



UNIVERSITÀ
DI TRENTO

DIPARTIMENTO

FACOLTÀ DI GIURISPRUDENZA

lawtech

The Law and Technology Research Group

Diritto comparato della privacy

Lezione 4 – Right to be forgotten

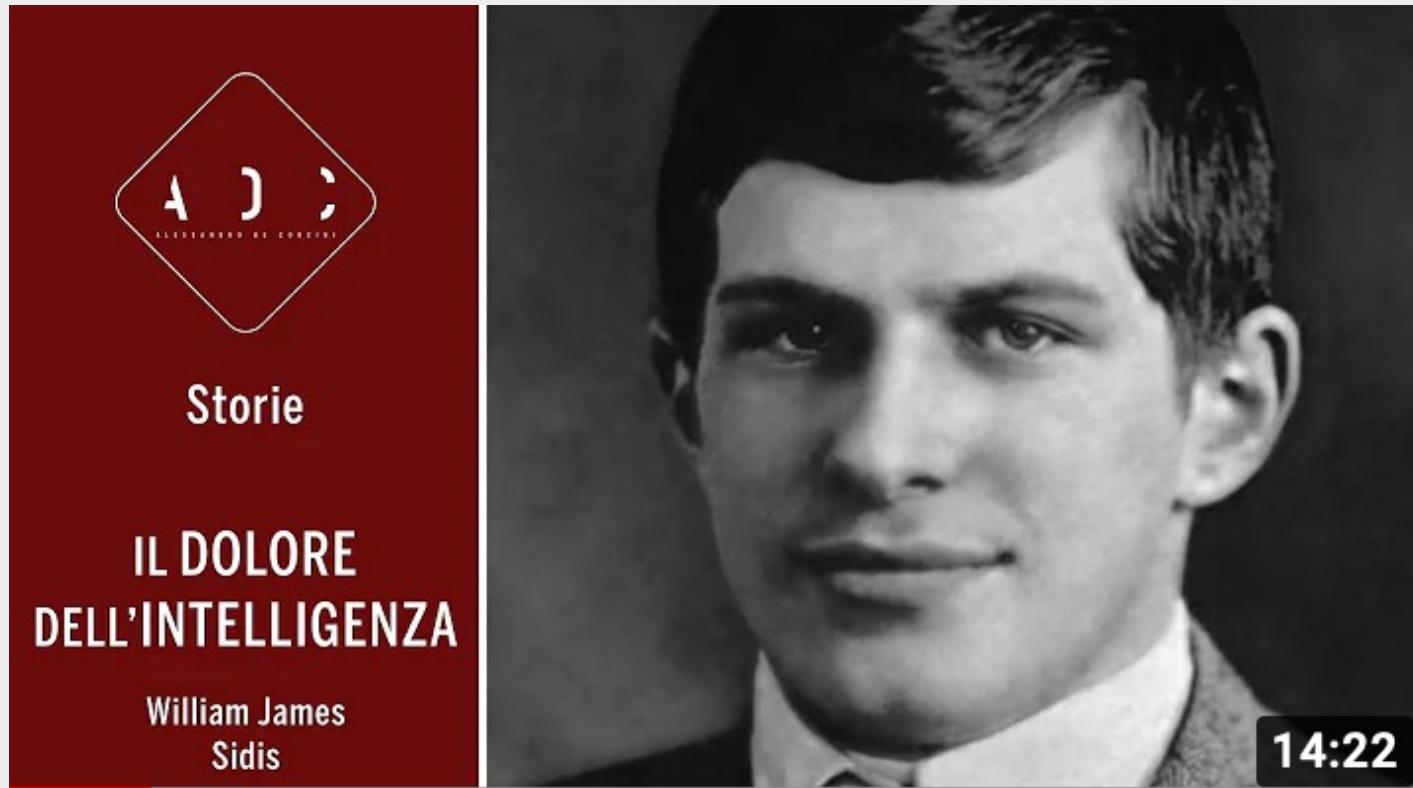
Università di Trento – Facoltà di Giurisprudenza
a.a. 2022-2023

