

Chapter 4: PRIVACY and The FOURTH AMENDMENT

Abstract

The right of privacy is not explicitly stated in the U.S. Constitution. Rather, the Supreme Court has ruled over time that privacy is implicitly protected by numerous constitutional amendments. Changing cultural conceptions, technological advancements, and Supreme Court rulings have played a role in the evolution of this right, which is sometimes implicated when the government exercises its police power. Limitations on how far the government can go in conducting “search” fall within the Fourth Amendment. As part of *Constitutionally Speaking’s* inquiry, “How Does the Constitution Keep Up with the Times?” the materials that follow explore changes in the constitutional right of privacy and what constitutes a legal search and seizure.

Relevant Constitutionally Speaking Videos

Reasonable Expectations of Privacy

Speaker: Professor Jessica Silbey, Suffolk University Law
Length: 6 min 39 sec
Synopsis: Professor Silbey discusses the three areas of privacy that are afforded varying degrees of constitutional protection: bodily, spatial, and informational. Each raises thorny issues, from the right to refuse medical treatment, to the legitimate use of electronic surveillance in and around a person’s home, to what reasonable expectation of privacy an individual has when disclosing information online.

Your House is Your Castle

Speaker: The Honorable James Duggan, New Hampshire Supreme Court (Retired)
Length: 8 min 19 sec
Synopsis: Justice Duggan traces the evolution of the Fourth Amendment definition of “search.” From microphones attached to phone booths to GPS devices attached to cars, advances in technology have provided new investigative tools that potentially conflict with the individual’s right to be “secure in their persons, houses, papers and effects against unreasonable search and seizure ...”

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Learning Objectives

Goal Students will be able to analyze how the constitutional right of privacy and the definition of search and seizure have evolved over time.

Students will understand that....

- The U.S. Supreme Court is the supreme authority over the meaning of the U.S. Constitution and can change its interpretation of the Constitution over time.
- The U.S. Supreme Court has recognized the right of privacy as an implicit right contained within the Bill of Rights.
- While a general right of privacy has been recognized since colonial times, the meaning of the right of privacy has changed over time.
- Technological advancements have caused the Supreme Court to reevaluate the meaning of a search under the Fourth Amendment.
- Changing interpretations of the Constitution allow it to keep up with the times.

Essential Questions

- Why is the Supreme Court permitted to change its interpretation of the U.S. Constitution?
- What is the difference between an explicit and an implicit legal right?
- How and why has the meaning of the right of privacy changed over time?
- Why has the Supreme Court periodically reevaluated the meaning of a search under the Fourth Amendment?
- How does the Constitution keep up with the times?

Students will know...

- Important terms regarding the right of privacy and searches under the Fourth Amendment.
- Key facts about the changing interpretation of the right of privacy and more specifically the Fourth Amendment.
- Key Supreme Court cases on the right of privacy and more specifically on the Fourth Amendment.

Students will be able to...

- Recognize, define, and use right of privacy and Fourth Amendment vocabulary in context.
- Research Supreme Court cases and recent news on the right of privacy and the Fourth Amendment to add depth to their understanding of its development over time.
- Express their learning orally during class discussions and in writing.
- Collaborate successfully with their peers to improve and express their learning.

Relevant Supreme Court Cases

Each case is followed by a link to the full-text majority opinion at Cornell University's Legal Information Institute as well as a link to a case summary at Oyez.org unless otherwise indicated.

<u>Title (year)</u>	<u>Full Text</u>	<u>Summary</u>
<u>Right of Privacy in General</u>		
Meyer v. Nebraska (1923)	Full Text	Summary
Olmstead v. United States (1928)	Full Text	Summary
Griswold v. Connecticut (1965)	Full Text	Summary
Katz v. United States (1967)	Full Text	Summary
Loving v. Virginia (1967)	Full Text	Summary
Stanley v. Georgia (1969)	Full Text	Summary
Roe v. Wade (1972)	Full Text	Summary
Moore v. East Cleveland (1977)	Full Text	Summary
Bowers v. Hardwick (1986)	Full Text	Summary
Cruzan v. Missouri (1990)	Full Text	Summary
Planned Parenthood v. Casey (1992)	Full Text	Summary
Washington v. Glucksberg (1997)	Full Text	Summary
Lawrence v. Texas (2003)	Full Text	Summary
<u>Fourth Amendment</u>		
Olmstead v. United States (1928)	Full Text	Summary
Silverman v United States (1961)	Full Text *	
Katz v. United States (1967)	Full Text	Summary
United States v. Knotts (1982)	Full Text	Summary
United States v. Karo (1984)	Full Text	Summary
Kyllo v. United States (2001)**	Full Text	Summary
United States v. Jones (2012) **	Full Text	Summary

*Full text majority opinions located at *Justia.com*'s U.S. Supreme Court Center.

