

Privacy: Is there a right to be left alone?

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Abstract: The materials include a general discussion of privacy that raises points and questions to engage students in the subject before they complete the hypothetical case study that follows in a three-part, workbook format. (Purpose) The purpose is to engage students in a critical thinking exercise that requires students to analyze a developing situation from a variety of perspectives. (Method) The case study is divided in three parts so that students must adjust their responses to a changing situation. They are to use a variety of moral values, obligations and principles that the instructor of the class may select and define. (Results) The case study often engages students at an emotional level. Further, students in my classes are asked to do some parts in small groups, some by themselves and some with the class as a whole, which leads to often robust discussions. (Conclusion) The students in the ethics class come from a wide range of majors, and the exercise seems to clearly fulfill the purpose of helping them develop critical thinking skills in the area of moral decision-making, even though the content uses a journalism context. (Recommendation) Instructors may wish to only give students the study one part at a time so they cannot base conclusions to part one or two with the knowledge of future developments. I use moral concepts/rules when considering values and principles, whereas obligations refer to duties to different people involved in the case study.

Privacy

Is there a right to be left alone?

What is privacy?

When Louis Brandeis and Samuel Warren wrote an article in the Harvard Law Review¹ in 1890 they envisioned a place where a person could go and do as he or she pleased. And as long as it didn't harm anyone, nobody else had the right to know about it.

Clearly, the technological ability to peer and peak into the very private corners of people's lives is much greater now than it was more than a century ago. Yet who does not feel the need to escape to a place beyond the glare of the world?

Is that such a bad idea? Is it possible for people to have such a safe haven? Or are there times when society needs to see what is going on in such places?

The news media are in the business of recording history as it happens. In so doing, journalists often catch people at their best – and worst.

A photo of a mother grieving beside her son just killed in a drive-by shooting.

The lurid, sniping details of claims made by a noted couple in their divorce filings.

The intimate embrace of a young couple witnessed on a secluded, though public, beach.

Are these things the public needs to know about? Or are these just things the public often wants to see or read?

It would seem the people involved often want to have such emotional events kept private. So how do journalists know when to back off and when to publish?

The courts hold in privacy cases that a defense for publication is the newsworthiness of the material. And the more prominent a person is the more newsworthy his or her actions tend to be.

But is that right morally? By entering the public arena in some way does a person give up the need, the desire, the right to be left alone sometimes? If you say yes, that would seem to be contrary to what Warren and Brandeis intended.

On the other hand, is the right to privacy so complete for John or Jane Doe that it should shield from public scrutiny all manner of behavior if that behavior is only evidenced in private environs? Even if that behavior is illegal?

These questions, and more, regularly confront journalists.

Still, the news media are generally for-profit businesses. They have to make money to pay employees, bills, owners. So journalists are hired to prepare and present stories that news consumers want, and if they don't, their business may fail. Leading to no paychecks.

Further, the reason for so much attention to what famous and powerful people do is not driven by journalists' meddlesome curiosity into the backyards of people's lives, at least not by that alone. It also seeks to satisfy the curiosity of readers and viewers who want to see what's on the grill.

But what items on the menu are OK for us to report on?

Mr. Eagleton

One area that would seem to be considered private would be a person's medical records. After all, courts generally uphold the privacy of the physician-patient relationship. Further, few things are more intimate, more private than a person's health.

Yet in 1972, that area of privacy was tested when Democratic Party presidential nominee George McGovern named U.S. Sen. Thomas Eagleton of Missouri as his running mate. What McGovern did not know was that Eagleton's medical records showed he had mental health problems, and the Missouri senator eventually revealed that he took an anti-psychotic medication.² Shortly thereafter, Eagleton was dropped from the ticket.

If such an episode were repeated today, what would be the morally appropriate response? Should such records be revealed to the public if a person is running for a powerful position? What if the records belong to someone who works as a delivery person for a local florist? What should your local newspaper do then?

