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THE COMMUNICATIONS INDUSTRIES  
AND THE  
INVASION OF PRIVACY

I. STATEMENT OF THE PROBLEM

The problem of this paper is to analyze the practice of invasion of individual privacy by the mass communications industries and the different approaches taken to solve the problem, and to determine the impact of invasion of privacy on future technology, values, and the mass media.

II. SUMMARY OF PRINCIPAL FINDINGS

1. The invasion of privacy by the communications media in some ways is part of an overall trend in American society which is marked by a desire for more information and the diminishing of importance of the individual.

2. Both the print media and the broadcasting media have largely solved the problem of invasion of privacy through a combination of laws, self-regulation, codes, situation ethics, and pressure from the public. Radio and television are more susceptible to invasions of privacy than newspapers because of a still new technology and competition between stations and networks. The communications industries have in some ways reinforced the value of invasion of privacy through abusive practices. The media have the responsibility to reassert more fulfilling values so that the problem can be solved in other areas in American society.

3. Legal solutions are vague and arbitrary now, because they use definition of interests, not of underlying concepts. The media will resent most forms of legislation and court rulings as a limit of freedom of the press. Legal solutions are necessary only to provide regulation when self-regulation by the media fails to correct its problems. Legal solutions do not motivate a higher sense of responsibility within the media.

4. The Social Responsibility Theory of the media recognizes the responsibility of the media to the public. Through situation ethics, codes, and the process of professionalization, the media can assume greater self-regulation in solving its abuses. Codes now are too vague and lacking in enforcement to provide a sense of social responsibility.

5. The people must recognize their power as consumers of the media, and their obligations to improve the media.

6. Growing technology can lead to worse abuses. A possible revival of competition in the print media and new forms of news gathering, processing and distribution might cause new invasions of privacy in that industry. New values are needed which can control this technology. The media must reassert the beneficial principle of some degree of privacy if privacy is to remain a right in society.

7. Professionalization is one way to achieve high-responsibility and self-regulation. This calls for the combined professionalization of the communicators and businessmen. In this way the communications industry can serve as a model for other profit-making industries which violate right of privacy.

III. POLICY RECOMMENDATIONS

1. At the present time, no form of government regulation of the mass media is seen as advisable.

It should be the Court's function to present privacy and freedom of the press as coexisting, not conflicting rights. Therefore a decidedly different set of values is needed in future Court decisions. Government regulation of any sort should be realized an abridgement of the media's own responsibility to regulate itself. Therefore, no regulation outside the industry should occur less new technology and abuse of this technology renders self-regulation impossible. (pp. 11-13, 30, 34).

2. The communications industries must be constantly aware of its responsibilities to society and of the potential dangers of new technology, increased competition, and the invasion of privacy on American values.

To achieve a higher degree of responsibility, industry codes must be rewritten so that they define concepts of privacy and newsworthiness, provide for intra-industry enforcement of violations of the codes, and recognize the interdependency of businessmen and communicators. Communications media must accept its responsibility of disseminating values into American society. Professionalization can rectify many existing problems. (pp. 13-23, 30-34).

3. The public should create an independent agency to act as a forum for constructive criticism of the media.

The public has tremendous control over the media which they must learn to use properly. Independence from the government and media in an agency might lead to rational and objective, constructive criticism. (p. 25).

4. The government, the communications industries and the public must realize the potential threat that uncontrolled technology represents.

Invasion of privacy is a symptom of the destruction of values through the misuse of technology. If no effort is made beforehand to understand the dangers of technological advances and their psychological and social effects, society might see the widescale invasion of privacy, unintentional irresponsibility by the media, and possible government regulation to control the abuses. Foresight is the best policy to protect both the individual and the media.

IV. TABLE OF CONTENTS

	<u>Page</u>
I. STATEMENT OF THE PROBLEM.....	ii
II. SUMMARY OF PRINCIPAL FINDINGS.....	iii
III. POLICY RECOMMENDATIONS.....	iv
V. DISCUSSION.....	1
Introduction.....	1
The Government's Approach: Legal.....	3
Warren and Brandies.....	5
<u>Time v. Hill</u> .....	7
Social Responsibility of the Media.....	15
Situation Ethics.....	19
Professional Codes.....	20
Public Responsibility.....	23
A Look to the Future.....	26
Technological Revolutions.....	27
Technology and Values.....	29
Professionalization.....	31
Professionalization and Self-Regulation.....	34
VI. APPENDIX.....	36
Warren and Brandies.....	36
<u>Time v. Hill</u> .....	36
Meiklejohn's Theory of Freedom.....	37
VII. BIBLIOGRAPHY.....	38

V. DISCUSSION

Introduction

That there exists invasion of individual privacy by the various communications industries cannot be seriously doubted. Journalists and broadcasters alike agree that there is a minimal degree of invasion of privacy in their daily tasks, but that this invasion differs greatly from other forms of invasion of privacy—governmental surveillance, credit banks, psychological testing—both in the motives and uses.<sup>1</sup> It might be questioned in what way media invasions of privacy reflect a general trend now prevalent in American society, the trend of the diminishing individual right to privacy, and of the dominance of the public right to know. Eugene Aleinikoff, attorney for the Public Broadcasting Corporation, sees no connection between media and other forms of invasion of privacy. In fact, he argues, the communications industries have gone far to solve, largely on their own, the problem of invasion of privacy.<sup>2</sup> Unfortunately, eliminating the abuses of invasion of privacy from their own industries does not fulfill the media's responsibility to the rest of society.

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<sup>1</sup>Richard A. Salant, interview, October 18, 1971, New York, and Norman Isaacs, interview, October 18, 1971, New York.

<sup>2</sup>Eugene Aleinikoff, interview, October 25, 1971, New York.

The media have the capability of injecting new values within articles and broadcasts, an unintentional by-product of technology. In part it was the technological advances of the late nineteenth century that led to the rise of "yellow" journalism, and the subsequent invasions of privacy. The last chapter will describe the way in which new technology can lead to even worse abuses, of which invasion of privacy is only one symptom of a run-away technology. It is sufficient to note here that the communications industries have had much to do with creating the problem of invasion of privacy, and now that the media have successfully tackled their own intra-industry problems, it still has the responsibility to attack all invasions of privacy, regardless of their source.

There are three ways to attack the problem of invasion of privacy: through the government, the media and the people. Because no one institution could exist without the cooperation of the other two, it is necessary to approach the problem, not in a vacuum, but in a realistic appraisal of the relationships between any one group and the other two. There are also two ideologically opposed philosophies toward the press. The one might be expressed as such: "Freedom of the press is embodied in our Constitution for the benefit of all the people and not as an exclusive prerogative of those who are engaged in the business of news dissemination."<sup>1</sup>

<sup>1</sup>Stanford Smith, testimony before the Senate Committee on the Judiciary, Subcommittee on Constitutional Rights, October 12, 1971, in U.S. 92nd Congress, 1st Session. (Hereafter to be cited testimony.)





The other approach might be characterized by the recognition that

our historic commitment to freedom of the press means that we must tolerate absurd, misleading, and vindictive reports which sometimes appear in newspapers and magazines and on radio and television. It means that thoughts and ideas which we hate and despise will appear in print and be broadcast across the land. James Madison recognized that "Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press."<sup>1</sup>

If the former belief were to held solely by the government, and the latter by the media, no solution of any problems would ever be presented. Fortunately, the situation is never so rigid. The government and the media have a mutual respect, somewhat shaped by fear, for one another. The two must co-exist to achieve any degree of harmony in a democratic society.<sup>2</sup> Thus all solutions to the problem of invasion of privacy must take into account the different interests of the government, media and public; and also the need to compromise positions.