**Additional case summaries and excerpts are available for these cases in [Street Law Inc.'s Resource Library](#).

Important Terms

affidavit	A legal document that contains a written declaration of facts. Government officials often submit affidavits when seeking search warrants, as proof that there is probable cause to believe that evidence of a crime exists.
countervailing interest	An interest that counterbalances, counteracts or offsets another interest. For example, while the First Amendment appears to protect the act of yelling <i>fire</i> in a crowded movie theater when there is no fire, the government has a <i>countervailing interest</i> in protecting public safety by prohibiting false statements that put people in immediate danger. Protecting public safety is the countervailing interest to protecting free speech.
effects	As used in the Fourth Amendment, <i>effects</i> means private property in general.
explicit right	A right created by direct, specific statements.
implicit right	A right created not by direct, specific statements, but by language that implies or indirectly suggests it exists.
privacy, private	Free from public attention, knowledge, and/or observation.
probable cause	In the case of a search warrant, <i>probable cause</i> is the Fourth Amendment requirement that there is a reasonable basis for believing that evidence of the crime is present in the place to be searched.
trespass	Knowingly violating another person's property rights without permission. This includes such actions as physically moving onto another person's land or into another person's house or car without permission, as well as placing an object on or inside another's person's property without permission.
warrant	A legal order given by a judge authorizing and/or ordering a government official to do something. A <i>search warrant</i> authorizes a government official to search a specific location and seize specific property. In order to get a warrant the government must describe the place to be searched and the property to be seized as well as explain

why there is probable cause that the property will be there and can be legally seized.

wiretapping

Secretly monitoring an electronic conversation between two or more people (i.e. telephone or Internet).

Learning Activities & Assessments

Part 1: The Right of Privacy and the U.S. Constitution

In these activities students will explore the meaning of privacy and the development of the constitutional right of privacy over time.

Step 1: Introductory Activity: Defining Privacy

In this activity students will define and explore the concept of privacy, types of privacy, and the concept of countervailing interests.

Have students define the term *privacy* (or *private*) on a sheet of paper, or answer this question: *What do we mean when we say something is private?* Encourage students to investigate the word in the dictionary or use online resources. Have students share their responses with a partner or in a small group setting for several minutes, then lead a class discussion in order to create a class definition for the term *privacy*. Alternatively you could ask each small group to discuss and create a group definition to present to the class.

When it appears the class has settled on a definition, write the definition on the board, on a large piece of paper to post on the wall, or another location that will remain visible for the duration of the lesson. Then ask students to make lists of things in their lives they consider private (general descriptions are encouraged, i.e. *my locker combination, my text messages, my diary, my bedroom, etc...*). Create one master list of private things from the students' compilations, and display it alongside the class definition of privacy. Discuss whether the definition needs to be amended based on the lists developed, allowing for change as the students' thinking about privacy evolves.

Ask students to group the items on the master list into categories that reflect similarities; i.e., private information, private places, etc. These categories can be called *types of privacy*.

Familiarize students with the concept of *countervailing interests* (see Important Terms, page 70). In small groups, have students consider the following question: *Under what circumstances is it acceptable for the government to invade your privacy?* Discuss the group responses as a class and create a list of the potential *countervailing interests* when dealing with privacy issues.

Discussion Questions

- Was there any disagreement among students in the class over how *privacy* should be defined? What were the disagreements about? Were the disagreements resolved during the discussion or do students still disagree?
- Is there anything that you consider private that someone else does not? Is there anything that someone else considered private that you do not? Why do you think those differences exist?

- Do you think that your definition of privacy is the same as your parents? Your grandparents? Why or why not?
- Why do you think people have different perspectives on what they consider private? What factors may affect how a person views privacy? Where did your opinion on privacy come from - in other words, from whom and when did you *learn* what was considered private?
- Why do people disagree about when it is acceptable for the government to invade a person's privacy? How has technological advancement made this a more important question today than it has been in the past?

Learning Extension

Ask students to interview several adults and/or students outside of class and ask them for their definition of *privacy* as well as their response to follow up questions 2-4 above. These responses can add to the students' understanding of the variations in how privacy is defined and the reasons for those variations.

Step 2: Constitutionally Speaking Video: Reasonable Expectations of Privacy

Show the *Constitutionally Speaking* video *Reasonable Expectations of Privacy* to introduce students to the different types of privacy acknowledged and/or debated in the United States today. Students will need time after the video ends to complete the questions and may benefit from working with a partner or in a small group. Discuss the answers in small groups and/or as a class. Use the questions below to further evaluate the class's definition and types of privacy.

Video Discussion Questions: Reasonable Expectations of Privacy

1. According to Professor Silbey, some people believe that privacy was the "impetus behind the Bill of Rights." *Impetus* can be defined as the force that causes something to occur. Based on what you know about American history and the Bill of Rights, do you agree or disagree with her statement? Why?
2. Reread the quote that was referenced in the video:

Instantaneous photographs and newspaper enterprises have invaded the sacred precincts of private and domestic life, and numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the house-tops'. On Privacy. Louis Brandeis and Samuel Warren. 4 Harvard Law Review (1890).

- In your opinion, has the prediction made by Brandeis and Warren come true? Does the combination of technology and the news media threaten to destroy the idea of privacy as we know it? Why or why not?
3. Three types of privacy are defined in the video. Identify and give examples of each type of privacy.
 4. Professor Silbey ended her lecture with the following statement:

...our reasonable expectations are evolving with the times and privacy is measured in part by what we do and what we expect.

- a) How are "our reasonable expectations [of privacy]...evolving with the times"? Describe a few examples in your response.
- b) Explain what you think Professor Silbey meant when she said "...privacy is measured in part by what we do and what we expect."

Step 3: The Changing Nature of the Right of Privacy

In this activity students will identify language in the Bill of Rights that implicitly acknowledges the existence of a right of privacy and analyze how the right of privacy has changed over time.

Review with your students the difference between the terms *explicit right* and *implicit right* (See Important Terms, page 70). Explain to students that while the right of privacy may be a constitutional right recognized by the courts, nowhere does the U.S. Constitution *explicitly* state that this right exists.

Have students review the Bill of Rights to identify clauses that indicate the existence of a right of privacy. Ask students to record the Amendment number, its text, as well as a short explanation as to why they feel the right of privacy is implicit in the text. (It may be helpful to first analyze a particular Amendment with the class as an example). Review and discuss student responses in small groups or as a class. Have students add other students' suggestions to their own records if they agree.

Divide the class into small groups. Pass out a different Supreme Court case on privacy to each group (full case or excerpt; one case or multiple different cases). Have each group read through the text of each case and identify the Amendment(s) relevant to the case and what was held to be private by the Court.

Example: *Griswold v. CT (1965)* - The Supreme Court uses the First, Third, Fourth, Fifth, and Ninth Amendments to hold that a right of privacy exists and it applies to marital relations (no state can prohibit a married couple from receiving counseling in contraception).

Once students have mastered the material, reassign group members so that each new group has one student who is an expert on each case. Have each student/expert teach the rest of the group about the case so that all students can create a master list of the information on each case in chronological order. Then, either individually or by group, students should create a diagram of the evolution of what the Supreme Court has held to fall within the right to privacy.

Discussion Questions

- Do you believe that the Constitution should be interpreted based only on what is *explicitly* stated within it? Or, should the courts be permitted to conclude that – in

- addition to the explicit statements – there are *implicit* understandings that are a part of the Constitution?
- Were the Amendments the class identified as implicitly acknowledging the existence of a right of privacy the same ones used by the Supreme Court? Explain.
 - Did the Supreme Court emphasize certain Amendments more than others in these right of privacy cases? If so, why do you think that is?
 - What types of privacy that are important to you were not recognized by the cases we reviewed as a class?
 - How has the Supreme Court's view on privacy changed over time? Are there specific events in American history and/or cultural changes that you believe may have contributed to the Court's decisions? Explain.

