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PUTTING THE BRAKES ON PAPARAZZI: STATE AND FEDERAL LEGISLATORS PROPOSE PRIVACY PROTECTION BILLS

INTRODUCTION

In today's society, the privacy of individuals and the rights of the media stand in direct conflict. These two fundamental interests serve important functions: the first, protecting the individual from unwarranted public intrusions; the second, communicating information via visual images deemed to be in the public interest.¹ Both private figures and celebrities are affected by the right of the media to capture unauthorized visual images to later be disseminated for public view.²

Neither the right of the press nor the right to privacy is absolute. The Supreme Court has stated that the press "has no special privilege to invade the rights and liberties of others."³ Likewise, the RESTATEMENT (SECOND) OF TORTS [hereinafter "RESTATEMENT"] reflects the underlying premise that an individual "assumes the risk of public inspection when she ventures into a public place."⁴ Due to the subjective nature of privacy, and the constitutional freedom of the media, it is difficult to measure

1. Andrew Jay McClurg, *Bringing Privacy Law Out Of The Closet: A Tort Theory Of Liability For Intrusions In Public Places*, 73 N.C.L.REV. 989, 1017 (1995).

2. See *Galella v. Onassis*, 487 F.2d 986 (2nd Cir. 1973) (granting injunctive relief to the John F. Kennedy's widow against a photographer due to his harassment). See *Schulman v. Group W Productions, Inc., et al.*, 18 Cal.4th 200, 955 P.2d 469, 74 Cal.Rptr.2d 843 (1998) (holding that victim was entitled to degree of privacy in conversations with medical rescuers; and recording of communications to rescuers and filming in helicopter ambulance may have been highly offensive to reasonable person).

3. Eduardo W. Gonzalez, "Get That Camera Out of My Face!" *An Examination Of The Viability Of Suing "Tabloid Television" For Invasion Of Privacy*, 51 Miami L.Rev. 935, 951 (1997) (citing *Branzburg v. Hayes*, 408 U.S. 665, 683 (1972)) (quoting *Associated Press v. NLRB*, 301 U.S. 103, 132-133 (1937)).

4. See *McClurg*, *supra* note 1, at 1036 (discussing RESTATEMENT (SECOND) OF TORTS §§ 652B-652E (1977)).

precisely when a violation of a right has occurred, giving rise to a cause of action.

Heightened awareness was drawn to this issue with the tragic death of Princess Diana, due to a collision during a high speed chase undertaken to flee aggressive “paparazzi.”⁵ Public shock and outrage over Princess Diana’s death, in part, fueled a movement to restrict the intrusiveness of the media, and to expand protection for individual privacy through the creation of criminal penalties and civil remedies.⁶ In response to that tragedy and public opinion, both state and federal legislatures have introduced bills to protect more adequately the privacy rights of individuals.⁷

This legislative update will briefly explore the historical tradition of privacy and its development in tort law. Some cases asserting privacy causes of action will be analyzed. Next, pending federal bills will be analyzed to determine whether the proposed privacy protections create an undue restriction on the freedom of the press. In addition, the recently passed Section 1708.08 of the California Civil Code, will be discussed. This law attaches liability to anyone physically invading the privacy of another without permission.⁸ In conclusion, the argument will be made that the right to individual privacy should trump the right of the media, and therefore, privacy legislation should be passed to serve this interest in the least restrictive manner.

I. BACKGROUND

A. Common Law

With tremendous foresight in 1890, Justices Warren and Brandeis, wrote that an individual should be entitled to a legal

5. *7 Paparazzi Suspects in Diana’s Fatal Crash Manslaughter Charges May Be Filed In Paris*, St. Louis Post Dispatch, Sept. 3, 1997, at O1A.

6. 143 CONG. REC. E1709-01 (September 10, 1997)(statement of Rep. Bono).

7. H.R. 2448, 105th Cong. (1997), H.R. 3224, 105th Cong. (1998), S. 2103, 105th Cong. (1998) H.R. 4425, 105th Cong. (1998), CAL. CIV. CODE § 1708.8 (1998).

