend psychological sensitivity sessions to change the individual's attitudes toward other individuals and toward social problems.

On the basis of the complaints received by the Senate Constitutional Rights Subcommittee, I have concluded that the great majority of the grievances which individuals voice today about privacy invasions are nothing more nor less than violations of constitutional guarantees, especially those contained in the first, fourth and fifth amendments to the Constitution.

In a dissenting opinion to the Griswold case, Justice Black warned against the danger of challenging unconstitutional acts on the basis of common law concepts of privacy. The average man, he stated, is as concerned about infringements on his liberties whether perpetrated quietly or in public. He agreed that "there are guarantees in certain specific constitutional provisions which are designed in part to protect privacy at certain times and places with respect to certain activities." However, he cautioned that "one of the most effective ways of diluting or expanding a constitutionally guaranteed right is to substitute for the crucial word or words of a constitutional guarantee another word or words, more or less flexible and more or less restricted in meaning."

For these reasons, it is helpful to discuss current privacy issues in the context of freedom of the individual, as it is protected by the Bill of Rights.

Freedom of the Individual

Freedom for the individual was bought for us long ago by the blood, sweat, tears, and prayers of multitudes of men and women, great and small.

The Founding Fathers esteemed it life's supreme value. They so testified by declaring in the preamble to the Constitution that they ordained and established that instrument to preserve the blessings of liberty for themselves and their posterity.

Freedom is hard to win or preserve, but easy to lose. The price of its keeping is eternal vigilance, and this vigilance will be exercised only by those stout-hearts who love freedom above all things and are always ready to do battle for it against its enemies, doubt and fear.

Doubt lacks faith in freedom and fear is afraid of freedom. When doubt and fear prevail, government becomes tyrannous, and people become tolerant of tyranny.

The Bill of Rights

The Founding Fathers apprehended these truths. Moreover, they were aware that history repeats itself.

For these reasons, they knew that the tyrannies of the past would be attempted in the future in the land for which they were creating a government; that the government they were creating would undertake in time of doubt and fear to suppress by sharp measures exercises of freedom displeasing to it; and that freedom itself would thereby be put in peril unless it was protected by irrevocable constitutional law.

And so the Founding Fathers added the Bill of Rights to the Constitution to place freedom beyond the reach of any President or any Congress who might doubt the wisdom of America's commitment to freedom or fear its exercise by Americans.

The aim of the Bill of Rights is aptly described in these words in West Virginia State Board of Education v. Barnette, 319 U. S. 624, 638:

The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no election.

A Time of Doubt and Fear

Ours is a time of doubt and fear.

Some nations threaten the peace of the world and the security of our country. Violent crime stalks our land. In the recent past, riotous mobs have burned and looted in some of our cities; and disquieting agitators have staged violent, and hence unlawful demonstrations on public streets and college campuses.

These things have frightened many Americans, including some in high offices. These Americans have lost faith in America's commitment to freedom. They demand the abridgment of historic freedoms of our people, and attempt to justify their demand by the plea that there is no other way to obtain security for our land.

Let us reject this plea with words uttered by William Pitt, the younger, in the House of Commons in 1783:

