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**Private Life and Public Image:**

**Privacy Legislation in France**

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## **Private Life and Public Image:**

### **Privacy Legislation in France**

In October 1998, at the height of the Monicagate scandal, the publication by the French publisher Plon of a novel which recounts the adulterous relationship in the 1960s between a politician bearing a marked resemblance to François Mitterrand, and a journalist, provided an interesting comparison between the attitudes of the French and of the Americans to the romantic dalliances of their respective leaders. For Jeanne Dautun's work of fiction *Un ami d'autrefois* is most certainly no *Monica's Story*, and French reactions to their President's lengthy extra-marital relationship with Anne Pingeot have been at the very least understanding, if not even compassionate. In France, the small gathering of graveside mourners amongst whom Mitterrand's mistress and illegitimate daughter Mazarine took their places shocked no-one, although many an eyebrow was raised in the United States. In truth, Mitterrand manipulated the release of information about his private life all along the line, 'coming clean' only progressively with his approaching death. Although the general public knew nothing of his double life, journalists had been very much aware of the existence of this second family for a great many years, but had revealed nothing. The respect of his privacy in this relationship and the reactions of fellow French politicians to his unashamed infidelity contrast sharply with the fate reserved for Bill Clinton, the indiscretions of his private life exposed in the nation's press for all to enjoy. We may ask ourselves if French journalists are perhaps more gentlemanly, less cut-throat than their Anglo-Saxon counterparts. Or are the clichés which describe latins as inveterate romantics and lovers true after all? Or are these irrational judgments supported by powerful French legislation protecting the individual's right to privacy? This article aims to examine the main texts relating to infringements of privacy in France, highlighting in particular those committed by the press against public figures and celebrities.

For the French, public life and private life are quite separate; being slightly less than truthful about events occurring in one's private life is considered completely irrelevant to one's role in public office. The private and the public do not mix. A survey carried out by Ipsos-*Le Point* in September 1998, at the height of Clinton's troubles, demonstrated clearly French feelings on the whole Monicagate episode. On press reporting, a massive 88% of those questioned felt that the American media had gone too far in its treatment of the affair; only 8% felt that Clinton should consider resigning and a resounding 85% of respondents replied 'non' to the question 'Un homme politique est-il condamnable quand il ment sur sa vie privée?' (Should a politician be taken to court when he lies about his private life?).<sup>1</sup> In fact, remarkably little is published in French newspapers and magazines relating to the private lives of French public figures. Under the Fifth Republic there have been only three notable exceptions to the silence of the press in this respect. The first of these in 1974 revolved around President Valéry Giscard d'Estaing's nighttime peregrinations, from which he returned in the early hours of the morning to the Elysée Palace. Concerns were expressed at the potential indiscretions of the President in a system where he is seen as the sole repository of power, and they quite overshadowed the faint murmurings there had been about the declining health of his

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Dufay, F, 'La bonne mesure française', *Le Point*, 19 September 1998, pp 72-73.<sup>2</sup> 'Nous avons la chance de ne pas connaître le syndrome américain, la vie privée de tout homme public étalée en long et en large'; *Le Point*, 2 November 1991, quoted in Courtois, G, 'En France, par convention, la vie privée des hommes politiques est respectée', *Le Monde*, 17 September 1998, p. 7.<sup>3</sup> Guerrin, M, 'La mort de Diana a bouleversé les mœurs des paparazzis et de la "presse people"', *Le Monde*, 1 September 1998, p 19.<sup>4</sup> Malherbe, J, *La vie privée et le droit moderne* (Librairie du journal des notaires et des avocats; comment faire? Paris, 1968) p 4.<sup>5</sup> see Morange, J, *Droits de l'homme et libertés publiques*, 3è édition (PUF, Paris, 1995), p. 16.<sup>6</sup> Decision of the Tribunal de grande instance, Paris, 2 June 1976, Dalloz, 1977, p 364.<sup>7</sup> Decision of the Tribunal de grande instance, Bayonne, 29 May 1976, *Semaine juridique* 1976, second part (Jurisprudence), paragraph 18495, commentary by Bonnais.<sup>8</sup> Harris, D J et al, *Law of the European Convention on Human Rights* (Butterworths, 1995), p. 302.<sup>9</sup> Decision of the Cour d'appel, Lyon, 2 July 1991, Dalloz 1991, p. 252 and Cour d'appel, Dijon, 2 July 1991, *Gazette du Palais* 1994, volume I, p. 237.<sup>10</sup> Morange, J, p. 17.<sup>11</sup> Decision of the Cour de Paris, on appeal, 27 février 1967, see Malherbe, J, p. 5.<sup>12</sup> Bilger, P et Lebedel, P, *Abrégé des droits de la presse*, 3e édition (CFPJ, Paris, 1991), pp. 43-4.<sup>13</sup> Rivero, J, *Les libertés publiques*, vol 2 (PUF, Paris, 1977), p. 7.<sup>14</sup> Tribunal de grande instance, Nanterre, 15 February 1995, *Gazette du Palais*, 1995, volume I, p. 282.<sup>15</sup> 'Les habitants ne seront jamais délogés de la chambre et du lit où ils ont l'habitude de coucher.' Morange, J, p. 175, note 2.<sup>16</sup> See Morange, J, p. 174.<sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

