

The First Annual Symposium of the Masterman
Institute on the First Amendment and the Fourth Estate*

**Journalistic Freedom and Privacy: A Case of Relative
Compatibility**

Anthony Lewis**

It is a privilege for me to give the first Masterman Institute lecture. Edward Masterman has been an inspiring leader of the bar. He and his wife, Sydell, funded the institute to explore the freedom of the press and its limits. I think that is a wise combination of subjects. The press often sounds as though there are no limits on what it can do—as though all its problems can be solved by crying, “First Amendment.” But that is not true and never has been. In my judgment, the press will be strengthened in its great functions if it understands that limits—responsibilities—go along with its freedom.

My subject today is privacy and how that value intersects with and limits the vital interest of press freedom. I shall begin by describing an actual series of events, asking you to consider where lines should be drawn. On June 24, 1990, Mrs. Ruth Shulman was driving on a California freeway when her car was hit by another and rolled down an embankment. Mrs. Shulman was gravely injured and was trapped in the car. A rescue helicopter was called to the scene.¹

Technicians got into the car, removed Mrs. Shulman, and put her in the helicopter. As they flew toward a hospital, and before that as she was rescued from the car, a nurse talked with her and encouraged her to persist in the face of great pain. Unknown to Mrs. Shulman, the nurse was wearing a microphone and recorded her words and groans. Someone else in the helicopter filmed her with a video camera, also without Mrs. Shulman’s knowledge. Bits of the sound and video were broadcast on a television program.²

* Edward I. Masterman Suffolk University Law School, JD '50, LLD '90 and his wife Sydell established the Masterman Institute on the First Amendment and the Fourth Estate to provide a forum for robust debate and exchange of ideas on freedom of the press and its attendant responsibilities. The Institute will host a symposium each year that will bring together representatives from government, the legal profession, and the press for the purpose of informing, educating, and engaging those who care deeply about these issues.

** Anthony Lewis is a noted journalist and winner of two Pulitzer prizes: the first for articles on the federal government’s loyalty security program, and the second for Supreme Court reporting. Mr. Lewis lectured at Harvard University from 1974 to 1989, and has been a visiting lecturer at Columbia and universities of Arizona, California, Illinois, and Oregon. His books include *Gideon’s Trumpet* (1964), *Portrait of a Decade: The Second American Revolution* (1964), and *Make No Law: The Sullivan Case and the First Amendment* (1992).

1. *See* *Shulman v. Group W. Prod., Inc.*, 955 P.2d 469, 475-77 (Cal. 1998) (providing facts of case).
2. *Id.* at 475 (outlining events following accident).

Mrs. Shulman sued the makers of the program for invasion of her privacy.³ As an emotional matter, there can be no doubt that her privacy was invaded and that she felt injured by the invasion. But legally the result was not so sure. That is because the various kinds of injuries to privacy that are covered by privacy law have not fared well in the courts in recent years. Judges have been wary of letting the value of privacy stand in the way of the freedom of the press, whose protection by the First Amendment has grown greatly because of broad and, in my judgment, wise judicial decisions.

Emboldened by its First Amendment gains, the press and its lawyers have argued that it should never have to pay civil damages for what it publishes so long as it is true. No matter how painful a public disclosure of private life may be, if the matter published is true, the damage to the interest of privacy cannot be compensated. That is the claim.

The conflict between privacy and press freedom was resolved in the Shulman case by a divided California Supreme Court. The majority, in an opinion by Justice Kathryn M. Werdegar, decided that Mrs. Shulman could maintain her lawsuit.⁴ What the broadcasters had done, she held, had intruded into a zone where Mrs. Shulman had a reasonable expectation of privacy. Justice Werdegar recognized that government cannot generally dictate what the press may or may not do, but “neither may the media play tyrant to the people by unlawfully spying on them in the name of news-gathering.”⁵ Justice Werdegar went on to say:

A jury could reasonably believe that fundamental respect for human dignity requires the patients’ anxious journey be taken only with those whose care is solely for them and out of sight of prying eyes A reasonable jury could find that defendants, in placing a microphone on an emergency treatment nurse and recording her conversation with a distressed, disoriented and severely injured patient, without the patient’s knowledge or consent, acted with highly offensive disrespect for the patient’s personal privacy⁶

In many cases judges have held that the First Amendment protects the rights of the press to cover newsworthy events.⁷ The dissenting judges in the California court wrote that this principle should have protected these

3. *Id.* at 476 (discussing plaintiff’s cause of action).