Roberto Caso

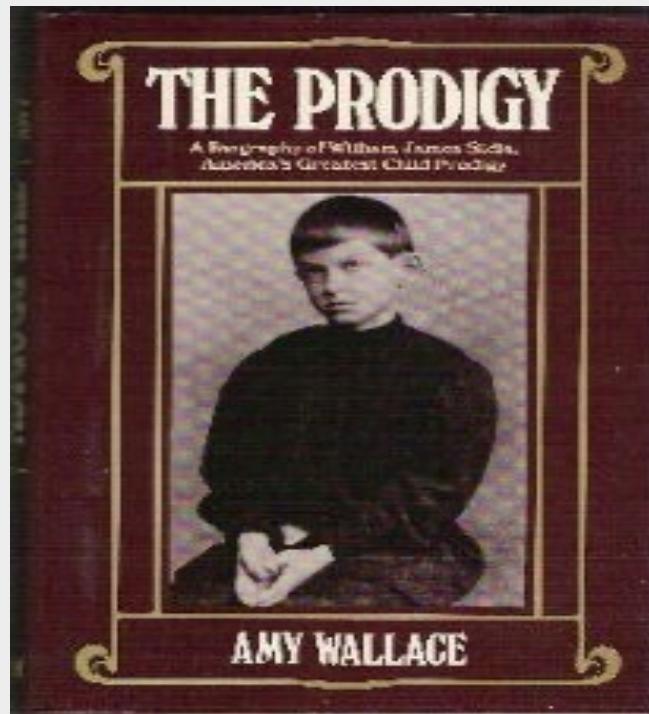
L'ordine del ragionamento

1. Sidis: una vicenda umana prima che giuridica (e letteraria)
2. La decisione del Secondo Circuito del 1941
3. Cenni all'Italia

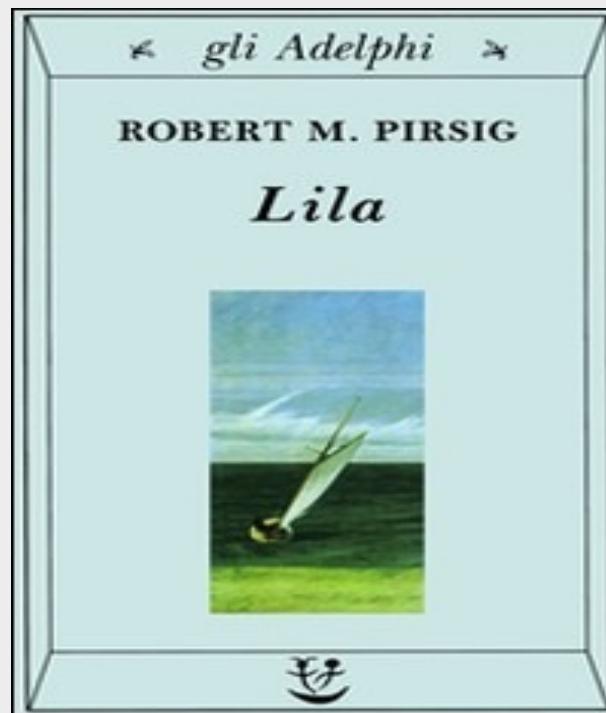
1. Alessandro de Concini (2020)



1. Amy Wallace



1. Robert Pirsig



1. Pirsig, Lila

- «La stampa che l'aveva idolatrato gli si rivoltò contro. L'attacco più feroce venne dal «New Yorker» nel 1937, in un articolo intitolato Pesce d'aprile, che metteva in ridicolo tutto quanto lo riguardasse, dai suoi hobby al suo aspetto fisico. Sidis denunciò la rivista per diffamazione e violazione della sfera privata. [...]»

1. Pirsig, Lila

- «Nel 1976, incuriosito dalla vicenda di Sidis, Dan Mahony, di Ipswich, nel Massachussets, volle cercare di capire che cosa l'ex ragazzo prodigo avesse realmente fatto in quegli anni. «È vero» spiegava Mahony «che svolse lavori da poco e malpagati, ma anche Einstein, quando elaborò la teoria della relatività, faceva l'impiegato in un ufficio brevetti. Avevo l'impressione che ci fosse sotto dell'altro».
- Mahony dedicò i successivi dieci anni a esaminare le carte di Sidis».