Learning Extension: Privacy Reading and Questions

The [Privacy reading](#) contains eight pages of background information on the development of the right of privacy. It is written at an advanced reading level, and requires familiarity with the Bill of Rights. It is best used to deepen students' existing knowledge so they can conceptualize the chronological changes in the right of privacy apparent in the cases they have already read.

Learning Extension: Informational Privacy & NSA Surveillance

Revelations of government surveillance of Americans' Internet and telephone data have sparked controversy over the extent of constitutional protection of informational privacy. This activity is useful for additional exploration into data privacy: what information the government collects, and how it goes about it.

Pose the following questions to frame your students' inquiry into the topic: *When you surf the Internet do you consider your browsing history private? What about the words you type into a search bar when searching the Internet through providers like Google?*

Ask students to read (or research and find) one or more articles about the National Security Agency's (NSA) PRISM program. In small groups or as a class create a diagram that shows how the Executive Branch acquires information through two alternative pathways: (1) obtaining a warrant via the Foreign Intelligence Surveillance Court; and (2) without obtaining a warrant through the PRISM program.

[Article on NSA's PRISM program from *The Guardian*](#)

[Article on NSA's PRISM program from the Washington Post](#)

Privacy Policies: [Google](#) / [Microsoft](#) / [Yahoo!](#) / [Twitter](#) / [Facebook](#)

Have students research and compare at least two privacy policies from major Internet companies such as Google, Microsoft, Yahoo!, Twitter, or Facebook. Focus on the circumstances under which the companies share with other people, companies, and/or the government the information collected while their services are being used.

Discussion Questions

- From the government's perspective, what is the countervailing interest that sometimes outweighs informational privacy? In other words, why does the government believe the PRISM program is necessary?
- Is the warrant procedure through the Foreign Intelligence Surveillance Court sufficient to meet the government's needs or is the PRISM program a necessity in today's technologically advanced world?
- Have you ever read the privacy policies of any Internet or telephone company you have used? Why or why not?
- Based on the privacy policies you compared, does one company protect your information privacy more than another? Were you surprised at how strong or weak the protections were? Why? Has reading the policies made you reconsider how you use these services or if you are going to use them at all? Why or why not?
- If you knew that none of the information you entered into or accessed from the Internet would remain private for the rest of your life (whether via computer or cell phone), would you still use the Internet? Why or why not?
- Does the Constitution protect you from this type of government surveillance? Why or why not? Use the established case law to support your conclusion.

Part 2: Privacy and the Fourth Amendment

In these activities students will explore the text of the Fourth Amendment and the impact of technological advancement on the Supreme Court's interpretation of what constitutes a search under the Constitution.

Step 1: Introductory Activity on the Evolution of Technology

In this activity students will identify technological differences between colonial times and the present day that impact their ideas of privacy and the government's ability to search.

Each student should divide a piece of paper into two sections. Section 1 should be filled with things that people consider private today that either did not exist or were not considered private during colonial times (students may use the list of things they considered private created during Part I to help). For example, students should recognize that text messages, while they may be considered private today, did not exist in colonial times.

Section 2 should be filled with a list of search techniques - including types of technology - available to help the government search for evidence today that did not exist in colonial times. For example, monitoring phone conversations (*wiretapping*) is search technology available today that was not available in colonial times.

Discussion Questions

- What are the differences between what was considered private in colonial times and what is considered private today? Why do those differences exist?
- What are the differences between the search technology available to the government in colonial times and the search technology available today? What major technological innovations have improved (or hindered) the government's ability to search for evidence?
- How would your privacy be affected today if the Constitution only protected things considered private in colonial times?
- How would the government's ability to search be affected today if the Constitution only permitted the use of the search technology available in colonial times?

Step 2: Introduction to the Fourth Amendment

In this activity students will analyze the meaning of and learn relevant terms contained within the text of the Fourth Amendment.

First, display the text of the Fourth Amendment and read through it with your class. Students should write down or be provided with a copy of the full text. Divide the amendment into sections as indicated below and have students explore how they would interpret the meaning of each section (the bolded words are important words for students to attempt to define themselves).

