

INTRODUCTION

Law Day Live: The Government, Privacy and You is brought to you by Project Real's curriculum entitled, *Government, Privacy and You*. This curriculum is designed to take **two** class periods as introduction for Law Day Live and will show how the courts directly affect the lives of your students.

- 1) Please go through the introductory information (pages 1-6 in the student guide): Terms for you to know, What is privacy? What is not private? What effect has technology had on your privacy? What are the sources of privacy law and policy and Do these have anything to do with me? Most of this will be unfamiliar to your students.
- 2) The Consider This Case section looks at areas of students' lives and some of the pertinent decisions that impact them. Each case or statement has a brief introduction that will provide background. We recommend you divide the class into five groups and assign one case to each. Have the students read the preliminary information together, discuss the case, answer the questions and guess what the decision will be. Then have each group select a spokesperson or two to present their findings to the entire class. You will have the **only** copy of the case decisions.
- 3) The next activity introduces the Nevada case, *Hiibel v. Nevada* 2004, which pertains to protecting your identity. Using REAL Drama to bring the issue to life, a short play will follow the case that goes all the way to the U.S. Supreme Court and addresses those rights guaranteed to us under the Fourth and Fifth Amendments. Please show the DVD to your students. There is one part in the DVD where you will stop the DVD to have students answer the four questions which are asked by the reporter.
- 4) In the appendix, you will find:
 - A class activity chart that will be used as the introduction to the lesson.
 - Extension activities of a current event assignment and a closing assessment.
 - How the Amendments and case decisions apply to privacy law and policy.
 - Cases to Consider decisions. Following the decisions is the actual sex offender registration for Phillip Alpert.
- 5). Following the script for the play *Hiibel v. Nevada*, you will find suggested discussion questions.
- 6). A list of references used in the research for these materials.
- 7). Correlations of all materials with the Nevada Social Studies State Standards for middle and high school.

In addition, we are also including a copy of the "Advanced" high school text which might help you clarify some of the issues that the students bring up, as well as provide you with additional examples and background material to share with your class.

THE GOVERNMENT, PRIVACY AND YOU

TEACHER EDITION

GOALS

At the end of this lesson students will be able to:

- Explain the meaning of privacy and what is not private;
- Recognize the importance of privacy law in your own life;
- Put in your own words why it is important for you to protect your own privacy; and
- Know several legal terms related to privacy law and policy.

TERMS FOR YOU TO KNOW

In Loco Parentis - a Latin phrase that means “in the place of a parent in their absence” and refers to the legal responsibility of a person or organization (*i.e.*, schools) to assume some of the functions and responsibilities of a parent in their absence.

Legitimate Expectation of Privacy - a belief that there is a thing or place where a person can expect privacy and that society agrees.

Policy - a plan or course of action by a government, political party or business intended to influence and determine decisions and actions.

Probable Cause - a realistic belief that a crime has been committed, is currently being committed or will be soon be committed, and there is sufficient evidence to warrant an arrest or search and seizure.

Probable cause has a stronger standard of proof than **reasonable suspicion** and can lead to an arrest. Evidence is the key difference between **probable cause** and **reasonable suspicion**.

Reasonable Suspicion - a strong belief that a person might have been, is or is about to be engaged in criminal activity based on specific facts or deductions that can be clearly explained. A police officer has the legal right to stop and ask a person questions under the lower standard of **reasonable suspicion**. The police officer may frisk a suspect or detain the suspect briefly, but may only arrest if evidence is obtained to move to **probable cause** or a warrant is issued.

Warrant - a written order by an official of a court authorizing an officer to search in a specific place for specified objects and to seize them if found. The objects sought may be stolen goods or physical evidence of the commission of a crime or crimes (*e.g.*, narcotics weapons or bloodstains).

WHAT IS PRIVACY?

As early as 1890, Justice Louis Brandeis defined privacy as simply the right “to be left alone.” In the following years, that definition has grown to mean that privacy is the right to keep secrets from others as well as the right to keep anyone from intruding into your private space.

What does the word privacy mean to you?

WHAT IS NOT PRIVATE?

The definition of privacy sounds simple enough, doesn’t it? Okay, what is your private space your room, your diary, your house, your locker, your backpack, your computer, your cell phone? Not anymore. Under certain circumstances, most often with a **warrant**, law enforcement or school officials can have access to all those things. It is important for you to know that students in public schools, individuals at work, prisoners, immigrants and even celebrities have specific limits on what is private and what is not.

For example, officers can seek a **warrant** signed by a judge that will give them permission to search for specific items in your home, such as your computer or your cell phone. Remember that in a school setting, with only **reasonable suspicion**, school administrators may search your locker, backpack and/or purse.

What are some important items that you want to keep private?

WHAT EFFECT HAS MODERN TECHNOLOGY HAD ON YOUR PRIVACY?