Public people

A different situation raises a quite different set of questions. One writer, Joe McGinniss, planning to write a book on Sarah Palin rented a house in spring 2010 in Wasilla, Alaska, next door to the home of the 2008 Republican vice presidential nominee. She posted her response on Facebook: "Wonder what kind of material he'll gather while overlooking Piper's bedroom, my little garden, and the family's swimming hole?"³

The question may be whether journalists should respect the privacy of public people. Are their homes off-limits? How about their children?

The media has largely respected the privacy of the Obama children, as it did Chelsea Clinton when her father was president from 1993-2001. But not so for Palin's daughter Bristol, whose teenage, out-of-wedlock pregnancy was revealed shortly after the then governor of Alaska was nominated in 2008.

Indeed, Sarah Palin opposes abortion and favors abstinence-only sex education, but she is the politician. What of the daughter, whose situation is not unlike millions of other young women in the last few years in America?⁴ Would it be appropriate to publicize the other pregnant teens one by one? Is it right that the younger Palin received a different treatment?

If newsworthy means something lots of people will read about, then Sarah Palin's life and family would seem to fit the definition. Lots of people like or dislike the former governor and her views, and negative stories on Palin may well draw a large audience from those who dislike her.

But the question is: Does that strip her of her right to privacy? How about members of her family?

What would Brandeis and Warren say?

What do you say?

Little people

Then there are issues that involve non-public figures. Students, teachers, nurses, doctors, factory workers, farmers. The list could go on and on. What about them? It may be a no-brainer to say they deserve their privacy. Still, lots of situations exist in which unflattering images or videos of regular people taken in places one might expect to be considered private find their way onto social media sites or blogs.

Lots of people get to see you acting up or someone depicting you in a very negative way. Is that an invasion of privacy, too?

And some people voice the opinion that their right to free speech includes the right to make slashing comments on anyone and anything – privacy rights be damned.

Then there is the case of members of one Kansas church in recent years who press their anti-gay message in protests at the funerals of soldiers.

On the flip side, many people feel they have the right to control what they say and images of what they do even if they are outside a private place such as their home. The courts generally don't agree with that extension of

the right to privacy, with some exceptions, and it would seem to be beyond what Warren and Brandeis envisioned as well.

Where do you draw the line? For the public and private person. For the public and private place. For one person's free speech and another's right to be left alone.

Notes

1. Samuel D. Warren and Louis D. Brandeis, "The Right to Privacy," *Harvard Law Review*, December 15, 1890, <http://faculty.uml.edu/sgallagher/Brandeisprivacy.htm> (accessed July 5, 2010).
2. *Wikipedia*, "Thomas Eagleton," http://www.ask.com/wiki/Thomas_Eagleton (accessed June 26, 2010).
3. Nick Klopsis, "Sarah Palin's neighbor approached journalist Joe McGinniss to rent out house for tell-all book," *New York Daily News*, May 27, 2010, http://www.nydailynews.com/news/politics/2010/05/28/2010-05-28_sarah_palins_neighbor_sought_out_journalist_joe_mcginniss_to_rent_out_house_for_.html (accessed June 22, 2010).
4. *TeenHelp.com*, "Teen Pregnancy Statistics," <http://www.teenhelp.com/teen-pregnancy/teen-pregnancy-statistics.html> (accessed June 22, 2010).

On the margin: Part 1

[Note: The following is a hypothetical case study.]

Watching politicians make public pronouncements can be so tiresome sometimes, you think. Sometimes not, true enough, but sometimes, wow. Lots of words, big words, lots of backslapping – of their own backs.

It would be so nice for them to just say what they really think. It would be so nice if credit was given to the people who deserved it. It would be so nice if . . . oh, well, you think, maybe this is why people like scandals. It lets them see something real behind the finely presented facade.