4. *See Shulman*, 955 P.2d at 497 (holding claim for invasion of privacy by intrusion survived summary judgment).

5. *Id.* at 497.

6. *Id.* at 494-95.

7. *See, e.g., Kapellas v. Kofman*, 459 P.2d 912, 922 (Cal. 1969) (recognizing broad privilege cloaking truthful publication of all newsworthy matters); *Spahn v. Julian Messner, Inc.*, 221 N.E.2d 543, 545 (N.Y. 1966), *vacated on other grounds*, 387 U.S. 239 (1967) (stating “factual reporting of newsworthy persons and events” in public interest).

broadcasters.⁸ The majority, however, said the principle had to yield when the method of coverage was “highly offensive to a reasonable person.”⁹

As we look at those facts now, how do we as citizens feel about them? Shouldn't the press be free to cover newsworthy events no matter how repellent its methods? After all, the heroic tradition of reporters was created in plays like *The Front Page*¹⁰ where the reporter conceals an escaped murderer in a rolltop desk to get an exclusive story. Or do we think that the press must pay a certain respect, as Justice Werdegard said, to human dignity?

My vote is for human dignity—which is to say, respect for privacy when it is subject to brutal intrusion. And I think we can say that the broadcasters in the *Shulman* case suspected that a jury would take that view. After the California Supreme Court decision, the defendant broadcasters could have insisted on a jury trial, but they settled the case, paying Mrs. Shulman an unstated amount in damages.¹¹ My guess is that they thought a jury would not be happy about the tactics that were used.

Nowadays a frequent cause of conflict between claims of freedom and privacy is a decision by a newspaper or broadcaster to name an individual as a likely suspect in a crime. The crime may well be a grave one, and the publication may well go beyond pointing to a suspect to virtually convicting him of the crime.

That was the situation involving Nicholas Kristof, a New York Times columnist and a one-time colleague of mine. In the wake of the terrorist attacks of September 11, 2001, envelopes containing anthrax powder were mailed to prominent individuals. The results were not just injury and death, but widespread panic. The Federal Bureau of Investigation began a high-powered inquiry, but it seemed to get nowhere. In the spring and summer of 2002, Kristof wrote a series of columns criticizing the F.B.I. investigation.¹² He said the agency had failed to explore evidence about a scientist he called “Mr. Z.” Investigators raided the home of a scientist named Dr. Steven Hatfill, tipping off television networks so that cameras would be there. Dr. Hatfill then said that he fit the description of Mr. Z but had nothing to do with the anthrax mailings. Dr. Hatfill became the subject of unremitting attention by the government and the press, including Kristof. The Public Editor of the New

8. See *Shulman v. Group W. Prod., Inc.*, 955 P.2d 469, 501-02 (Cal. 1998) (Chin, J., dissenting) (arguing events newsworthy and not “highly offensive to a reasonable person”).

9. See *id.* at 496 (plurality opinion) (reasoning intrusive news gathering not within protection of First Amendment).

10. BEN HECHT & CHARLES MACARTHUR, *THE FRONT PAGE: A PLAY IN THREE ACTS* (Samuel French, Inc. 1950) (1928).

11. See Gail Diane Cox, *Long ‘Reality’ TV Case Settles Quietly*, NAT’L L.J., Sept. 20, 1999, at A6 (reporting settlement of Shulman’s case under confidential agreement).

12. See Nicholas D. Kristof, *The Anthrax Files*, N.Y. TIMES, Aug. 13, 2002, at A19; Nicholas D. Kristof, *The Anthrax Files*, N.Y. TIMES, July 12, 2002, at A19; Nicholas D. Kristof, *Anthrax? The F.B.I. Yawns*, N.Y. TIMES, July 2, 2002, at A21; Nicholas D. Kristof, *Connecting Deadly Dots*, N.Y. TIMES, May 24, 2002, at A25.

