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“Brandeis: A Great Justice and the Right to Be Let Alone”

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Louis Brandeis, known by the nation at the time of his appointment to the U.S. Supreme Court as “The People’s Lawyer” and years later affectionately nicknamed “Old Isaiah” by President Franklin D. Roosevelt, was one of the greatest jurists and most innovative legal minds in our country’s history.

Fearful of the concentration of power and committed to the principle that the Supreme Court has the authority and duty to protect Americans' civil liberties, Brandeis forged new paths in the area of freedom of speech and the right to privacy that federal courts follow today.

Justice Brandeis’s creative contributions to the world of law, particularly to our constitutional jurisprudence, began early in his career, well in advance of his appointment to the Supreme Court. Few know that Brandeis was instrumental in creating the prestigious Harvard Law Review, molding modern legal education, and raising funds to create an endowed professorship for Oliver Wendell Holmes—all within minutes of his graduation from law school.

Few know that Brandeis experienced serious problems with his eyes while a law student, which prevented him from reading more than three or four hours a day, an important factor that contributed to

the development of his prodigious and legendary memory. The issues with his vision, however, did not prevent him from amassing the best grades ever awarded at Harvard. Few know that his prominent law practice in Boston, straight out of school, featured an impressive list of clients, including Mark Twain. Few know of Brandeis's reputation for meticulous detail and commitment to punctuality.

When future Secretary of State Dean Acheson began his stint as a law clerk for Justice Brandeis, he was warned by colleagues about Brandeis's lifelong practice of being on time, which he emphasized for reasons of courtesy and professionalism. Punctuality was one of Brandeis's prized virtues.

On one occasion, when Brandeis assigned Acheson to write a legal memo, he told the young clerk to slide the memo under the front door of his home, at precisely 5 a.m. At the appointed hour, according to Acheson's narrative, he did indeed slide the memo under Brandeis's front door, only to feel a hand from the other side grasp the memo.

Brandeis's novel contributions to American constitutional law began in earnest while he was a young lawyer practicing in Boston. In 1890, Brandeis and his law partner, Samuel Warren, whose academic record at Harvard was second only to Brandeis's, wrote an article, "The Right to Privacy," for the Harvard Law Review. It was this article that introduced the right to privacy to America. Brandeis quoted passages of this article in his famous dissent in Olmstead v. United States (1928), which became the law of the land in the landmark case of Griswold v. Connecticut (1965).

The argument enjoyed wide appeal within the academic world, the legal community and across the nation. Indeed, it's safe to say the reaction to it was nothing short of remarkable. Brandeis and Warren, it

appeared, had created a new right—the right to privacy, which they believed embodied in the Constitution. A distinguished Harvard Law School Dean, Roscoe Pound, stated that the article "did nothing less than add a chapter to our law." Over the course of time, scholars hailed it as an example of how the best academic writing can work an influence on American law. One scholar observed that article "was perhaps the most influential law journal piece ever published."

Brandeis considered the right to privacy inextricably linked to free speech, both as a check on government and as a human necessity. The word "privacy" does not appear in the Constitution, but he had long believed it to be one of our most fundamental rights.

In Olmstead, the Supreme Court had held that wiretapping did not constitute a violation of the Fourth Amendment. In a landmark dissent that drew upon his 1890 article, Brandeis objected to this invasion of privacy. "The makers of our Constitution," he declared, "conferred, as against the government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men."

The assertion by Brandeis and Warren of a "right to be let alone," first promoted in the 1890 law review article and embraced 75 years later by Justice William O. Douglas in his opinion for the Court in 1965, in Griswold v. Connecticut, generated curiosity about the motivations behind the article. Simply put, the origin of the idea for the article stemmed from unwanted newspaper coverage of private family events which, the authors believed, deserved to remain, well, private. From there, it was a matter of determining how important privacy is to those who live in a free country.

The concern about privacy is rooted in our DNA. After all, the objections of the colonists to sweeping

searches of their businesses and homes by English agents in the early 1760s, widely considered to be unlawful, spurred the discontent that led to the American Revolution. What Brandeis and Warren did in their groundbreaking law review article, and what Brandeis did in his Olmstead dissent, was to give voice to a fundamental right that Americans have always believed to be essential to a free society—and always will.

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