The issue of privacy has become even more complicated with the expansion of technology. Who is going to decide what sites you can go to on the Internet or what you can write on your Facebook page, for example? Blogs, Facebook and YouTube are all considered to be public places even if you enter them, write in them or post photos from your own homes.

Where do you think the government, law enforcement or your school get the authority to determine what is private and what is not?

WHAT ARE THE SOURCES OF PRIVACY LAW AND POLICY?

Privacy is not mentioned directly in the Constitution. However there are several suggestions in the Bill of Rights, specifically in the First, Third, Fourth, Fifth and Ninth Amendments, as well as the Fourteenth Amendment. These establish that privacy should be a protected right. Other sources include law that has been passed down through the ages called common law, special laws called torts that give people the right to sue if they believe their privacy has been violated, laws passed by the state legislature, and school district policy.

DO THESE LAWS AND POLICIES HAVE ANYTHING TO DO WITH ME?

Yes! Let’s examine five cases with decisions that directly impact you.

Day 1 Lesson Plan

Essential Question: How does your view of privacy differ from the Supreme Court’s view of privacy?

Procedure:

Bell Ringer: Give the students the “Introduction to Privacy Law: What do you think?” worksheet (found as Appendix B) as they enter the classroom. Students should fill out the chart. The teacher will then use the teacher copy of this (Appendix A) and inform students that all of these things should be checked in the NO column.

Terms to Know: Quickly define the six terms students should know.

Jigsaw: Divide students into five groups. Each group will be given a topic and a Supreme Court case. It will be the responsibility of each group to:

1. **Discuss** the information and details of the case (who is involved, where, when, what is it about).
2. **Answer** the questions provided for each case.
3. And **guess** what they think the decision will be.

Groups will present their information to the class. After each group goes through the teacher will inform the students of the actual decision made by the Supreme Court.

Students will complete the Chart (Appendix C) as information is presented about each case.

If you don’t finish this in day one – finish right away at the start of day two.

Group 1 – YOUR CAR

It is often a mistaken belief that police cannot search an individual's car. The first case to address the privacy rights of an individual and his car was in the 1920's when prohibition officers searched a car looking for liquor that was illegal. The simple fact that cars can be moved supports a search without a **warrant** as long as law enforcement has **probable cause**.

CONSIDER THIS CASE: UNITED STATES V. ROSS (1982)

A reliable informant notified a detective that a man known as "Bandit" was selling illegal drugs out of the trunk of his car. The informant gave detailed information of the appearance of both the car and "Bandit." Other detectives located the car and learned it belonged to Albert Ross, who used the alias "Bandit." After observing the car for awhile, the officers saw a man matching the description of "Bandit" enter the car and drive away. They then pulled the car over and asked Ross to get out. One of the officers found a pistol in the glove compartment and in the trunk, a brown paper bag filled with small bags of powder, \$3,200 and traces of another powder which the police laboratory later determined was heroin. No warrant was obtained.

Questions for the Group:

*Do you think the police had the right to search the car and its glove compartment and trunk when their **probable cause** was solely based on information from an informant?*

If you agree, does that mean that if you told school or police authorities that a student at your school was selling drugs out of his car they would have the right to search it?

Group 2 – YOUR SCHOOL

There are many limits to privacy rights within your school. Your right to privacy is lower in schools because there must be a balance between personal rights and the need to maintain a safe learning environment for the students.

School districts have been given great power to establish policies to protect all students. The notion of *in loco parentis* states that school administrators can act in the place of your parents.

CONSIDER THIS CASE: VERNONIA SCHOOL DISTRICT V. ACTON (1995)

In the late 1980's, Oregon's Vernonia School District saw a spike in drug use in high schools. The students became increasingly bold and unruly in their drug use. The administration learned that the student athletes were not only drug users, but also were popularizing drugs. A variety of methods were used to intervene, but with little success. In 1989, after receiving input from the parents, the school district made the decision to begin drug testing student athletes "to protect their health and safety." In fall 1991, James Acton, then a seventh grader, signed up to play football but was denied participation because he refused to complete the drug test. His family filed suit on the basis that his privacy was being invaded in the requirement of a urine sample.

Questions for the Group:

What would you expect to be the result of this case?

Do you think students involved in extracurricular activities other than athletics should be tested for drug use?

Why or why not?

Group 3 – YOUR CLOTHES

School districts are responsible for creating and implementing policies, rules and regulations that govern behavior and promote an environment for learning while still protecting the rights of individual students. Cases have established that students have reduced expectations of privacy in school, partially because staff is acting *in loco parentis* (in place of your parents). In this role, many school decisions can be made that are outside the normal range of governmental involvement.

The range of school policies that pertain to privacy rights is broad. For example, how you choose to dress would seem to be a private decision. Yet, most school districts have established strict dress **policies** for pupils. For example, in Nevada, policies include limitations on the length of skirts and shorts, indicate that students must wear shoes with soles, may not wear crop tops or those with spaghetti straps, or hats. The dress code **policy** explains that outfits must provide “minimum coverage.” The district also prohibits slogans or advertising on clothing that is controversial, religious in nature, or obscene and might disrupt the educational setting.