Or maybe they just like seeing the high and mighty not quite so high and mighty. Who knows? You just know you've had enough of Sen. Johnson T. Smith's speech about where he stands on whatever it is he's standing on this week – brought to you courtesy of the break room television. So you get up and change channels to the food network. No, you're on a diet. The sports channel. No, your teams didn't do so well last night. Some movie channel. Hey, you haven't seen John Wayne as Genghis Khan for some time – why not.

Then again, why not just go back to your desk and go through some more of the mail you get as editor of the Tribune.

As you step out of the break room, you recognize the region reporter, Ed Jones, standing at your desk. When he sees you he walks hurriedly toward you.

"Can we talk in here," he says, motioning toward the now empty break room.

"OK," you respond, shrugging your shoulders.

When you get inside, Jones shuts the door. "I think I have something that could be big."

"Really," you reply. "Like what?"

"Like I spent the weekend at Bear Lake with a friend," he starts.

"Hold on, Ed, I'm not Dear Abby," you inject.

"No, no, it's not about me. My friend works at the local hospital up there. She works in the kitchen. She had to go in Sunday morning, so I helped a little. I saw someone coming out of the psychiatric wing. He was real shaky, real . . . I don't know, real scared, I guess. A doctor was talking to him and his wife and another couple of guys with them. He handed the guy what looked like a couple of prescriptions."

You inject. "Wait a second. How do you know it was the shaky guy's wife?"

Jones looks around. "Because I know the guy and the woman. It was Sen. Smith and his wife, Janice."

You sit down at a table and motion Jones to do the same.

You look at him and ask, "Are you sure it was them? Have you seen them before?"

"Yes, I talk to them each year at the Overton County Fair," the reporter says. "And the two guys are his aides – bodyguards really."

You stare at the reporter for a few moments.

"This will make the national wires!" Jones says excitedly.

You reply, "Did you get anything on why he was there? Did you hear what they were saying?"

"I couldn't hear. I was on the other side of a thick glass partition – one of those with wire running through the glass. I think it's meant to keep people from breaking out," he says. "But I asked my friend and she said only patients being released use that exit area. And the senator was the shaky one the doctor gave the papers to."

You pause. "You know, I've never heard of him having mental health issues before. Have you?"

"No," Jones says shaking his head. "But it's gotta be a story when a senator is seen all nervous leaving a psychiatric ward with a doctor giving him prescriptions."

"You sure they were prescriptions?"

"I think so. They had that Rx emblem in a top corner," Jones says.

You look at the reporter. "I wish we had more, but go ahead and write up what you have and I'll look at it. Oh, and see if you can confirm what's going on. The hospital people won't tell you anything, but maybe you can get something out of one of the senator's people."

"Maybe," he says. "I used to play basketball with a couple of them when they worked a Channel 7."

You look Jones straight in the eye. "Don't say anything to anyone or show anyone what you write except me. Understand? We don't want somebody else to break this on us."

Jones nods and heads for his desk and computer.

And you think about the questions you have about the story. Like why was the senator there, really? Could this be explained in a way that would make it a private matter? Hardly, you think. He's a U.S. senator.

So what do you do? Tonight's deadline is in three hours. Should you run with it? Put it online, maybe? Or do you need some kind of confirmation first that Smith was, or is, a mental health patient?

Reasoning process guide

(This uses the reasoning model noted in Chapter 2. Use it as directed by your instructor to consider the event and how you should act given what you know at this point.)

Define: Write down the facts related to the case you are considering.

Moral values: Consider values related to the case in this section.

Value 1: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: _____

Why it suggests that: _____

Value 2: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: -----

Why it suggests that: -----

Value 3: ----- **Means:** -----

What does that make you think about: -----

What action it suggests you take: -----

Why it suggests that: -----

Value 4: ----- **Means:** -----

What does that make you think about: -----

What action it suggests you take: -----

Why it suggests that: _____

Moral obligations: Consider obligations related to the case in this section.

Obligation 1: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: _____

Why it suggests that: _____

Obligation 2: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: _____

Why it suggests that: _____

Obligation 3: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: _____

Why it suggests that: _____

Obligation 4: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: _____

Why it suggests that: _____

Moral principle: Consider the principle you are using in the case in this section.