1. <http://www.sidis.net/>



Sidis Archives

am James Sidis (SIGH-dis), a world-famous child prodigy said to have been a "prodigious failure" because he never graduated from college. He nevertheless wrote many books, articles, and periodicals. He wrote using pseudonyms because he abided by the principles of anonymous contribution and avoidance of fame. Thus through his own choosing the masses did not know of his highly productive life. Sidis worked fulltime jobs and did his prodigious thinking at night on his own time.

W. J. Sidis Archive presents here all of his writings found so far: four books; four pamphlets; two booklets; four periodicals (36 issues); 89 weekly magazine columns; a design for a corporation owned and operated by a federation of its employees; and one wonderful invention. Also find here selected correspondence and financial documents. See also Dr. Abraham Sperling's short bio of Sidis; Adachi's short bio; and Dan Mahony's compilation of materials for biographers Failure?

(/tap images to read books, etc. PLEASE CONTINUE SCROLLING TO BOTTOM.)

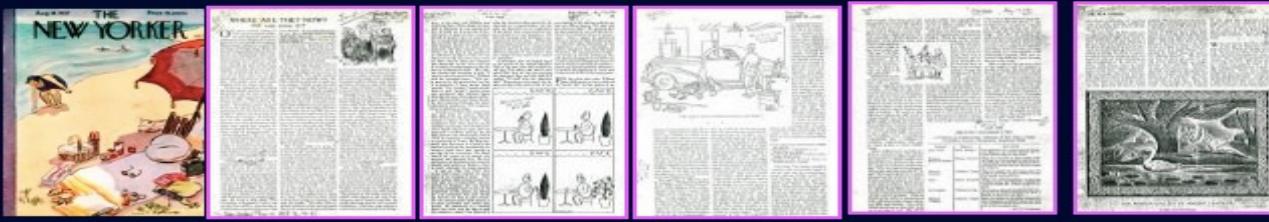
1. <http://www.sidis.net/newyorker3.htm>

[Home](#) [Legal Case Menu](#) [W. J. Sidis Biography](#) [.pdf](#)

Where Are They Now? April Fool!

by James Thurber

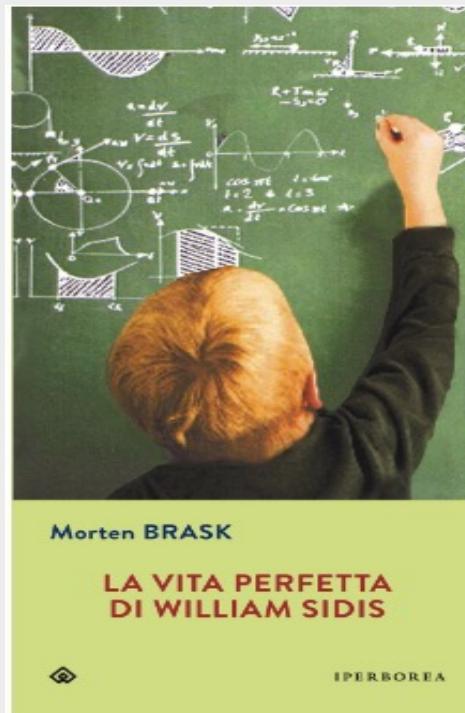
The New Yorker, Saturday, August 14, 1937, 22-26.



1. La vita perfetta

- In un'intervista al Boston Herald William Sidis dice: «Desidero una vita perfetta e il solo modo è la completa solitudine. Ho sempre odiato le folle».