CONSIDER THIS CASE: JACOBS V. CLARK COUNTY SCHOOL DISTRICT (2008)

Liberty High School in Henderson, NV instituted a **policy** requiring all students to wear "solid khaki-colored bottoms and solid-colored polo, tee, or button-down shirts (blue, red or white) with or without Liberty logos."

Kimberly Jacobs, then an eleventh-grader at Liberty, time after time violated the school’s uniform **policy** (at least once by wearing a shirt containing a printed message reflecting her religious beliefs). Jacobs was repeatedly referred to the Dean's office and she was suspended from school five times for a total of twenty-five days. Although Liberty provided Jacobs with educational services during her suspensions, she claimed that she missed out on classroom interactions, her reputation was tarnished among her teachers and peers, she had a disciplinary record, and was unconstitutionally deprived of her First Amendment rights to free expression and free exercise of religion because of Liberty's enforcement of its mandatory school uniform **policy**.

Jacobs and her parents sued the District.

Questions for the Group:

Should the way you dress in school be a private matter?

Do you believe student uniforms assist school districts in the reduction of gang-related or bullying incidents on your campus?

Why or why not?

Group 4 – YOUR BODY (HIGH SCHOOL)

There is no other area around privacy rights that is as controversial and heated as those directly related to the privacy of our own bodies. Parents, police and schools are becoming increasingly concerned about teens swapping more than messages as they face a rising number of ‘sexting’ incidents. A quick click and teens can instantly send nude images or videos of themselves to friends in a text on their cell phones or on computer sites as Facebook.

CONSIDER THIS CASE: PHILLIP ALPERT

Eighteen -year old Phillip Alpert was a senior at a high school in Orlando, Florida. Angry at his 16-year-old ex-girlfriend and as a way to get back at her, he forwarded some photos of her without clothes that she had given him. They were included in text messages to her family, friends and anyone on his contact list. He immediately realized he had made a dreadful mistake and apologized, but it was too late. The reaction from people receiving the photos was immediate and the police arrested Phillip on child pornography charges. Child pornography is any visual representation of minors under the age of 18 that is highly sexual in nature.

Questions for the Group:

Why is sending photos of undressed people to others considered a crime?

Do you believe that sending pictures of yourself partially clothed can make you a child pornographer as well?

What kinds of punishment do you think Phillip received from the courts?

Group 4 – YOUR HOUSE (MIDDLE SCHOOL)

The Fourth Amendment assures us that the government cannot conduct unreasonable searches, or those without legal warrants, in areas where we would reasonably expect privacy. Over the years, multiple cases have sought to define this more clearly. For example, in 1961, the ruling for the *Mapp v. Ohio* case found that states as well as the Federal Government must exclude evidence seized in violation of the Fourth Amendment.

However, this ruling has since been modified as long as it can be proven that the evidence was gathered in good faith (honestly and without deception).

Chimel v. California (1969) indicated that police can only search the area or room around the suspect where a weapon or evidence may be concealed. In this case, police conducted a search of Chimel's home after they arrived there to arrest him for burglary. During the search, they located items that incriminated Chimel. However, they did not have a search warrant, only an arrest warrant. In this case, the Supreme Court ruled that the search of his entire dwelling without a search warrant violated his Fourth and Fourteenth Amendment. The fact that he was being arrested did not negate his constitutional rights.

Clearly there are limits to privacy within our own homes and not everything we do behind closed doors is protected. For example, it is against the law to inject intravenous drugs even if these activities occur within the walls of one's home. Laws that protect against these types of crimes are relevant across the country.

CONSIDER THIS CASE: BORING V. GOOGLE

In 2009, in Riverhead, Long Island, NY 250 property owners were cited and fined for not honoring city rules regarding building pools in their backyards. Using Google Earth satellite photos and maps, a city inspector located pools that had not been properly inspected or permitted at the time of their installation. Citing safety concerns, the city has collected nearly \$75,000 on fines. As of now, no legal actions have been taken.

Questions for the Group:

Given what you've learned, is it reasonable to expect privacy in your own backyard?

Why or why not?

We could have used growing marijuana as our example. What do you think about that being discovered by Google?

Group 5 – YOUR BELONGINGS (HIGH SCHOOL)

The courts and school boards have given school administrators and teachers significant freedom in assuring that all students, faculty and staff are kept safe. This means that with **reasonable suspicion** that something illegal and possibly dangerous is in the possession of a student, administrators and sometimes school police have the right to search lockers, backpacks and other personal belongings.