York Times, Clark Hoyt, wrote that Kristof “contributed to a cloud of suspicion over the wrong man.”¹³

That Dr. Hatfill was indeed the wrong man became clear in 2008, when the government officially exonerated him and paid him a multi-million dollar settlement for leaking private information to the press.¹⁴ In August of 2008, the government said the real anthrax villain was Dr. Bruce Ivans, who had just committed suicide.¹⁵ Nicholas Kristof apologized to Dr. Hatfill in a column. The press’s job is “to afflict the comfortable and comfort the afflicted,” he wrote, but he had “managed to afflict the afflicted.”¹⁶

Kristof used his apology column to discuss what he called the larger question of “the collision between the public interest in aggressive news coverage and the individual interest in privacy.”¹⁷ He asked readers whether a reporter should write a story in three hypothetical cases.

In the first:

The police have seized barrels of chemicals from a group of foreign, young men living in town and are questioning them on suspicion of planning to poison the local reservoir. The men’s lawyer pleads with you to write nothing, saying that the matter will be cleared up and that publicity would exacerbate anti-foreign prejudices and make it impossible for them to remain in the community. Do you write about it?¹⁸

In the second hypothetical case:

[The] police have a new suspect in the JonBenet Ramsey case and are interrogating him repeatedly. A friendly cop lets you peek at the man’s file. The man’s wife calls up frantically to beg you not to go public, saying that an article would set off a media feeding frenzy that would permanently traumatize their three children. Do you break the story . . . ?¹⁹

13. Clark Hoyt, *Headlines and Exonerations*, N.Y. TIMES, Aug. 17, 2008, at L10 (criticizing Kristof’s treatment of Hatfill in opinion-editorials).

14. See Hoyt, *supra* note 13 (reporting Department of Justice exonerated Hatfill and settled lawsuit for \$4.6 million); Statement of Brian Roehrkaase, Director of Public Affairs, Department of Justice, on Department’s Settlement with Steven Hatfill in *Hatfill v. Ashcroft* (June 27, 2008), available at <http://www.usdoj.gov/opa/pr/2008/June/08-opa-576.html> (disclosing settlement with Hatfill); see also Settlement Agreement at 1-2, *Hatfill v. Mukasey*, No. 03-1793 (D.D.C. June 27, 2008) (documenting settlement between U.S. government and Hatfill).

15. See Jeffrey Taylor, U.S. Att’y, Dep’t of Justice, Remarks Delivered at Press Conference (Aug. 6, 2008), available at <http://www.usdoj.gov/opa/documents/opa-080806.html>.

16. Nicholas D. Kristof, *Media’s Balancing Act*, N.Y. TIMES, Aug. 28, 2008, at A27 [hereinafter Kristof Apology] (apologizing and explaining his earlier columns).

17. *Id.*

18. *Id.*

19. *Id.*

The third:

You learn that the local high school girls' basketball coach has been repeatedly accused of sexual misconduct and has left three previous schools under a cloud of suspicion [The coach] pleads with you to let the matter drop and hints that a scandal might drive him to kill himself. Do you write anything?²⁰

Kristof said he would write a story in the first case, because "the risk to a reservoir is such a serious health concern that it demands coverage," and in the third, because the school system had done nothing about the suspect coach and "news coverage may be the only corrective oversight."²¹ But he would not write about the new JonBenet Ramsey suspect, Kristof said, because the case is "titillating but doesn't involve serious public policy concerns."²²

When I read that column, I answered no to all three questions. I would not write a story about any one of the three hypothetical cases. My basic reason was that in all three a decision to write would require a judgment by the reporter that the suspects were more than likely guilty. Consider the alternative. Suppose the reporter looked into the reservoir case and concluded that a right-wing nativist police chief was just working off his hatred of foreigners on these young men. Would the reporter conceivably be justified in dragging their names into the limelight? No, I think a conscientious journalist like Nicholas Kristof would write a story only if he were convinced that something wrong and dangerous was going on, both in this hypothetical case and in the case of the basketball coach.

The question is whether a journalist, even one who is smart and conscientious, should be making a judgment as to guilt on what might be incomplete or biased assertions of fact. A journalist does not have subpoena power. He does not have the role of a judge or a jury.

My doubts about giving journalists such a role are strengthened by a case that is far from hypothetical: the case of Wen Ho Lee, a scientist at the Los Alamos National Laboratory.²³ In the late 1990s, stories appeared in the press and on television suggesting that he was a nuclear spy for China.²⁴ The stories evidently resulted from leaks by one or more government sources, though none were identified.²⁵ Lee was arrested, charged with fifty-nine felony counts and held for nine months in solitary confinement.²⁶ Then the government dropped

20. Kristof Apology, *supra* note 16.

21. *Id.* (justifying reporting in hypothetical cases involving public health risk and failure of school system).

