

Privacy: Ethical and Legal Considerations¹

Raphael Cohen-Almagor, University of Haifa, Mount Carmel²

Abstract

Privacy is commonly understood as insulation from observability, a value asserted by individuals against the demands of a curious and intrusive society. It is intimately associated with our most profound values, our understanding of what it means to be an autonomous moral agent capable of self-reflection and choice.

When news is becoming entertainment and private stories become public spectacle, individual lives can be mercilessly exposed to the glaring spotlight of unwanted publicity. In delineating the boundaries of intrusion, distinctions are made between children and adults; between public figures and ordinary citizens; between people who choose to live in the spotlights, and ordinary citizens who stumble into the public forum, either because fate played with them or because they did something of public significance.

Introduction

There are things about ourselves that we would like to keep to ourselves. Life, we judge, would be better for us if this information would not be known to others. Our well-being would be adversely affected, we think, if certain issues about us became known. We might dread the embarrassment and shame that we would experience if others came to know certain things about us. We feel we might suffer loss of respect or repute in the eyes of others if they knew certain things.¹ Or there are simply spheres in which we feel others should not intrude because they are intimate, and we would like to keep them this way.

¹ The author wishes to thank Geoffrey Marshall, Eric Barendt, Rod Macdonald, Robert Post, David Feldman, Steve Newman as well as participants in workshops and seminars at Bar-Ilan University, the National Communication Association Annual Conference (Miami), and University of Baltimore School of Law for their criticisms. He also expresses gratitude to the Editor and referees of *Communication Law Review* for their instructive comments, and to Eli Dunker for his exceptional research ability. This essay is dedicated to Geoffrey Marshall, former Provost of Queen's College, Oxford, who passed away during the process of writing this essay.

² Professor Raphael Cohen-Almagor (D. Phil: Oxford University) is an associate professor and director of the Center for Democratic Studies at the University of Haifa, Mount Carmel. This essay is part of a large scale multi-disciplinary research project on The Scope of Tolerance that began in 1997 and was carried out in the United States, Canada, the United Kingdom and Israel with grant support from: Johns Hopkins University; the Fulbright Foundation; The Rockefeller Foundation; The British Council; the Canadian Government.

When news is becoming entertainment and private stories become public spectacle, individual lives can be mercilessly exposed to the glaring spotlight of unwanted publicity. In delineating the boundaries of intrusion, the present article makes distinctions between children and adults; between public figures and ordinary citizens; between people who choose to live in the spotlights, and ordinary citizens who stumble into the public forum; between ordinary citizens doing something of public significance and those who do not. Finally I will consider the issue of intruding into the private life of previously well-known figures.

With due appreciation for the liberal inclination to provide wide latitude to freedom of expression, we must also acknowledge the need for prescribing the scope of tolerance. The right to free expression and free media, supplemented and strengthened by the concept of the public's right to know, does not entail the freedom to invade individual privacy without ample justification.² The media are expected to adopt some social responsibility standards to retain some credibility in the eyes of the public and preserve individuals' dignity.³ Indeed, in Israel Section 7 of The Basic Law: Human Dignity and Freedom (1992) states "(a) All persons have the right to privacy and to intimacy. (b) There shall be no entry into the private premises of a person who has not consented thereto. (c) No search shall be conducted on the private premises of a person, nor in the body or personal effects. (d) There shall be no violation of the confidentiality of conversation, or of the writings or records of a person."⁴

Free expression does not include the right to do unjustifiable harm to others.⁵ Indeed, one of the four key principles of Sigma Delta Chi, the Society of Professional Journalists' Code of Ethics, is to minimize harm. It says, "ethical journalists treat sources, subjects and colleagues as human beings deserving of respect." The Code further instructs journalists to show compassion for those who may be affected adversely by news coverage and to avoid pandering to lurid curiosity, maintaining that the "pursuit of the news is not a license for arrogance."⁶

In turn, the Australian Broadcasting Corporation's Code of Practice holds: "The rights of individuals to privacy should be respected in all ABC programs. However, in order to provide information which relates to a person's performance of public duties or about other matters of public interest, intrusions upon privacy may, in some circumstances, be justified."⁷ The question begs what circumstances warrant such intrusion. This essay tackles this question, aiming to provide some answers by offering useful distinctions and tools for thinking.

Public and Private Spheres

The term “privacy” is used frequently in ordinary language as well as in philosophical, political and legal discussions, yet there is no single definition or analysis or meaning of the term. The concept of privacy has broad historical roots in sociological and anthropological discussions about how extensively it is valued and preserved in various cultures. Moreover, the concept has historical origins in well-known philosophical discussions, most notably Aristotle’s distinction between the public sphere of political activity, the *polis*, and the private sphere associated with family and domestic life, the *oikos*.⁸

Privacy is commonly understood as insulation from observability, a value asserted by individuals against the demands of a curious and intrusive society.⁹ It is intimately associated with our most profound values, our understanding of what it means to be an autonomous moral agent capable of self-reflection and choice. Its violation is demeaning to individuality and an affront to personal dignity.¹⁰ Avishai Margalit asserted that the institutions of a decent society must not encroach upon personal privacy.¹¹ Privacy as dignity locates privacy in precisely the aspects of social life that are shared and mutual. Invading privacy causes injury because we are socialized to experience common norms as essential prerequisites of our own identity and self-respect.¹² However, when one opens today's newspapers, especially the tabloids, one could read many details that concern very private aspects of the other.

There is a strong link between media and entertainment. As a result, the media at large, and the sensational media in particular, prefer to intrude on private matters at the expense of analyzing social, cultural, scientific and political matters. We witness gossip and a tendency to popularize the news, and the tabloids around the globe have specialized in incidents of intrusion on privacy. The large sensational narratives are taking so much space that they drive out discussion about politics. In today’s world the leaders of democracies and celebrities are continuously watched, even hounded. Political leaders and public figures live in a media bubble where their every move is likely to be observed. Their public faces can almost never be taken off, and their private lives can be mercilessly exposed to the glaring spotlight of unwanted publicity. Sometimes, their families – spouses and children – become media personalities.

Adults v. Children

Privacy of children is usually respected far more by the media than the privacy of adults. In Israel, the gossip columns adopted some ethical standards in reporting about celebrities and

public figures. They hardly ever reported about their children, believing children should be left out of the public scene and their privacy should be maintained. Children are conceived as a protected class of people and consequently the media require substantive justifications to invade their privacy. Indeed, children are more vulnerable and sensitive than adults. This is not to say that the media do not report stories about children. Of course they do. Maltreatment of children is of public interest. The media take upon themselves to protect weak third parties. If the children's conduct is conceived as news story, then children will also be photographed. Children who take part in wars and other hostilities appear often on the airwaves. For instance, Palestinian children who throw stones at armed soldiers are photographed, and with a good reason. The public should know that children are in the frontline, fighting against armed men with stones. Such photos inform the public of the Palestinian determination, of the balance of power between the two sides, of the sensitivity (or lack thereof) that both sides to the conflict show regarding the use of children in the battlefield. The media love David versus Goliath stories and, in such instances, one photo is better than a thousand words. And, of course, the issue of privacy invasion is secondary. The children want to be shown, their parents apparently do not go out of their way to keep them off the streets, and the Palestinian leaders who orchestrate the hostile events are quite eager to have such photos taken and published. A photo showing a child throwing stones at Israeli tank serves the Palestinian propaganda and national interest.