CONSIDER THIS CASE: SAFFORD UNIFIED SCHOOL DISTRICT V. REDDING (2009)

After a fellow student told school personnel about a girl with several suspicious items in her day planner, 13-year-old Savannah Redding was taken to the office and accused of bringing prescription strength ibuprofen to school, a direct violation of school **policy**. After searching her backpack and outer clothing and finding nothing, the assistant principal took the girl to the nurse's office where she was asked to remove her outer clothing. Her undergarments were searched, exposing her body to staff. No pills were found. The girl's mother filed suit against Safford Unified School District #1 for conducting a strip search, in direct violation of Savannah's Fourth Amendment rights against unreasonable search.

Questions for the Group:

What do you think?

Do you think this search was unreasonable?

Did the principal and the nurse take their responsibility too far?

Was the student's expectation of privacy violated?

Group 5 – YOUR BELONGINGS (MIDDLE SCHOOL)

As you have learned there are limits to privacy rights within your school. The expectation of privacy is lower in schools because there must be balance between personal rights and the need to maintain a safe learning environment for minors

CONSIDER THIS CASE: NEW JERSEY V. T.L.O. (1985)

A teacher at a New Jersey high school, upon discovering a 14-year-old freshman, and her companion smoking cigarettes in a school lavatory in violation of a school rule, took them to the Principal's office, where they met with the Assistant Vice Principal. In response to the Assistant Vice Principal's questioning, the girl denied that she had been smoking and claimed that she did not smoke at all, the Assistant Vice Principal demanded to see her purse.

Upon opening the purse, he found a pack of cigarettes and also noticed a package of cigarette rolling papers that are commonly associated with the use of marijuana. He then proceeded to search the purse thoroughly and found some marijuana, a pipe, plastic bags, a fairly substantial amount of money, an index card containing a list of students who owed the girl money, and two letters that implicated her in marijuana dealing.

The girl sued, arguing that the search was a violation of her fourth Amendment rights protecting her from an unreasonable search. She argued that the Vice Principal did not have the right to search her or her belongings without a search warrant.

Questions for the Group:

Should a school official have the right to search you or your belongings?

What about your locker?

How could you connect this case to cyber bullying and the right of officials to search your facebook profile?

CASES TO CONSIDER DECISIONS

DECISION: *UNITED STATES V. ROSS (1982)*

The Supreme Court ruled that the warrantless search exception, because of the ability of cars to move, extended to compartments such as the glove box or trunk, within the vehicles. If the law enforcement official has probable cause to believe that illegal goods are concealed, it leaves your car open to search based on the determination of the police, not a judge. This case led to many other decisions which gave the police even more authority when stopping a vehicle. (Your Car)

DECISION: *VERNONIA SCHOOL DISTRICT V. ACTON (1995)*

The Supreme Court ruling on this case favored the School District. Justice Antonin Scalia acknowledged that expectations of Fourth Amendment rights are different in schools, in that the “schools cannot ignore the custodial ... responsibilities for children.” In addition he notes that school athletes have even less of an expectation of privacy. The very fact that student athletes use the school’s public locker rooms would indicate that legitimate expectations of privacy are very limited. However, Justice Scalia did not give schools a blank check with regards to non-athletes and drug testing. He made it clear that such testing would not necessarily pass “constitutional muster.” (Your School)

DECISION: *JACOBS V. CLARK COUNTY SCHOOL DISTRICT (2008)*

The decision of the Ninth Circuit Court of Appeals on the Jacob’s case set a precedent in its support of the Clark County School District. Judge Hawkins, speaking for the majority, accepted the school district’s official argument that dress code policies do increase student achievement, promote safety and enhance a positive school climate. Finally, he reasoned that the policies did not restrict more speech than necessary, as “students are still permitted to choose what clothing to wear after school, on weekends, and at non-school functions.” (Your Clothes)

DECISION: *Alpert (2010) HIGH SCHOOL ONLY*

The young man was arrested in Orlando, FL and charged with child pornography. Rather than go through a trial, Alpert pleaded no contest. (This is a plea in a criminal case that the accused will not argue with the facts in the case. The judge then finds the person guilty and issues the sentence.) Alpert was sentenced to five years probation and forced to register as a sex offender. This means that he cannot live near a school, park or playground .Because he has committed such a serious crime, (a felony) while he is on probation, he has also lost the privilege to vote. (Your Body)

DECISION: Boring v. GOOGLE (MIDDLE SCHOOL)

A magistrate judge in the Western District of Pennsylvania dismissed all claims by Aaron and Christine Boring against Google for [photographs](#) taken of the Borings' house and pool for use in the [Street View](#) feature of Google Maps. The Borings had filed suit in April 2008 after discovering pictures of their house on Google's Street View. They noticed that the pictures were taken from their unpaved driveway, which had allegedly been marked with signs reading "Private Road" and "No Trespassing." (Your Home)

DECISION: SAFFORD UNIFIED SCHOOL DISTRICT V. REDDING (2009) HIGH SCHOOL ONLY

The Supreme Court held that Savannah's Fourth Amendment rights were violated when school officials searched her underwear. The Court stated that, based on the idea of reasonable suspicion, search methods used by school personnel to find contraband harmful to school environments must be "reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." In this case, school officials did not have sufficient suspicion to warrant extending the search from Savannah's belongings to her body and her underwear. (Your Belongings)