predecessor, Georges Pompidou. In 1991, the silence was broken once again, but this time of his own volition, by former socialist prime minister Michel Rocard who disclosed the news of his divorce in an interview with the weekly newsmagazine *Le Point* (2 November 1991). During the interview, he voiced his hopes that the press would thereafter respect his privacy in the matter, adding ‘We are fortunate enough not to experience the American syndrome, where the private lives of any public figures are exposed in minutest detail’.<sup>2</sup> The third occasion was precisely that of the disclosure of the existence of President Mitterrand’s illegitimate daughter Mazarine, revealed to the public in a spread in *Paris Match* in November 1994. Interestingly, this step was denounced by some as an invasion of privacy, despite the fact that, in journalistic circles, the relationship had been an open secret.

This state of affairs does not mean to say, of course, that no salacious stories at all appear in the French press, nor that the French do not enjoy reading about the intimate secrets of the rich and famous. For of course, there is a flourishing sensational press which thrives on publishing full-colour photographs and outrageous revelations about well-known figures. It would appear, however, that those who fall prey to the highly intrusive telephoto lenses of photographers from magazines such as *Paris Match*, *Ici Paris* and *Voici* are selected differently. Members of foreign royal families, celebrities of the stage, screen and sports field are all fair game, with few holds barred. Politicians can expect to be victims - but they will usually be implicated in some fraudulent or otherwise corrupt affair, as opposed to a sex

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scandal. Roland Dumas, for example, has seen his dirty linen washed in public; however, the starting point for this was not his relationship with Christine Deviers- Joncour, but rather accusations of corruption at a financial level. The possibility of an image of the French president embracing an administrative assistant at the Elysée appearing in the national and international press and on television in the way we have all seen Clinton and Lewinsky captured is remote.

The constant desire to know more and more about those in the public gaze has caused journalists to go to ever greater lengths to snap the definitive shot, to sell it for a small fortune and then wait for the compensation claims to roll in. Ten million francs are reputed to have exchanged hands for photographs of Diana and Dodi's kiss in the summer preceding her death in 1997. However, since the furore surrounding the role of the paparazzi in the Princess of Wales' fatal accident and the vast sums of money paid for photographs of the kiss and of the crash, news editors have been rather more cautious in terms of what they will print and how much they will pay. Fifteen million francs were paid out to stars by way of compensation for violation of privacy through intrusive photography by the magazine *Voici* (the French version of *Hello*) in 1997 alone - and this not counting the lawyers' fees! Indeed, the Daniel Agnelli news agency confesses that - post Diana - it will now pay only 10 000 francs for a photograph which would have fetched ten times that sum in the past, and to reduce the risks of expensive compensation claims, French magazines have turned to running features on foreign stars, as opposed to their own (entitled to the same justice, but less likely to know it), even though these have proved less popular with their readership<sup>3</sup>.

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d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

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In Britain, self-regulation is the basis for press-reporting on celebrities. French Law, by contrast, contains a number of texts intended to restrict quite severely violation of the privacy, or *vie privée*, of the individual. Traditionally, judges ruling on interferences in privacy turned to jurisprudence and to texts from Commercial Law, supporting their judgements with legislation on authorship and copyright, on the right to one's name, on *les droits du modèle* (legislation which ruled that an individual was the owner of any likeness made of him, be it painted engraved or sculpted, and of the use which was made of it), including *les droits du modèle photographié* (legislation relating purely to one's rights over one's photographic image) as attributes of his own person, and to general legislation relating to privacy. Indeed, judges tended to adopt a hard-line approach to infringements of the '*droit à l'image*' of an individual. Courts ruled that it was unlawful to photograph an individual without his consent, even if the photograph was not for subsequent publication, and the victim could expect compensation. However, the whole issue of consent was a problematic one - and remains so - since consent for the photograph to be taken may appear to be given, in so far as the subject may pose willingly for the camera, without necessarily wishing to authorise the subsequent publication of the image. In the 1960s, Advocate General Lindon outlined the hypothetical example of a couple snapped arm in arm at a car show, admiring an expensive car. A successful protestation could be made against the publication of the photograph, for, in this fictitious example, the outing was a clandestine one, of which the gentleman's lawful wife was unaware... In such a case, he felt that it was reasonable to expect payment of compensation for violation of his private life.<sup>4</sup>