In England, following Princess Diana's tragic death in August 1997, Lord Wakeham, Chairperson of the Press Complaints Committee declared that the Press Complaints Commission (PCC) will need to ponder ways to protect the privacy of Princes William and Harry so that they will not have to go through the agonizing experiences that their mother lived almost daily after she became the Princess of Wales. Lord Wakeham said he was "extremely concerned" about what will happen as the Princes reach the age of 16,¹³ conceding that the PCC's Code of Practice might change after consultation with editors.¹⁴ Lord Wakeham's statement followed the pledge made by Earl Spencer, Princess Diana's brother, during her funeral. The outraged Earl committed himself to protect her children from the media, not allowing them "to suffer the anguish that used regularly to drive you [Diana] to tearful despair".¹⁵

On September 8, 1997, three daily newspapers, *The Mirror*, *The Sun*, and *The Independent*, announced that they would no longer use paparazzi pictures of Princes William and Harry in the first step to agreeing to tighter self-regulation.¹⁶ *The Mirror* said it "will now work

swiftly with the Press Complaints Commission to protect these boys from intrusive paparazzi pictures".¹⁷ Andrew Marr, editor of the *Independent*, declared that "we will never again publish any pictures of the princes in a private situation and we will be more sparing of pictures of the princes and other members of the royal family in other situations as well".¹⁸ Associated Newspapers, publishers of the *Daily Mail*, *Mail on Sunday*, and London's *Evening Standard*, have declared that any use of paparazzi pictures will have to be cleared with Lord Rothermere, the proprietor who, in turn, proclaimed that there would be a ban on "all intrusive pictures except where they are considered necessary".¹⁹ Max Hastings, editor of the *Standard*, said: "There can be few British journalists who did not spend some hours this weekend brooding about privacy after Lord Spencer's vengeful contribution... Some members of the newspaper trade have behaved like animals, and it is strongly in the public interest that they should be deterred from doing so".²⁰

Because of the public sensitivity after the death of Princess Diana, the tabloids indeed honoured the privacy of young Princes William and Harry as long as they were at school. Eton is a relatively big open place, yet no pictures of the two young boys were taken at school. The only photos that were released were those issued by the Palace.²¹

Things are different when a well-known public figure opens his home to the media and invites them to watch and film his family life. Prime Minister Benjamin Netanyahu apparently believed that access to his family life would serve his political partisan interests. Thus, when his second son, Avner, was born, photographers were invited to the hospital to see the prime minister, his wife and their elder son Yair posing in front of the camera, holding the baby. Eight days later, photographers were invited to the circumcision ceremony (*brith milah*). A private vacation of the family in the north of Israel was also photographed in details.²² Yair Netanyahu's singing abilities were photographed and recorded. When the prime minister cooperates to such extent with the media to harvest potential political gains, the media would be hard to blame for privacy violation. Netanyahu, it seems, like Princess Diana,²³ failed to understand that he cannot completely control what will be photographed and what will not. When you open the door to the media, they will come with full force and will make the most of the opportunity presented to them, thinking about their own partisan interests, not Netanyahu's.

Public Figures and Celebrities v. Ordinary Citizens

We need to distinguish between public figures and celebrities, on the one hand, and ordinary citizens on the other. Public figures and celebrities are more susceptible to media invasion of their privacy. Ordinary citizens are usually of no interest to the public and therefore do not, generally speaking, attract media attention. Public figures are of interest due to their roles and duties in society, while celebrities are a product of the mass media. With celebrity reporting, there has been a naturalization and normalization of the close connection between the sources of information and journalistic practice. In other words, celebrity journalism is one of the key locations for the convergence of publicity, promotion and journalism in terms of the generated editorial content.²⁴

Where an individual is a public figure or celebrity she is entitled to have her privacy respected in appropriate circumstances. She, however, should recognize that she must expect and accept that her actions would be more closely scrutinized by the media. Even trivial facts relating to a public figure/celebrity could be of great interest to readers and other observers of the media. In many situations it would be overstating the position to say that there was a public interest in the information being published. It would be more accurate to say that the public had an understandable and so a legitimate interest in being told the information.²⁵ Through celebrity profiles, the coverage of entertainment has expanded massively and has become a major component of information and news reporting. Almost everything deems relevant to cover when celebrities, who widely exposed their private realm for the media (but still wanted to keep some things private), are concerned.²⁶ Nowadays, it seems, no one represents this phenomenon better than Ms. Paris Hilton with her love affairs, reality TV show, adult video, constant appearance in "openings", sport games and fashion shows, to name just some of her rich activities and small part of her celebrity profile.²⁷ Hilton entered into the lacuna created by the passing of Princess Diana in 1997.

Having said that, although many aspects of the private lives of celebrities and public figures would inevitably enter the public domain, it did not follow that, even with self-publicists, every aspect and detail of their private lives was legitimate quarry for the journalist. They are entitled to some space of privacy.²⁸ Some standards of decency should be kept. For many years some organs of the media have exhibited poor taste by speculating that some dead celebrities are alive (the most notable examples being Elvis Presley²⁹ and Marilyn Monroe³⁰). They excelled

themselves by grossly claiming that one known celebrity, alive and kicking, had actually died. They repeatedly alleged that Paul McCartney died in an automobile accident outside of London in November 1966 and was secretly replaced under very mysterious circumstances by a double.³¹ The Israel military radio station, Galei Zahal, for more than two decades repeatedly ran shows hosted by their music expert, Yoav Kutner, who was making this claim. This false claim did not interfere negatively in Kutner's career. Possibly the opposite is true: Kutner is regarded as an influential music celebrity. He was even awarded prizes for his "Paul McCartney is Dead" program (IDF radio, 1978).³² It does not matter that McCartney has a family and continued to produce songs and to hold concerts. The tale has become one of the cult stories associated with the Beatles.

I always wondered what McCartney himself thinks about this. How does he feel about the allegations that he actually died, and that an imitator (he himself) took his place and exploits McCartney's reputation? In the summer of 1997 I had contacted a senior editor in the British press and through him asked Sir Paul for a response. After a while the editor returned to me, saying that Sir Paul has no interest in commenting on the issue. Maybe the story is for his advantage, making him some sort of a legend during his life time, literally greater than life. Apparently, he does not take offense being described as a phony imitator. Other celebrities might regard such an innovation differently.

In any event, public figures have far more experience than ordinary citizens in dealing with the media, and could gain access to present their side of the story, to voice their content or discontent, and to respond to allegations and gossip.³³ This is provided they are alive. On January 19, 2004, on the day of the funeral of the Australian cricket coach and media personality, David Hookes,³⁴ a funeral that was attended by 10,000 people and broadcast on television, radio announcer Derryn Hinch told his audience that Hookes and his wife had separated the previous year and added that there was another woman "who is grieving for a loved one right now".³⁵ In such moments one can expect media professionals to respect grief, respect the deceased's family, and personal privacy of the wife and children, and not to unnecessarily intrude on family relationships in a cheap gossip, peeping way.