Principle: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: -----

Why it suggests that: -----

Decision: Weigh all the factors you have considered so far to reach your decision. If confronted with dilemmas by competing values or obligations suggesting different actions on your part, use the moral principle you have chosen to determine which values or which obligations are more important to you in the case. In the end, the moral decision should be the one that is suggested by the preponderance of the values, obligations and principle.

Key facts: -----

Key values: -----

Do you have a dilemma between competing values? _____ If so, how do you resolve it? -----

Note how the values suggest you act and why. (Do this part if you don't have a dilemma.) -----

Key obligations: -----

On the margin: Part 2

You're still going back and forth over the Smith situation when Jones comes back from supper. You look up. An hour has passed.

Jones looks around and sees no one else is in the newsroom. "Any decisions on the story?"

"Not fully," you reply. "I mean, he's a U.S. senator, but I just would like to know the details before I go to press. Did you get anything from the friends?"

Jones shakes his head no. "They've gone to the Caribbean until next week. There's no big push for them right now as the senator isn't up for re-election until next year. But what would they tell us anyway. You know these guys. They're all talk, talk, talk while saying just about nothing, at least nothing that would hurt their boss."

You reply, "Yeah, I know. Usually we have to report the bits of fact we have to force them to reveal what is going on. Plus this does seem like a pretty big deal – the mental health of one of the nation's leaders."

Jones responds, "Let me look at the morgue clips and Google this guy to see if there is anything on him. Then I'll write what we have."

You answer, "OK, but don't go on some social media or other and start asking for help. That could get out of hand real fast."

"Right," the reporter answers as he's walking back to his desk.

In the meantime, you start to call the publisher and let her know what is happening. Then you remember she's at a publishers' convention until next week in Tokyo. So you decide to contact an old political consultant you used as a deep background source when you were at the Washington bureau years ago. He tells you he's been out of the loop for some time, but that he doesn't recall anything like that on Smith.

"But you never know," Bob Hingle says. "I'll make a couple of calls and let you know what I find."

You look at the clock. It's almost 10:45 and the deadline is 11 p.m. Maybe Jones won't get it done in time for the morning edition. Just then Jones rises from his desk and heads toward you.

He takes a seat at a chair by your desk and says, "I just emailed it to you as an attachment. There wasn't anything in the clips or online so I just wrote what I know, what I saw at the hospital. I tried to call the senator for a comment but nobody is answering the phones. I've got three numbers and I tried them all."

"Thanks, Ed. Let me look it over, and don't say anything until I decide what to do."

Jones nods and heads back to his desk. He knows, you think, that this is a tough call. You were hoping Hingle would call back, but he hasn't yet.

So, you ask yourself, what do you do right now?

[The reasoning process guide starts on the next page.]

Reasoning process guide

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Define: Write down the facts related to the case you are considering.

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What does that make you think about: -----

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Moral obligations: Consider obligations related to the case in this section.

Obligation 1: _____ **Means:** _____

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Obligation 3: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: _____

Why it suggests that: _____

Obligation 4: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: _____

Why it suggests that: _____

Moral principle: Consider the principle you are using in the case in this section.

Principle: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: -----

Why it suggests that: -----

Decision: Weigh all the factors you have considered so far to reach your decision. If confronted with dilemmas by competing values or obligations suggesting different actions on your part, use the moral principle you have chosen to determine which values or which obligations are more important to you in the case. In the end, the moral decision should be the one that is suggested by the preponderance of the values, obligations and principle.

Key facts: -----

Key values: -----

Do you have a dilemma between competing values? _____ If so, how do you resolve it? _____

Note how the values suggest you act and why. (Do this part if you don't have a dilemma.) -----

Key obligations: -----

On the margin: Part 3

A big warehouse fire down by the river keeps Jones busy the following morning. In a way, you're glad he hasn't come back to ask you the status of the story on the senator.