*The right of the people to be secure in their **persons, houses, papers, and effects,***

*against **unreasonable searches and seizures,***

shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Next, students should create a diagram that illustrates the warrant procedure.

The following are useful resources on the meaning of the Fourth Amendment:

[*What does the Fourth Amendment mean?*](#) at USCourts.gov.

[*The Right to Protection Against Illegal Search and Seizure*](#) at the Annenberg Classroom (.pdf).

Discussion Questions

- What types of privacy does the Fourth Amendment explicitly protect? What types of privacy do you think are implicitly protected? Why?
- What do you think is meant by the term *unreasonable*? When does a search become *unreasonable*?
- Does the warrant requirement adequately protect your privacy from unreasonable government searches? Why or why not?

- Are there times when the government should not have to obtain a warrant to invade your privacy? Why or why not? If so, what countervailing interest(s) outweighs the extra privacy protection provided by the warrant procedure?

Step 3: The Changing Interpretation of the Fourth Amendment over Time

In this activity students will be analyze how and why the meaning of the Fourth Amendment has changed over time. Two formats for conducting this exercise are included below.

Format 1: First, show the *Constitutionally Speaking* video *Your House is Your Castle* as a brief introduction to the changing nature of a search under the Fourth Amendment.

Video Discussion Questions: Your House is Your Castle

1. What was the legal definition of a search under the Fourth Amendment from the 1930s through the 1950s?
2. What was the new standard established by the Supreme Court in *Katz v. U.S.* (1967) for deciding if a search had occurred?
3. Provide examples of types of legal and illegal searches under the standard established in *Katz v. U.S.* (1967).
4. Describe the facts of *U.S. v. Jones*. What government action did Jones challenge as an unconstitutional search?
5. What was unexpected about the Supreme Court’s reasoning in *U.S. v. Jones*?
6. Read the following excerpt from Justice Alito’s concurrence to the majority opinion. Do you agree that tracking a person’s public movements for 28 straight days is a violation of our *reasonable expectations of privacy*? Why or why not?

In the pre-computer age, the greatest protections of privacy were neither constitutional nor statutory, but practical. Traditional surveillance for any extended period of time was difficult and costly and therefore rarely undertaken. The surveillance at issue in this case—constant monitoring of the location of a vehicle for four weeks—would have required a large team of agents, multiple vehicles, and perhaps aerial assistance. Only an investigation of unusual importance could have justified such an expenditure of law enforcement resources. Devices like the one used in the present case, however, make long-term monitoring relatively easy and cheap. In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative. A legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.

To date, however, Congress and most States have not enacted statutes regulating the use of GPS tracking technology for law enforcement purposes. The best that we can do in this case is to apply existing Fourth Amendment doctrine and to ask whether the use of GPS tracking in a

particular case involved a degree of intrusion that a reasonable person would not have anticipated.

Under this approach, relatively short-term monitoring of a person's movements on public streets accords with expectations of privacy that our society has recognized as reasonable. But the use of longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy. For such offenses, society's expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalogue every single movement of an individual's car for a very long period. In this case, for four weeks, law enforcement agents tracked every movement that respondent made in the vehicle he was driving. We need not identify with precision the point at which the tracking of this vehicle became a search, for the line was surely crossed before the 4-week mark. Other cases may present more difficult questions. But where uncertainty exists with respect to whether a certain period of GPS surveillance is long enough to constitute a Fourth Amendment search, the police may always seek a warrant. We also need not consider whether prolonged GPS monitoring in the context of investigations involving extraordinary offenses would similarly intrude on a constitutionally protected sphere of privacy. In such cases, long-term tracking might have been mounted using previously available techniques.

Next, have students analyze significant Supreme Court cases that deal with Fourth Amendment issues (see Relevant Cases, page 68). This activity can be completed using independent learning/research, small group work, class discussion, jig saw, or combinations of these structures. The goal is to have students answer the following questions about each case.

- a) What are the facts of the case?
- b) What is the Court's holding in the case?
- c) What was the Court's reasoning? What was the standard the Court used to decide the case? Be sure to explain how the Court defines a *search* and how the Court defines what is *private* under the Fourth Amendment for each case.