#### The Government's Approach: Legal

Legal recognition of the right to privacy developed simultaneously with the growth of modern mass media of communications and the emergence of a general desire "to be in the know," to find out the "inside dope" in all areas

<sup>1</sup>Samuel Ervin, testimony.

<sup>2</sup>It is ironic to note that Smith's quote implies the need for government regulation, yet he is president of the American Newspapers Publishers Assoc.; Ervin is a U.S. Senator.

of social and private life.<sup>1</sup> This last trend often led to certain journalistic abuses which, by printing detailed and intimate "facts" about personal lives, offended the sensibilities of large sections of the public and respectable newspapers. In part the legal recognition of a right to privacy grew out of a reaction to yellow journalism.<sup>2</sup>

Legal theorists have attempted to discover the origin of the right to privacy. Louis Brandies as a Supreme Court Justice argued that the right could be inferred from the Constitution, yet forty years earlier he and Samuel Warren in "The Right to Privacy" invoked common law as the source of this right.<sup>3</sup> Justice William O. Douglas solved the problem of origin by noting that even though privacy is not provided for in the Constitution, "it is essential to the exercise of other rights guaranteed by it."<sup>4</sup> Thus the right of privacy must be accepted to insure the smooth functioning of other rights.

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<sup>1</sup>Louis H. Mayo, "Comments Concerning the First Amendment and the People's Right to Know," in Summer Institute on International and Comparative Law, University of Michigan, 1954, Lectures on Communications Media: Legal and Policy Problems, p. 38. (Hereafter to be cited Lectures).

<sup>2</sup>Ibid., p. 39.

<sup>3</sup>Samuel D. Warren and Louis D. Brandies, "The Right to Privacy," Harvard Law Review, vol. 4, (1890-91), p. 193.

<sup>4</sup>William O. Douglas, "The Present: Inroads on the Right to Privacy," in David G. Clark, ed., Mass Media and the Law: Freedom and Restraint, p. 187.

Yet there are some rights, firmly embodied in the Constitution, that directly conflict with the right of privacy. The legal right to privacy, constitutionally legitimate or not, firmly limits the right to freedom of speech. Both in the examples of state statutes and recent Supreme Court decisions, the right to privacy has lessened the "absoluteness" of the First Amendment. The history of privacy laws in the area of communications media has been marked by a perpetual conflict between the rights of the individual to privacy and the rights of the public to complete information, or put another way, the rights of the media to disseminate information as broadly as possible. When successful, this judicial juggling has led to a creative balancing of moral and legal judgements. But more often than not, the laws and court decisions have been plagued by ambiguity, short-sightedness and a general ignorance of social realities.

### Warren and Brandies<sup>1</sup>

"The Right to Privacy" laid the foundation for practically every privacy and statute and court decision within the last eighty years. They asked for legal protection, not only for injuries of a person's property, but for such intangibles as feelings and emotions. Invasions of privacy violate the principle of "an inviolate personality."<sup>2</sup> Legal protection is necessary because

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<sup>1</sup> see Appendix for the history behind this famous article.

The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of daily papers....The intensity of life...has rendered necessary some retreat from the world, and man...has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprise and invention have...subjected him to mental pain and distress....<sup>1</sup>

Being well-versed in the Constitution, they could not countenance any abridgement of the legitimate right to free speech. They therefore included a number of exceptions in which invasion of privacy might be acceptable: any material of public interest (thus public figures lose their right to privacy in connection with their public lives); any material from a court, legislative body or municipal assembly; truth does not afford a defense, nor does the absence of malice in the publication.<sup>2</sup>

Two fundamental flaws undermine "The Right to Privacy." First, no effort is made to <sup>discuss</sup> define public interest from public curiosity. If a court is to make decisions on such criterion, they need definitions. Second, Warren and Brandies have no understanding of the causes behind yellow journalism. They are quick to criticize journalism without realizing that the gross invasions of privacy were due to mainly <sup>temporary</sup> economic and technological reasons, not because of any immorality inherent in the reporter.

<sup>1</sup>Warren and Brandies, op. cit., p. 186.

<sup>2</sup>Ibid., pp. 209-212.

Time v. Hill<sup>1</sup>

The 1967 Supreme Court decision in Time, Inc. v. Hill 385 U.S. 374 (1967) for the first time extended the constitutional guarantees of freedom of the press to right of privacy cases. The Hill decision relied upon a "balancing test" of Justice Brennan, in which he weighed the social interest in freedom of speech against the individual interests in regulation that restrict this freedom.<sup>2</sup>

Obviously, because of changes in technology and society and because of "time, place, and manner considerations,"<sup>3</sup> no law, not even the First Amendment guaranteeing freedom of speech, can be considered absolute. There have always been prohibited forms of speech, such as libel,<sup>or</sup> "crying 'Fire!'" in a crowded theater.

In the Hill case, the Court had to decide upon Life's publication of the material as either legal or illegal. In an effort to balance public interest and individual privacy, the Court participated in "ad-hoc balancing," a non-generalized weighing of relevant interests. Accounting for a quiltwork of contradictory decisions and statutes, ad-hoc balancing is deficient in another area: there can be

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<sup>1</sup> See Appendix

<sup>2</sup> M. G. Slough, Privacy, Freedom and Responsibility, p. 73

<sup>3</sup> Melville G. Nimmer, "The Right to Speak from Times to Time: First Amendment Theory Applied to Libel and Misapplied to Privacy," California Law Review, vol. 56 (1968), p. 936.

no general rule applied, since each case is judged from its own relevant merits. With the absence of rules comes uncertainty, and possibly even fear to express new ideas.<sup>1</sup>

But another possible approach, aside from the absolute process or from ad-hoc balancing is a "balancing process on the definitional rather than the litigator or ad-hoc level."<sup>2</sup> Thus, in Time v. Hill the approach would not be which interests, public or private, should win, but rather would determine which forms of speech are "speech" in terms of the First Amendment. Principles can be withdrawn as a result of definitional balancing, rules which clearly define and protect freedom of speech and the individual.<sup>3</sup>

That Hill failed to set up worthwhile limits for both the right of privacy and the right of free speech is seen from the large criticism directed to the decision by justices, lawyers and journalists. Justices Black and Douglas, both absolutonists, felt that the malice guideline was an inappropriate balance of interests which limited the freedom of the press, while Justice Brennan believed that protecting the rights of the individual would, as a result of the expanded press rights, become more difficult.

<sup>1</sup>Ibid., p. 939.

<sup>2</sup>Ibid., p. 942.

<sup>3</sup>Ibid., pp. 936-944. For another interpretation of definitional balancing see theory of Alexander Meiklejohn in appendix.

Justice Fortas expressed concern that public reaction to what he considered an abuse of the press in the Hill case might hurt that media in the long run, and that by limiting the media's right to invade privacy, the media would be protected.<sup>1</sup>

Although the Court had the correct idea of placing some standard upon what constitutes invasion of privacy by the communications industries, they may have gone too far in selecting a vague and too-protective criterion which might lead to less, not more, press responsibility.<sup>2</sup> Furthermore, the ability of an individual to prove invasion of privacy has been substantially reduced. And even though the Supreme Court has declared First Amendment immunity for non-malicious falsity, the Court has not decided what is malice and recklessness.<sup>3</sup> Also, the standard of knowing falsehood seems too narrow for creative works.