DECISION: NEW JERSEY V. T.L.O. (1985) MIDDLE SCHOOL

Citing the peculiarities associated with searches on school grounds, the Court abandoned its requirement that searches be conducted only when a "probable cause" exists that an individual has violated the law. The Court used a less strict standard of "reasonableness" to conclude that the search did not violate the Constitution. The presence of rolling papers in the purse gave rise to a reasonable suspicion in the principal's mind that T.L.O. may have been carrying drugs, thus, justifying a more thorough search of the purse. (Your Belongings)

Day 2 Lesson Plan

Essential Question: How do the fourth and fifth Amendments protect your privacy?

Procedure:

Jigsaw: Finish day one jigsaw

Preview Video: This is a play performed about a case that started in Winnemucca in Humboldt County. The play "It's None of Your Business...Or Is It?" Based on the case of *Hiibel v. Nevada (2004)*. This case focuses on whether or not an individual **who is not driving** has the right to keep his or her name secret from the police.

Video:

Questions During the Video: Discuss with your class the following questions when the DVD tells you to stop.

1. What do you think is the greatest threat to your privacy and why?
2. When do you think your privacy is more important than law enforcement?
3. Do you think the Nevada statute requiring you to give your name should be repealed by the Legislature?
4. What do you think the U.S. Supreme Court should do?

Questions After the Video: Students will complete Appendix D when the video is over.

Preparation for Law Day Live:

These two lessons must be completed prior to Law Day Live. During Law Day Live students will watch/participate in a question and answer discussion about these cases and the role the court can play in protecting our rights and freedoms.

Have students prepare questions for judges and lawyers about protecting their privacy.

Appendix A

INTRODUCTION TO PRIVACY LAW: WHAT DO YOU THINK? TEACHER COPY

In the following chart place a mark in the YES column if you think the item is something that you can keep private. Place a mark in the NO column if you think you are not always able to keep the item private. Place a mark in the SHOULD BE column if you think that the item should be private even if it is not.

	YES	NO	SHOULD BE
1. School Notebooks			
2. Diary			
3. Facebook and Twitter			
4. Cell Phones			
5. Social Security Number			
6. What your parents earn			
7. Computer			
8. Medical records			
9. School grades			
10. Your room at home			

Students may be shocked to learn that, under certain circumstances, all of these can be accessible to government officials, organizations and even individuals. For example, if a student is arrested the officers can gain access with a warrant to their diary, social media outlets, cell phone, credit cards and computer. When a student is applying for college or a scholarship, those institutions can request grades and the income of parents. A student will have to show medical records to be an athlete. Stores and banks can ask for your credit cards, driver's license and social security number.

The reality is that in today's society there are few things, except what goes on in your mind, which can be kept totally private.

Appendix B

INTRODUCTION TO PRIVACY LAW: WHAT DO YOU THINK?

In the following chart place a mark in the YES column if you think the item is something that you can keep private. Place a mark in the NO column if you think you are not always able to keep the item private. Place a mark in the SHOULD BE column if you think that the item should be private even if it is not.

Student Name _____

Period _____

	YES	NO	SHOULD BE
1. School Notebooks			
2. Diary			
3. Facebook and Twitter			
4. Cell Phones			
5. Social Security Number			
6. What your parents earn			
7. Computer			
8. Medical records			
9. School grades			
10. Your room at home			

Appendix C

Name _____

Period _____

Case	Details	Decision
1.		
2.		
3.		
4.		
5.		

Appendix D

Name _____

Period _____

QUESTIONS FOR DISCUSSION AFTER VIEWING THE DVD

1. What are the constitutional protections for individual privacy guaranteed in the Fourth and Fifth Amendments?
2. Identify the four levels of court that heard the *Hiibel v. Nevada* case.
3. What is the difference between reasonable suspicion and probable cause?
4. What rights does a police officer have when he stops a person based on reasonable suspicion?
5. If you are stopped by a police officer and you are not driving, do you have to tell the officer your name?
6. What do you do to protect your own privacy?

Appendix E

CURRENT EVENTS A WRITTEN OR VERBAL ASSIGNMENT

Please provide the students with newspapers such as the National Enquirer, magazines or the internet. Ask the students to locate a current event that involves privacy. The student is then to prepare a one-two minute coverage of the story. All students will turn in their assignments to the teacher.

CLOSING ASSIGNMENT

Ask students to write a brief essay describing the three most important things they learned from studying the privacy unit and include whether those things will make any difference in how they protect their identity.

THE AMENDMENTS AND CASE DECISIONS HOW THE AMENDMENTS APPLY TO PRIVACY LAW

The notion of privacy has played a unique role in American society as well as its history, yet it is never *directly* mentioned in the United States Constitution. Despite no direct mention, the amendments of the Bill of Rights do reflect the concerns of the framers around specific areas of privacy. The Fourteenth Amendment expanded ways to address those concerns.

