

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.