Perhaps the greatest shortcoming to the Hill decision is that, while the Court attempted to categorize malice and truth, it left out more important elements of privacy laws: namely, what constitutes newsworthiness and the public interest? Newsworthiness, not truth, is the only proper defense for

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<sup>1</sup>William A. Hachten, The Supreme Court on Freedom of the Press: Decisions and Dissents, pp. 174-179.

<sup>2</sup>Slough, op. cit., p. 79.

<sup>3</sup>"Privacy, Defamation, and the First Amendment: The Implications of Time, Inc. v. Hill," Columbia Law Review, vol. 67(1967), pp. 942-943.



invasion of privacy, and no court decisions have explained this elusive concept. In privacy cases involving the media the courts have usually decided in the media's favor because of its "limited privilege to report about persons or events in the public eye."<sup>1</sup> And although the courts have not yet described news beyond an ambiguous "that indefinable quality of information which arouses public attention,"<sup>2</sup> the courts remain the final authority on what is news and what is not.

The same problem arises with the questions of "time lapse" (are public figures still news even years after their original fame or notoriety?), "fictionalization" (how closely must media's reporting of an event stick to the facts to be still considered newsworthy), and "accidental public figures" (does a man who unintentionally is put in the public limelight lose his rights to privacy as completely as an elected official or entertainer?). In Hill the Court attempted to resolve these problems, but by not laying down explicit rules, a shroud of ambiguity still covers right of privacy cases.

~~It~~ is doubtful that any one general court decision will solve the problems of private and public interest. Any such

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<sup>1</sup>Hacten, op. cit., p. 169.

<sup>2</sup>Ibid., p. 169.

blanket principles would rely upon absolute and static interpretations which could harm both parties involved. On the contrary, the courts need a new set of social values to determine what is good for the individual and for the public. Eugene N. Aleinikoff calls for a redefinition of appropriate bounds of privacy and public rights. He labels four types of invasions of privacy that have in which the media should have no privilege: invasions of privacy committed with malice, electronic invasions (bugging, wiretapping), invasions of private persons in private places, and invasions committed for commercial purposes.<sup>1</sup> This is not haphazard balancing of interests but a form of definitional balancing of what speech is protected in the First Amendment, and what is not. Under Aleinikoff's model, the editors, broadcasters and journalists would know what is legal and illegal, yet would still be confronted with a number of ethical judgements. Aleinikoff notes that perhaps only ten percent of any news to be printed or broadcasted is illegal, but that does not mean that the other ninety percent is automatically released to the public. There are social and ethical considerations to be made, and these should be made not by the courts, but by the media.<sup>2</sup>

But even improved legal solutions do not necessarily result in improved responsibility of the media and improved protection of the individual rights of privacy. Freedom of

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<sup>1</sup>Aleinikoff, op. cit.

<sup>2</sup>Aleinikoff, op. cit.

speech and the right to privacy are not mutually exclusive privileges, but rather interrelated, so that any increase in one right will result in a decrease of the other. <sup>Some</sup> Legal solutions are negative, in that they can correct abuses, and thus <sup>do</sup> not infringe upon freedom of the press. Positive solutions imply responsibility and moral judgements, <sup>for the media</sup> and here is where the courts have failed in the past and will probably fail in the future. It is interesting to note that the courts usually decide in favor of the media on the grounds of public interest, public figures or public record, yet these are principles which no court has undertaken to define.<sup>1</sup>

Although courts and society have a responsibility to protect privacy, they also have a two-fold responsibility to the press: to allow for responsible freedom of speech in the public interest, and to allow communicators to exercise their own judgements. Court regulations, no matter how well-meaning, have the potential of impeding the vital flow of information necessary in a democratic society. Laws and court decisions also have the tendency to become inflexible: social and technological considerations shaped the Warren and Brandies article, and yet their argument is still used today in a society substantially different from that of 1890.<sup>2</sup>

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<sup>1</sup>Don R. Pember, 'Privacy and the Press: the Defense of Newsworthiness,' Journalism Quarterly, vol. 45 (1968), pp. 17-21.

<sup>2</sup>Morris L. Ernst, Privacy: The Right to be Let Alone, p. 61.

There are additional objections to legal solutions: they are bound to be conflicting as long as interests, not principles, are balanced, and this creates imperfect guidelines for the media. Thus the communications media still do not know what is meant by "newsworthiness," when the courts use the term. Also, conflicting rules fail in dispensing uniform justice to the media and the people.<sup>1</sup> Finally, much of the Court's efforts have been to erect a set of professional ethics and standards for journalists and broadcasters. This, like all external regulations of this nature, constitutes a repugnant encroachment of freedom of the press, and must come from within the media themselves.

#### Social Responsibility of the Media

The outrages of decency that prompted the Warren and Brandies diatribe against press invasions of privacy led to three-quarters of a century of a legal hodge-podge of contradictory and ambiguous court decisions and state statutes. As described above, these decisions have in no way formulated a doctrine of responsibility for the mass media. Rather, the various media have both explicitly and implicitly assumed responsibility for self-regulation.

The period of yellow journalism, reflected by sudden technological advances in news gathering, printing and dis-

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<sup>1</sup>Norris G. Davis, "Invasion of Privacy: A Study in Contradictions," Journalism Quarterly, vol. 30 (1958), p. 180.

tribution, was marked in its dying phase by the ideologies of libertarianism. As a guiding force for journalism since the founding of newspapers in America, libertarianism used Lockean terms in demanding an open market place for ideas. It was assumed that, left alone, the press could and would correct all abuses of power. Editors could lie and distort the truth, because it was assumed that any rational reader could derive the truth from the falsehoods. But by the end of the nineteenth century, the press had grown larger and more concentrated, more difficult to enter, and far removed from the people.<sup>1</sup> Criticism directed at the media usually included invasions of individual privacy.<sup>2</sup> And the press, leaving laissez-faire and Enlightenment theories behind to disappear along with the nineteenth century, began the new century with a changed philosophy. Journalism schools appeared and began the long (and still unfinished) job of professionalization. Moral responsibility began to creep in the attitudes of reporters and editors, as objective writing became the norm and not the exception. This shift in attitudes was mainly the press's acceptance of responsibility to the public, and the understanding that

freedom carries concomitant obligations; and the press, which enjoys a privileged position under the Constitution, is obliged to be responsible

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<sup>1</sup>Wilbur Schramm, Responsibility in Mass Communications, pp. 86-8.

<sup>2</sup>Theodore B. Peterson, "The Social Responsibility Theory of the Press," in Fred S. Siebert, Four Theories of the Press, p. 79.

to society for carrying out certain essential functions of mass communication in contemporary society.<sup>1</sup>

The rise of the social responsibility theory can be traced to a number of other factors. Technological advances led to a period of abuses by the press, of which invasion of privacy was a major example. The threat of government regulation and sanctions (instigated by the Warren and Brandies article), criticism of press practices by intelligent members of society, and the eventual maturation of the journalism industry whereby it learned to control and intelligently use the new technology led to the development of social responsibility.<sup>2</sup>

Social responsibility places a premium on responsibility not to specific people, not to conflicting interests, not even to the public, for this would imply that the editor panders to his readers, but rather to society.<sup>3</sup> Thus the media's primary obligation consists of raising public standards. As literacy and education continue to increase, the public taste will also rise, and will reject irresponsible reporting and its abuses, such as invasion of privacy.<sup>4</sup>

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<sup>1</sup>Ibid., p. 74.