8. CAL. CIV. CODE § 1708.8 (1998).

remedy for invasion of privacy.⁹ They asserted that the right to life may be construed as the right to be left alone.¹⁰ In an often quoted passage, referring to the willingness of the press to meet the public's demand for gossip, the authors noted, "the press is overstepping in every direction the obvious bounds of propriety and decency."¹¹ They believed that privacy invasions could cause mental distress or physical injury.¹² For Warren and Brandeis, privacy contained an element of control: entitling the individual to decide what personal information shall be given to the public.¹³ Apparently, the stimulus for the right to privacy was the unwanted publicity given by the press to the wedding of Justice Warren's daughter.¹⁴ This analysis of privacy lent credence to the establishment of a cause of action in tort for invasion of privacy.¹⁵

B. Privacy and Tort Law

In the tort realm in 1960, Dean William Prosser, reviewing case law development of invasion of privacy, determined the law of privacy could be divided into four torts: (1) intrusion upon the plaintiff's seclusion or solitude, or into his private affairs; (2) public disclosure of private facts; (3) publicity placing the plaintiff in a false light; and (4) appropriation of the plaintiff's name or likeness for the defendant's.¹⁶ The four privacy torts were later adopted by the RESTATEMENT.¹⁷ Only the tort of intrusion will be discussed in this update.

9. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV.L.REV. 193, 214 (1890).

10. *Id.* at 193.

11. *Id.* at 196.

12. *Id.* at 196.

13. *Id.* at 199.

14. Mary Ann L. Wymore, *Modernizing The Law Of Privacy: Challenging the Validity of the Intrusion Tort and Presenting Arguments for its Elimination*, 40 Fed. B.News & J. 374, 375 (1993) (citing Prosser, *Privacy*, 48 CAL. L. REV. 383 (1960)).

15. *McChurg*, *supra* note 1, at 997.

16. Note, *Privacy, Photography, and the Press*, 111 HARV. L. REV. 1087 (1998).

The RESTATEMENT defines intrusion upon seclusion as covering actions, “where one intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”¹⁸ Comment (b) to the RESTATEMENT states that the invasion may occur by a physical intrusion, such as a trespass, or by use of the defendant’s senses, with or without mechanical aids to oversee or overhear the plaintiff’s private affairs.¹⁹ The intrusion itself subjects the defendant to liability, regardless of whether the information or photograph obtained is published or used in any way.²⁰ However, the tort of intrusion fails to provide adequate protection against unauthorized photographs taken in public.²¹ Applying a strict reading of the RESTATEMENT tort of intrusion, if a tabloid TV show films an accident rescue on a highway, or a newspaper publishes a photograph of a couple enjoying a romantic moment, neither group could sue for intrusion.²² As a result, plaintiffs pursuing a cause of action for intrusion of privacy are not always successful.

C. Modern Development of Invasion of Privacy Claims

Judicial reluctance to provide recovery strictly on an invasion of privacy basis is prevalent in American jurisprudence. One such example is the *Galella v. Onassis* case decided in 1973.²³ In that case, Jacqueline Kennedy Onassis obtained an injunction against a free-lance celebrity photographer, who engaged in a pattern of aggressive conduct in attempt to photograph Mrs. Onassis and her children.²⁴ The court allowed recovery for Mrs. Onassis based on an offense of harassment, not invasion of privacy, which was not a recognized common law right in New York.²⁵ Examples of the

18. RESTATEMENT (SECOND) OF TORTS § 652B-E (1976).

19. *Id.*

20. *Id.*

21. *McChurg, supra*, note 1 at 1037.

22. *Gonzalez, supra*, note 3, at 944.

23. *Galella v. Onassis*, 487 F.2d 986, 991 (2nd Cir. 1973).

24. *Id.* at 992.

25. *Id.* at 995.

photographer's behavior included jumping in front of John Kennedy while he was riding his bicycle in the park; coming uncomfortably close in a power boat while Mrs. Onassis was swimming; bribing doormen at her apartment, restaurant and nightclub to keep him advised of the movements of the family.²⁶ The photographer was specifically enjoined from: (1) approaching or touching Mrs. Onassis within twenty-five feet; (2) any blocking of her movement in public places; (3) any act foreseeable or reasonably calculated to place the life and safety of Mrs. Onassis in jeopardy; (4) any conduct which would reasonably harass, alarm or frighten Mrs. Onassis.²⁷ The prohibited conduct applied to Mrs. Onassis' children as well.²⁸ The court noted that any further restriction on the photographer's taking and selling pictures of Mrs. Onassis for news coverage would be unwarranted,²⁹ because the photographer served the public interest through news coverage of a public figure, Mrs. Onassis.³⁰ Reasonable efforts taken by the photographer to cover Mrs. Onassis were protected by the First Amendment,³¹ however, the court specifically stated that crimes and torts committed in newsgathering are not permitted.³²