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Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

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In France today, rulings on infringements of privacy committed by the press refer to legislation found in the Civil Code (*Code civil*), the Criminal Code (*Code pénal*) and the European Convention on Human Rights, which emphasise concepts such as the *droit à l'image* (right to one's image), *lieu privé* (private place) and the inviolability of *relations familiales et sentimentales* (family and private relationships), as well as continuing to support judgements by referring to jurisprudence. A contentious issue in this area has been what is actually understood by privacy or *vie privée*, and judges must form their own definition from judgements previously made. The starting point is generally taken to be that *vie privée* is the 'secret domain where every individual has a right to be left in peace' (*la sphère secrète où l'individu aura le droit d'être laissé tranquille*<sup>5</sup>). However, the lack of precision of this definition - which was intentionally left open in order for changes in the perception of privacy - naturally allows considerable flexibility in interpretation, which may vary according to the circumstances and to the person dealing with them.

Today, the mainstay of legislation on violation of privacy in the context of intrusions by the press is the law of 17 July 1970. This law modified both the Criminal and Civil Codes, providing a framework for sanctions in both criminal and civil courts, sanctions which are not to be taken lightly in terms either of the extent of the definition of the offence or the limit of the penalty imposed. Article 9 of the Civil Code states the following:

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June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

<sup>5</sup> see Morange, J, *Droits de l'homme et libertés publiques*, 3e édition (PUF, Paris, 1995), p. 16.<sup>6</sup> Decision of the Tribunal de grande instance, Paris, 2 June 1976, *Dalloz*, 1977, p 364.<sup>7</sup> Decision of the Tribunal de grande instance, Bayonne, 29 May 1976, *Semaine juridique* 1976, second part (Jurisprudence), paragraph 18495, commentary by Bonnais.<sup>8</sup> Harris, D J et al, *Law of the European Convention on Human Rights* (Butterworths, 1995), p. 302.<sup>9</sup> Decision of the Cour d'appel, Lyon, 2 July 1991, *Dalloz* 1991, p. 252 and Cour d'appel, Dijon, 2 July 1991, *Gazette du Palais* 1994, volume I, p. 237.<sup>10</sup> Morange, J, p. 17.<sup>11</sup> Decision of the Cour de Paris, on appeal, 27 février 1967, see Malherbe, J, p. 5.<sup>12</sup> Bilger, P et Lebedel, P, *Abrégé des droits de la presse*, 3e édition (CFPJ, Paris, 1991), pp. 43-4.<sup>13</sup> Rivero, J, *Les libertés publiques*, vol 2 (PUF, Paris, 1977), p. 7.<sup>14</sup> Tribunal de grande instance, Nanterre, 15 February 1995, *Gazette du Palais*, 1995, volume I, p. 282.<sup>15</sup> 'Les habitants ne seront jamais délogés de la chambre et du lit où ils ont l'habitude de coucher.' Morange, J, p. 175, note 2.<sup>16</sup> See Morange, J, p. 174.<sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption

Everyone should be able to expect their privacy to be respected.

The judges may, without adversely affecting a compensation claim, prescribe any measure whatsoever, such as sequestration, seizure of goods, or any other measure with a view to preventing or bringing to an end an intrusion into the intimate nature of the private life of an individual. These measures may be implemented by the judge as emergency measures if necessary (See notes for original text).

It would indeed be a bold newspaper editor who would risk seizure of his printing presses in exchange for titillating his readership for a brief season. In the 1970s, Advocate General Lindon ruled that the sentimental life of an individual was something strictly private, and that article 9 of the Civil Code forbade revealing to the general public a genuine or fictitious liaison.<sup>6</sup> However, a distinction is made between the privacy (*vie privée*) of an individual and the intimate nature of his or her private life (*intimité de la vie privée*), the legislation only punishing severely an infringement of the latter. This second notion is more restrictive and is taken to relate to matters concerning marital or sentimental relationships usually kept hidden from other parties.<sup>7</sup> Even so, such legislation in the States would perhaps have saved Clinton

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d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

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some embarrassment, and it certainly enabled Mitterrand to keep his relationship with Anne Pingeot under wraps. Article 1382 of the Civil Code provides for compensation to be made to the person whose privacy has been invaded, stating: ‘Any act performed by an individual which causes hurt to another obliges the person responsible for that hurt to make compensation for it’ (see notes for original text). The protection offered to family relationships has been reinforced by article 8 of the European Convention on Human Rights, which states the following:

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. (Article 8, European Convention on Human Rights, 1950)<sup>8</sup>.