<sup>2</sup>Theodore Peterson, "Social Responsibility—Theory and Practice," in Gerald Gross, ed., The Responsibility of the Press, pp. 43-45.

<sup>3</sup>Hy Steirman, "The Publisher's Responsibility," in Gross, op. cit., p. 213.

<sup>4</sup>J. Montgomery Curtis, "Responsibility for Raising Standards," in Gross, op. cit., p. 96.

The Hutchins Commission rejects the theory that the public will buy only what it wants to read.

As the example of many ventures in the communications industry shows, good practice in the interest of public enlightenment is good business as well. The agencies of mass communication are not serving static wants. Year by year they are building and transforming the interests of the public. They have an obligation to elevate rather than to degrade them.<sup>1</sup>

Even a constructionist such as Justice Black recognized that freedom of the press could not remain absolute, or unhampered by societal norms of morality and ethics. Unfortunately, as discussed in the last section, the Court makes a poor judge of ethical matters. However, the communications industries have shown more aptitude in handling this responsibility. Freedom of the press should not lessen the media's obligations. "As the freedom is great, the standard of responsibility should be high."<sup>2</sup>

One of the forms of responsibility that the mass media undertakes is by ordering its interests into a type of hierarchy: service to society on top, then service to

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<sup>1</sup>"A Free and Responsible Press: Report of the Commission on Freedom of the Press," in Gross, *op. cit.* pp 23-24. Commonly called the Hutchins Commission because Robert Hutchins chaired the Commission, it was established after World War II to make recommendations on government policies concerning government regulation of the media. (Hereafter to be cited as Hutchins Commission).

<sup>2</sup>Frederick W. Lehmann, past solicitor general of U.S., in Leon Nelson Flint, The Conscience of The Newspaper, p. 107.

community, and finally service to individual.<sup>1</sup> This pyramid of priorities can provide a justification for invasions of privacy. By responsibly reporting the important events of the world, and by keeping its obligations to society uppermost in mind, the media can claim that informing the public takes precedence over individual privacy.

A person may inspect public records in which he has an interest...when the necessity for such inspection is shown and the purpose does not seem improper, and where the disclosure would not be detrimental to the public interest.<sup>2</sup>

There is no right of inspection of a public record when inspection is sought to satisfy a person's mere whim or fancy, to engage in pastime, to create scandal, to degrade another, to injure public morals, or to further any improper or useless end or purpose.<sup>3</sup>

It might help to differentiate between invasions of privacy for benign purposes, that is for service to society or the community, and those abuses of freedom of press which invade the privacy of individuals for negative reasons.<sup>4</sup>

<sup>1</sup> Ibid., p. 278.

<sup>2</sup> Quote from Cross, The People's Right to Know, in Lectures, op. cit., p. 58.

<sup>3</sup> State v. Harrison, 130 W. Va. 246, 43 S.E. (2d) 214 (1947), in Lectures, op. cit., p. 58.

<sup>4</sup> Eugene Aleinokoff favors substituting the phrase "invasion of privacy" with one that does not automatically connote a negative image.



Each day editors, journalists, and broadcasters are confronted with stories which fall in the no man's land between public interest and public curiosity, between the public right to know and the individual right to privacy. If all the truth were printed all the time media would be guilty not only of invasion of privacy and libel (which can be taken to court), but also of poor taste, degradation of character, muckraking, lowering public standards of taste and reckless control of its power.<sup>1</sup> Suppression of some news, on the other hand, can prevent innocent persons in a touchy situation from being embarrassed or hurt mentally, <sup>stop</sup> articles of questionable decency from appearing, save the reputation of people involved in first offenses and overall contribute to the betterment of society and the community.<sup>2</sup>

Legally newspapers, radio and television have the right to broadcast almost anything, as long as it is not considered obscene, libelous, or invading privacy (under the narrow obscenity, libel and privacy laws). Yet the media usually show remarkable discretion in protecting the rights of individuals. Errors of judgement are made but any right includes as a corollary the right to make errors (without intentional recklessness). That communicators demonstrate restraint even though the laws are

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<sup>1</sup>Jenkins Lloyd Jones, "The Inexact Science of Truth-telling," in Gross, op. cit., p. 159.

<sup>2</sup>Flint, op. cit., pp. 71-78.

are in their favor is because moral principles and decisions are present in almost all privacy questions, and these ethical judgements are binding and usually sufficient without any resort to legal sanctions. The majority of decisions determining whether an article should be run is not decided by legal binds, but by moral constrictions.<sup>1</sup>

The Hutchins Commission recommended with emphasis that the press, not laws or the court, should decide upon the quality and correctness of information it chooses to print. Social responsibility theory has made possible the emergence of two forms of moral rules which have in turn strengthened the responsibility of mass media.

### Situation Ethics<sup>2</sup>

Journalists and broadcasters do not abide by a special set of moral rules. The principles they hold—truth, responsibility, decency—are held by other professional men, and indeed by most intelligent people. However their particular vocations require them to utilize these ordinary virtues in a different manner than in other occupations. Thus, while a doctor would not reveal the cause of illness, or the symptoms of a patient, a newspaper would probably reveal the illness to the public, if it were of sufficient newsworthiness.<sup>3</sup>

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<sup>1</sup>Aleinokoff, op. cit.

<sup>2</sup>Situation Ethics is a book by Joseph Fletcher. See Bibliography.

<sup>3</sup>Such a case exists. See Barber v. Times 348 Mo. 1199, 81 S.W.2d 291

Situation ethics imply that there exists a constant conflict between two sets of values (in this case between the individual and the public) which precludes the use of any one absolute value to solve the dilemma. Each case must be judged separately on its own terms and only the reporter, broadcaster, or editor should be the judge.<sup>1,2</sup>

### Professional Codes

While situation ethics as moral guidelines are used by the individual broadcaster, editor, or reporter, there is another form of moral rule that covers whole industries or associations: ethical codes of conduct. Individual moral codes, different from person to person, are rarely verbalized and never written. Yet the codes show virtual unanimity in their express desire for social responsibility, and all, of course, are written.

The business of an ethical code is to translate the best thought of newspapermen into general precepts so that the public opinion within the profession may be brought to bear upon those who transgress. A journalism code of general adoption should be of efficacy in ridding the profession of those who do not recognize the newspaper business as a semi-public institution in which the public has an extensive right; but who instead look upon it merely as one way of making money and of gratifying personal ends.<sup>3</sup>

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<sup>1</sup>U.S. Office of Science and Technology, Privacy and Behavioral Research, p. 15. Also see Flint, op. cit. pp. 6-11.

<sup>2</sup>Compare this to definitional balancing.

<sup>3</sup>Flint, op. cit., p. 387.