The most recent controversy relating to Princess Diana took place in 2004, some years after her tragic death, when CBS News program "48 Hours Investigates" showed two pictures taken by paparazzi at the scene of the August 31, 1997 accident in Paris. The network insisted

the pictures — which showed an unconscious Diana being treated by a doctor as she lay slumped in the back of a car in the Alma road tunnel — "were not graphic or exploitative". The pictures were shown in context of an interview with the doctor who first treated Diana at the scene, and illustrated his comments about her condition at the time.³⁶

Britain's press, which has refrained from publishing similar photos since Diana's death in 1997, expressed anger and front-page outrage at what *The Sun* called the "horrific pictures." *The Guardian* said CBS had decided to "plumb new depths of prurience in the Princess Diana industry."³⁷ Princess Diana's brother commented he was "sickened" that the CBS had broadcast photos of the princess as she lay dying after a car accident — the first time a major media outlet has published pictures of the injured princess. Prime Minister Tony Blair called the broadcast of the grainy black-and-white images "distasteful": "I think everyone finds it distasteful that there are pictures that can cause distress to the family," Blair said.³⁸ Indeed, little attention was given to the impact of showing such pictures on Diana's family, especially her two boys William and Harry, as well as on the family of Dodi Fayed, Diana's lover, who was also killed in the car accident. The justification that was given for showing the pictures, revealing details about Diana's condition at the time of accident, was weak and unconvincing. You can speak about her condition, if you have new information, without showing the photos. The only reason for showing them was sensationalism, attracting ratings and increasing market sales. These were the true reasons for invading privacy and treating Diana with no human respect. These reasons should not and cannot be regarded as valid justifications.

In Israel, one of the most notorious stories intruding in the life of a so-called "celebrity" after his death was a five-page article in the local *Tel Aviv* newspaper concerning the death circumstances of an ultra-orthodox millionaire named David Reichman. The article contained pure voyeurism which deeply offended Reichman's widow and family, and did not add to the paper's reputation.³⁹ *Yedioth Ahronoth* also published a full story on Mr. Reichman's death but it was much less intrusive.⁴⁰ The newspapers revealed, *inter alia*, that the 34 year-old businessman was found dead in the house of a prostitute, allegedly after taking drugs. The *Tel Aviv* rag story was written in the most sensational terms, without giving minimum of respect to the deceased and his loved ones. Ethically, there was no justification for printing the sensational story. Reichman was a private figure, who wanted to keep his privacy intact. *Tel Aviv* saw it necessary to publish the detailed story and to attract attention with juicy headlines possibly because his last

name was Reichman, because of his affiliation to a very wealthy family. Some may add that Reichman's identity as an ultra-orthodox also motivated the editors to splash the story over five pages, so as to say with a secular wink (*Tel Aviv* is published in Tel Aviv, the secular bastion of Israel): Ultra-orthodox men also go to prostitutes and use drugs.

I wrote "so-called celebrity" because this story stretches the understanding of the term "celebrity" to its maximum. Reichman did not run for public office, was not a religious authority, and was hardly known outside of his own circles. The story, arguably, was of interest to the public, as most stories involving drugs and prostitutes are, but there was no public interest to publish this story, in such fashion, after Reichman's death. Minimum standards of decency should be preserved.

Death is a private matter and should remain so unless there are conflicting countervailing interests that justify intrusion. In recent years the debate over privacy and the public's right to know has flared up at the Pentagon over the sensitive subject of the photographing of soldiers' coffins as they are shipped home. Under a policy adopted in 1991, the Pentagon bars news organizations from photographing caskets being returned to the United States, saying publication of such photos would be insensitive to bereaved families. But many such photos were published by the print media and on the Internet. Russ Kick, a First Amendment activist, posted more than 350 government photographs on his Web site, www.thememoryhole.org. Then the Defense Department barred the further release of the photographs to media outlets. Defense officials explained the purpose of the no photos policy is to protect the privacy of the soldiers' families. "Quite frankly, we don't want the remains of our service members who have made the ultimate sacrifice to be the subject of any kind of attention that is unwarranted or undignified," said John Molino, a deputy undersecretary of defense.⁴¹ He added that this is what the bereaved families' desire.

On the other hand, those who support showing the caskets photos argue that the issue is not of privacy. Rather, it is about showing the consequences of war. The public is being denied information by not being able to see photos of coffins coming back from Iraq. One editor who chose to publish the questionable photos explained: "This was not published with any sort of antiwar agenda... It was published with the purpose of presenting an important context of the war."⁴²

Surely, it serves the government not to show the photos. Surely, the public has the right

to know what's going on. Democratic Rep. Jim McDermott of Washington, who served in the Navy during the Vietnam War, said photos of caskets coming home from Vietnam had a tremendous impact on the way Americans came to view that war: "As people began to see the reality of it and see the 55,000 people who were killed coming back in body bags, they became more and more upset by the war," he said. "This is not about privacy. This is about trying to keep the country from facing the reality of war."⁴³

While the Pentagon argues that its policy represents what the bereaved families want, in truth opinions vary among military families. There is no consensus among families about whether they want events surrounding the death and burial of the service member to be made public. While some families ask to show sensitivity to the grief of the surviving family members, others argue that "We need to stop hiding the deaths of our young; we need to be open about their deaths."⁴⁴

Moreover, the identity of no single individual is being revealed. The caskets remain close. It is impossible to identify any individual soldier. The reports wanted to show the consequences of war by printing photographs of coffins shipped back to the United States *en masse*. Wars are not cartoons where the spectator does not see the consequences of violence. People are killed in wars, and although it is unsettling and disturbing to see caskets, facing reality is important. Parts of the public may not wish to see the caskets, while others insist to see them. The bottom line is that the issue revolves around political questions: the consequences of, and justification for war, not around privacy. Privacy is just a misplaced red herring.

The Scope of Intruding on Private Matters of Public Officials

Now let us turn to another question: Whether the media are entitled to intrude on private matters of public officials when these matters do not directly concern their work and office.

If, for instance, a public figure known and respected for preaching family values, decency among couples and honesty in marriage, is found to be betraying his wife, the media have a right to break the news and bring the issue to public attention. The public is entitled to know that the person who spoke so eloquently about family values does not espouse those values at home. The issue is different when the public figure has made his reputation in other spheres, unrelated to his family life, and the conduct in his private life does not affect his public duties. Most broadsheet papers would not cover the infidelity story, while most of the popular press would probably publish the story in the name of public's right to know. Most broadsheet papers don't consider as

valid the argument that if a person is betraying the closest person to him or her, i.e., the spouse, then that person might cheat also on other matters in which he or she is less personally involved.

Interestingly, the Israeli media have hardly ever exposed infidelity stories. They believe that the confines of the bedroom should remain intact. At most, they hint about such affairs without specifically identifying the adulterer. The only infidelity affair that became public during the 1990s was connected with Benjamin Netanyahu, and the details of this episode were revealed by Netanyahu himself in a prime-time public television broadcast.⁴⁵ On this occasion, the media had the legitimacy to tell the story, were Netanyahu not preceding them, because he himself did not hesitate to bring his own family to the public eye. His wife Sarah, and as said also his children, received quite a lot of public attention, thanks to Netanyahu's efforts.⁴⁶ My guess is, however, that the media would have at most hinted about the extra-marital affair, as they did with similar alleged affairs of politicians (for instance, Shimon Peres, David Levy and Haim Ramon). The media were never explicit in their descriptions and stories.

Acts of infidelity (whatever the gender of the couple involved, although when the partners belong to the same gender the story is arguably juicier so some organs of the media seem to think) necessitate resorting to lies, and these might necessitate cover ups and misconduct. Information about such allegations that parts of the public -- even a small part -- deems relevant, should be made available. The person who wishes to have information about a candidate's marital infidelity can be understood as saying that, in a democracy, the determination of the nature of a public office and its qualifications are as important to him or her as this personal preference is important to the adulterer.⁴⁷ This is not a mere matter of curiosity.

For similar reasons I cannot agree with Dennis Thompson who argues that citizens do not need to know about the drinking habits of an official because the alleged effects can be discovered by observing his actions on the job.⁴⁸ Alcohol, like drugs, might affect one's judgment and people should be aware that their representative has a soft spot for certain drinks and/or drugs that might cloud one's ability to make delicate decisions. Furthermore, some people would like to know about such a habit before electing or nominating someone for a responsible position. Many people don't have the time and energy to inquire about such habits themselves and they trust the media to disclose this information, upon obtaining it, to the public. Many people would not like to take the risk and discover that their representative is drunk at a moment of crisis. Then it might be too late.