The First Amendment guarantees our right to peaceably assemble, giving us the right to connect with anyone we choose privately or publicly. It also protects “freedom of conscience” and our rights to freedom of speech, press, and religion (Glenn). Congress shall not pass laws that prohibit these freedoms.

The Third and Fourth Amendments protect the privacy of our homes. The Third specifically says that the government cannot force us to house soldiers in our private homes without our consent. The Fourth guarantees that the government cannot conduct an unreasonable search and seizure without a legal warrant in an area we have the right to expect to be private. As seen in the landmark case, *Katz v. United States* (1967), “A person’s desire to be left alone as pitted against the police’s desire for information about a potential crime reflects the tension in the Fourth Amendment.” (Ahranjani, 58).

The Fifth Amendment protects the privacy of our thoughts and states that we have a right to keep secret any evidence that might help the government obtain a conviction against us. We never have to incriminate ourselves.

In his opinion of the landmark *Griswold v. Connecticut* (1965) case, Justice William O. Douglas described the **Fourth and Fifth Amendments** “...as protection against all governmental invasions of the sanctity (sacredness) of a man’s home and the privacies of life.”

The true meaning of the **Ninth Amendment** has long been considered controversial, but it maintains that those “certain rights” specifically listed in the Bill of Rights are not the only ones available to the people. This broad idea has been widely interpreted to mean “that other rights aside from those may exist and just because they are not listed doesn’t mean they can be violated.” (Mount) This would then include the rights around privacy that are now widely accepted but were not specifically addressed.

Following the civil war, an important amendment in protecting our privacy was added to the Constitution. The **Fourteenth Amendment**, and its **due process** clause, ensures that the States cannot deny or limit certain fundamental rights in the Bill of Rights deemed essential to the concepts of equality or liberty, particularly those in the *Fourth and Fifth Amendments*.

IT'S NONE OF YOUR BUSINESS...OR IS IT?

ACKNOWLEDGEMENT

Many thanks to Nevada Chief Deputy Attorney General Conrad Hafen and Winnemucca attorney Robert Dolan for sharing their insights and experiences about the Hiibel case. We are equally grateful to Nevada Justice Miriam Shearing who was on the court at the time of the decision, for ensuring that the intent of the law was not changed in the play.

Most especially appreciation is owed to Jonathan Venzor for conducting the initial research and gathering the documents needed for the play, to Debbie Berger for her editing expertise and Channel 3's Dana Wagner for helping make the legal language easier to understand. It has been a pleasure to work with an exceptional group of students from the Las Vegas Academy of International Studies and Performing and Visual Arts, Jordan Sasse, Josh Thompson, Drew Grant, Kandice Upshur, John Pietz, Dallas Bennett and Sabe Robinson, who brought the play to life.

JUDITH F. SIMPSON

2011

Graphic design by JB Burns

Florida Department Of Law Enforcement - Sexual Offender / Predator Flyer



Phillip Michael Alpert
Date Of Photo: 09/28/2009

Click Here to Track this Offender	
Designation:	Sexual Offender
Name:	Phillip Michael Alpert
Status:	Supervised - FL Dept of Corrections
Department of Corrections #:	X61836 Search the Dept of Corrections Website
Date of Birth:	09/22/1989
Race :	White
Sex:	Male
Hair:	Blond
Eyes:	Black
Height:	5'11"
Weight:	125 lbs

Alpert is registered as a Sexual Offender. Positive identification cannot be established unless a fingerprint comparison is made.

Aliases

Phillip M Alpert, Phillip Alpert

Scars, Marks & Tattoos

Not Available

Address Information

Address	Address Source Information	Map Link
6160 Westgate Dr Apt 203 Orlando, FL 32835-7055 Orange COUNTY	Source: Dept. of Corrections Received: 10/01/2010 Type of Address: Permanent	Show Map

Crime Information - Qualifying Offenses

Adjudication Date	Crime Description	Court Case Number	Jurisdiction & State	Adjudication
02/26/2008	SEND CHILD PORN; F.S. 847.0137(2)	0716350	ORANGE, FL	Adjudication Withheld

Victim Information

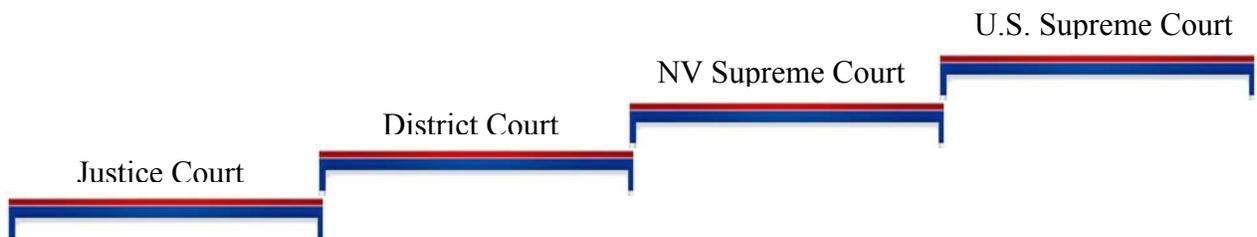
Gender:Unknown Minor:Yes

.....