Codes came into existence in the early twentieth century, around the time <sup>9</sup> to press had begun to mature and accept its social responsibility. It became clear that, with the absence of high-quality journalism schools and adequate training, individual integrity was insufficient to solve everyday problems. An over-all philosophy was needed.<sup>1</sup>

Overwhelmingly positive and idealistic in tone, the codes were written by an "an elite group within journalism...as devices for implementing a view of life."<sup>2</sup> They asserted the independence of the editor from all interests except for that of public opinion.<sup>3</sup> The Oregon State Editorial Association established its code to declare a policy of social responsibility. Asking that judgement be used at all times, the code implies the necessity for situation ethics:

It shall be one of our canons that mercy and kindness are legitimate considerations in any phase of journalism; and that if the public or social interest seems to be best conserved by suppression, we may suppress; but the motive in such instances must always be the public or social interest, and not the personal or commercial interest.<sup>4</sup>

<sup>1</sup>Schramm, op. cit., p. xiii.

<sup>2</sup>J. Edward Gerald, The Social Responsibility of the Press, p. 150.

<sup>3</sup>This primary provision in codes is important for three reasons: first, it revealed the social responsibility of the press to the people and society and implied that commercial and political interests would not hamper the

That the codes ask for judgement is certainly better than no standard at all. However, these codes are completely unenforceable and vague. Moreover, as Margaret Mead points out, the canons for journalists are basically positive, while those industries more regulated by the government, such as radio and television, have negative codes ("Don't do this, or this). She asserts the negative controls are more "congenial" and enforceable, and give a better idea to the journalist or broadcaster how he should operate.<sup>1</sup>

Positive codes, such as the American Society of Newspaper Editors code, are couched in libertarian terms holding idealistic faith in the rationality of man. The negative codes contain many specific references to abuses and allow some degree of enforcement. Penalties within the radio and television codes include: publicizing of offensive practices within the industry; additional enforcement by network acceptance offices; and the constant threat of FCC regulation. This amount of self-regulation in the broadcasting industries fills the vacuum created by

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the responsibility of the press; second, it placed the final decision-making powers within the editor, not the reporter; finally, by placing responsibility to the public, it asserted independence from the commercial interests, the publisher, running the newspaper. It was during this period that business gained control over newspapers because of their control over the new technology. (For more discussion of relationships between editors and publishers, see 10th section)

<sup>4</sup>Flint, op. cit., p. 98.

<sup>1</sup>Margaret Mead, "Some Cultural Approaches to Communications Problems," in Wilbur Schramm, ed., Mass Communications, p. 343.

the absence of sufficient government regulation.<sup>1</sup>

Newspaper codes grew out of the libertarian era, and the codes reflected the search for professional status. The negative movie and broadcasting codes arose out of fear of government dominance and they attempt to set forth principles of self-regulation.<sup>2</sup> No codes ensure perfection.

They will tell the communicator how to avoid some of the things he should avoid, but not how to put in some of the things he should put in: truthfulness, insight, material to serve the diversity of needs and interests in his audiences. In other words, what the codes do, we can respect, but we cannot equate what the codes do with the responsibility of the mass media.<sup>3</sup>

### Public Responsibility

To the statement made above, that it is to the benefit of the media that it serve the public well, might be added that it is to the benefit of the public that it be served well. The relationship of the mass media to the people is one of dual responsibilities: communicators must

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<sup>1</sup>This does not call for government regulation. Self-regulation is desirable at all times to government interference. Self-regulation is also the best defense against any other form of control. The point is, there must be some form of control and the journalism industry, through the codes as its main form of control, is unable to maintain control and self-regulation.

<sup>2</sup>Schramm, Responsibility, pp. 336-338.

<sup>3</sup>Ibid., p. 342.

disseminate information vital to the smooth functioning of society. According to Meiklejohn's theory, freedom of speech carries with this freedom media's responsibility to the public. But the public also has responsibilities attached to its freedom to read and listen. These are the obligations to check constantly on the performance of the media, to criticize, to complain, to construct. The government is restrained from exercising this function in any meaningful way, the media is often unaware or uncaring of its own problems. Thus the public has the duty and opportunity to exercise creative and constructive functions to improve the media.

"The listening, viewing, reading public underestimates its power."<sup>1</sup> The Hutchins Commission arrived at the same conclusion in 1947, but for the most part its recommendations have been ignored. The public must understand that an electronic communications revolution has occurred and the media have <sup>both</sup> succeeded and failed in the correct use of their new power. The recommendations were:

1. We recommend that nonprofit institutions help supply the variety, quantity, and quality of press service required by the American people." (The Commission assumes that if the variety and quality increase, public tastes will rise).

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<sup>1</sup>Ibid., p. 354.

2. "We recommend the creation of academic-professional centers of advanced study, research, and publication in the field of communications." Public research could perhaps explain how the communications revolution has contributed to the trend of desiring more information and subsequent invasions of privacy.

3. "We recommend the establishment of a new and independent agency to appraise and report annually upon the performance of the press."<sup>1</sup> Such an agency would not be a coalition of pressure groups, but a representative body of the American public, independent of government and media, that would attempt to define and solve many of the problems confronting the media and the public, including invasion of privacy. Such an independent group can possibly arrive at conclusions both intelligently and objectively.

Even the average citizen, the person who does not have access to educational television or an independent agency, can show responsibility: discrimination in the types of news he reads and programs he watches, alertness and interest in the workings of media; constructive criticism.<sup>2</sup> Norman Isaacs, former editor of the Louisville Courier-Journal and past president of the American Association of Newspaper Editors suggests suing the media as a way to bring the media to realize its faults.<sup>3</sup>

<sup>1</sup>Hutchins Commission in Gross, op. cit., pp. 27-32.

<sup>2</sup>Schramm, Responsibility, pp. 652-659.

<sup>3</sup>Isaacs, op. cit.



Newspapers have in the past organized agencies for the promotion of accuracy which would encourage and review complaints from the public.<sup>1</sup> When editor of the Courier, Isaacs hired someone to receive and work out complaints from his readers.<sup>2</sup> There are times when, though willing to improve itself, the media is simply blind to its problems. By initiating agencies such as the ones listed above, the different industries can help stimulate civil responsibility and enable the public to improve the media.

A Look to the Future

This conference paper is directed to the present and past problems of the media, and dedicated to the future. As far as the communications industries are concerned, the problem of invasion of privacy is largely solved. Certainly the print media, with a long history of legal freedom and social responsibility, has met the problem more successfully than the industries of infant technology: television and radio. This Section, discussing why the newer forms of media are more susceptible to invasions of privacy and offering guides and warnings to the future, will show, however, that problems of invasion of privacy are far from being solved if technology continues to increase and our values remain the same.

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<sup>1</sup>Flint, op. cit., p. 32.

<sup>2</sup>Isaacs, op. cit.

## Technological Revolutions

The ultimate significance of the mass communications system is not political or economic, but social. New forms of media and advances in existing media alter both the world and man's perception of his world.<sup>1</sup> Due to advanced and faster forms of news gathering, processing and distribution, more pure information reaches more people than ever before. This inundation of information, far from quenching the thirst of the public, stimulates a demand for even more information, not only of the socially relevant, the tasteful, and the newsworthy, but also of the trivial and the morally outrageous.<sup>2</sup> Technological advances—three-dimensional television, communications satellites, home videotape recorders, cable television, and the ability to "tune in" to almost anywhere in the world—all make invasions of privacy a much greater threat in the future than today.<sup>3</sup>

Holding fame now means being known by millions of people thanks to new technology and "as the number of those addressed increases, the subject and style of communications alter."<sup>4</sup> To reach mass-mass audiences on a national, or even

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<sup>1</sup>Ben H. Bagdikian, The Information Machines, p. xii.