Judges, it appears, consider extra-marital, sentimental relationships to be covered by ‘private and family life’. A woman, following the instructions of the court which required her to gather evidence confirming the infidelity of her husband, was nevertheless found to be acting illegally when she revealed her findings to the husband of her rival, without the consent of the

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Morange, J, p. 175, note 2.<sup>16</sup> See Morange, J, p. 174.<sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. ‘On veut tuer la photo - on tue ainsi la liberté d’informer. Le projet de loi sur la présomption d’innocence présenté au parlement, l’interprétation abusive du droit à l’image et l’arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.’

<sup>8</sup> Harris, D J et al, *Law of the European Convention on Human Rights* (Butterworths, 1995), p. 302.<sup>9</sup> Decision of the Cour d’appel, Lyon, 2 July 1991, Dalloz 1991, p. 252 and Cour d’appel, Dijon, 2 July 1991, *Gazette du Palais* 1994, volume I, p. 237.<sup>10</sup> Morange, J, p. 17.<sup>11</sup> Decision of the Cour de Paris, on appeal, 27 février 1967, see Malherbe, J, p. 5.<sup>12</sup> Bilger, P et Lebedel, P, *Abrégé des droits de la presse*, 3e édition (CFPJ, Paris, 1991), pp. 43-4.<sup>13</sup> Rivero, J, *Les libertés publiques*, vol 2 (PUF, Paris, 1977), p. 7.<sup>14</sup> Tribunal de grande instance, Nanterre, 15 February 1995, *Gazette du Palais*, 1995, volume I, p. 282.<sup>15</sup> ‘Les habitants ne seront jamais délogés de la chambre et du lit où ils ont l’habitude de coucher.’ Morange, J, p. 175, note 2.<sup>16</sup> See Morange, J, p. 174.<sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. ‘On veut tuer la photo - on tue ainsi la liberté d’informer. Le projet de loi sur la présomption d’innocence présenté au parlement, l’interprétation abusive du droit à l’image et l’arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.’

latter. The court ruled that she had contravened article 9 of the Civil Code, and that her intention had been to seriously damage the quality of her husband's mistress' private life. It was the cheated wife who was ordered to pay compensation to her rival<sup>9</sup>. Compensation to be made has traditionally been calculated by the judges to be in proportion to the harm done to the injured party and to the amount of money made or potentially made from the disclosures, which can naturally, in the case of a well-known public figure, reach very high sums.<sup>10</sup>

For its part, the Criminal Code saw five of its articles altered by the law of 17 July 1970 (articles 368-372), the most noteworthy of these now reading, since revision of the Code in 1994:

The act of intentionally infringing the privacy of another individual using any process whatsoever by

1 Picking up, recording or transmitting words spoken in private or confidentially, without the consent of the speaker;

2 Imprinting, recording or transmitting the image of a person in a private place without his or her consent;

carries a sentence of one year in prison and a fine of 300 000 francs. If the acts mentioned in this paragraph are performed in the sight and with the knowledge of those concerned without their opposition, at a time when they

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<sup>9</sup>Decision of the Cour d'appel, Lyon, 2 July 1991, *Dalloz* 1991, p. 252 and Cour d'appel, Dijon, 2 July 1991, *Gazette du Palais* 1994, volume I, p. 237.<sup>10</sup> Morange, J, p. 17.<sup>11</sup> Decision of the Cour de Paris, on appeal, 27 février 1967, see Malherbe, J, p. 5.<sup>12</sup> Bilger, P et Lebedel, P, *Abrégé des droits de la presse*, 3e édition (CFPJ, Paris, 1991), pp. 43-4.<sup>13</sup> Rivero, J, *Les libertés publiques*, vol 2 (PUF, Paris, 1977), p. 7.<sup>14</sup> Tribunal de grande instance, Nanterre, 15 February 1995, *Gazette du Palais*, 1995, volume I, p. 282.<sup>15</sup> 'Les habitants ne seront jamais délogés de la chambre et du lit où ils ont l'habitude de coucher.' Morange, J, p. 175, note 2.<sup>16</sup> See Morange, J, p. 174.<sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