When you get to the office after lunch, a young woman wearing a dark suit with a clerical collar is waiting to see you. She looks familiar. This is exactly what you need, you think, divine help.

"Good morning," she begins. "I'm Rev. Marjorie Smith and I was wondering if I could speak with you privately for a few minutes."

"Of course, Rev. Smith. Why don't we go into the conference room."

You show her to the room and close the door.

"Please," you say. "Have a seat. May I get you something to drink?"

"That's most kind. The coffee smells good. I'll have a cup if you'll join me."

"Certainly," you respond, walking to the coffee urn sitting on a table along the oak-paneled wall. "Would you like sugar or cream?"

"No. I like it black."

"Me, too." You return to the conference table, hand the minister a cup and sit across from her. "How can I help you?"

"I'd like to talk to you about an ... occurrence I believe you've run across," she begins. "I know I can't decide for you what to do, but I was hoping you would consider what I have to say."

"I'd be glad to hear what you have to say. But you're right, we have to decide how to handle information we have."

She adds, "One thing further. I want you to agree that the information I give you will be kept confidential. It cannot be used."

"Well, OK. But only if it's something we don't already know," you respond, then add, "or that someone else doesn't tell us."

She dips her head slightly, glancing at the cup of coffee she holds in a hand. "Do you know who I am?"

"Yes, reverend. You're Sen. Smith's daughter. In fact, a couple of my staff members go to your church and have spoken highly of you." You lean forward a little and add quietly, "I think they're trying to save me from my evil ways."

You smile politely at your effort to be humorous.

"I know who you're talking of, the Davidsons. They're fine people, and we'd love to have you join us sometime." It's her turn to lean forward and speak low. "It never hurts to take precautions," she says and smiles.

The smile fades from her face and she straightens herself in the upholstered chair. Her eyes stray out the window to the cityscape beyond.

"But I'm not here because of the Davidsons or you. I wish I was. I'm here because I've learned you may be considering a story on my father. Is that correct?" Her gaze comes back into the room – and your eyes.

"Why, yes, that's true." You wonder how she found that out. Probably Hingle. Once a politician, always a politician.

"I'd like to ask you to keep the story out of the paper. I know it's your decision to make, but please listen to my reason. There's more to it than my father," she says.

"OK," you say. "Like I said, I'm willing to listen, but no promises."

"My brother Michael is really a fine young man. We just celebrated his 19th birthday. He does well in school. He has friends. He even does good works at my church helping underprivileged children learn to read."

She pauses to take a sip of coffee. Her hand seems to tremble a little and some of the hot drink spills on the table. "Oh, I'm so sorry. Let me get something to clean this up."

You grab a stack of napkins from the center of the table. "That's OK. This should clean it up." You wipe up the spill and put the soaked napkins in a wastebasket by the door. "Please continue."

You're uncertain where this is going.

"Yes. Of course." She pauses. "Michael is also somewhat shy. He never has handled the public spotlight very well. Whenever Dad asks him to go with him places, Michael gets very nervous."

"I understand. A lot of people don't like getting up in front of others," you say.

"No. It's become much more than that." She dips her head slightly again, this time looking at her hands folded before her. "At first Michael just got nervous, but later he began using some not so good ways of handling the pressure."

"What's that?" you ask.

"Alcohol, lots of it. I think the expression is he self-medicates," she responds. "But it's gone beyond that."

"Do you mean drugs?"

“No,” she says in a very quiet voice. “I wish it were that simple.” She pauses again. You can see she is having a hard time saying what she wants to tell you. “It’s become a mental health issue for Michael. You see, he loves his father dearly and would do anything for him. Or anything to keep from hurting him. And Dad feels the same way about Mike. They’re joined at the hip, so to speak.”

Now you’re really puzzled. “I’m not sure I understand,” you say.

“You’ve learned that Dad was at a psychiatric ward and you’ve concluded he’s the one being treated.” She stops and puts her hand to her mouth. Tears well up in her brown eyes, then trickle down her cheeks. You hand her a napkin that wasn’t used to soak up coffee.