In this context, former president of Israel, Ezer Weizman, disclosed many years after the 1967 Six Day War that the Chief of Staff at that time, Yitzhak Rabin, collapsed on the eve of the war and asked Weizman to replace him. Weizman was his deputy at the time. He refused, Rabin collected himself and led the Israeli army to victory. Later it also became public that Rabin had a drinking problem.⁴⁹ The Israeli public deserved to know all this before the outbreak of the 1967 fateful war and before Rabin was elected to further high positions.

Yet, I wish to refrain from the sweeping generalization that *everything* is relevant. Some boundaries need to be introduced. A major consideration in coming to decide the confines of privacy is the consequences of the official's action on the political/social process. In the examples pointed *supra*, infidelity and addiction problems, those kinds of behaviour might affect the official's performances and his or her ability to function. But, is this the only consideration?

Suppose a public official beats his wife in bed as part of their sexual foreplay. If this is done with the wife's consent, then this fact need not be revealed to the public. I don't think that consenting violence might affect his public behaviour. The case is different if the wife does not consent to the beating. Then it is just another version of domestic violence. Should this be revealed to the public? Now, if you focus all attention on the effect this behavior might have on the official's public conduct, it might be argued quite persuasively that domestic violence has no bearing on performing one's duties. The wife can complain to the police, and then there will be repercussions against the beater. But often the wife will not complain, and it is difficult to argue that this repugnant behavior might instigate cover ups, commonly in use to hide infidelity stories that might have an effect on one's conduct.

It might be argued that if a certain behavior goes against the majority's norm, then that behavior needs to be exposed. I don't find the argument of majorities and minorities convincing. The majority may hold a norm which at another point of time may seem to be repugnant. Such, for instance, was slavery in North America. Nowadays, the majority of people in one democracy or another may think homosexuality is repugnant. At another point of time homosexuality may be conceived as normal. Indeed, in Greek and Roman times homosexuality was conceived differently.⁵⁰ Majority opinion should not be considered as grounds for invasion of privacy.

My argument is that domestic violence needs to be exposed in public because the public needs to be aware of such a behavior, whether or not it has a bearing on one's public duties. One of the basic foundations of liberal democracy is not to harm others. Any action which causes

physical harm to individuals or groups, for any reason other than self-protection, ought to be curtailed.⁵¹ When this underpinning is broken, the public has the right to know. Violence against women is vile, goes against the underlying values of democracy, and should be fought against and curtailed. Violence against weak parties is something wrong. It is wrong *qua* unjustified violence, even if no one is aware of its existence.

One may suggest a different line of reasoning, based on law, arguing that the media should report all transgressions of law and refrain from reporting on matters that are within the confines of law. I find this reasoning too simplistic and unconvincing. Law and ethics overlap to one extent or another but they do not overlap completely. There are controversial issues that are illegal yet some may argue that the media should not report; and there are many issues that are within the confines of the law that the media should report.

A public official may smoke marijuana in the weekends for his own pleasure. This conduct is illegal in Israel as well as in other countries. Yet I am not sure whether the media should report this to the public. Marijuana can be useful for certain medical purposes. Many who smoke this soft drug argue that it does not affect them more than cigarettes do. Media professionals may take different stances on this issue.

Another pertinent consideration concerns the taking of actions that might compromise the conduct of a public official due to potential conflict of interests. When Ezer Weizman was the President of Israel it was reported that for many years he received substantial sums of money from Edouard Seroussi, a millionaire friend who wanted to support the Weizman family. The issue was brought before Attorney General Elyakim Rubinstein to investigate what, if anything, Weizman gave in return, and whether to pursue charges against the president on the grounds that bribery might have been involved. Rubinstein decided to close the case. Rubinstein had possibly made the right decision. It might indeed be that Weizman did not give his business friend any favors in return. Yet this conduct is questionable and the public certainly had the right to be informed about the special relationships between the president and the affluent businessman.⁵²

Public Figures v. Ordinary Citizens Who Stumble into the Limelight

We may also distinguish between public figures who choose to live in the spotlights, like Paris Hilton and Ezer Weizman, and ordinary citizens who stumble into the public forum. On occasion, people enter unintentionally into the spotlight, under circumstances that are not under their control. They might rise and receive public attention as a result of an act of fate, positive or

negative. For instance, a person may win the lottery and immediately receive wide notice. The public is interested to know his or her financial situation prior winning, and what does he or she intend to do with all the money; how will the substantial sum of money affect the lucky person's life. Alternatively, fate might have a drastic negative effect on people. People might become victims in a criminal or terrorist attack, or be involved in a tragic road accident.

People might also stumble into the limelight because they commit a significant public act. These acts might be of bravery, like saving a family from a fire, or rescuing a public figure from danger. The media, of course, will publish the heroic deed of the individual but should refrain from intruding into his or her private life that is of no importance to the public unless there are countervailing interests weighty enough to warrant interference.

Let us consider the following. John had committed a brave act by saving the life of his president. John was a quiet citizen who never before attracted public attention, and literally overnight became the center of media concern. One tabloid newspaper decided to reveal to the public who is John, the brave savior. The editor assigned a diligent reporter for the job who after a few days returned with sensational news: John leads a double life. During the day he is a working man, who has a wife and three kids whom he supports; and during the evening he is secretly active in the San Francisco gay community. The editor decides to publish the story in the name of pursuit of truth and the public's right to know. He did not ask for John's consent. His justification for this publication is that the public has a right to know who saved the president's life, especially as John can serve as a role model for the gay community that is usually portrayed as "sissies," incapable of conducting such acts of bravery. Following the publication, John's wife sued for divorce.

John's private life was immaterial to the act of saving the president's life. His privacy, which he strove so hard to protect, should have been safeguarded. The "role model" argument is unconvincing. Surely the gay community would rather identify with someone who is proud of his identity, not with John who did his utmost to hide his sexual preferences in the closet. Accountable media professionals are expected to think about the consequences of reporting, and not remain oblivious to the issue, "*que sera sera*, whatever will be will be." Human life is not a cheap commodity to play with, and sensational news should not be conceived as trump to outweigh decency and respect for people. John should be left free to settle his private life with his wife and his friends. It is not a matter for the media to intrude upon. If this is the media's

conduct, people like John would think twice before making acts of bravery, not wanting to pay the possible price of intrusion. They would rather stay away from the limelight and continue to lead their quiet, peaceful life and forego good citizenship.

A real life case is *Hill*, decided by the American Supreme Court. In 1952, James Hill, his wife and their five children involuntarily became the subjects of a front-page story after being held hostage by three escaped convicts in their Pennsylvania home. During the nineteen hours of the ordeal the convicts had treated the family courteously and did not molest them. However, the event made a deep impression on the family, especially on Mrs. Hill, and shortly thereafter the family moved to Connecticut. They discouraged all media efforts to keep them in the public spotlight.⁵³

Two years later, a play titled *The Desperate Hours* opened on Broadway, based on Joseph Hayes' novel published in spring 1953. Unlike the Hills' experience, the family of the story suffered brute violence in the convicts' hands. The play was set in Indianapolis, but *Life* magazine in a feature story about the play decided to photograph the actors in the former home of the Hill family and to describe the play, with all its terror, as a reenactment of what had happened to the Hills. The article intended to give the impression that the play mirrored the Hills' experience, which was false. The *Life* story was devastating to the family. Mrs. Hill suffered a psychiatric breakdown. Mr. Hill said he could not understand how *Life* could publish such a story without at least checking with him the facts. "It was just like we didn't exist," he said, "like we were dirt."⁵⁴

The Hill family sued the publisher, Time Inc., for invasion of privacy. After a tiring legal battle the Supreme Court, in a 5 to 4 decision, decided for the publisher. Speaking for the majority, Justice Brennan relied on *New York Times v. Sullivan*⁵⁵ to hold that the Constitution delimits a State's power to award damages for libel in actions brought by public officials against critics of their official conduct. Factual error, content defamatory of official reputation, or both, are insufficient for an award of damages for false statements unless actual malice, "knowledge that the statements are false or in reckless disregard of the truth," is alleged and proved.⁵⁶ This was not the case here and therefore the Court decided for *Life*.