<sup>10</sup> Morange, J, p. 17.<sup>11</sup> Decision of the Cour de Paris, on appeal, 27 février 1967, see Malherbe, J, p. 5.<sup>12</sup> Bilger, P et Lebedel, P, *Abrégé des droits de la presse*, 3e édition (CFPJ, Paris, 1991), pp. 43-4.<sup>13</sup> Rivero, J, *Les libertés publiques*, vol 2 (PUF, Paris, 1977), p. 7.<sup>14</sup> Tribunal de grande instance, Nanterre, 15 February 1995, *Gazette du Palais*, 1995, volume I, p. 282.<sup>15</sup> 'Les habitants ne seront jamais délogés de la chambre et du lit où ils ont l'habitude de coucher.' Morange, J, p. 175, note 2.<sup>16</sup> See Morange, J, p. 174.<sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

could have protested, the consent of the individuals is presumed to be given (Revised Criminal Code, article 226-1, law of 17 July 1970; see notes for original text).

This will remind many of the actions of the Princess of Wales in France, when, pursued by photographers, she demanded they hand over film of photographs they had shot without her permission. This paragraph would also certainly have posed problems in the use of secret recordings of conversations as any form of evidence, such as those made by Linda Tripp of conversations with Lewinsky in the Clinton case. In France, the recording of telephone conversations by private individuals is also, of course, strictly illegal and is punishable under article 225 paragraph 15 of the revised Criminal Code, a paragraph which also incriminates tampering with another person's electronic mail - certainly retrieving erased messages from the waste bin!

The act, committed with malicious intent, of opening, destroying, delaying or diverting mail which may or may not have reached its destination and which is addressed to a third party, or to gain knowledge of the correspondence by fraudulent means, carries a sentence of one year in prison and a fine of 300 000 francs.

Likewise liable to the same sentence and fine is the act, committed with malicious intent, of intercepting, diverting, using or making public correspondence sent, transmitted or received by the means of telecommunications, or of installing equipment designed to carry out such interception (Revised Criminal Code, Article 226-15. See notes for original text).

This legislation is rigorously applied by the courts, but of course does not present an obstacle to the police or examining magistrate, who may waive such constraints in the search for the truth (articles 56 and 81 of the Code of Criminal Procedure).

At the time the law of 17 July 1970 was passed in France, the intention was not specifically to protect the president, nor even other political figures. The law was actually referred to with some humour as the *loi BB*, after the principal personality who would probably need to have recourse to it: Brigitte Bardot. Brigitte Bardot had already brought cases against intrusions in

her privacy, which were numerous. She had been photographed scantily clad in her own home at Bazoches, sitting on a bench, and in a car in the street setting out for her home. Despite murmurings that, by the very nature of their work, stars are always on public show, the courts ruled that the use of a telephoto lens to take pictures without her knowledge, in her own home and when she was not engaged in any professional activity was an unreasonable invasion of her privacy, and that 'the rights an individual has over his own image must not exclude showbusiness artistes or public figures' (le droit de la personne sur son image ne saurait souffrir d'exception pour les vedettes de l'art ou les personnalités publiques)<sup>11</sup>, unless they were on public duty and their permission had therefore been presumed to have been given. The final decision reached, the person to pay the price in cases of invasions of privacy is usually the person who has committed the indiscretion, although the editor of the publication, the printers and those making the publication available for sale can also be sued as accomplices, and it is the editor of the publication who is ultimately held responsible if the perpetrator of the offence is unknown or unavailable<sup>12</sup>.

The *droit à l'image*, outlined above, does not figure in English Law. French Law perceives the individual's image to be an item of his or her private property, since the rights over one's image are seen as extension of the rights that each individual has over his own body, of which the image is a visual representation<sup>13</sup>. Therefore, contravening the rights to someone's image

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<sup>11</sup> Decision of the Cour de Paris, on appeal, 27 février 1967, see Malherbe, J, p. 5.<sup>12</sup> Bilger, P et Lebedel, P, *Abrégé des droits de la presse*, 3e édition (CFPJ, Paris, 1991), pp. 43-4.<sup>13</sup> Rivero, J, *Les libertés publiques*, vol 2 (PUF, Paris, 1977), p. 7.<sup>14</sup> Tribunal de grande instance, Nanterre, 15 February 1995, *Gazette du Palais*, 1995, volume I, p. 282.<sup>15</sup> 'Les habitants ne seront jamais délogés de la chambre et du lit où ils ont l'habitude de coucher.' Morange, J, p. 175, note 2.<sup>16</sup> See Morange, J, p. 174.<sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