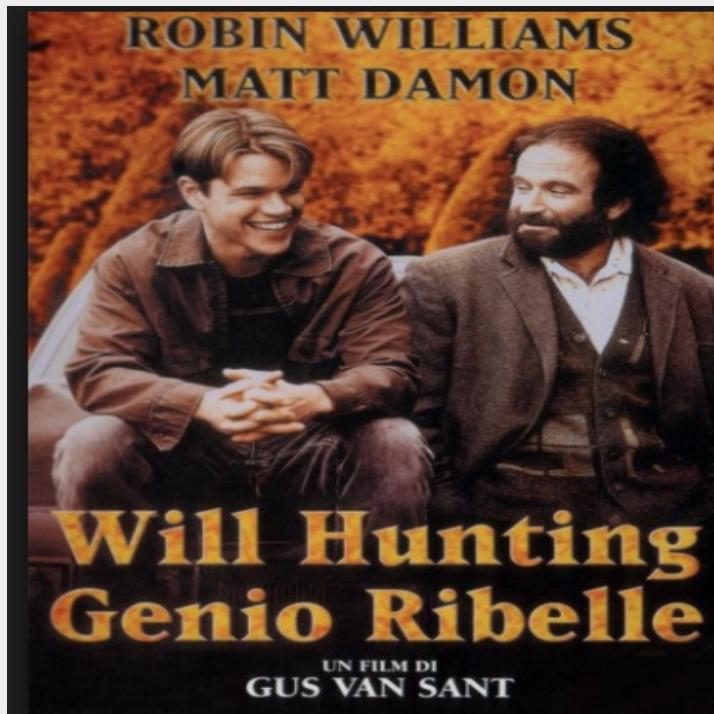
1. La vita perfetta



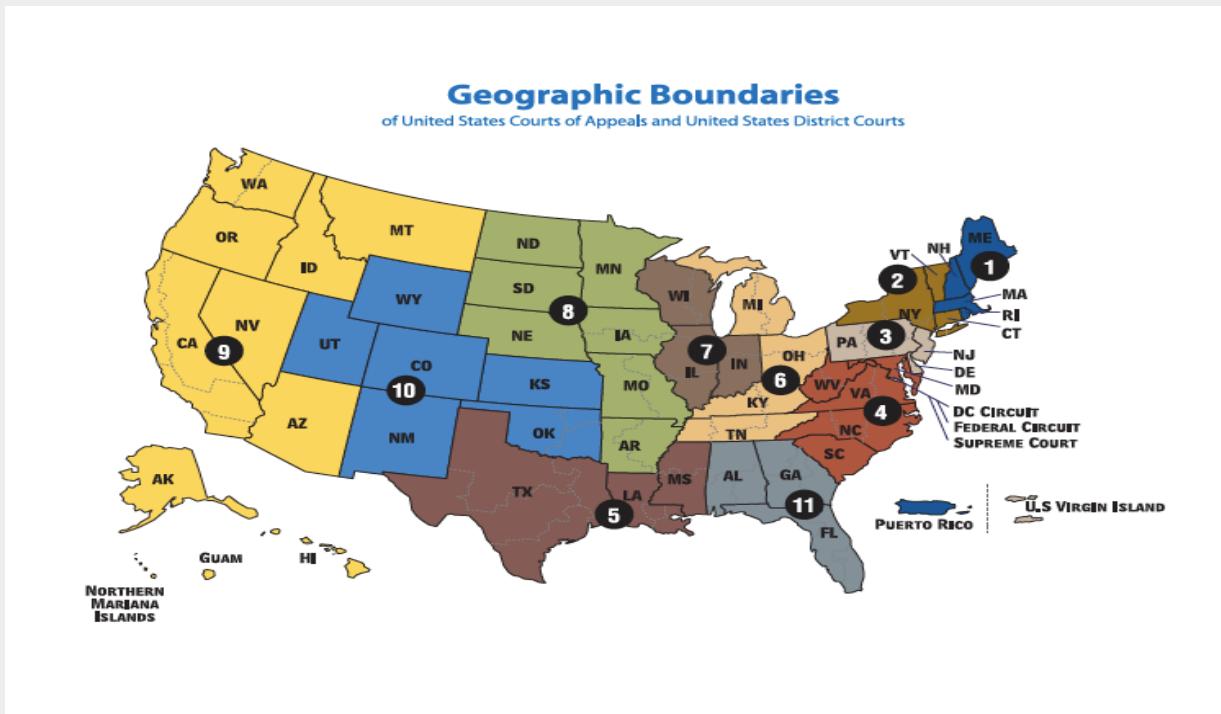
<http://www.letteratura.rai.it/articoli/la-perfetta-solitudine-di-un-genio-morten-brask-racconta-william-sidis/31914/default.aspx>



1. Will Hunting



2. US Federal Circuits



2. US Const. Amendment I

- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; **or
abridging the freedom of speech, or of the press**; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