<sup>2</sup>Ibid., pp. xiii-xv.

<sup>3</sup>Eugene N. Aleinikoff, "Privacy in Broadcasting" in Clark, op. cit., p. 211.

<sup>4</sup>Gilbert Seldes, The New Mass Media, p. 14

international level will require a partial lowering of standards to make the business of communications profitable. During the period of yellow journalism the press was overwhelmed by extraordinary increments in the amount of information it received. And like this earlier period of increased technology, as future technology increases the amount of input information, the industries will "monitor" the information as carefully as possible, but still choosing those most exciting and juiciest bit of knowledge. Technology influences the type of material distributed, the way it is written or broadcasted, and the content of the news.<sup>1</sup>

In informing the public, the purpose of communicators will have shifted from discovering the size of the audience for a given article to designing an article for the largest possible audience.<sup>2</sup> Choosing a "lowest-common-denominator" of programming and the lack of control of new technology are two criticisms directed at television; television as an immature technology is a much more vulnerable media to such forms of abuse as above, and to invasions of privacy.<sup>3</sup> The newer media are also susceptible to abuses of power because of strong competition between networks and stations. In theory the FCC regulates the broadcasting industries

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<sup>1</sup>Bagdikian, op. cit., pp. 266-279.

<sup>2</sup>Seldes, op. cit., p. 18.

<sup>3</sup>Salant, op. cit.

because there is only a finite number of frequencies to be used, while newspapers, again in theory, have no such parallel. In practice, the number of radio stations and UHF channels per city have risen over the years, while the number of daily newspapers per city has declined.<sup>1</sup> Periods of high competition and new, uncontrolled <sup>technology</sup> ~~lead~~ <sup>lead</sup> to problems such as invasion of privacy.

Technological improvements in news gathering and distribution will enable the print media to compete with the already electronically advanced broadcasting industries. The differences between the two types of media will, and has already started, to disappear.<sup>2</sup> This can lead to a revival of print competition, not between dailies of one city, but between national conglomerates. The problems now inherent in television will possibly be arising in print again.

Technology and Values

"We have to live with invasions of privacy in our technological society or die"<sup>3</sup> expresses the belief that existing values cannot survive the electronic revolution. American ethics, morals and laws reflect an old society based upon an obsolete technology and a different concept of freedom than the society, technology and freedom we have now.

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<sup>1</sup>Schramm, Mass Communications, pp. 195-197.

<sup>2</sup>Frank Stanton, Testimony.

<sup>3</sup>Aleinikoff, Interview.

Values are now chosen haphazardly, without reference to industrial codes and situation ethics.<sup>1</sup> Mass media, as vehicles for social revolution and evolution both reflect and can partially initiate changes in values. These are values of the media's own choosing, and the wrong values bring disastrous results. Invasion of privacy, reinforced in the mass media as a positive value as a result of continual invasions of privacy, can have this effect:

The man who is compelled live every minute of his life among others and whose every need, thought, desire fancy or gratification is subject to public scrutiny, has been deprived of his individuality and human dignity. Such an individual merges with the mass. His opinions, being public, tend never to be different; his aspirations, being known, tend always to be conventionally accepted ones; his feeling, being openly exhibited, tend to lose their quality of unique personal warmth and to become the feelings of every man. Such a being, although sentient, is fungible; he is not an individual.<sup>2</sup>

In a communications systems in which the value of the individual is diminished in importance, in which the quest for information overrides most other concerns, in which technology leads to boredom and passivity and an unnatural desire for the unique and novel, in which abuses of technology lead to a lessening of democracy, it is no wonder that privacy as value has also lessened. How hardened to invasions of privacy we might already be, that even now we cannot recognize obvious trespassings of the right to privacy. We create values and construct

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<sup>1</sup>Gerald, op. cit. p. 146.

<sup>2</sup>Edward J. Bloustein, "Privacy as an Aspect of Human

technology, and through ignorance of technology's power, allow systems to be altered beyond control.

If the new communications are designed to serve people, ..it will require more than the new machines. Electrons have no morals. Their use in transmitting human ideas depends on those who design the machines and control their use.... The information machines will do what they are instructed by their human masters. But from then on the roles will be reversed and the machines in their impersonal efficiency will thenceforth become the teachers of a generation of human beings.<sup>1</sup>

Undoubtably technology will lead to more efficient media, but communicators must understand what their chief concern is: not profit or mechanical efficiency, but the support of <sup>values of</sup> freedom.

### Professionalization

To insure a high degree of responsibility in communication industries, new values are needed: not the idealistic and superficial values of codes, and more than random situation ethics. An entire system of technologically-influenced values must be adopted completely by members of the mass media; this will expedite the slow but necessary process of professionalization.

Professionalism already exists among many editors, chief broadcasters and some journalists. They usually have attended a school of communications or journalism, and they have pride in their work. Professionalization, however, is a continuing process which touches all those involved in the mass media, teaches responsibility and ethics,

<sup>1</sup> Bagdikian, op. cit., p. 303.

and can heighten the ideals, not idealism, of social responsibility.

Communications media are now in a position to "renovate and perpetuate a system of personal values which, taken in the aggregate, make free society possible."<sup>1</sup> Because the media can change values, its standards of conduct must correspond to a set of commonly held values of the industry. When there is low congruence between moral and institutional norms, society does not work and the media cannot function properly. To act as a carrier for new values the media must be institutionalized, for once the media conform to these new values, problems introduced by technology, such as invasion of privacy, can be solved.<sup>2</sup>

Professionalization means professional schools, forms of intra-industry discipline, mutual self-criticism, adequate training and personnel, codes which understand technology and values and define concepts such as "newsworthy," and finally the internalization by each worker of a set of moral and rational norms.<sup>3</sup>

Professional spirit is a powerful defense against the acceptance of imbalanced government, against technological captivity, against coercion and disruption of political communication, because it attracts and trains persons able to cope with tasks of such magnitude. Pride in political

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<sup>1</sup>Gerald, op. cit., p. 101

<sup>2</sup>Ibid., pp 146-148.

<sup>3</sup>Ibid., pp. 148-150, 171.

liberty, internalized in the consciences of journalists and pre-eminent among the common values of the community, can release journalism from the thralldom of non-involvement and fear to work for the repair and maintenance of the self-governing community.<sup>1</sup>

Professionalization also means the combined professionalization of both the communicators and the businessmen involved in the industries. To a considerable degree it is the publisher, not the editor, who determines the editorial view, the content of news, the amount of advertising in the newspaper. Cooperation between businessman and communicator is necessary to acheive a balance of responsibility. Therefore professional codes should apply to both groups, for such codes would realize realistic facts of life.<sup>2</sup>

Business also have a higher capability to deal with new technology in a more mature manner than do broadcasters and journalists. More cooperation with the businessmen does not mean dependence for the communicators; on the contrary, both the businessmen and the communicators have responsibility to society for their media. Recognition of each other would lead to easier professionalization, a more realistic outlook, and greater social responsibility.<sup>3</sup>

If the publishers and corporation magnates who run newspapers and stations can develop personal and industrial

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<sup>1</sup>Ibid., p. 199.

<sup>2</sup>Ibid., p. 176.