<sup>12</sup> Bilger, P et Lebedel, P, *Abrégé des droits de la presse*, 3e édition (CFPJ, Paris, 1991), pp. 43-4.<sup>13</sup> Rivero, J, *Les libertés publiques*, vol 2 (PUF, Paris, 1977), p. 7.<sup>14</sup> Tribunal de grande instance, Nanterre, 15 February 1995, *Gazette du Palais*, 1995, volume I, p. 282.<sup>15</sup> 'Les habitants ne seront jamais délogés de la chambre et du lit où ils ont l'habitude de coucher.' Morange, J, p. 175, note 2.<sup>16</sup> See Morange, J, p. 174.<sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

<sup>13</sup> Rivero, J, *Les libertés publiques*, vol 2 (PUF, Paris, 1977), p. 7.<sup>14</sup> Tribunal de grande instance, Nanterre, 15 February 1995, *Gazette du Palais*, 1995, volume I, p. 282.<sup>15</sup> 'Les habitants ne seront jamais délogés de la

is invading his or her privacy. More recently than the above example, the French television channel TF1 was successfully prosecuted for showing in its reality show *Les marches de la gloire* images of a man, Laurent Gilles, falling from a burning building, dragging a woman with him. An interview with the plaintiff, given solely for use by a German programme, had been used by TF1 alongside footage of the fire, in the form of a montage relaying the most dramatic shots in slow motion with selected parts of the interview in voice-over, as if the main protagonist were actually commenting his acts. In fact, this was not the case, although negotiations were underway for his participation in the show. The court ruled that TF1 had contravened article 9 of the Civil Code, in addition to exploiting this incident for commercial ends rather than for the documentation and education of the television audience, by showing the scenes at peak viewing time, and granted compensation of 100 000 francs. The ruling emphasised the following:

Everyone has the right to expect the intimate nature of his or her private life to be respected, and is entitled to its protection by defining himself or herself the limits of what may be revealed in this respect.

Likewise, every individual also possess the exclusive rights to his or her image, an attribute of one's own person, and to the use which is made of it, and consequently may oppose the reproduction and publication of this image without his or her permission being explicitly given or being understood to have been given (Ruling of the Tribunal de grande instance, Nanterre, 18 April 1995, reported in the *Gazette du Palais*, 1995, volume I, p 279, see notes for original text).

Other rulings made in the case of celebrities emphasise the universality of this legislation, adding 'fût-il célèbre' (even if he is famous) to the definition of the person concerned.

The second paragraph of article 226-1 of the Criminal Code also talks of the intrusion of a private place (*lieu privé*) as an offence, appearing to make a distinction between the public

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chambre et du lit où ils ont l'habitude de coucher.' Morange, J, p. 175, note 2.<sup>16</sup> See Morange, J, p. 174.<sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté

and private domains in this respect. This emphasis would appear to indicate that an individual photographed in a public place is knowingly exposing himself or herself to the public gaze and can therefore expect no special protection from the law; in other words, you can only expect to be entitled to privacy in a private place. However, French courts appear to look sympathetically on incidents which can genuinely be described as violations of privacy even though they take place in public places, as can be seen in the above example. The court ruled that, although this episode took place in public, it recounted a particularly tragic incident in Monsieur Gilles' private life, since it was a life-threatening incident, and therefore his privacy had been invaded. A similar judgement was made concerning photographs taken at the funeral of the actor Yves Montand, photographs taken in a public place, but of infinitely private scenes of grief. The offending party, the weekly magazine *France Dimanche*, was ordered to pay 80 000 francs in compensation to Catherine Allégret, Montand's adopted daughter<sup>14</sup>.

The idea of *lieu privé* is a projection of a concept that the French have long revered, the sanctity of the home (*l'inviolabilité du domicile*); The law of 3 July 1877 stated 'The inhabitants of a property will never be evicted from the room and the bed where they regularly sleep'<sup>15</sup>. Jurisprudence, too, gives a broad definition to the term *domicile*. It is not simply an individual's home address, but any place where he has the right to describe himself as being at home, whether he actually resides there or not. Into this category fall caravans, outhouses, balconies, terraces, courtyards, grounds, even those poorly protected from prying eyes and badly maintained. Holiday flats and hotel rooms can also be considered *domiciles*, as can the place of work, although this is generally less well-protected by law, and boats, but

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au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

<sup>14</sup> Tribunal de grande instance, Nanterre, 15 February 1995, *Gazette du Palais*, 1995, volume I, p. 282. <sup>15</sup> 'Les habitants ne seront jamais délogés de la chambre et du lit où ils ont l'habitude de coucher.' Morange, J, p. 175, note 2. <sup>16</sup> See Morange, J, p. 174. <sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34. <sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224. <sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