I find this reasoning unconvincing. As Justice Harlan noted in his partial dissent, there is a vast difference in the state interest in protecting individuals like the Hills from irresponsible publicity, and the state interest in similar protection for public officials. In *Sullivan* the Court

acknowledged public officials to be a breed from whom hardness to exposure to charges, innuendoes, and criticisms might be demanded and who voluntarily assumed the risks involved.⁵⁷ But the Hills stumbled into the spotlight in most unfortunate circumstances. They did whatever they could to avoid public exposure, thus the state interest in encouraging careful checking and preparation of published material is far stronger than in *Sullivan*. A State should be free to hold the press dutiful of making reasonable investigations of the underlying facts and limiting itself to "fair comment."⁵⁸ Justice Harlan concluded by saying that the First Amendment cannot be thought to insulate all press conduct from review and responsibility for harm inflicted. He appropriately observed that sanctions against such conduct should be employed when it creates a severe risk of irremediable harm to individuals involuntarily exposed to it and powerless to protect themselves against it.

Harlan further noted, quite rightly, that a constitutional doctrine which relieves the press of even this minimal responsibility would ultimately harm the best interest of the press.⁵⁹ The public would lose its faith in it.

Furthermore, I find Justice Douglas' concurring opinion with the majority staggering in its crudeness. For him public interest in "news" and free speech rule supreme. He paid no consideration to the distinction made here between voluntary and involuntary stepping into the limelight. Douglas argued that in this case a private person is catapulted into the news by events over which he had no control (referring to the appellant, Mr. Hill) and henceforth he and his activities are in the public domain. For Douglas, privacy has ceased when his life has ceased to be private even though he was coerced into the event that made him the unfortunate publicity. Justice Douglas reinforced his position by expressing fear that "once we narrow the ambit of the First Amendment, creative writing is imperiled and the 'chilling effect' on free expression... is almost sure to take place."⁶⁰

I fail to understand how liberals like Douglas can have so much sympathy for the First Amendment, emphasizing "chilling effects" on future hypothetical speech and the importance of "creative writing" that has destructive effect on people, and at the same time have so little sensitivity to real people who come before the court hurt and devastated.⁶¹ Liberals like Douglas are more worried of possible costs to free expression than of costs forced upon people here and now.

Finally, let me conclude this section with an example of an individual who stumbled into the limelight in different circumstances. Ronnie Kempler, an accountant for the State Comptroller's Office and amateur photographer, taped the Rabin assassination from a rooftop overlooking the parking lot where Rabin was shot. Asked why he taped the parking lot, Kempler told the newspaper: "The whole time I had the feeling that something bad would happen. There was anxiety in the air. Maybe because in the (army) reserves I deal in security, I am more sensitive to that."⁶² Immediately after the tape was sold and shown on prime time on Israeli television, Kempler gained a lot of attention. People wanted to know who was Ronnie Kempler, what had brought him to stand where he stood on November 4, 1995, and why he focused his attention on the assassin Yigal Amir. Kempler was a quiet citizen who never attracted public attention before, and literally overnight became the center of media concern. Many media outlets wanted to reveal to the public details about the photographer who happened to be with his camera in the murder scene. Kempler insisted on keeping his private life intact. At most he was ready and willing to explain why he shot the historical film on the tragic night of November 4. While the media thought that the public has a right to know who the historic photographer was, Kempler thought that his private life was immaterial to the act of photography. His insistence on keeping his life private contributed to the conspiracy theories that flourished after the assassination, alleging that Kempler stood where he did, with his camera, for a reason, and that in some way or another took part in the grand conspiracy to assassinate Yitzhak Rabin.⁶³ Kempler remained unconvinced that those speculations and allegations constituted strong enough justifications to disclose his private life before the intruding media.

Intruding Into Private Life of Previously Well-Known Figures

William James Sidis was a famous child prodigy in 1910. His name and prowess were well-known due to the efforts of his father who developed advanced ideas on child training. When Sidis was 3.5 years old he could use a typewriter. By the time he was 5 Sidis was able to read, write and speak English, was an expert accountant, and begun to study French and Latin. He wrote a text book on anatomy and another on English grammar.⁶⁴

At the age of 8 Sidis entered high school and in six weeks he had completed the mathematical course and begun writing an astronomy book. Then he also studied German and Russian. Boris, the proud father, took care to issue bulletins to the press detailing all these (and other) achievements. The press complied and followed William and praised Boris for the so-

called "successful" implementation of his theories. At the age of 11 Sidis, the mathematics whiz, lectured to distinguished mathematicians on Four-Dimensional Bodies at Harvard. At 16 he graduated from Harvard College, amid considerable public attention. He was declared to be, according to the *New York Times*, "the most learned undergraduate that has ever entered the Cambridge institution."⁶⁵

Since then, however, Sidis sought to live as unobtrusively as possible. His name appeared in the press only sporadically until *The New Yorker* published quite an unflattering article about him in 1937.

The New Yorker did features on past personalities under the title "Where are they now." The article on Sidis was printed with the subtitle "April fool," playing on the fact that William was born on April 1. The reporter described Sidis's early accomplishments, then recounted his general breakdown and the revulsion that Sidis felt for his former life of fame. The article described how Sidis tried to conceal his identity, his chosen career as an insignificant clerk, his enthusiasm for collecting streetcar transfers and for studying the history of a certain American-Indian tribe, as well as his proficiency with an adding machine. The untidiness of Sidis's room, his curious gasping laugh, his manner of speech, his wary eyes and other personal habits were commented upon at length. The article gave unflattering description of Sidis and his lodgings,⁶⁶ and ended by saying that the little boy who lectured in 1910 on the fourth dimension to a gathering of learned men was expected to grow up to be a great mathematician, a famous leader in the world of science but, in the words of Sidis himself, "I was born on April Fools' Day."⁶⁷

Sidis sued for violation of privacy. The issue at hand was not whether the article was true. Sidis who so desperately wanted to be let alone and to live his life away from the public eye was exposed in a merciless fashion. The court recognized that, saying "the article is merciless in its dissection of intimate details of its subject's personal life," maintaining that the article may be fairly described as "a ruthless exposure of a once public character, who has since sought and has now been deprived of the seclusion of private life."⁶⁸

However, despite the sympathy for Sidis Judge Clark found for the defendant, saying that "Everyone will agree that at some point the public interest in obtaining information becomes dominant over the individual's desire for privacy."⁶⁹ Notice the language: Clark is recruiting "everyone" for this assignment of trumping the plaintiff's privacy.