22. *Id.* (arguing against reporting in merely scandalous case).

23. *See Lee v. Dep't of Justice*, 413 F.3d 53, 55 (D.C. Cir. 2005) (describing Department of Justice investigation of Lee).

24. *See id.* (recounting media coverage of Los Alamos investigation).

25. *See id.* (highlighting media's use of unnamed government sources).

26. *See U.S. v. Lee*, 79 F. Supp. 2d 1280, 1282, 1289 (D. N.M. 1999) (referring to grand jury indictment

all but one of the counts, a charge that he had mishandled information that had been retroactively classified as “secret.”²⁷ Lee pleaded guilty to that and was released. The judge in the case apologized to him and said officials handling the matter had “embarrassed our entire nation.”²⁸

An editorial in the Boston Globe said that the source of the incorrect and slanderous stories about Lee was an intelligence official “with a reputation for right-wing zealotry.”²⁹ If so, the reporters who spread the dirt about Wen Ho Lee either did not know that about their source, or were not ready to take account of it. The danger in the episode is obvious. Bad news is a story. Good news is usually not. Who would have written something about Wen Ho Lee saying that he was a hard-working civil servant at Los Alamos? A sensational scoop can lure even the best of us in the business of journalism.

Nick Kristof put it, I remind you, that there is a “collision between the public interest in aggressive news coverage and the individual interest in privacy.”³⁰ That is a fair enough description, but I would add a couple of qualifications. Journalistic investigations of possible wrongdoing, especially official wrongs, should be aggressive, but not sensational or oblivious to the concerns of privacy and decency. Again, the interest in privacy is individual, often painfully so. But it is more than that. The nature of our society is affected if we trample the value of privacy. It becomes a coarser, less humane society.

Justice William J. Brennan Jr. was one of my heroes on the Supreme Court. But I think he went wrong in 1967 when he wrote the opinion for the five-to-four majority in a privacy case, *Time Inc. v. Hill*.³¹ Justice Brennan held that James Hill, a private citizen suing over a hurtful injury to his family’s privacy, had to meet the difficult legal test imposed on public officials and public figures in libel cases.³² Justice Brennan wrote:

One need only pick up any newspaper or magazine to comprehend the vast range of published matter which exposes persons to public view, both private citizens and public officials. Exposure of the self to others in varying degrees is a concomitant of life in a civilized community. The risk of this exposure is an essential incident of life in a society which places a primary value on

against Lee); Paul Farhi, *Privacy Lawsuit of Wen Ho Lee Settled for \$1.6M*, WASH. POST, June 3, 2006 (noting Lee’s imprisonment).

27. See *Lee v. Dep’t of Justice*, 401 F. Supp. 2d 123, 126 (D.D.C. 2005) (detailing outcome of Lee’s indictment); Editorial, *Remembering Wen Ho Lee*, BOSTON GLOBE, June 11, 2006 [hereinafter Boston Globe Editorial] (criticizing Department of Justice behavior in prosecuting Lee).

28. *Statement by Judge in Los Alamos Case, With Apology for Abuse of Power*, N.Y. TIMES, Sept. 14, 2000, at A25.

29. Boston Globe Editorial, *supra* note 27 (describing circumstances of Lee’s false accusation).

30. Kristof Apology, *supra* note 16 (observing balance of privacy and public inquiry concerns).

31. 385 U.S. 374 (1967).

32. See *id.* at 387-88 (holding speech and press protections exclude redress for reasonable, false reports of public interest matters unless falsehood knowing or reckless).

freedom of speech and of press.³³

I think that passage essentially rejects the claim of privacy as an important value in our society. The most obscure American, it says, must accept the inescapability of “exposure of the self to others”; that is the price of “life in a civilized community.”³⁴ I have a different view of what makes a “civilized community.”

Now I do not have to tell you that my view is not embraced by the journalism business or its lawyers. That is putting it mildly. A fair word for what I have said is “heresy.” So be it. Another fair word might be “old-fashioned.” We live in the age of letting it all hang out. Young people disclose their innermost thoughts and images in computer messages. The other day I read a story in the New York Times about how teenagers send out pictures of themselves naked.³⁵ The value of privacy does not seem to be much treasured these days.

We are in the age of exposure now: self-exposure on television and the web, exposure of every kind of human fault or flaw by the press and various investigative agencies. The digital revolution has made available endless information about individuals, not only to official probers but also to the casually curious.