<sup>15</sup> 'Les habitants ne seront jamais délogés de la chambre et du lit où ils ont l'habitude de coucher.' Morange, J, p. 175, note 2. <sup>16</sup> See Morange, J, p. 174. <sup>17</sup> Chatelain, C and d'Antoni, D, 'La presse a-t-elle le droit de tout raconter?' *Ça m'intéresse*, June 1998, p. 34. <sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224. <sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et

not cars. Commercial premises such as restaurants, cafés and shops during opening hours are not considered as *domiciles* <sup>16</sup>. Many a royal has protested against photographers directing telephoto lenses at her yacht. A recent case of note is probably the attempt by Mohammed Al Fayed to incriminate the photographers who hounded his son and the Princess of Wales during the summer of 1997, which they spent in the south of France and on the Mediterranean. The Duchess of York, too, was successful in her case against *Paris Match* for its reporting on her holiday in France with her two young daughters and the ‘shrimping’ episode with her financial adviser featured in the edition of 3 September, 1992; in this country, the English tabloids also exploited this incident mercilessly, but were untouchable <sup>17</sup>. However, taking photographs or fingerprints during a police investigation is not an infringement of an individual’s privacy or *droit à l’image*, since a police station cannot be considered to be a private place. And the seizure of Madame Tiberi’s personal diary during a search of the Mayor of Paris’ private apartment in June 1996, although most definitely a violation of privacy, was justified by the need to further the enquiry<sup>18</sup>.

Another text protecting the private life of the individual is article 226-13 of the Criminal Code, which concerns professional secrecy:

The divulging of confidential information by a person entrusted with such information, either due to his function or the nature of his profession on a temporary or permanent basis is liable to a sentence of one year in prison and a fine of 100 000 francs (see notes for original text).

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l’arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.’

<sup>16</sup> See Morange, J, p. 174.<sup>17</sup> Chatelain, C and d’Antoni, D, ‘La presse a-t-elle le droit de tout raconter?’ *Ça m’intéresse*, June 1998, p. 34.<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. ‘On veut tuer la photo - on tue ainsi la liberté d’informer. Le projet de loi sur la présomption d’innocence présenté au parlement, l’interprétation abusive du droit à l’image et l’arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.’

<sup>17</sup> Chatelain, C and d’Antoni, D, ‘La presse a-t-elle le droit de tout raconter?’ *Ça m’intéresse*, June 1998, p. 34.<sup>18</sup>

Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. ‘On veut tuer la photo - on tue ainsi la liberté d’informer. Le projet de loi sur la présomption d’innocence présenté au parlement, l’interprétation abusive du droit à l’image et l’arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.’

<sup>18</sup> Turpin, D, *Les libertés publiques*, 3e édition (Mémentos, Paris, 1996) p. 224.<sup>19</sup> *Le Point*, 18 June 1999, p. 137. ‘On veut tuer la photo - on tue ainsi la liberté d’informer. Le projet de loi sur la présomption d’innocence présenté au parlement, l’interprétation abusive du droit à l’image et l’arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.’

President Mitterrand's family were to avail themselves of this legislation in relation to the intended publication of a book, *Le Grand Secret*, by Mitterrand's doctor, Gübler, who cared for him in the period leading up to his death. On 18 January 1996, the Tribunal de Grande Instance in Paris ruled that the author and editor were guilty of violating professional secrecy and had invaded the intimate nature of Mitterrand's, his wife's and his children's privacy. This legislation enabled both Presidents Mitterrand and Pompidou to keep secret the fact the country was being run by men seriously ill, the fact that their illness could conceivably have rendered them less than competent to remain at the leadership of the country apparently taking second place to their right to privacy. This again forms an interesting contrast with United States' president Ronald Reagan's candid admissions of suffering from both cancer and Alzheimer's disease.

We can see, therefore, that a number of texts exist in order to protect the privacy of the individual, laws which are enforced in the case of public figures and the more humble man or woman in the street. There is also, however, a strong cultural context which insists that a person's private life has no bearing on his public function and refuses to indulge in the spreading of sleaze which has become a feature of Anglo-saxon politics. Ironically, shock at the treatment of the United States president has even hindered the Justice Minister Elisabeth Guigou in her proposed reforms of the legal system aimed at according greater rights to the defence. For Madame Guigou aims to grant greater independence to the public prosecutor's department (*le parquet*), currently answerable to the Justice Minister, who is of course a member of the government in power. In addition, under debate for some time now has been the shifting of some of the responsibility for pre-trial incarceration of suspects from the already over-burdened shoulders of the examining magistrate (*juge d'instruction*) to the *parquet*, thus quashing the accusation that the examining magistrate is responsible not only for collecting evidence in a case, but also for judging his own case, empowered to remove the liberty of an individual based purely upon his own findings. The famed Starr Report, which revealed only too clearly the extent of the powers of the US independent prosecutor, was read in fear and trepidation by the French political class, who saw in this report an unhappy marriage of the excessive powers of the American judiciary and the pressure of the media. The tension between an individual's right to privacy and the freedom of the press to report has been highlighted recently by a photo campaign protesting at the bill on the presumption of innocence. A full-page advertisement in the newsweekly *Le Point* shows three photographs:

