Symposium: The Right to Privacy
One Hundred Years Later

Rereading Warren and Brandeis:
Privacy, Property, and Appropriation

Comments:
Privacy, Personality, and Social Norms
Privacy Rights and Remedies

Reflections on the Value of Truth

Comments:
All Truths Are Equal, but Are Some Truths More Equal than Others?
In Defense of Truth
The Power of Private Facts

The Right to Privacy's Place in the Intellectual History of Tort Law

Comments:
Rights-Talk and Torts-Talk: A Commentary on the Road Not Taken in the Intellectual History of Tort Law
Musings on a Famous Law Review Article: The Shadow of Substance

On the Utility of Constitutional Rights to Privacy and Data Protection

Comments:
Some Queries about Privacy and Constitutional Rights
Privacy and Legal Rights
Explaining and Justifying a Limited Tort of False Light Invasion of Privacy

Epilogue: When Privacy Rights Encounter First Amendment Freedoms

Robert C. Post
Randall P. Bezanson
Jonathan L. Entin
Frederick Schauer
Susan M. Gilles
Erwin Chemerinsky
Anita L. Allen
David W. Leebron
Paul A. LeBel
Diane Leenheer Zimmerman
David H. Flaherty
Michael Grossberg
Ronald A. Cass
Gary T. Schwartz
Terence J. Clark
CASE WESTERN RESERVE UNIVERSITY
LAW SCHOOL FACULTY

Administrative Officers
PETER M. GERHART, B.A., J.D., Dean
DANIEL T. CLANCY, B.S., LL.B., Vice Dean
MELVYN R. DURCHSLAG, B.S., J.D., Associate Dean of Academic Affairs
JOANNE U. JACKSON, B.A., J.D., Associate Dean for Students and Post J.D. Programs
BARBARA F. ANDELMAN, B.A., J.D., Assistant Dean for Admissions and Financial Aid

Professors Emeriti
LINDSEY COWEN, B.A., J.D., LL.M., Dean Emeritus
SIMON L. GOREN, Dip. Law, M.L.S.
SIDNEY B. JACOBY, J.D., LL.B., John C. Hutchins Professor Emeritus
HUGH A. ROSS, B.S., LL.B., LL.M., S.J.D.
OLIVER C. SCHROEDER, JR., A.B., J.D., Albert J. Weatherhead III and
Richard W. Weatherhead Professor Emeritus of Law and Criminal Justice
LOUIS A. TOEPFER, A.B., LL.B., Dean Emeritus, President Emeritus of the University

Professors of Law
ARTHUR D. AUSTIN II, B.S., LL.B.
Edgar A. Hahn Professor of Jurisprudence
LAURA BROWN CHISOLM, B.A., J.D.
RONALD J. COFFEY, A.B., LL.B., LL.M.
GEORGE W. DENT, B.A., J.D., LL.M.
MELVYN R. DURCHSLAG, B.S., J.D.
LEON GABINET, Ph.B., J.D.
David L. Brennan Professor of Law
PETER M. GERHART, B.A., J.D.
PAUL C. GIANNELLI, B.A., M.S.F.S., J.D., LL.M.
Albert J. Weatherhead III and
Richard W. Weatherhead Professor of Law and Criminal Justice
ERIK M. JENSEN, S.B., M.A., J.D.
PETER D. JUNGER, A.B., LL.B.
LEWIS R. KATZ, A.B., J.D.
John C. Hutchins Professor of Law

HENRY T. KING, JR., B.A., LL.B.
U.S. Director, Canada-U.S. Law Institute
GERALD KORNGOLD, B.A., J.D.
JULIET P. KOSTRITSKY, A.B., J.D.
ROBERT P. LAWRY, B.A., J.D., Dip. Law
WILBUR C. LEATHERBERRY, A.B., J.D.
WILLIAM P. MARSHALL, B.A., J.D.
Galen J. Roush Professor of Law
JAMES W. McELHANEY, A.B., LL.B.
Joseph C. Hostetler Professor of Trial Practice and Advocacy
EDWARD A. MEARNS, JR., B.S., LL.B.
MAXWELL J. MEHLMAN, B.A., J.D.
KAREN NELSON MOORE, A.B., J.D.
SPENCER NETH, A.B., J.D., LL.M.
SIDNEY I. PICKER, JR., A.B., LL.B., LL.M.
MORRIS G. SHANKER, B.S.E.E., M.B.A., J.D.
John Homer Kapp Professor of Law
CALVIN WILLIAM SHARPE, B.A., J.D.

Associate Professors of Law
KATHLEEN CARRICK, B.A., M.L.S., J.D., Librarian
REBECCA SUSAN DRESSER, B.A., M.S., J.D.
JONATHAN L. ENTING, A.B., J.D.
MICHAEL C. GROSSBERG, B.A., Ph.D.
Associate Professor of History and Law
KEVIN C. McMUNIGAL, B.A., J.D.
RICHARD S. MYERS, B.A., J.D.

