

UNDERSTANDING THE DEFINITION OF “CELEBRITY:”

*A Response to the Proposed Public Policy Rationales for
Enhanced Celebrity Protection Against Paparazzi and
Invasion of Privacy*

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It is important to understand author Devan Orr’s definition of “celebrity” in the article *Privacy Issues and the Paparazzi*. Orr indicates that the increased privacy that California’s legislation provides to celebrities is an appropriate step to address celebrities’ privacy concerns. Orr focuses on the fact that the legislation amendments that increase privacy protection are intended to remedy safety concerns, especially Assembly Bill 1356, which explicitly states “the plaintiff reasonably fearing for his or her safety.”¹ Next, recall that Orr goes on to state that the use of the primary assumption of risk defense would most likely be ineffective in this context. This is because, the author argues, being a celebrity is not inherently dangerous and thus does not justify an assumption of risk on the celebrity’s part when he or she is photographed or recorded by the paparazzi.

It is that statement with which this note takes issue. Though the article focuses much of its attention on the relationship between the status of celebrity parents and its effect on the privacy of their children, this note does not address that concern. This note instead contests the definition of “celebrity” utilized in the article and thus argues against one of the primary public policy rationales

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1. Assemb. B. 1356, 2013 Leg., Reg. Sess. (Cal. 2014), *available at*
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1356&search_keywords= (last visited May 19, 2015).

put forward in favor of increased privacy protection for celebrities.

The Oxford English Dictionary defines “celebrity” as “a person of celebrity; a celebrated person: a public character.”² In contrast, the author, though not explicitly, indicates that a celebrity is defined by what he or she does for a career. Those professions could include acting or singing. However, that is not what is indicated by the Oxford definition of celebrity, which only indicates that celebrities are individuals who possess public personas.³

In fact, one example is President Obama and his family, whose images are often photographed and followed, though neither he nor his family hold themselves out as singers or actors. A president’s celebrity status is further evidenced by the fact that Black’s Law Dictionary acknowledges a president’s status in its section on the Executive Branch when it states that “[t]he president is not only the celebrity of celebrities, he is a man of enormous and growing power.”⁴ Though it can be argued that President Obama is not always photographed for stereotypical magazines that utilize paparazzi photographs, one must recall August of 2014, when the President was photographed and criticized for one of his most famous fashion choices, sparking memes and tweets across the Internet.⁵ To be sure,

2. *Celebrity*, OXFORD ENGLISH DICTIONARY (2d ed.1989).

3. *See id.*

4. *Executive Branch*, BLACK’S LAW DICTIONARY (10th ed. 2014).

5. See Snejana Farberov & Lydia Warren, *Yes We Tan! Obama Ridiculed for Wearing a ‘Used Car Salesman’ Suit to Discuss Crises in Iraq and Ukraine – but White House ‘Stands Squarely Behind His Decision’*, DAILY MAIL (Aug. 28, 2014), <http://www.dailymail.co.uk/news/article-2737288/The-audacity-taupe-Obama-sparks-uproar-Twitter-wearing-tan-suit-press-conference-ISIS-Ukraine.html> (speaking about how much criticism the President received after wearing a tan suit while discussing the crises in Iraq and Ukraine).

it can be acknowledged that a president may more appropriately fit into the category of “politician,” but the definition of celebrity encompasses individuals of public recognition, including politicians. Because of this definition, these celebrities are individuals who have put themselves in the public eye.⁶ As Orr acknowledges, many celebrities have endorsement contracts or movie deals, which necessitate extensive public relations and appearances.

Some individuals criticize celebrities — or, essentially, public figures — when they do insist on increased privacy, because the celebrities “make their living in the public eye.”⁷ Considering this fact, the same individuals also question how much privacy celebrities should even expect.⁸ To be sure, some individuals indicate that celebrities’ presence in the public eye should not alone make them susceptible to constant surveillance; but if a celebrity goes out seeking media attention and the media turns on him or her, it is a lot more difficult to keep the media out of his or her business from that point forward.⁹ In fact, media commentator Mark Borkowski stated that celebrities should realize that, to a certain extent, they are public property and must strive for a delicate balance between promotion and maneuvering through their personal lives.¹⁰

Additionally, celebrities enjoy their celebrity status and all of the benefits that accompany their status as a result of media attention. Sometimes termed a symbiotic

6. See Genevieve Hassan, *Can Celebrities Expect Privacy?*, BBC NEWS (July 15, 2011), <http://www.bbc.com/news/entertainment-arts-14151678>.