a joyful crowd scene shot after the French football team's World Cup victory in 1998, in which the face of a jubilant supporter is clearly seen; a gruesome photograph of prisoners at Buchenwald concentration camp and an action shot of the assassination of President Kennedy. The rubric 'On veut tuer la photo - on tue ainsi la liberté d'informer' (They want to kill photography - that's how you kill the freedom of information) expresses journalists' stance on the interpretation of legislation on the *droit à l'image* and the presumption of innocence<sup>19</sup>. These three shots would all have earned their authors a heavy fine and a prison sentence, having been published without the permission of the subjects of the photograph. In any event, for the time being both the legislation and the attitude of the general public in France appears determined to support the protection of privacy - even if the price to pay is less openness in the pages of their newspapers.

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<sup>19</sup> *Le Point*, 18 June 1999, p. 137. 'On veut tuer la photo - on tue ainsi la liberté d'informer. Le projet de loi sur la présomption d'innocence présenté au parlement, l'interprétation abusive du droit à l'image et l'arbitraire des procédures créent de nouvelles censures. Elles nous priveront des photos essentielles qui font notre histoire.'

## NOTES

### **Article 9, Code civil, loi du 17 juillet 1970**

Chacun a droit au respect de sa vie privée.

Les juges peuvent, sans préjudice de la réparation du dommage subi, prescrire toutes mesures, telles que séquestre, saisie et autres, propres à empêcher ou faire cesser une atteinte à l'intimité de la vie privée; ces mesures peuvent, s'il y a urgence, être ordonnées en référé (Article 9, Code Civil, loi du 17 juillet 1970).

### **Article 226-1 Nouveau code pénal, loi du 17 juillet 1970**

Est puni d'un an d'emprisonnement et de 300 000 F d'amende le fait, au moyen d'un procédé quelconque, volontairement de porter atteinte à l'intimité de la vie privée d'autrui:

- 1 En captant, enregistrant ou transmettant, sans le consentement de leur auteur, des paroles prononcées à titre privé ou confidentiel;
- 2 En fixant, enregistrant ou transmettant, sans le consentement de celle-ci, l'image d'une personne se trouvant dans un lieu privé.

Lorsque les actes mentionnés au présent article ont été accomplis au vu et au su des intéressés sans qu'ils s'y soient opposés, alors qu'ils étaient en mesure de le faire, le consentement de ceux-ci est présumé (Nouveau code Pénal, article 226-1, loi du 17 juillet 1970).

### **Article 226-15, Nouveau code pénal**

Le fait, commis de mauvaise foi, d'ouvrir, de supprimer, de retarder ou de détourner des correspondances arrivées ou non à destination et adressées à des tiers, ou d'en prendre frauduleusement connaissance, est puni d'un an d'emprisonnement et de 300 000 F d'amende.

Est puni des mêmes peines le fait, commis de mauvaise foi, d'intercepter, de détourner, d'utiliser ou de divulguer des correspondances émises, transmises ou reçues par la voie des télécommunications ou de procéder à l'installation d'appareils conçus pour réaliser de telles interceptions (Article 226-15, Nouveau code pénal).

### **Article 1382, Code civil**

Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer (Article 1382, Code civil).

### ***Gazette du Palais, 1995, Ruling of the Tribunal de grande instance, Nanterre, 18 April 1995***

Tout individu a droit au respect de l'intimité de sa vie privée et est fondé à en obtenir la protection en fixant lui-même les limites de ce qui peut être divulgué à ce sujet.

Dans les mêmes conditions, il dispose sur sa propre image, attribut de sa personnalité, et sur l'utilisation de celle-ci, d'un droit exclusif qui lui permet de s'opposer à sa reproduction et à sa diffusion sans autorisation expresse ou tacite (*Gazette du Palais, 1995, vol I, p 279*).

### **Code pénal, article 226-13**

La révélation d'une information à caractère secret par une personne qui en est dépositaire, soit par état soit par profession, soit en raison d'une fonction ou d'une mission temporaire, est punie d'un an d'emprisonnement et de 100 000 francs d'amende (Code pénal, article 226-13).