2. <https://www.law.cornell.edu/citation/2-200>

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Table of contents Index Help eBooks

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HOW TO CITE ... ▾

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Constitutions & Statutes

Agency & Exec. Material

Arbitrations

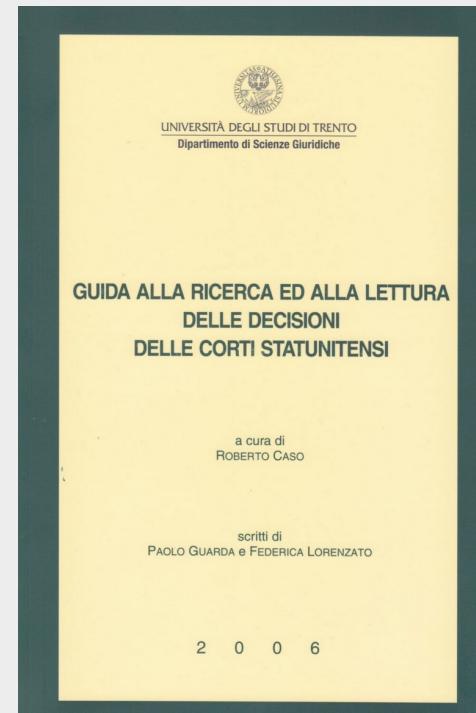
§ 2-200. How to Cite Judicial Opinions

In the U.S. legal system, judicial opinions are probably the most frequently cited category of legal material. The articulated grounds of past judicial decisions are, in many instances, binding precedent for currently litigated matters. Under other circumstances, they are "persuasive" authority. In either event, if on point, they should be cited. In the context of legal citation, judicial opinions are commonly referred to as "cases" and organized collections of opinions are called "law reports" or "case reports." Most cited "cases" are opinions of appellate courts; however, trial court rulings on questions of law do on occasion produce decisions lawyers may wish to cite, despite their limited force as precedent.

Prior to the era of electronic information dissemination, many courts that produced large numbers of legal opinions selected only a fraction of them for "publication" in law reports. The remaining "unpublished cases" were, as a practical matter, unavailable for citation. The appearance of online systems ready, even eager, to

2. Guida alla lettura

- R. Caso (a cura di), Guida alla ricerca ed alla lettura delle decisioni delle corti statunitensi. Trento, Università di Trento, 2006



2. Court of Appeals for the Second Circuit

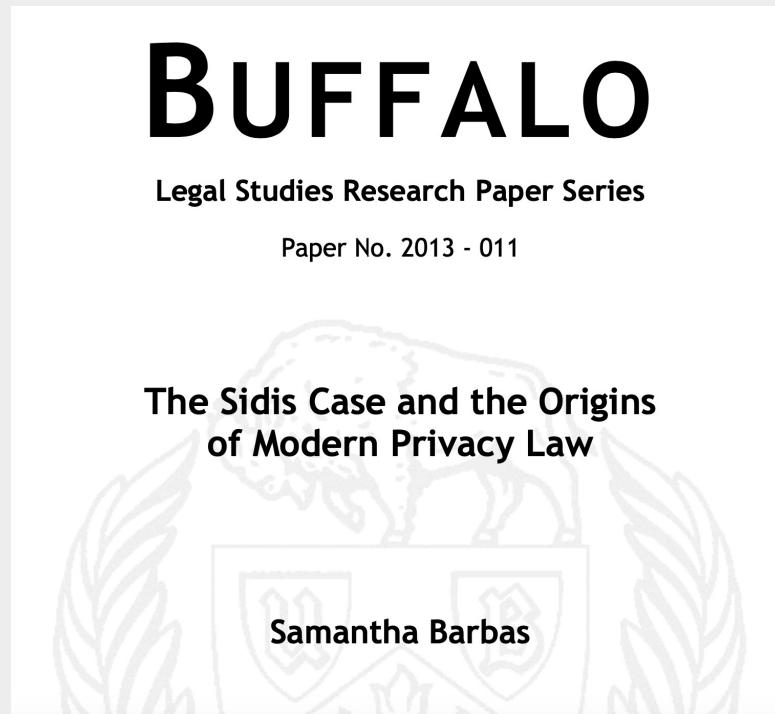
https://en.wikipedia.org/wiki/United_States_Court_of_Appeals_for_the_Second_Circuit#/media/File:WTM_sheila_0036.jpg