<sup>3</sup>Ibid., p. 178.



ethics, and reflect these ethics within their own media, the communications industries can serve as models for other industries based on technology and lacking in values. The problem of invasion of privacy, now largely lacking in the newspaper industry, has been solved because of a growing professionalization of the writer, the editor, and the publisher. Both <sup>the</sup> publisher and editor now realize that in order to make a profit, it is not necessary to give the public what it wants. There is room for responsibility and ethics within the profit motive.

Professionalization and Self-Regulation

Professionalization is the only method to guarantee no extensive government regulation of the communications media. Abuses of the media's freedom provoke governmental interference. Thus a professional attitude among communicators would realize the dangers involved in misuse of their powers.<sup>1</sup> This "enlightened self-interest" among communicators can lead to higher social responsibility and ethical judgement, the adoption of worthwhile codes, and an end to specific problems such as inaccuracy, distortion and invasion of privacy.<sup>2</sup>

Professionalization cannot be superficial. It is the only hope for the future if self-regulation is to be

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<sup>1</sup>Hartford Thomas, "Report on the Mass Media, the State and Society, in Symposium on Human Rights and Mass Communications, p. 40.

<sup>2</sup>Gerald, op. cit., p. 104.



preserved. The new forms of technology <sup>television and radio,</sup> had to be controlled by the FCC for economic and technological reasons, and this was considered no real abridgement of the First Amendment.

The only way to avoid outside regulation of new technology is to increase professionalization and for communicators to accept responsibility now for the potential effects of their craft. Self-regulation of the communications media, in no small part, is one way to preserve democracy.

VI. APPENDIX

Warren and Brandies

Boston in 1890 was the perfect hunting-ground for snooping journalists and photographers. The home and parties of Mrs. Samuel D. Warren were no exception. Having experienced embarrassment from these invasions of privacy, Samuel Warren asked his new law partner, Louis D. Brandies, to collaborate on a legal article entitled "The Right to Privacy," which laid the foundation for practically every privacy suit since then.

Time v. Hill

In September, 1952, three escaped convicts held the Hill family captive in their home near Philadelphia. The incident received wide press coverage. The next year Joseph Hayes wrote a semi-fictional novel The Desperate Hours, which was later made into a movie and play. When "The Desperate Hours" opened in Philadelphia, Life Magazine ran an article on the play in which they used the show's actors to dramatize events which occurred in the play, but not in true life. The Hills brought suit against the publication, claiming that the article invaded their privacy. The Appellate Division ruled in favor of the Hills, holding that the scope of the article was outside of the "news-worthy" privilege because the Hill incident no longer was

remembered or cared about by the public, and that the identification of the real incident with the play was basically inaccurate. However on appeal to the Supreme Court the decision was reversed on the grounds "that the plaintiff must establish that the defendant published the report knowing it was false or in reckless disregard of the truth."<sup>1</sup>

Meiklejohn's Theory of Freedom

The late Alexander Meiklejohn, former president of Amherst College, was a proponent of definitional balancing. Rather than weighing interests of the individual against those of society, he attempted to differentiate speech as public or private. Once a certain form of expression, and this includes creative and other non-political forms, has achieved "governing importance," or "public interest" as Justice Brennan calls it, that type of speech is absolutely protected by the First Amendment.<sup>2</sup> "Those activities of thought and communication by which we 'govern'" must be protected from interference. Although Meiklejohn's thinking pervaded the Hill decision, the Supreme Court has rarely decided cases beyond insufficient ad-hoc balancing.<sup>3</sup>

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<sup>1</sup>Time, Inc. v. Hill, 385 U.S. 374 (1967), no page.

<sup>2</sup>Alexander Meiklejohn, "The First Amendment is an Absolute," The Supreme Court Review (1961), p. 255.

<sup>3</sup>"Privacy, Defamation, and the First Amendment," op. cit., pp. 939-941.

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II. SUMMARY OF PRINCIPAL FINDINGS

1. The invasion of privacy by the communications media in some ways is part of an overall trend in American society which is marked by a desire for more information and a subsequent diminished importance of individualism.

(Points #2 through #7 are in their original form)

### III. POLICY RECOMMENDATIONS

1. At the present time, no form of government regulation of the mass media, concerning the privacy issue, is seen as advisable.

Two forms of government intervention in the privacy issue are available: legislative efforts to regulate or restrict invasion of privacy, and court decisions which define the parameters of free speech and right to privacy. The former method of regulation is unacceptable as an abridgement of the first amendment. It should be noted that not all government legislation must be restrictive or regulatory; the federal government could make an attractive facilitatory or participatory partner with the mass media, working to eliminate invasions of privacy in the media. The latter method, court decisions, can be regulatory only in setting the limits in which invasions of privacy may occur and still be protected as free speech under the first amendment. It should be the Court's function to present privacy and freedom of the press as complementary, not conflicting rights. Therefore a decidedly different set of values is needed in future Court decisions. Government regulation which goes beyond this limits the media's own responsibility to regulate itself. Therefore, no regulation outside the industry should occur less new technology and abuse of this technology renders self-regulation impossible. (pp. 11-13, 30, 34).

2. The communications industries must be constantly aware of their responsibilities to society and of the potential dangers of new technology, increased competition, and the invasion of privacy on American values.

To achieve a higher degree of responsibility, industry codes must be rewritten so that they define concepts of privacy and newsworthiness, provide for intra-industry enforcement of violations of the codes, and recognize the interdependency of businessmen and communicators. Communications media must accept their responsibility of disseminating values into American society. Thus, the media should embark on a program to educate the public on the correctness of certain values and the potential destructiveness of others. One way to do this would be for the

industries to adhere to their own principles of protection of privacy and protection of the individual and individualism. Professionalization of the mass media can rectify many existing problems. (pp. 13-23, 30-34).

(recommendations #3 and #4 are the same as originally stated).

...He labels four types of invasions of privacy in which the media should have no privilege: invasions of privacy committed with malice, electronic invasions (bugging, wire-trapping), invasions of private persons in private places, and invasions committed for commercial purposes (such as displaying faces or names on billboards or in television commercials without receiving consent from the individuals involved).<sup>1</sup>

There are additional objections to legal solutions: they are bound to be conflicting as long as interests, not principles, are balanced, and this creates imperfect guidelines for the media. Thus the communications media still do not know what is meant by "newsworthiness," when the courts use the term. Also, conflicting rules fail in dispensing uniform justice to the media and the people.<sup>1</sup> Finally, much of the Court's efforts have been to erect a set of professional ethics and standards for journalists and broadcasters. This, like all external regulations of this nature, constitutes a repugnant encroachment of freedom of the press, and must come from within the media themselves.

Court decisions, for all their deficiencies, do not aim at being restrictive or beneficent; they try to be fair. There exists one alternative method to protect the individual, or the press, and that is through legislative efforts. Unfortunately, such legislative solutions would infringe upon the First Amendment's guarantee of freedom of the press. Also, Congressional solutions are not interpretations of the law, but rather new laws, which attempt to legislate morality, a task too huge for the government. Legislative solutions contain all the deficiencies that Court decisions contain, with one added problem: they cannot be fair, since the aura of impartiality which surrounds the Court does not extend to Congress. Finally, legislative solutions to prevent the invasion of privacy smack of prior restraint, a form of censorship denied by the First Amendment.