At a minimum, students should analyze the *Olmstead* and *Katz* cases in order to understand the evolving nature of the Supreme Court's interpretation of the Fourth Amendment.

Format 2: This alternative structure allows independent analysis of the facts in the Supreme Court case *United States v. Jones*. Students will analyze the facts, formulate a ruling based on case precedent, and explain their reasoning.

For this exercise, stop the *Your House is Your Castle* video at 4:14 – before Justice Duggan introduces the *United States v. Jones* case. Have students complete their analyses of Fourth Amendment cases but do not include the *Jones* case in their analyses.

After students have analyzed and shared their learning on the Fourth Amendment cases prior to *Jones*, have them write a chronological history of places they have been in the past two weeks. Ask them to include the names and/or addresses of the locations they visited (i.e. school, 15 South Main Street, etc...) as well as how long they were at each location. Instruct them *not* to write their names on the paper or share their lists with anyone. If you are comfortable you can write your own 2-week history somewhere that is visible to all students. When the students are done, ask if they would feel comfortable sharing the information with friends. Other students they do not know well or at all? Teachers? Parents? Police officers? College Admissions officers? Would they feel differently if their lists included information from only one day? Thirty days? One year?

An extension of this activity is to collect the lists of those students who feel comfortable sharing them. Mix the lists up, distribute them randomly among the students, and have students guess the author and/or draw conclusions about what the person is like based on where they have been over the past 2 weeks. If no students volunteer to share their lists – but you are comfortable sharing yours – ask students to draw conclusions about you based on your movements.

Now, pass out a copy of the facts of the case in *United States v. Jones*. Independently or in groups, have students issue rulings based on the Fourth Amendment and explain their reasoning using case precedent if possible. Make sure students decide: (1) if what the government did constituted a search; and (2) if Jones had a reasonable expectation of privacy for his public movements in his car over 28 days.

When all students have had an opportunity to explain their rulings, divide them into smaller groups for brief discussions and follow up with a class discussion or debate.

Show the remainder of the video *Your House is Your Castle*. Then pass out a copy of the Court's opinion in the *Jones* case (full text or excerpts) and have students identify, analyze and compare the Court's reasoning to their own.

Discussion Questions

- What disagreements emerged in your groups or class over how to rule on this case? Why did those disagreements occur?
- How did the Supreme Court rule in *United States v. Jones*? Did the government's actions constitute a search? Did Jones have a reasonable expectation of privacy over his public movements in his car for 28 days? What standard did the Court apply in deciding the case?
- Do you think tracking Jones's public movements for 28 days is *reasonable* under the Fourth Amendment? Why or why not?
- In the *Jones* case, did the Court abandon the *reasonable expectation of privacy* standard created in *Katz*? Explain.

- Why did the Court conclude that the search in the *Jones* case was fundamentally different from the search used in the cases of *U.S. v. Knotts* and *U.S. v. Karo*?
- How was your ruling in *United States v. Jones* similar to and/or different from the Supreme Court's ruling?
- Read Justice Sotomayor's concurrence in the *Jones* case. Why does Justice Sotomayor believe that the *reasonable expectation of privacy* standard is sufficient to decide the case? What are Justice Sotomayor's concerns about recent technological advancements? In what way did Justice Sotomayor accurately foresee issues that have arisen recently?

Short Answer/Essay/Debate Prompts

- How and why has the constitutional right of privacy changed over time?
- How and why has the interpretation of the Fourth Amendment changed over time?
- Does the Supreme Court's current interpretation of the constitutional right of privacy accurately reflect what the average American considers private? Why or why not?
- Does the Supreme Court's current interpretation of the Fourth Amendment adequately protect your privacy? Why or why not?
- Is the Supreme Court's current interpretation of the constitutional right of privacy consistent with your own views? Why or why not?
- In his dissent in the Supreme Court case of *Olmstead v. U.S.* (1928), Justice Brandeis made the following statement about the right of privacy:

The makers of our Constitution understood the need to secure conditions favorable to the pursuit of happiness, and the protections guaranteed by this are much broader in scope, and include the right to life and an inviolate personality - the right to be left alone - the most comprehensive of rights and the right most valued by civilized men. The principle underlying the Fourth and Fifth Amendments is protection against invasions of the sanctities of a man's home and privacies of life. This is a recognition of the significance of man's spiritual nature, his feelings and his intellect.