I hasten to think that there would be quite differences of opinion among "everyone" regarding the exact point at which public interest in obtaining information becomes dominant. This point is not clarified in the judgment. Clark maintained, "At least we would permit limited scrutiny of the 'private' life of any person who has achieved, or has had thrust upon him, the questionable and indefinable status of a 'public figure.'"⁷⁰ Indeed, "thrust upon him" is the correct phrase, as William was a child, incapable of independent autonomous decision making, when he became a public figure due to the endless efforts of his father to push him to the spotlights. When he was able to break free and to stand on his own, Sidis opted for anonymity. The court essentially says that once a public figure, always a public figure. There is no escape. Even if you like to be forgotten, you cannot. You owe to the public the right to inform them about major developments in your life, however tragic and personal those might be. The fact that Sidis never made a decision to become a public figure, and when he was able to control his life he chose the exact opposite of being one, was insignificant for the court.

In 1937, Sidis was not a retired public official who may be still held accountable for past actions. He was not a celebrity who relishes the limelight. Quite the opposite. Sidis did whatever he could to sink into oblivion. Intruding into his privacy in the name of popular curiosity is unjustified and unethical. Granted that there is public interest in Sidis. The public is interested in many things, including state's security, official secrets, capturing Osama Bin-Laden, sexual behavior of supermodels and politicians, and how much money one's neighbor earns. This does not mean that the media should provide all data of interest. The court's decision was erroneous and damaging.

Conclusion

Privacy is commonly understood as a value asserted by individuals against the demands of a curious and intrusive society. Thus it is remarked that privacy rests upon an individualist concept of society.⁷¹ Indeed, privacy, on the one hand, and the public interest and curiosity, on the other, are uneasy bedfellows. Surely, for the media to do their job there is a need for a certain degree of transparency, and sometimes intrusion might be warranted. The above discussion provides some useful distinctions to delineate the boundaries of intrusion and offers some ethical tools for reflection in deciding the appropriate lines of reportage. Reality shows that sensationalism, infotainment, the rush for scoops might push and, indeed, do push journalists into gross breaches

of privacy. Especially the popular tabloids, supermarket papers, and peeping TV current affairs shows boost this unfortunate tendency in their hasty desire to increase their sales and ratings.

The hand need not be the quickest organ in one's body when writing. Journalists are expected to observe the fundamental background rights underlining every democracy: respect for others and not harming others.⁷² These rights should not be held secondary to considerations of profit and personal prestige of journalists and newspapers. Journalists should see people as ends and not as means - a Kantian deontological approach.⁷³

In this article I laid conditions for media coverage of children, and for protecting the privacy of celebrities and public figures. I emphasized that infidelities, addiction problems and potential conflict of interests constitute valid grounds for intruding on public officials' privacy. At the same time, in a community where sensationalism and peeping rule supreme, individuals should be reassured that the courts may take a protective stance on privacy and secure their right to live away from the public eye, though the public may be eager to see, for instance, nude photos of Laura Bush, Ariel Sharon or Princess Diana. I also explained that the media should protect the privacy of people who stumbled into the limelight, and of former celebrities who decide to live their lives away from the public eye. However, if the person who had stumbled into the public forum would prefer to remain in the public eye and to harvest more attention by further deeds or expressions, then he or she is no longer a private citizen and should accept the pros and cons involved in public life.

Finally, let me say something about the need to maintain the privacy of the home. The interest in protecting the privacy and tranquility of the home was recognized by the American⁷⁴ and Israeli⁷⁵ Supreme Courts in several decisions. In *Mapp v. Ohio* the Court referred to the right to privacy, conceived no less important than any other right carefully and particularly reserved to the people, as "basic to free society."⁷⁶ Justice Frankfurter wrote in one of his prominent rulings: "Homes are sanctuaries from intrusions upon privacy and of opportunities for leading lives in health and safety."⁷⁷ Similar reasoning was enunciated by Justices Black⁷⁸ and Brennan.⁷⁹

The glaring cameras of the media should keep the privacy of the home intact. Certainly in common usage a basic meaning of privacy is that of a private space from which others may be excluded. As Joel Feinberg explained, the root idea in the generic concept of privacy is that of a privileged territory or domain in which an individual person has the exclusive authority of determining whether another may enter, and if so, when and for how long, and under what

conditions. Within this area, the individual person is sovereign.⁸⁰ The forms of respect that underlie such spaces are well displayed by Erving Goffman in his essay on "The Territories of the Self". Goffman defines a territory as a "field of things" or a "preserve" to which an individual can claim entitlement to possess, control, use, or dispose of. Territories are defined not by neutral, objective factors, like feet or inches, but instead are contextual. Their boundaries have a socially determined variability and depend upon local population density, purpose of the approacher, and character of the social occasion.⁸¹ The social occasion, I reiterate, should not strip individuals from their dignity.

Notes

- 1 R.G. Frey, "Privacy, Control, and Talk of Rights", *Social Philosophy and Policy*, Vol. 17 (2000): 45-67, at 46. See also Judith Jarvis Thomson, "The Right to Privacy", *Philosophy & Public Affairs*, Vol. 4, No. 4 (Summer 1975): 295-314.
- 2 See Section 8 of the *Canadian Charter of Rights and Freedoms*, and Article 17 of the *International Covenant on Civil and Political Rights*: "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation." U.N.T.S. No. 14668, Vol. 999 (1976).
- 3 Cf. Commission on Freedom of the Press (Hutchins Commission), *A Free and Responsible Press* (Chicago: University of Chicago Press, 1947); Robert W. McChesney and John C. Nerone (eds.), *Last Rights: Revisiting Four Theories of the Press* (Urbana and Chicago: University of Illinois Press, 1995), esp. pp. 77-124. See also Dan Caspi, "On Media and Politics: Between Enlightened Authoritarianism and Social Responsibility," in R. Cohen-Almagor (ed.), *Israeli Democracy at the Crossroads* (London: Routledge, 2005): 23-38.
- 4 The Basic Law: Human Dignity and Freedom (5752 - 1992). Passed by the Knesset on 21st Adar, 5754 (March 9, 1994); http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1992/3/Basic%20Law-%20Human%20Dignity%20and%20Liberty-.
- 5 Canadian Charter of Rights and Freedoms, section 1; *R. v. Keegstra* [1990] S.C.J. No. 131, 3 S.C.R. 870; *Canadian Human Rights Commission et al. v. Taylor et al.* [1990] 3 S.C.R. 892, 75 D.L.R. (4th); *R. v. Butler* [1992] 1 S.C.R. 452.
- 6 Founded in 1909 as Sigma Delta Chi, the Society of Professional Journalists is the US's largest and most broad-based journalism organization. Sigma Delta Chi's first Code of Ethics was borrowed from the American Society of Newspaper Editors in 1926. In 1973, Sigma Delta Chi wrote its own code, which was revised in 1984 and 1987. The present version of the Society of Professional Journalists' Code of Ethics was adopted in September 1996. <http://spj.org/awards/SDX98/rules.htm#society>; <http://spj.org/ethics/ethics.pdf>.
- 7 <http://www.abc.net.au/corp/codeprac04.htm>, para 2.5.
- 8 "Privacy", in *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/archives/sum2002/entries/privacy/>
- 9 Robert C. Post, "The Social Foundations of Privacy: Community and Self in the Common Law Tort," *California*