Situation Ethics (for footnotes, see original)

Journalists and broadcasters do not abide by a special set of moral rules. The principles they hold—truth, responsibility, decency—are held by other professional men, and indeed by most intelligent people. However, their particular vocations require them to utilize these ordinary virtues in a different manner than in other occupations. Thus, while a doctor would not reveal the cause of illness, or the symptoms of a patient, a newspaper would probably reveal the illness to the public, if it were of sufficient newsworthiness.

Situation ethics imply that there exists a constant conflict between two sets of values (~~in this case between two sets of values~~ (in this case between the individual and the public) which precludes the use of any one absolute value to solve the dilemma. Each case must be judged separately on its own terms and only the reporter, broadcaster, or editor should be the judge. It might seem that were the media to rely solely upon situation ethics and other moral tools, the result would be the same as the courts judging each case on its own special merits, the situation which was criticized above. Upon careful analysis, the analogy between situation ethics and ad-hoc balancing does not hold true.

First of all, though court decisions define what speech is permitted and what speech is not, even the most

perfect court ruling would not explain how to do something. But situation ethics, applied correctly by the mass media, explain both what to do and what not to do; how to do it and how not to do it; why it should be done and why it should not be done. Situation ethics are not merely negative, as are court decisions, ~~but~~ since they are value judgements, there can be both positive and negative. Also, situation ethics never deal with the legality of a situation: the proper domain of the courts is to determine the general concept of what is legal and what is illegal. Rather, the ethics of industries distinguish between the moral correctness and the moral incorrectness of an action. There is <sup>final selection, no</sup> balancing of right or wrong, but rather a balancing of particular advantages against the particular disadvantages. Thus the use of situation ethics can lead to responsible decision-making on the part of the communicators and to heightened media responsibility and improved self-regulation.

the absence of sufficient government regulation. (for foot-  
notes, see original)

Newspaper codes grew out of the libertarian era,  
and the codes reflected the search for professional status.  
The negative movie and broadcasting codes arose out of fear  
of government dominance and they attempted to set forth  
principles of self-regulation. No codes ensure perfection.

They will tell the communicator how to avoid  
some of the things he should avoid, but not  
how to put in some of the things he should  
put in: truthfulness, insight, material to  
serve the diversity of needs and interests  
in his audiences. In other words, what the  
codes do, we can respect, but we cannot equate  
what the codes do with the responsibility of  
the mass media.

Thus codes suffer from one of the same short-  
comings that undermines the effectiveness of court decisions:  
they tell what not to do, not necessarily what to do, and  
never how to do it. Libertarianism is the source for  
this impracticality of the codes; to the libertarian era  
can be traced too high levels of idealism and faith in  
both the media and the people to do and realize what is right.  
Leaving to man's rationality and intelligence the problem  
of how to do what is right, the codes show no constructiveness  
at all.

Codes as they are now written are insufficient to  
prevent violations of privacy and to maintain a free and  
open press. The problem is that violations of individual



privacy can be expected and even condoned in certain situations (this is where situation ethics prove indispensable). Not all potential invasions of privacy are to be rejected; each must be considered on its own terms. Codes as they are now do not realize this need to think each situation out. They categorically denounce all invasions of privacy, a negative situation which can lead to less, not more, effective mass media.

...Thus the public has the duty and opportunity to exercise creative and constructive functions to improve the media, through consumer advocate groups, through individual and organized criticism, and through independent "watchdog" organizations.

...Norman Issacs, former editor of the Louisville Courier-Journal and past president of the American Association of Newspaper Editors suggests suing the media for invasions of privacy as a way to bring the media to realize its faults. He noted that even though the media could win most cases in court, they are not looking for this type of publicity, and that the result usually is an out-of-court settlement with the media realizing that even though their practices are perfectly legal, they may be morally improper.

...Such an agency would not be a coalition of pressure groups, but a representative body of the American public, independent of government and media, that would attempt to define and solve many of the problems confronting the media and the public, including the invasion of privacy. The organization would probably be financed by the government and media and could act as a "watchdog" on the media's activities. Not operating as a clearinghouse for complaints, the group would be an investigative and recommending body.

...In informing the public, the purpose of communicators will have shifted from discovering the size of the audience for a given article to designing an article for the largest possible audience. Choosing a "lowest-common-denominator" of programming and the lack of control of new technology are two criticisms directed at television; television as an immature technology is a much more vulnerable media to such forms of abuse as above, and to invasions of privacy. There are a number of reasons why television, and all new forms of media, are more vulnerable to problems like invasion of privacy. First of all, infant technologies in the hands of those who do not understand their potential for destruction and construction (and it is mostly social scientists who now understand the effects of television) usually implant a changed life-style and changed values in society unconsciously; in this case the value of individual privacy has diminished and been partly replaced by the need to know all. Because competition among networks is keen, "lowest-common-denominator" programming is less of an economic risk. Since television is relatively new, there has been little professionalization of the industry, which could prevent invasions of privacy. And finally, television operates from negative premises: to be free from government interference and to make a profit.

The newspaper industry encountered each of the above problems during its era of technological improvement, the period of yellow journalism, and that that medium has largely solved the problem of invasion of privacy might be attributed to its now mature technology controlled by those who understand its effects, a lack of intense competition between newspapers so that something can be had for everyone without fear of economic losses, a high degree of professionalization, and an operation from positive premise: that is, for the public good. It is possible that television will overcome its problems someday, too, by following the same path of social responsibility that saved the newspapers. Television cannot improve itself, however, until it makes its basic goal public service instead of entertainment. There is room for both, as newspapers have shown, but only public service can lead to social responsibility and the solution of ~~its~~ <sup>these</sup> problems.

...To act as a carrier for new values the media must be institutionalized, for once the media conform to these new values, problems introduced by technology, such as invasion of privacy, can be solved. The media must understand that the values they choose to present and uphold are communicated to the public just as information is transmitted, but far more powerfully. The values that the media selects have enormous influence upon the values selected by society at large. This "multiplier effect" can thus have disastrous results when a value such as invasion of privacy is reinforced through constant invasion of privacy in a news article or television program. It can also spread high standards of morality; if values of individual privacy are respected in the preparation of newspaper articles and television programs, these values can, too, be ingrained in society.

No one can tell how much the media is at fault for the invasions of privacy committed by individuals, businesses and even the government. Yet the media can rectify this situation, by educating the public as to the correctness of certain values and the destructiveness of others. This education does not mean <sup>that the media should explicitly</sup> say to the public "Invasion of privacy is bad," but rather <sup>that they must</sup> adhere to institutional ethics which respect the privacy of individuals.

...The new forms of technology, television and radio, had to be controlled by the FCC for economic and technological reasons, and this was considered no real abridgement of the First Amendment. It might be noted here that although the Hutchins Commission took a firm stand against government regulation and restriction, they encouraged ~~the~~ government participation in a facilitatory manner. While regulation and restriction are incompatible with the ideals of a free press, the government can facilitate the efforts of the mass media to achieve professionalization without endangering freedom of the press. Facilitation would mean grants to communications schools and research, scholarships, and facilitatory legislation, such as for cable television and public television. The carrot is more useful than the stick in order to provide for responsibility and self-regulation.

The only way to avoid outside regulation of new technology is to increase professionalization and for communicators to accept responsibility now for the potential effects of their craft. Self-regulation of the communications media, in no small part, is one way to preserve democracy.