In another case, *Shulman v. Group W Productions*³³, the Schulman family were involved in a car accident. As a result of the accident, the plaintiffs sustained serious injuries and required extrication from their demolished car.³⁴ A rescue helicopter arrived at the scene, along with a video cameraman employed by the defendants Group W Productions, Inc., and 4MN Productions.³⁵ The cameraman filmed the rescue operation, shot footage inside the helicopter, and recorded conversations between the plaintiffs

26. *Id.* at 992.

27. *Id.* at 998.

28. *Gallela*, 487 F.2d at 999.

29. *Id.* at 995.

30. *Id.* at 998.

31. *Id.*

32. *Id.* at 995.

33. *Shulman v. Group W Productions, Inc.*, 955 P.2d 469, 475 (1998).

34. *Id.* at 475.

35. *Id.* at 476.

and rescue personnel.³⁶ The footage later was broadcast on the television program, “On Scene: Emergency Response” absent the plaintiffs consent.³⁷ The plaintiff, Ruth Schulman was both seen and heard speaking to a nurse in the helicopter, asking what had happened and later saying, “I just want to die. I don’t want to do this.”³⁸ This accident left Ruth Schulman a paraplegic.³⁹ She was in her hospital room when the segment was broadcast, and told by both hospital personnel and family members that her accident was on television.⁴⁰ Ruth Schulman later stated that she was, “shockedthat this would be run and I would be exploited, have my privacy invaded....I was kind of talking nonstop, and I remember hearing some of the things I said, which were not very pleasant.”⁴¹

The plaintiffs sued the television producers and others alleging torts of publication of private facts and intrusion. The court held that the cameraman’s presence and filming of the accident events was not intrusion on the victim’s seclusion, but found that an issue of fact remained regarding an invasion of privacy claim for the taping that occurred inside the helicopter while the plaintiff was receiving medical care.⁴² The court stated that the cameraman’s presence at the accident scene was not a physical or sensory intrusion on plaintiffs’ seclusion because they had no ownership or control over the premises where the accident took place.⁴³ In the opinion, the court referred to the danger of a contrary holding, allowing liability to be imposed because the court or jury believes certain details of the broadcast were in poor taste or overly sensational in impact, which would assert impermissible supervisory power over the press.⁴⁴ Further, the court stated that in deciding whether a reporter’s alleged intrusion into private matters is offensive and therefore actionable, the courts must consider

36. *Id.*

37. *Id.*

38. *Shulman*, 955 P.2d at 476.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 496.

43. *Shulman*, 955 P.2d at 490.

44. *Id.* at 497.

whether under the circumstances, the intrusion was justified by the legitimate goal of gathering the news.⁴⁵ In summary, the court added that, “the state may not intrude into the proper sphere of the news media to dictate what they should publish and broadcast, but neither may the media play tyrant to the people by unlawfully spying on them in the name of newsgathering.”⁴⁶ While this conclusion succinctly describes the conflict between the media and individual privacy, there is no bright line rule illustrating when such boundaries are impermissibly crossed, and providing adequate remedies for injuries.

II. PROPOSED BILLS

A. *Federal Bills*

1. *H.R. 2448: Protection From Personal Intrusion Act*

On September 10, 1997, Representative Sonny Bono (R-CA) introduced into the House a bill to provide protection from personal intrusion for commercial purposes.⁴⁷ Representative Bono, a former celebrity, drafted this bill to establish criminal and civil liability for violent behavior undertaken by any member of the media, such as stalking, harassment, and assault to obtain a photograph or recording with the intent to be broadcast, published or sold.⁴⁸

This bill would amend the Federal criminal code at chapter 89 of title 18 by adding section 1822. Harassment.⁴⁹ Harass is defined in the bill as,

“persistently physically following or chasing a victim, in circumstances where the victim has a reasonable expectation of privacy and has taken reasonable steps to insure that privacy, for the purpose of capturing by a camera or sound

45. *Id.* at 493.

46. *Id.*

47. H.R. 2448, 105th Cong. (1997).

48. 143 CONG. REC. E1709-01 (September 10, 1997) (statement of Rep. Bono).