Communication Law Review

- Law Review*, Vol. 77 (October 1989): 957.
- 10 Amitai Etzioni, *The Limits of Privacy* (New York: Basic Books, 1999), p. 191. James Q. Whitman argues that privacy is an aspect of personal dignity within the continental tradition. For a useful discussion on privacy especially in Germany and France, see his "The Two Western Cultures of Privacy: Dignity versus Liberty," *Yale Law Journal*, Vol. 113 (April 2004).
- 11 Avishai Margalit, *The Decent Society* (Cambridge, Mass.: Harvard University Press, 1996), p. 201.
- 12 Robert C. Post, "Three Concepts of Privacy", *Georgetown Law Journal*, Vol. 89 (June 2001): 2094.
- 13 Clause 12 of the PCC Code of Practice holds that children under sixteen should not be interviewed or photographed on subjects involving their personal welfare without the consent of a parent or other adult responsible for them". For further discussion see Lord Wakeham's speech at St. Bride's Institute (August 23, 1995), in *Moving Ahead* (Press Complaints Commission, 1995).
- 14 Alison Boshoff, "Curbs on Press to Protect Princes", *The Daily Telegraph* (September 8, 1997), p. 1.
- 15 "Earl Spencer's Funeral Address", *The Sunday Telegraph* (September 7, 1997), p. 2.
- 16 The term "paparazzi" comes from Federico Fellini's film "La Dolce Vita". The character, a photographer named Paparazzo, reminded Fellini of "a buzzing insect, hovering, darting, stinging." See <http://people.howstuffworks.com/paparazzi.htm>
- 17 Kamal Ahmed, "Editors Bar Snatched Pictures of Princes", *The Guardian* (September 9, 1997), p. 2.
- 18 *Ibid.*
- 19 *Ibid.* For further discussion, see R. Cohen-Almagor, *The Scope of Tolerance: Studies on the Costs of Free Expression and Freedom of the Press* (London and New York: Routledge, 2006).
- 20 Kamal Ahmed, "Editors Bar Snatched Pictures of Princes", *The Guardian* (September 9, 1997), p. 2. For an interesting American case involving a paparazzi who made a career of photographing Jacqueline Kennedy Onassis and her children in public places and whose intrusions were enjoined by the courts, see *Galella v. Onassis*, 487 F.2d 986 (2nd Cir. 1973); *Galella v. Onassis*, 533 F.Supp. 1076 (S.D.N.Y. 1982).
- 21 For depiction of the Princes' lives and their relationships with the media, see the documentary *Prince William and Prince Harry, The Prisoners of Celebrity* (Imagicians Television production For BBC, produced and directed by Alan Scales). See http://turnerclassic.moviesunlimited.com/browse_list.asp?cid=do&dept=Miscellaneous+Documentaries&subdept=Great+Britain&media=d
- 22 Anat Balint, "Directing Itself: The Netanyahu Family and Paparazzi Photographers", *The Seventh Eye*, Issue 11 (October 1997): 6-11 (Hebrew).
- 23 Charles J. Sykes, *The End of Privacy* (New York: St. Martin's Press, 1999).
- 24 P. David Marshall, "Intimately Intertwined in the Most Public Way: Celebrity and Journalism", in Stuart Allan (ed.), *Journalism: Critical Issues* (Berkshire: Open University Press, 2005), p. 28.
- 25 *A. v. B PLC and Another* [Court of Appeal], [11 March 2002] 1 F.L.R. 1021.
- 26 See *Virgil v. Time Inc.* 527 Fed. 2d 1122 (C.A. 9, 1975) and *Virgil v. Sports Illustrated*, 424 F. Supp. 1286 (S.D. Cal., 1976) concerning Mike Virgil, a well-known body-surfer, who sued for invasion of privacy after *Sports*

Communication Law Review

Illustrated published a non-complimentary article about him. Virgil lost as the court felt body-surfing was a subject of general public interest, and the juicy details revealed about Virgil helped explain his extremely daring and dangerous style of body surfing.

- 27 See, for instance, <http://www.cyberturf.com/freepictures/Hilton/Paris.html>. I googled her on December 4, 2005 and received no less than 30,400,000 results. The numbers grow each and every day as Hilton keeps journalists busy, and they are quite happy to be kept busy by her, as the public is happy to learn more juicy details about the young millionaire.
- 28 In *Campbell v Mirror* the court ruled that the media to conform with Art.8 European Convention on Human Rights should respect information about aspects or details of the private lives of celebrities and public figures that they legitimately chose to keep private, certainly "sensitive personal data" under the 1998 Act, unless there was an overriding public interest duty to publish consistent with Art.10(2) of the Convention. The court held that Campbell was entitled to 3,500 pounds remedy of damages for breach of confidence after the paper revealed her treatment for drug addiction. Cf. *Campbell v Mirror Group Newspapers* [2002] EWHC 499 (QB) QBD (Morland J.) 27/3/2002. <http://www.publications.parliament.uk/pa/ld200304/ldjudgmt/jd040506/campbe-1.htm>. For further discussion on privacy law in Britain, see *Michael Douglas, Catherine Zeta-Jones and Northern & Shell PLC v. Hello! And Others* [11 April 2003] EWHC 786 (Ch); *Jamie Theakston v MGN LTD* [2002] EWHC 137 (QB), <http://www.simkins.co.uk/ebulletins/JKCSexandprivacy.aspx>. Both are concerned with taking photos without permission, the first during the couple's wedding; the second of the BBC Top of the Pops presenter in a brothel.
- 29 James Mennie, "They love him tender; Quebecers more likely to believe Elvis Presley's still alive, poll says," *The Gazette* (Montreal, Quebec) (November 1, 1991), p. A7; Jon Stock, "Making a mint by keeping Elvis alive; Can any serious investigator honestly believe Elvis Presley is still alive?," *South China Morning Post* (Hong Kong) (August 16, 1992), p. 4; "Special: Some people are desperate to prove that Elvis Presley is still alive," *The Advertiser* (March 26, 1992).
- 30 Ian Haysom, "Marilyn Monroe is alive and well," *Ottawa Citizen* (September 7, 1996), p. B5. See also Lea Frydman, "Elvis death hoax," <http://www.elvispresleynews.com/article1045.html>
- 31 J Marks, "No, No, No, Paul McCartney is not dead," *New York Times* (November 2, 1969), p. D13; "Beatle spokesman calls rumor of McCartney's death 'rubbish'," *New York Times* (October 22, 1969), p. 8; J. Phillips. "McCartney 'death' rumors," *Washington Post* (October 22, 1969), p. B1; "McCartney Ballad: 'So Long Paul'," *Washington Post* (November 1, 1969), p. C6.
- 32 <http://web.sadna.co.il/icexcellence2/website/topbar/advisory.html>
http://he.wikipedia.org/wiki/%D7%99%D7%95%D7%90%D7%91_%D7%A7%D7%95%D7%98%D7%A0%D7%A8 (Hebrew); <http://web.sadna.co.il/icexcellence2/website/topbar/advisory.html>
- 33 The *Sydney Morning Herald* code of ethics states: "Staff will strike a balance between the right of the public to information and the right of individuals to privacy. They will recognize that private individuals have a greater right to protect information about themselves than do public officials and others who hold or seek power, influence or attention. They shall not exploit the vulnerable or those ignorant of media practices." See <http://smh.com.au/articles/2003/07/23/1058853117909.html>

