

CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The “Contemplation of Justice” Bartnicki v. Vopper 532 U.S. 514 (2001)



JUSTICE STEVENS delivered the opinion of the Court. These cases raise an important question concerning what degree of protection, if any, the First Amendment provides to speech that **discloses the contents of an illegally intercepted communication**. That question is both novel and narrow.

The essential thrust of the First Amendment is to prohibit improper restraints on the voluntary public expression of ideas; it shields the man who wants to speak or publish when others wish him to be quiet. There is necessarily, and within suitably defined areas, a concomitant freedom not to speak publicly, one which serves the same ultimate end as freedom of speech in its affirmative aspect." *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U. S., at 559 (quoting *Estate of Hemingway v. Random House, Inc.*, 23 N. Y. 2d 341, 348, 244 N. E. 2d 250, 255 (1968)).

In a democratic society privacy of communication is essential if citizens are to think and act creatively and constructively. Fear or suspicion that one's speech is being monitored by a stranger, even without the reality of such activity, can have a seriously inhibiting effect upon the willingness to voice critical and constructive ideas."

In these cases, privacy concerns give way when balanced against the interest in publishing matters of public importance. As Warren and Brandeis stated in their classic law review article: "The right of privacy does not prohibit any publication of matter which is of public or general interest." *The Right to Privacy*, 4 *Harv. L. Rev.* 193, 214 (1890). One of the costs associated with participation in public affairs is an attendant loss of privacy.

"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 freedom of speech and of press. 'Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.'" *Time, Inc. v. Hill*, 385 U. S., at 388 (quoting *Thornhill v. Alabama*, 310 U. S. 88, 102 (1940)).²¹

*Thoughts, Words and Actions for Plaintiff's Quintessential Rights of the First Amendment:
Truths that manifest Life, Liberty & Pursuit of Happiness pursuant to the Free Exercise Clause*