A particularly shameful example can be found in the work of Kenneth Starr, the independent counsel who tried to drive President Bill Clinton from office.³⁶ Starr used his power to obtain Monica Lewinsky’s letters and personal jottings from her personal computer—and then included them in his report to the House of Representatives.³⁷ Despite a plea from Ms. Lewinsky, he also included in the report computer messages Lewinsky had received from a woman friend describing conflicts with her husband: messages that had no conceivable relevance to the Starr inquiry.³⁸ Starr issued a subpoena demanding that a Washington bookstore produce a record of all the books Lewinsky had bought there: a demand that Lewinsky said made her feel violated more than any other of Starr’s overreachings.³⁹ Starr defended his inclusion of invasive irrelevancies in his report by saying that he did not expect it to be made public.

33. *Id.* at 388.

34. *Id.*

35. See Stephanie Clifford, *Teaching Teenagers About Harassment*, N.Y. TIMES, Jan. 27, 2009, at B1 (describing child pornography charges for teenagers transmitting nude pictures via cellular telephone).

36. See generally KENNETH STARR, THE STARR REPORT (1998), available at 1998 WL 614815.

37. *Id.* at § B4 (citing documents found in Monica Lewinsky’s apartment and computer as evidence of affair with President Clinton).

38. See ANDREW MORTON, MONICA’S STORY 280 (1999) (describing effect of Starr report on Lewinsky’s friend).

39. See *id.* at 288 (quoting Lewinsky’s complaint of privacy violation from bookstore subpoena); Jeffrey Rosen, *The Eroded Self*, N.Y. TIMES, Apr. 30, 2000, at 46 (presenting Lewinsky’s assertion of privacy violation from bookstore subpoena to biographer, Andrew Morton).

If you believe that, as the Duke of Wellington said, you can believe anything.

But you do not need a prurient zealot like Kenneth Starr to make public what had been thought assuredly private. As I said a moment ago, all kinds of facts are just floating out there in the digital age. A recent article in the New York Times pointed out how this worked in the case of Alex Rodriguez, the New York Yankees baseball star exposed lately as having used steroids clearly in this decade.⁴⁰ How did that fact come out? Rodriguez and other Major League players took part in a 2003 survey of steroid use. The survey results were supposed to be used without names, just to get an estimate of the prevalence of steroid use. The test samples were to be destroyed. But when federal prosecutors sought them, years later, it turned out that the samples were still there, names attached.⁴¹

The press's disdain for the idea that privacy deserves legal protection is not limited to this country. Indeed, there are more noxious examples in Britain, the land of the shameless tabloid. In 2008, one of those tabloids, the Daily Mail, published a sensational story about how a man who was well-known, but not in official life, had participated in an orgy.⁴² A court upheld the man's claim for damages for invasion of privacy, finding that there were factual errors in the story. The editor of the Daily Mail, Paul Dacre, thereupon excoriated the judge as an enemy of freedom.⁴³ If the right to publish stories on scandal was limited, Dacre said, the press might lose readers and be unable to perform its nobler functions.⁴⁴

Dacre and his colleagues are up-to-date versions of the journalist rogues memorably described by Evelyn Waugh in his novel, "Scoop."⁴⁵ They remind me of a verse by Humbert Wolfe:

You cannot hope to bribe or twist,
Thank God! The British journalist.
But, seeing what the man will do
Unbribed, there's no occasion to.⁴⁶

40. See Noam Cohen, *As Data Collecting Grows, Privacy Erodes*, N.Y. TIMES, Feb. 16, 2009, at B3 (describing privacy encroachment through steroid test data collection).

41. See *id.*

42. See *Mosley v. News Group Ltd.*, (2008) E.M.L.R. 20 (Q.B.) (reporting suit between president of car racing organization and newspaper publishers).

43. See Paul Dacre, Editor in Chief, Daily Mail, Opening Lecture to the Society of Editors Conference 2008 (Nov. 9, 2008), available at <http://www.societyofeditors.co.uk> then follow "Conference" link, then follow "Read the full text of Paul Dacre's speech" link (observing ubiquity of Justice Eady in cases suppressing media freedom).