THE SCRIPT

IT'S NONE OF
YOUR BUSINESS...
...OR IS IT?

HIIBEL v. NEVADA (2004)



IT'S NONE OF YOUR BUSINESS ...OR IS IT?

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2011

Graphic design by JB Burns

GOALS:

- Know the constitutional protections for individual privacy guaranteed in both the Fourth and Fifth Amendments.
- Identify the four levels of court that heard the *Hiibel v. Nevada* case
- Differentiate between reasonable suspicion and probable cause
- Explain the Terry Stop
- Know the Nevada law regarding identifying yourself to a police officer.

The setting: The set includes 1 small table, and 2 chairs and a podium.

Props needed: one hand held microphone, equipment and screen to show DVDs

Cast: Student 1, Student 2, Justice of the Peace Gene Wambolt, District Court Judge Richard Wagner, Nevada Supreme Court Justice Cliff Young, television reporter Sam Harris, U.S. Supreme Court Justice Anthony Kennedy

Student 1: Hey, how was your weekend?

Student 2: Oh, it was bad.

Student 1: How come?

Student 2: Well, on Friday night, I was walking the dog around midnight and this cop stopped me and asked for my ID and of course I didn't have it.

Student 1: Well. Hang on. Is that legal? You were just walking around and he stops you? Isn't that private? Do you have to give your id? Isn't that just like the case we were discussing in government class the other day? You know the one we are going to be tested on.

Student 2: The Hiibel case? Right?

Student 1: Right, what were the facts?

Student 2: Well, it happened ten years ago in Winnemucca in this little town up in Humboldt County. Deputy Sheriff Lee Dove got a call from dispatch saying that a citizen saw a man hitting a woman inside a red and silver truck. So he goes down there and the citizen takes him to the truck that's pulled off to the side of the road. Now when he goes there, it's where he meets the local rancher Dudley Hiibel. He was standing outside his truck and his 15 year old daughter Mimi was

sitting in the truck. When Dove goes to talk to him, he thought he was drunk because he had the red eyes and smelled of booze.

Student 1: That's right. So at that point, didn't Dove ask Hiibel for his ID to which the rancher responded "Why?" and kept insisting his truck was parked legally? Now of course, the officer explained that he needed Hiibel to identify himself because of a report of a fight. Hiibel refused to give his name and challenged the officer to take him to jail. Now at this point they are both becoming agitated and angry. After eleven requests, yes eleven requests for identification, Dove finally arrests Hiibel and charges him with resisting an officer and failure to identify himself as required by Nevada Law.

Now you're not going to believe this. But I actually have the arrest right here on my phone. Look, this is a little blurry. Apparently it was taken by a dashboard camera in Deputy Dove's vehicle.

Show Youtube/HiibelvNevada

Student 2: Now aren't these only misdemeanor charges, nothing really serious? So how did this case make it all the way to the United States Supreme Court?

Student 1: To find out I guess we should follow Hiibel's journey.

Student 2: Well the first stop is in Justice Court in Winnemucca where a decision is announced by Justice of the Peace Gene Wambolt to the Deputy Public Defender Robert Dolan and Deputy District Attorney Conrad Hafen.

Justice of the Peace Judge Gene Wambolt: Mr. Dolan, on behalf of your client Dudley Hiibel, you argue that on the day that Deputy Dove arrested Mr. Hiibel his Fourth and Fifth Amendment rights were violated. You believe that requesting identity without a warrant is unreasonable under the 4th Amendment and that your client, by refusing to answer, was merely exerting his right to remain silent as granted in the 5th.

Mr. Hafen. you on the other hand argue on behalf of Humboldt County that Mr. Hiibel was legally detained and his rights were not violated. I agree. After the evidence has been presented to me I find that Deputy Dove acted properly and lawfully in detaining Mr. Hiibel and this court finds the defendant

Mr. Dudley Hiibel guilty of delaying an officer and he is fined \$250 and \$70 for administrative fees.

Student 1: Now, you would think he would just pay the little fine and go back to his ranch. Right?? Wrong!! Dudley Hiibel is a very stubborn man and he felt strongly that his rights had been violated. So he and his attorney Mr. Dolan appealed to the next highest court, the 6th District Court also in Winnemucca.

Now check out this decision issued by District Court Judge Richard Wagner.

District Court Judge Richard Wagner: In determining the issue before the Court today, the court has to balance the public interest of requiring the identity of a suspect who is involved in a DUI and battery or domestic violence case versus an individual's right to remain silent.

This court notes that an individual's identity may not only be crucial to the officer's safety but also for the safety of possible victims.