Assistant Professors of Law
PETER A. JOY, A.B., J.D.
JENNIFER M. RUSSELL, B.A., J.D.
Visiting Assistant Professor of Law
ROBERT N. STRASSFELD, B.A., M.A., J.D.
**Case Western Reserve Law Review**

**Volume 41**  
**1991**  
**Number 3**

**Editor in Chief**  
Neil J. Kinkopf

**Managing Editor**  
Todd M. Smith

**Business Manager**  
Michele H. Brown

**Articles Editors**  
Marsha L. Montgomery  
Paula B. Christ  
Derrick D. Crago  
David J. Cummings  
James A. DeRoche  
David C. Dvorak  
Mary F. Jordan  
H. Kevin McNeelege  
Jonathan L. Stark

**Contributing Editors**  
Dennis L. Murphy  
Daniel Anker  
Irah H. Donner

**Notes Editors**  
Christopher P. Thorman  
David R. Cohen  
Van C. Ernest  
Jacklyn J. Ford  
Elizabeth L. Haber  
Lauren L. McFarlane  
Dimitri J. Nionakis  
Alise R. Panitch  
Joseph D. Russo

**Associates**  
George E. Hamm, Jr.  
John S. Harris  
Laurie F. Humphrey  
Candace M. Jones  
Christopher Paul Keller  
Michael W. Kelly  
Michael W. Kier  
James C. López  
Katharine E. Mason  
L. John Matthews  
Jane E. Penttila  
Michelle M. Pepin  
Mary B. Percifull  
Karen D. Pfister  
Michael C. Protos  
Richard J. Rudolph  
Eileen M. Scanlon  
Jeffrey C. Schwarz  
H. William Smith III  
Mary E. Sweeney  
Timothy M. Tesluk  
Victoria L. Wendling  
Donald P. Wyne  
Kirsten M. Zipko

**Faculty Advisor**  
Lewis R. Katz  
John C. Hutchins Professor of Law

**Manuscript Secretary**  
Debbie Korenchan
Contents

Symposium: The Right to Privacy
One Hundred Years Later

Introduction .......................................................... 643

Rereading Warren and Brandeis: Privacy, Property, and Appropriation
Robert C. Post ...................................................... 647

Comments:
Privacy, Personality, and Social Norms
Randall P. Bezanson .............................................. 681

Privacy Rights and Remedies
Jonathan L. Entin .................................................. 689

Reflections on the Value of Truth
Frederick Schauer .................................................. 699

Comments:
All Truths Are Equal, but Are Some Truths
More Equal than Others?
Susan M. Gilles ..................................................... 725

In Defense of Truth
Erwin Chemerinsky ................................................. 745

The Power of Private Facts
Anita L. Allen ...................................................... 757

The Right to Privacy's Place in the Intellectual
History of Tort Law
David W. Leebron .................................................. 769

Comments:
Rights-Talk and Torts-Talk: A Commentary on the
Road Not Taken in the Intellectual History of
Tort Law
Paul A. LeBel ....................................................... 811
Musings on a Famous Law Review Article:
The Shadow of Substance
Diane Leenheer Zimmerman .................. 823
On the Utility of Constitutional Rights to Privacy and Data Protection
David H. Flaherty ............................. 831
Comments:
Some Queries about Privacy and Constitutional Rights
Michael Grossberg ............................ 857
Privacy and Legal Rights
Ronald A. Cass ............................... 867
Explaining and Justifying A Limited Tort of False Light Invasion of Privacy
Gary T. Schwartz .............................. 885
Epilogue: When Privacy Rights Encounter First Amendment Freedoms
Terence J. Clark ............................... 921
NOTES
The Exclusion of Illegal Aliens from the Reapportionment Base: A Question of Representation 969
CASE COMMENTS
Goodwin v. Turner: Cons and Pro-Creating 999
Garza v. County of Los Angeles: The Dilemma over Using Elector Population as Opposed to Total Population in Legislative Apportionment 1013
United States v. Sahhar: The Right to a Jury Determination of Involuntary Civil Commitment 1029
The CASE WESTERN RESERVE LAW REVIEW (ISSN 0008-7262), formerly the Western Reserve Law Review, is published quarterly by the students of the Case Western Reserve School of Law. Second class postage paid at Cleveland, Ohio, and additional mailing offices.

Editorial and business offices are located at Case Western Reserve University, 11075 East Blvd., Cleveland, Ohio 44106, telephone (216) 368-3312. The submission of unsolicited manuscripts is invited.

Subscriptions are entered for the entire volume for only $20.00 per year ($24.00 for foreign subscriptions). Subscriptions are automatically renewable and any correspondence regarding this should be sent to the Business Manager. Students may subscribe at a discount price of $16.00 per year.

Single issues of the current volume are available for $7.00 each. Back issues from earlier volumes are available from the Case Western Reserve Law Review for $5.00 each. Special and Symposium issues are specially priced.


Except as otherwise provided, the Case Western Reserve Law Review grants permission for each article in this volume to be copied for use by nonprofit educational institutions, provided that 1) copies are distributed at or below cost, 2) the author and the Review are identified, and 3) proper notice of copyright is affixed to each copy.

This issue went to press in September 1991.

* Cover Design by Susan Abramson and John Donovan