Communication Law Review

- 34 Cf. http://en.wikipedia.org/wiki/David_Hookes; <http://news.bbc.co.uk/sport1/hi/cricket/3408473.stm>
- 35 Martin Hirst and Roger Patching, *Journalism Ethics: Arguments and Cases* (Melbourne: Oxford University Press, 2005), p. 176. See also *Ibid.*, p. 203 on the media coverage of Hookes' tragic death.
- 36 CBS/AP, "Anger At CBS Use Of Diana Photos", *CBS News* (April 23, 2004), at <http://www.cbsnews.com/stories/2004/04/22/world/printable613102.shtml>
- 37 Stephen Bates and Gary Younge, "US viewers to see pictures of dying Diana," *The Guardian* (April 22, 2004), http://www.guardian.co.uk/uk_news/story/0,3604,1200277,00.html
- 38 CBS/AP, "Anger At CBS Use Of Diana Photos", *CBS News* (April 23, 2004), at <http://www.cbsnews.com/stories/2004/04/22/world/printable613102.shtml> .
- 39 Oded Shalom and Anat Fishbine, "The Millionaire and the Whore", *Tel Aviv* (July 28, 1995) (Hebrew).
- 40 Anat Tal Shir, "The Strange Story of the Life and Death of David Reichman", *Yedioth Ahronoth* (April 14, 1995), pp. 14-15 (Hebrew).
- 41 "Pentagon: Families Want Photo Ban", *Cbsnews.com* (April 23, 2004), <http://www.cbsnews.com/stories/2004/04/23/iraq/main613301.shtml>.
- 42 *Ibid.*
- 43 <http://www.cbsnews.com/stories/2004/04/23/iraq/main613301.shtml>
- 44 <http://www.cbsnews.com/stories/2004/04/23/iraq/main613301.shtml>
- 45 Shubert Spero, "Bibi's 'personal problem'," *Jerusalem Post* (January 19, 1993), p. 6; See also http://www.jewishsf.com/content/2-0-/module/displaystory/story_id/4041/edition_id/72/format/html/displaystory.html
- 46 Anat Balint, "Directing Itself: The Netanyahu Family and Paparazzi Photographers", *The Seventh Eye*, Issue 11 (October 1997): 6-11 (Hebrew).
- 47 Cf. Frederick Schauer, "Can Public Figures Have Private Lives?," in Ellen Frankel Paul, Fred D. Miller Jr. and Jeffrey Paul (eds.), *The Right to Privacy* (New York: Cambridge University Press, 2000): 293-309.
- 48 Dennis F. Thompson, "Privacy, Politics, and the Press," in John R. Rowan and Samuel Zinaich, Jr. (eds.), *Ethics for the Professions* (Belmont, CA: Wadsworth, 2003), p. 395.
- 49 Ezer Weizman, *On Eagles' Wings* (New York: Macmillan, 1976), pp. 211-212. Weizman told me this story in detail in a lengthy private interview about the Six Day War in 1986. At that time Rabin declined the invitation for interview.
- 50 Cf. Craig A. Williams, *Homosexuality: Ideologies of Masculinity in Classical Antiquity* (New York: Oxford University Press, 1999).
- 51 Cf. R. Cohen-Almagor, *Speech, Media, and Ethics: The Limits of Free Expression* (Houndmills and New York: Palgrave, 2005), esp. chap. 1.
- 52 Edna Arbel, "Weizman should resign," *The Jerusalem Post* (February 16, 2000), p. 8; http://www.knesset.gov.il/lexicon/eng/weitzman_ez_eng.htm . I invited Attorney General Elyakim Rubinstein to comment on the issue but he declined.
- 53 *Time Inc. v. Hill*, 385 U.S. 374 (1967), 1 Media l. Rep. 1791, at 378.

Communication Law Review

- 54 Anthony Lewis, "The Right to Be Let Alone," in Craig L. LaMay (ed.), *Journalism and the Debate Over Privacy* (Mahwah, N.J.: Lawrence Erlbaum, 2003), p. 64.
- 55 376 U.S. 254 (1964), 84 S. Ct. 710.
- 56 *Time Inc. v. Hill*, at 388.
- 57 *Ibid.*, at 408.
- 58 *Ibid.*, at 409.
- 59 *Ibid.*, at 409-410.
- 60 *Ibid.*, at 401-402.
- 61 For further deliberation on involuntary celebrities, see Lawrence M. Friedman, "The One-Way Mirror: Law, Privacy, and the Media," *Stanford Public Law and Legal Theory Working Paper Series*, No. 89 (March 2004).
- 62 "Israeli TV broadcasts video of Rabin's assassination", *CNN* (December 19, 1995), http://edition.cnn.com/WORLD/9512/israel_rabin/
- 63 See Barry Chamish, "The Conspiracy to Assassinate Yitzhak Rabin", at http://www.parascope.com/articles/0397/rabin_in.htm
- 64 "Sidis could read at two years old," *New York Times* (October 18, 1909), p. 7.
- 65 *Ibid.*
- 66 Jared L. Manly, "Where are they now?, April fool!" *The New Yorker* (August 14, 1937), pp. 22-26, at 25-26.
- 67 *Ibid.*, p. 26.
- 68 *Sidis v. F-R Publishing*, 113 F.2d 806 (2nd Cir., July 22, 1940), at 807-808.
- 69 *Ibid.*, at 809.
- 70 *Ibid.*
- 71 Robert C. Post, "The Social Foundations of Privacy: Community and Self in the Common Law Tort", *California Law Review*, Vol. 77 (October 1989): 958. See also Ruth Gavison, "Privacy and the Limits of Law", *Yale Law Journal*, Vol. 89 (1980): 421-471.
- 72 Ronald Dworkin, "Liberalism," in *A Matter of Principle* (Oxford: Clarendon Press, 1985): 181-204; *idem*, *Taking Rights Seriously* (London: Duckworth, 1976); R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance* (Gainesville, FL: University Press of Florida, 1994). For Further reading and analysis, see Richard L. Abel, *Speaking Respect, Respecting Speech* (Chicago and London: University of Chicago Press, 1998).
- 73 Immanuel Kant, *Foundations of the Metaphysics of Morals* (Indianapolis, Ind.: Bobbs-Merrill Educational Publishers, 1969).
- 74 Cf. Justice Douglas in *Public Utilities Commission v. Pollack* 343 U.S. 451, 467 (1952). See also *Boyd v. United States* 116 U.S. 616 (1886); *Stanley v. Georgia*, 394 U.S. 557, 89 S. Ct. 1243, 22 L.Ed.2d 542 (1969); *City of Wauwatosa v. King* 182 N.W. 2d 530, 537 (1971). See also West's Legal News, "Supreme Court Denied Certiorari in Anti-Abortion Demonstrators' Picketing Case," *West's Legal News* 3061, 1995 WL 910586 (October 19, 1995).
- 75 H.C. (High Court of Justice) 456/73. *Rabbi Kahane v. Southern District Police Commander* (was not published); Shamgar J.'s judgment in F.H. 9/83. *Military Court of Appeals v. Vaaknin*, P.D. 42 (iii), 837, 851; H.C. 2481/93.

Communication Law Review

Yoseph Dayan v. Police Chief District of Jerusalem.

76 367 U.S. 643, 81 S. Ct. 1684 (1961), at 656.

77 *Martin v. City of Struthers* 319 U.S. 141, 153 (1943). See also my discussion in *Speech, Media and Ethics*, chap. 2.

78 *Gregory v. City of Chicago*, 394 U.S. 111, 125, 118, 89 S.Ct. 946, 953-954, 950, 22 L.Ed.2d 134 (1969).

79 *Carey v. Brown* 447 U.S. 455, 471 (1980). For further discussion, see Richard J. Arneson, "Egalitarian Justice v. the Right to Privacy?," in Ellen Frankel Pail, Fred D. Miller Jr. and Jeffrey Paul (eds.), *The Right to Privacy*, pp. 91-119.

80 Joel Feinberg, *Offense to Others* (NY: Oxford University Press, 1985): 24.

81 Erving Goffman, "The Territories of the Self", in *Relations in Public: Microstudies of the Public Order* (NY: Harper Colophon Books, 1971), at 29-31.