49. H.R. 2448, 105th Cong. (1997).

recording instrument of any type, a visual image, sound recording, or other physical impression of the victim for profit in or affecting interstate or foreign commerce.”⁵⁰

A defendant may not assert as a defense that no image or recording was captured, or sold for profit. The lack of defense follows the language of the tort of intrusion, where liability attaches because of the intrusion itself.⁵¹ The criminal penalty states that if death results from harassment, a sentence of at least twenty years may be imposed, plus a fine under Title 18 U.S.C.⁵² If bodily injury results, a minimum of five years and a fine, and if neither death nor bodily injury results, imprisonment for a maximum of one year plus a fine may be imposed.⁵³ In addition, any person who is victim to such a violation may pursue a civil action against the defendant. However, no cause of action exists, civil or criminal, where the sale, transmission, publication, or broadcast, or use of an image or recording was made in a lawful manner.⁵⁴ Also, legitimate law enforcement activities are not subject to the prohibitions the bill.⁵⁵

In this form, H.R. 2448 specifically prohibits behavior often engaged in by the paparazzi. Representative Bono states that the paparazzi are not legitimate media, nor do they contribute meaningfully to the public discourse.⁵⁶ As phrased, it is not clear whether this bill would provide a remedy for private individuals who have the misfortune of having a personal tragedy, such as a car accident, which is caught on tape because such media coverage may be conducted in a lawful manner absent harassment. This bill

50. *Id.*

51. RESTATEMENT (SECOND) OF TORTS § 652B-E (1976).

52. H.R. 2448, 105th Cong. (1997).

53. *Id.*

54. *Id.* (“Lawful manner” is not specifically described in the Bill, but it may be inferred that images captured without harassing conduct by the photographer is exempted from liability).

55. *Id.* (“Law enforcement activity” is not specifically defined in the bill, but Representative Bono, in his remarks, makes clear that police should not be subject to groundless suits while protecting the public safety.)

56. 143 CONG.REC. E1709-01. (September 10, 1997)(statement of Rep. Bono).

only provides relief in the most extreme instances of improper media behavior.

2. *H.R. 3224: Privacy Protection Act of 1998*

This bill, introduced by Representative Elton Gallegly (R-CA), along with co-sponsors Representative Coble (R-NC), Representative Berman (D-CA), and Representative Smith (R-TX), builds on H.R. 2448, with some modifications. It contains a similar harassment definition as outlined by Representative Bono, but states that a person is liable for harassment if: the image, recording or impression was intended or attempted to be, or was sold, published, or transmitted in interstate commerce, or obtained for commercial purposes.⁵⁷ Commercial purposes is defined as, “the expectation of financial gain or other consideration from the sale or other transfer of the visual image, sound recording, or other physical impression.”⁵⁸

The bill also states that a person who is subjected to harassment, “may in a civil action against the person engaging in that violation, obtain any appropriate relief.”⁵⁹ The bill allows the court to award the prevailing party reasonable attorney’s fees and costs arising from the litigation.⁶⁰ It is noted that any section within this proposed bill will not preempt any right or remedy available under federal, state, or local law.⁶¹

3. *S. 2103: Personal Privacy Protection Act*

This bill was introduced in the Senate on May 20, 1998 by Senator Dianne Feinstein (D-CA), with co-sponsors Senator Hatch (R-UT) and Senator Boxer (D-CA).⁶² Among the congressional findings offered in support of the bill are: (1) the legitimate privacy interests of individuals have been violated by media who “physically trespass in order to capture images or other reproductions of their private lives for commercial purposes, or who do so constructively through intrusive modern visual or

57. H.R. 3224, 105th Cong. (1998).

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. S. 2103, 105th Cong. (1998).

auditory enhancement devices”; (2) such media harassment and trespass threatens “not only professional public persons and their families, but also private persons and their families for whom personal tragedies or circumstances beyond their control create media interest.”⁶³

The findings further indicate that federal legislation is necessary because “harassment is not directly regulated by applicable federal, state, local statutory or common laws,” because those laws provide uneven coverage, and may not cover activities undertaken for commercial purposes.⁶⁴ The findings also recognize that there is no right under the First Amendment to harass or trespass where another individual is in reasonable fear of bodily injury.⁶⁵ The bill specifically states that it prohibits and creates liability for “specific dangerous and intrusive activities” and only regulates conduct undertaken to create products intended to be transmitted, bought, and sold in interstate and foreign commerce.⁶⁶ The bill also contains a law enforcement exception, but seems to place more focus on the privacy protection of private individuals whose misfortunes are captured on tape than Representative Bono’s bill.