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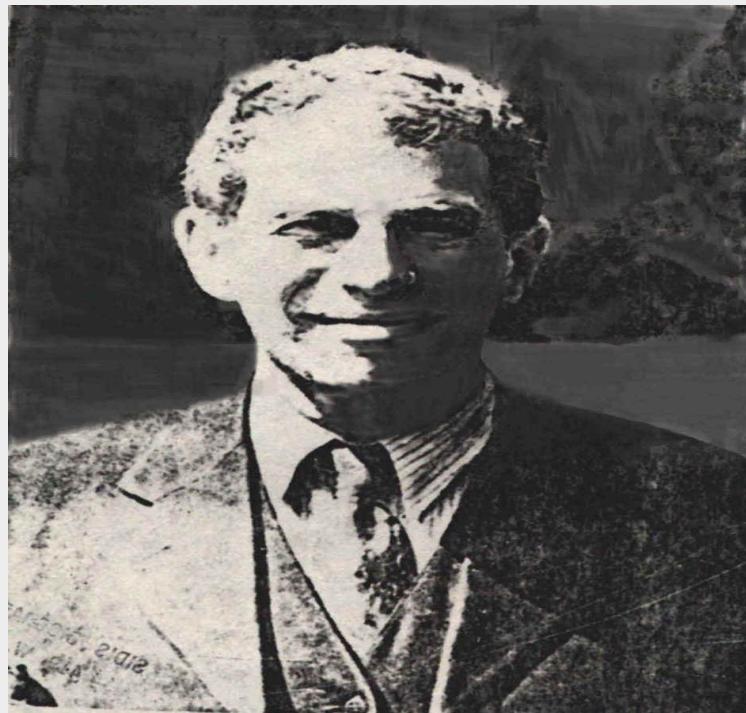
2. Barbas (2012)



2. Sidis v. FR Pub. Corporation, 113 F.2d 806 (2d Cir. 1940)

- U.S. Court of Appeals for the Second Circuit - 113 F.2d 806 (2d Cir. 1940)
- July 22, 1940
- 113 F.2d 806 (1940)

2. William Sidis



Roberto Caso - Unitn - Diritto comparato della privacy -
2022-2023

2. I fatti

- William James Sidis was the unwilling subject of a brief biographical sketch and cartoon printed in The New Yorker weekly magazine for August 14, 1937. Further references were made to him in the issue of December 25, 1937, and in a newspaper advertisement announcing the August 14 issue

2. L'azione

- His complaint stated three "causes of action": The first alleged violation of his right of privacy as that right is recognized in California, Georgia, Kansas, Kentucky, and Missouri

2. I fatti

- William James Sidis was a famous child prodigy in 1910. His name and prowess were well known to newspaper readers of the period. At the age of eleven, he lectured to distinguished mathematicians on the subject of Four-Dimensional Bodies. When he was sixteen, he was graduated from Harvard College, amid considerable public attention. Since then, his name has appeared in the press only sporadically, and he has sought to live as unobtrusively as possible. Until the articles objected to appeared in The New Yorker, he had apparently succeeded in his endeavor to avoid the public gaze

2. I fatti

- The author describes his subject's early accomplishments in mathematics and the wide-spread attention he received, then recounts his general breakdown and the revulsion which Sidis thereafter felt for his former life of fame and study. The unfortunate prodigy is traced over the years that followed, through his attempts to conceal his identity, through his chosen career as an insignificant clerk who would not need to employ unusual mathematical talents, and through the bizarre ways in which his genius flowered, as in his enthusiasm for collecting streetcar transfers and in his proficiency with an adding machine.

2. I fatti (e gli argomenti)

- It is not contended that any of the matter printed is untrue. Nor is the manner of the author unfriendly; Sidis today is described as having "a certain childlike charm." But the article is merciless in its dissection of intimate details of its subject's personal life, and this in company with elaborate accounts of Sidis' passion for privacy and the pitiable lengths to which he has gone in order to avoid public scrutiny. The work possesses great reader interest, for it is both amusing and instructive; but it may be fairly described as a ruthless exposure of a once public character, who has since sought and has *808 now been deprived of the seclusion of private life.