“Thank you,” she says, her voice cracking slightly.

“That’s OK. Please take your time, reverend.”

Moments pass before she continues. “I’m sure Dad would give anything if that were the case, but it isn’t.” She pauses again. “Last fall, some TV pundits made fun of Michael’s public awkwardness and used it as a barb against Dad’s intelligence. I know that most folks don’t listen to these people. But Michael did, especially when a poll came out a little later showing Dad’s support down a few points. He got very despondent. He just knew he’d hurt Dad’s chances for re-election next year. So he tried to escape the public eye for good.”

She sighs heavily.

“Last fall? All I recall of last fall was that he was hurt in a hunting accident,” you say, referring to the story of the senator’s son being grazed by a bullet on a hunting trip in Colorado.

She nods her head. “A friend came into his hotel room. He grabbed the gun barrel just in time.”

The room is silent.

“Last weekend he tried again. This time with a bottle of sleeping pills.” Her voice cracks. “Mom and I wanted him to go grab a bite with us so we went into his room at our lodge at the lake and found him, by chance.”

She bows her head and is silent.

It’s your turn to be unsettled. “I, I, uh, I don’t know what to say,” you stammer.

“So we got him to the hospital and they pumped his stomach. He’s still there. Dad’s with him. That’s what your reporter saw. I know you try to help by covering people in office. But Michael’s my brother, a scared boy who hurts a lot. And I don’t know if Dad wants to continue in office anymore. He just wants his son to be OK, like most parents I know.”

The room is silent again. “I want to thank you for listening to me,” she says. “I know I can’t tell you how to decide, but . . . He’s just a private, little person who wants to be left alone. Please help us keep him.”

With that she rises and walks from the room, stopping as she passes you to touch your shoulder with her hand. The door closes behind her.

A couple hours later you walk back to your desk and sit down.

“Hi, boss.” You look up and see Jones. He continues, “I wanted to see what you decided before I called the senator again for comment.”

“Thanks, Ed,” you respond. You look at the clock. It’s 2 p.m.

“Give me until 3,” you say. “I’ll tell you then.”

Now you must decide. A huge story. A powerful public figure. A frightened young man.

[The reasoning process guide starts on the next page.]

Reasoning process guide

(This uses the reasoning model noted in Chapter 2. Use it as directed by your instructor to consider the event and how you should act given what you know at this point.)

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Value 4: ----- **Means:** -----

What does that make you think about: -----

What action it suggests you take: -----

Why it suggests that: _____

Moral obligations: Consider obligations related to the case in this section.

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Obligation 4: _____ **Means:** _____

What does that make you think about: _____

What action it suggests you take: _____

Why it suggests that: _____

Moral principle: Consider the principle you are using in the case in this section.

Principle: _____ **Means:** _____

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Why it suggests that: -----

Decision: Weigh all the factors you have considered so far to reach your decision. If confronted with dilemmas by competing values or obligations suggesting different actions on your part, use the moral principle you have chosen to determine which values or which obligations are more important to you in the case. In the end, the moral decision should be the one that is suggested by the preponderance of the values, obligations and principle.

Key facts: -----

Key values: -----

Do you have a dilemma between competing values? _____ If so, how do you resolve it? _____

Note how the values suggest you act and why. (Do this part if you don't have a dilemma.) -----

Key obligations: -----

Post note

It would seem a good thing to have a place to go to collect your thoughts, act as you please, experience life on your own terms – just as Brandeis and Warren held – and do so outside the glare of the world as long as you are not hurting anybody else.

And since we may want this for ourselves it raises the question: How can we deprive others of the same thing?

And that question of privacy runs smack dab into all those readers and viewers and listeners who want the lowdown on the lives of others.

So we are faced with that conflict. The Brandeis-Warren argument for a person's privacy vs. the clammer of the public to know.

Whose right wins? When?

The answers to the questions posed are not easy to know, but they are in you.