4. H.R. 4425: Personal Privacy Protection Act

This bill includes new terms from the previous bills. It was introduced in the House on August 6, 1998, by Representatives John Conyers (D-VA) and co-sponsor Representative McCollum (R-FL).⁶⁷ Its central purpose is the same as the others: to provide protection from personal intrusion for commercial purposes.⁶⁸ Two new terms are introduced: Reckless endangerment and tortious invasion of privacy. Reckless endangerment is defined in the bill as:

“whoever, in or affecting interstate or foreign commerce and for commercial purposes, persistently follows or chases a person, in a manner that causes that person to have a

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. H.R. 4425, 105th Cong. (1998).

68. *Id.*

reasonable fear of bodily injury, in order to capture by a visual or auditory recording instrument any type of visual image, sound recording, or other physical impression of that person shall 1) if death or serious bodily injury results, be fined or imprisoned not more than 30 years, or both; 2) be liable in a civil action for any appropriate relief.”⁶⁹

Tortious invasion of privacy is defined as:

“a capture of any type of visual image, sound recording, or other physical impression of a personal or familial activity through the use of visual or auditory enhancement device, if the subject has a reasonable expectation of privacy with respect to that activity; and the image, recording, or impression could not have been captured without a trespass if not produced by the use of the enhancement device; or without a trespass on private property.”⁷⁰

This bill explains that ‘any appropriate relief’ may include compensatory, punitive damages, and injunctive and declaratory relief.⁷¹ In comparison to the proposed legislation previously discussed, H.R. 4425 explicitly attempts to define privacy activities and is more specific in terms of relief available to injured plaintiffs.

B. California Civil Code Section 1708.8

This Act was passed on September 29, 1998 by the California Legislature is a remedial statute, providing damages for invasion of privacy.⁷² Similar to the proposed federal legislation, the California Code holds a person liable for physical invasion of privacy when:

“the defendant knowingly enters the land of another without permission or otherwise committed a trespass, in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression if the plaintiff is engaging in a personal or

69. *Id.*

70. *Id.*

71. *Id.*

familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person.”⁷³

In addition, an individual may be held liable for a constructive invasion of privacy where through the use of enhancing recording devices, a physical trespass did not occur.⁷⁴

If either type of invasion of privacy occurs, the individual responsible for the invasion is liable for up to three times the amount of any general and special damages proximately caused by the violation.⁷⁵ Punitive damages may also be available.⁷⁶ If the plaintiff is able to prove that the privacy invasion was committed for commercial purposes, the defendant may be subject to “disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation.”⁷⁷ In addition, an individual who “directs, solicits, actually induces, or actually causes another person” to invade a plaintiff’s privacy, regardless of whether there is an employer-employee relationship, may also be liable for general, special, consequential, and in some instances, punitive damages resulting from the violation.⁷⁸

Section 1708.8 also has a law enforcement exemption, which is described in greater detail than the proposed federal legislation. This provision holds as legitimate any activity within the scope of employment and supported by an articulable suspicion, which captures an image via recording instruments, a person “during an investigation, surveillance, or monitoring of any conduct to obtain evidence of an illegal activity”, affecting the public health and safety.⁷⁹ As stated, it is not entirely clear whether police-type reality programming would fall under this exemption.

Further, “personal and familial activity” is defined as including “intimate details of the plaintiff’s personal life, interactions with plaintiff’s family or significant others, or other aspects of

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. CAL. CIV. CODE § 1708.8 (West 1998).