2. Argomento

- It must be conceded that under the strict standards suggested by these authors plaintiff's right of privacy has been invaded. Sidis today is neither politician, public administrator, nor statesman. Even if he were, some of the personal details revealed were of the sort that Warren and Brandeis believed "all men alike are entitled to keep from popular curiosity."

2. Argomento

- But despite eminent opinion to the contrary,[5] we are not yet disposed to afford to all of the intimate details of private life an absolute immunity from the prying of the press. **Everyone will agree that at some point the public interest in obtaining information becomes dominant over the individual's desire for privacy.** Warren and Brandeis were willing to lift the veil somewhat in the case of public officers. We would go further, though we are not yet prepared to say how far. At least we would permit limited scrutiny of the "private" life of any person who has achieved, or has had thrust upon him, the questionable and indefinable status of a "public figure."

2. Argomento

- We express no comment on whether or not the news worthiness of the matter printed will always constitute a complete defense. Revelations may be so intimate and so unwarranted in view of the victim's position as to outrage the community's notions of decency. But when focused upon public characters, truthful comments upon dress, speech, habits, and the ordinary aspects of personality will usually not transgress this line. **Regrettably or not, the misfortunes and frailties of neighbors and "public figures" are subjects of considerable interest and discussion to the rest of the population. And when such are the mores of the community, it would be unwise for a court to bar their expression in the newspapers, books, and magazines of the day.**

3. In Italia

- Il diritto all'oblio è stato a lungo negato dalla giurisprudenza
- Inizia a essere riconosciuto negli anni '90 dalla giurisprudenza della Corte di Cassazione
- Fattori propizi: A) allargamento giurisprudenziale del novero dei diritti della personalità; B) prime normative sulla protezione dei dati personali con diritto alla cancellazione dei dati personali: v. articoli 12, lettera b), e 14, primo comma, lettera a), della direttiva 95/46

3. Cass. 1998, n. 3679

- Posto che per diritto all'oblio si intende il legittimo interesse di ogni persona a non restare indeterminatamente esposta ai danni ulteriori che arreca al suo onore ed alla sua reputazione la reiterata pubblicazione di una notizia, in passato legittimamente divulgata, non costituisce legittimo esercizio del diritto di cronaca la pubblicazione di fatti già resi noti sei anni prima, salvo che eventi sopravvenuti rendano nuovamente attuali quei fatti, facendo sorgere un nuovo interesse pubblico alla divulgazione dell'informazione.

3. Cass., sez. un., n. 19681 del 2019

- In tema di rapporti tra diritto alla riservatezza (nella sua particolare connotazione del c.d. diritto all'oblio) e diritto alla rievocazione storica di fatti e vicende concernenti eventi del passato, il giudice di merito – ferma restando la libertà della scelta editoriale in ordine a tale rievocazione, che è espressione della libertà di stampa e di informazione protetta e garantita dall'art. 21 cost. – ha il compito di valutare l'interesse pubblico, concreto ed attuale alla menzione degli elementi identificativi delle persone che di quei fatti e di quelle vicende furono protagonisti; tale menzione deve ritenersi lecita solo nell'ipotesi in cui si riferisca a personaggi che destino nel momento presente l'interesse della collettività, sia per ragioni di notorietà che per il ruolo pubblico rivestito; in caso contrario, prevale il diritto degli interessati alla riservatezza rispetto ad avvenimenti del passato che li feriscono nella dignità e nell'onore e dei quali si sia ormai spenta la memoria collettiva (fattispecie relativa ad un omicidio commesso ventisette anni prima, il cui responsabile aveva scontato la relativa pena detentiva e si era reinserito positivamente nel contesto sociale).

Riferimenti bibliografici

- S. Barbas, The Sidis Case and the Origins of Modern Privacy Law (March 1, 2012). Columbia Journal of Law & the Arts, Vol. 36, No. 1, Fall 2012 , SUNY Buffalo Legal Studies Research Paper No. 2013-011, Available at SSRN:
<https://ssrn.com/abstract=2151880>
- R. Pardolesi, L'ombra del tempo e (il diritto al)l'oblio, in Questione Giustizia 2017/1

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