- Does Justice Brandeis's explanation of the meaning of the right of privacy match the Supreme Court's more recent interpretation of the right of privacy? Why or why not?
- How has the constitutional right of privacy kept up with the times?

Summative Assessments

- Create a graphic tool that illustrates the evolution of the right of privacy over time. Include dates, case names where possible, and descriptions of how the right of privacy changed at each point. Students could complete additional research to add depth to the material covered in class.

- Prepare position papers for and engage in a debate over the question: *Has the Supreme Court's interpretation of the constitutional right of privacy kept up with the times?* Additional research could be required to add depth to the papers and debate.
- Compare two or more Supreme Court cases on the right of privacy, specifically describing the facts and holding of each case, the reasoning used by the Court, and how the right of privacy changed as a result of the later case.
- Write a letter to a federal government official that explains why you agree or disagree with the Supreme Court's current interpretation of the right of privacy and ask the official to take a specific action in support of or to challenge the current case law.

Additional Resources

[*Abortion, Privacy, and Values in Conflict: Roe v. Wade \(1973\) in Annenberg's eBook Our Rights \(pdf\)*](#)

[*Best Civics Sites for Teachers at Annenberg Classroom*](#)

[*Finding a Right To Privacy: Griswold v. Connecticut \(1965\) in Annenberg's eBook The Pursuit of Justice \(pdf\)*](#)

[Lesson Plan on Privacy from Deliberating in a Democracy](#)

[Lesson Plans on the Constitution \(including privacy and federalism\) from the American Bar Association](#)

[National Constitution Center's *Privacy* blog](#)

[*Our Constitution*, an eBook on the U.S. Constitution from Annenberg Classroom](#)

[*Our Rights*, an eBook on civil rights from Annenberg Classroom](#)

[*Privacy* at Cornell University Law School's Legal Information Institute](#)

[*Privacy Rights* at Justia.com](#)

[*Privacy* video from the PBS series Constitution USA](#)

[*The Pursuit of Justice*, an eBook on Supreme Court cases from Annenberg Classroom](#)

[*The Right to Privacy* at Exploring Constitutional Law](#)

[*The Right to Privacy* full-text article by Samuel Warren and Louis Brandeis for Harvard Law Review \(1890\)](#)

[Street Law course lessons \(including privacy\) at the University of Washington School of Law](#)

[*Teaching the Constitution* resources at Annenberg Classroom](#)

[*Your Bill of Rights* videos at Time magazine](#)

APPARTS Template

<p>AUTHOR Who created the source? What do you know about the author? What is the author's point of view</p>	
<p>PLACE & TIME Where and when was the source produced? How might this affect the meaning of the source?</p>	
<p>PRIOR KNOWLEDGE Beyond information about the author and the context of its creation, what do you know that would help you further understand the primary source?</p>	
<p>AUDIENCE For whom was the source created and how might this affect the reliability of the source?</p>	
<p>REASON Why was this source produced at the time it was produced?</p>	
<p>THE MAIN IDEA What main point is the source trying to convey? What is the central message of the document</p>	
<p>SIGNIFICANCE Why is this source important? What inferences can you draw from this document? Ask yourself, "So what?" What should a student of history or politics take away from the analysis of this document</p>	

Debate Team Carousel

Create a prompt for students to respond to in box #1. Pass papers to the right and complete box #2. Pass to the right and complete box #3. Pass to the right and complete box #4. Return to the original owner. Limit response times to 2-3 minutes.

<p>1. Give your opinion and explain your rationale. Record your opinion and explain your reason for it.</p>	<p>2. Add a supporting argument. Read your classmate's response. In this box, add another reason that would <i>support</i> your classmate's response.</p>
<p>3. Add an opposing argument. In this box, record a reason that might be used to argue <i>against</i> what is written in boxes #1 and #2.</p>	<p>4. Add your "two cents." Read what is written in the three boxes. Add <i>your opinion</i> and <i>your reason</i> for it in this box.</p>

A Federal System of Government

Enumerated federal powers	Source	Powers reserved to states	Source	Concurrent powers	Source	Powers denied to federal government	Source	Powers denied to states	Source