78. *Id.*

79. *Id.*

plaintiff's private affairs or concerns".⁸⁰ Illegal or criminal activity does not fall under the protection of this definition.⁸¹ The Act protects the activities of victims of crime where a physical or constructive invasion of privacy occurs.⁸²

III. LEGISLATIVE IMPACT

There is a necessity for federal legislation providing for protection from personal intrusion at the hands of the media. Other nations, such as France, recognize broad legal protections for individual privacy. France has a privacy law which states that, "each individual has the right to require respect for his private life."⁸³ In France, "privacy revolves around the secrecy of one's intimate life and the right to oppose investigation and revelation of this domain."⁸⁴ Areas covered by this law include: family life, sexual activity and orientation, illness and death, and private repose and leisure.⁸⁵ Generally, a French plaintiff does not have to prove fault or injury, because emotional injury is assumed.⁸⁶

In the United States, there is a reluctance to recognize a legal remedy for invasions of privacy due to the fear of regulating media freedoms protected under the First Amendment. However, the proposed bills do not prohibit the coverage of the news event by the media, but instead prohibit the aggressive and intrusive conduct undertaken by the media to cover those events. The proposed bills, H.R. 2448, 3224, 4425 and S. 2103, have the same general purpose to provide civil and criminal liability for personal privacy

80. *Id.*

81. *Id.*

82. CAL. CIV. CODE § 1708.8 (West 1998).

83. Jeanne M. Hauch, *Protecting Private Facts In France: The Warren & Brandies Tort Is Alive And Well And Flourishing In Paris*, 68 TUL.L.REV. 1219, 1222 (1994). (citing Statute No. 70-643 of July 17, 1970, J.O., July 19, 1970, at 6751 (Fr); CODE CIVIL, (C.Civ.), art. 9.

84. *Id.* at 1246.

85. *Id.*

intrusions by media for commercial purposes.⁸⁷ A key element to a personal intrusion claim is proof of the conduct of ‘harassment’ or ‘reckless endangerment’, which may be shown from a patter of persistent following or chasing of a person, placing that person in reasonable fear of bodily injury.⁸⁸

Alternatively, a plaintiff may have a claim of ‘tortious invasion of privacy’ which requires a showing of some form of trespass, physical or constructive, where an image or recording of a personal or familial activity was captured.⁸⁹ The burden is placed on the plaintiff asserting the claim of a personal privacy violation. Passage of such legislation would not severely infringe the First Amendment right of the media, because the pure speech element is not targeted, simply the conduct undertaken to cover newsworthy events. Most legitimate media would not engage in outright aggressive and intrusive conduct to obtain a news story. These bills appear to be specifically tailored to curtail practices of the tabloid media or “paparazzi”.

However, one potential problem found in the proposed bills is a vagueness of terms. For example, the law enforcement exemption applies to official law enforcement activities.⁹⁰ The question remains, what exactly encompasses official law enforcement activities. Would police activities which are filmed for reality television programming be acceptable under this exemption? Furthermore, the term ‘personal or familial activity’ needs to be explored, as to what categories of activities fall under this general term.⁹¹ Would a plaintiff’s car accident be considered a personal activity?

In addition, the proposed bills indicate that a plaintiff may have a cause of action when harassment or trespass is present. In regard to trespass, there needs to be either a physical invasion or a constructive invasion, through the use of highly sensitive recording

87. H.R. 2448, 105th Cong. (1997), H.R. 3224, 105th Cong. (1998), S. 2103, 105th Cong. (1998) H.R. 4425, 105th Cong. (1998), CAL. CIV. CODE § 1708.8 (1998).

88. *Id.*

89. H.R. 4425, 105th Cong. (1998)

90. *Id.*

91. S. 2103, 105th Cong. (1998)

instruments that can capture images or conversations.⁹² Under this construction, it is not clear whether an individual, who suffers a medical emergency, and while receiving assistance is taped by an individual of a television show, can claim harassment or trespass. If this type of plaintiff cannot recover, then this should be addressed or such situations should be explicitly excluded. Construed in this manner, it is apparent that the narrow class of celebrities or public figures and professionals would be fully protected by a privacy bill requiring proof of harassment and trespass, since their activities are frequently interfered with in this manner.

CONCLUSION

Federal legislation protecting the personal privacy of individuals by imposing liability on the perpetrators is both necessary and constitutional. The currently proposed bills aim at the republication activities of media outlets, specifically their conduct, and do not focus on the content of what the media attempted to obtain. The proposed bills also do not attempt to place limits on what the media may report regarding the activities of individuals. Rather, the proposed bills generally recognize that some individual activities are more private in nature, and as such, should not be subject to media scrutiny. Individuals in the United States should be accorded a certain degree of privacy in their lives, free from media interference. Legislation prohibiting certain forms of media activities interfering with privacy interests is a necessary step in securing a privacy right.

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