44. See *id.* (arguing public condemnation through media identification necessary to moral society).

45. See generally EVELYN WAUGH, *SCOOP* (1938).

46. FRED R. SHAPIRO & JOSEPH EPSTEIN, *THE YALE BOOK OF QUOTATIONS* 833 (2006).

But forgive the trans-Atlantic diversion. Privacy is serious business. How serious I shall try to indicate by saying some more about the case of *Time, Inc. v. Hill*,⁴⁷ the case in which Justice Brennan wrote that “exposure of the self to others” was “a concomitant of life in a civilized community.”⁴⁸ James Hill, the plaintiff in that privacy suit, lived with his family in a suburb of Philadelphia. In 1952, three escaped convicts took over the home. The convicts behaved in a respectful way toward the Hills. In time, they left and were caught. The press covered the story intensely, to the distress of the Hill family and especially of Mrs. Hill, a sensitive and deeply private person. To escape the publicity, the Hills moved to a remote location in Connecticut and sought obscurity.⁴⁹

Two years later a play called “The Desperate Hours” opened on Broadway. It was about a family held hostage in its home by escaped convicts. Unlike those in the Hills’ home, the convicts in the play carried out a reign of threat and terror.⁵⁰

Although the play was set in Indianapolis, Life Magazine, doing a feature on the play’s opening, photographed the actors in the former home of the Hill family near Philadelphia.⁵¹ It described the play, with all its terror, as a reenactment of what had happened to the Hills. The Life Magazine story was devastating to the family.⁵² Mrs. Hill suffered a psychiatric breakdown.⁵³

Mr. Hill sued in New York and won modest damages for invasion of privacy—a victory that was reversed by the Supreme Court in 1967.⁵⁴ That was the end of the story for me until 1989, when Leonard Garment wrote an article about the case for the New Yorker.⁵⁵ (Garment got into it because Richard Nixon, before he became President, represented Mr. Hill; Garment was Nixon’s law partner.) In his New Yorker piece, Garment said testimony at the trial of the case described how the Life article had done “lasting emotional injury” to Mrs. Hill.⁵⁶ Two eminent psychiatrists testified that she had come through the hostage incident well, Garment wrote, “but had fallen apart when the Life article brought back her memories transformed into her worst nightmares and presented them to the world as reality. Both said she was and would for an indefinite time remain a psychological tinderbox. In August, 1971, Mrs. Hill took her life.”⁵⁷

Secrecy is a red flag to journalists, and rightly so. Governments use it to

47. 385 U.S. 374 (1967).

48. *Id.* at 388.

49. *See id.* at 378 (describing Hills’ ordeal and reaction).

50. *See id.* (contrasting Hayes’s novel with Hill family’s experience).

51. *Hill*, 385 U.S. at 392 (recounting Life editor’s decision to shoot at Hill home).

52. *See* Leonard Garment, *Annals of Law, The Hill Case*, NEW YORKER, Apr. 17, 1989, at 90 (reporting Mrs. Hill’s suicide after the Life story and lawsuit).

53. *See id.*

54. *See* *Time, Inc. v. Hill*, 385 U.S. 374 (1967).

55. *See* Garment, *supra* note 52, at 90.

56. *See id.*

57. *Id.*

hide incompetence and corruption, saying that they are protecting national security when they are really trying to avoid embarrassment. Fighting official secrecy is one of the prime duties of the press, an essential function if we are to keep our freedom. But secrecy on the part of individuals—privacy—is altogether different. The philosopher Thomas Nagel put it that the inner life of human beings “is such a jungle of thoughts, feelings, fantasies and impulses that civilization would be impossible if we expressed them all”—or, I would add, if they were brought to light by official investigators or a prying press.⁵⁸

The great Czech writer Milan Kundera made the point in different words in 1985, before the Iron Curtain fell. He wrote:

We live in an age when private life is being destroyed. The police destroy it in Communist countries, journalists threaten it in democratic countries, and little by little the people themselves lose their taste for private life and their sense of it. Life when one cannot hide from the eyes of others—that is hell. Those who have lived in totalitarian countries know it, but that system only brings out, like a magnifying glass, the tendencies of all modern society Without secrecy, nothing is possible—not love, not friendship.⁵⁹

58. See Thomas Nagel, *The Shredding of Public Privacy*, in *CONCEALMENT AND EXPOSURE: AND OTHER ESSAYS* 27, 28 (2002).

59. See Olga Carlisle, *A Talk With Milan Kundera*, N.Y. TIMES MAG., May 19, 1985, at 72, 85.