7. *Id.*

8. *See id.*

9. *See id.*

10. *See id.*

relationship or a “vicious cycle,”¹¹ much attention has been paid to the mutually beneficial relationship that the media and celebrities enjoy. For example, in April of 2014, Rolling Stone published an article that detailed the author’s ride in the passenger seat alongside a paparazzo for two weeks while he was on the hunt for celebrities to photograph.¹² Some of the candid comments that the paparazzi provided indicate a suspicion of how the celebrities utilize the media attention in their favor. For example, one paparazzo criticized celebrities who travel to popular places in West Hollywood accompanied by their children, and who are equipped with the knowledge that many celebrities are photographed there.¹³ The paparazzo stated that celebrities who guard their kids’ privacy, like Matt Damon, “simply don’t take [their children] to pap hot zones.”¹⁴ Ironically, Halle Berry, a noted advocate for the increased privacy legislation in California,¹⁵ was accused of taking her own child to a popular pumpkin patch in West Hollywood, known for its heightened paparazzi activity.¹⁶ Alternatively, another paparazzo revealed that there are instances where celebrities hire paparazzi to conduct fake photo shoots or even to join the celebrity on vacation so that they can receive a portion of the funds that the photographs

11. Christina Anderson, *Are the Paparazzi Just Doing Their Job or Are They Overstepping Their Boundaries?*, HUFFINGTON POST (Jan. 16, 2013, 12:02 PM), http://www.huffingtonpost.com/2013/01/16/paparazzi-boundaries_n_2473951.html.

12. Stephen Rodrick, *Attack of the Paparazzi*, ROLLING STONE (April 17, 2014), <http://www.rollingstone.com/culture/news/attack-of-the-paparazzi-20140417>.

13. *Id.*

14. *Id.*

15. See Luchina Fisher, *Halle Berry Lauds New Paparazzi Law Protecting Stars’ Kids*, ABC NEWS (Sept. 25, 2013), <http://abcnews.go.com/blogs/entertainment/2013/09/halle-berry-lauds-new-paparazzi-law-protecting-stars-kids/>.

16. Rodrick, *supra* note 12.

generate.¹⁷ One could question whether the celebrities themselves are partially to blame for their decreased personal privacy in both their professional and personal lives.

Another issue with the underlying policy rationale provided by the author’s definition of “celebrity” is why celebrities and their children should be entitled to more privacy protection than other individuals. Celebrities, by definition, are atypical individuals, due to their well-known status in society. This is a fact that the author acknowledges when she textually identifies celebrities as separate from “normal people.” However, it must be emphasized that celebrities, too, are subject to the Constitution. It should be of concern that California’s recently enacted amendments to civil and criminal statutes may violate the equal protection that is afforded to every individual.¹⁸ The Equal Protection Clause of the Constitution emphasizes that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*”¹⁹ Critics initially note that the law may be unconstitutional because it specifically targets photographers while they are doing something that is potentially constitutionally protected.²⁰

However, another concerning constitutional issue that may be a result of the California laws is how the laws affect citizens as a whole. The cited amendment, when

17. See Anderson, *supra* note 11.

18. See Christopher Zara, *In Pursuit of the Paparazzi: Is Harassing Justin Bieber Constitutionally Protected?*, INT’L BUS. TIMES (July 21, 2012, 2:24 PM), <http://www.ibtimes.com/pursuit-paparazzi-harassing-justin-bieber-constitutionally-protected-730059>.

19. U.S. CONST. amend. XIV, § 1 (emphasis added).

20. See Zara, *supra* note 18.

paired with the now common knowledge of Internet and mobile phone surveillance of the networked world,²¹ begs the question whether California should permit this increased protection of celebrities' privacy even though other individuals do not share in that same privilege. After all, the Constitution does not distinguish between individuals who spend their lives in the public eye; instead, the Constitution focuses on the language of "any person."²²

Though it is commendable that the members of the California Legislature are turning their attention to the safety concerns of some of their most famous residents, it is possible that the focus on increased privacy legislation for celebrities is misplaced. Instead, the issue of paparazzi harassment should perhaps be addressed through legislation that targets the restless demand for news, photographs, video recordings, and audio recordings of celebrities.²³ The increased demand for celebrity journalism could be what is fueling the aggressive tactics that the paparazzi employ, especially the potential monetary gain.²⁴ It is commonly understood that paparazzi target those with whom the public has a fascination, and that seems to be the main problem.²⁵ It is more likely than not that removing the market for celebrity media and the demand of its consumers would eradicate the presence of paparazzi altogether, and alleviate

21. See John Naughton, *Don't Trust Your Phone, Don't Trust Your Laptop – This is the Reality that Snowden Has Shown Us*, THE GUARDIAN (Mar. 8, 2015, 3:00 PM), <http://www.theguardian.com/commentisfree/2015/mar/08/edward-snowden-trust-phone-laptop-sim-cards>.

22. U.S. CONST. amend. XIV, § 1.

23. See, e.g., Kim McNamara, *The Paparazzi Industry and New Media: The Evolving Production and Consumption of Celebrity News and Gossip Websites*, 14 INT'L J. CULTURAL STUD. 515, 515-17 (2011).

24. Rodrick, *supra* note 12.

25. Jamie E. Nordhaus, *Celebrities' Rights to Privacy: How Far Should the Paparazzi Be Allowed to Go?*, 18 REV. LITIG. 285, 286 (1999).

safety as well as privacy concerns. One must ask the question: Would the paparazzi be so keen on following and documenting the lives of celebrities if there were no benefits of doing so?