That being said this Court upholds the decision of the lower court to fine Mr. Hiibel. The judge's order is accurate and precise, and this Court affirms it. Next case.

Student 2: Once this decision was announced that it was okay for Hiibel to be arrested and fined, his attorney Mr. Dolan knew that he had a very important case on his hands.

Student 1: Of course.

Student 2: Yes, Deputy Dove was sent out to investigate a domestic disturbance case and clearly had **reasonable suspicion** to investigate the call.

Student 1: But did he actually investigate anything? All he did was repeatedly demand identification.

Student 2: Well, did he actually determine that Hiibel was driving?

Student 1: No!

Student 2: Did he check him for drunkenness?

Student 1: Nope!

Student 2: Did he talk to Hiibel's daughter Mimi?

Student 1: That's negative.

Student 2: No! Did he even bother to see if she was okay?

Student 1: Definitely not!

Student 2: In addition, Dolan felt he could argue that the Nevada law which requires you to show your ID is nothing less than forced self-incrimination. It also is in clear violation of the U.S. Supreme Court case Terry v. Ohio.

Student 1: And I believe, in that case, the Court ruled you didn't have to show any ID. And failure to do so doesn't justify an arrest.

Student 2: Right. So in Dolan's opinion, the Nevada law was unconstitutional! By this time, it even made it to the news.

Reporter Sam Harris: Hi, this is Sam Harris reporting for KQRC news. This case is unbelievable. This rancher is fighting to have his \$250 fine returned and keeps fighting to win in a court of law. It all has to do with the Supreme Court case Terry v. Ohio looking at the differences between reasonable suspicion and probable cause – a distinction that affects us all. —————

Reasonable suspicion is when an officer believes a crime has been, is ~~about to be or is currently~~ being committed. **Probable cause** is when there is evidence, not a belief, that a crime has been committed or is about to be committed.

Here's an example of each. In the Terry case, a Cleveland, Ohio officer stopped three men who were behaving strangely by walking back and forth in front of a jewelry store and peering in the same window each time. It looked like they were casing the store so the officer identified himself and asked for their names. He then frisked the men and found guns. So is that legal? Yes, the officer did have **reasonable suspicion** to question them, but they didn't have to give their names. ~~The~~ court also determined that the person stopped is not obligated to answer any questions. This refusal cannot be used as a reason for an arrest.

To show **probable cause**, if an officer has evidence of a crime he can either seek a warrant or he can arrest on the spot. So let's go back to Cleveland for a minute. If the officer had seen the handguns, he would have met the standards of probable cause and could arrest them right then and there. The same premise would occur if the officer saw a drug deal going down.

Let's keep following Hiibel to see what happens next.

Student 1: The next level is the Nevada Supreme Court right?

Student 2: Yes. It was appealed on the basis of the Terry case and the 5th Amendment protection against self-incrimination. The case was heard in front of seven Nevada justices in 2001. Mr. Dolan argued that "the Nevada law which **requires** someone to identify themselves during a detention is unconstitutional based on the Terry decision. Mr. Hiibel was convicted of resisting an officer because he **refused** to identify himself." Dolan's conclusion remains that the conviction must be reversed.

Student 1: So how does the Supreme Court rule?

Student 2: They sure didn't agree with each other. There were four on one side – three on the other. Justice Cliff Young gave the majority opinion.

Sam Harris: This is Sam Harris standing at the Supreme Court in Carson City. Let's see if we can catch Justice Young on his way out. Justice Young, do you have a moment?

Nevada Supreme Court Justice Cliff Young: Yes sir.

Sam Harris: What can you tell me about the Hiibel case? What are your thoughts?

Justice Young: Well, I know that this decision is going to be extremely unpopular. I know it is fundamental to a democratic society to wander freely and anonymously without being compelled to divulge information to the government about who we are or what we are doing. This is the "right to be left alone" to simply live in privacy, the right protected by the Fourth Amendment and undoubtedly sacred to us all. But, like all freedoms and liberties we enjoy, it includes both limitations and responsibilities. Officers must know with whom they are dealing.

Listen carefully to me. We have a new reality with 9/11 and one that is not very nice. Terrorism has forced us to change the way we live, the way we act, the way we think. To **deny** the officers the right to request identification creates a situation where an officer could approach a wanted terrorist or sniper but is unable to identify him or her. Now tell me, how can not only an officer protect him, but also you and me?

Reporter Sam Harris: Thank you, Justice Young. Well, it sounds like Hiibel loses again. Justice Cliff Young is also quoted as saying, “An ordinary person would conclude it was Hiibel who was unreasonable, not the law.”

At the basis of Justice Young’s opinion is his emotional appeal to protect the police. They need to know if they are in danger. It is no doubt that the basic issue is whether the Nevada law adequately strikes a balance between our constitutional protections of privacy and the need to protect the officers and the public.

On behalf of the three who disagreed, Justice Deborah Agosti's dissent clearly shows the tension. She wrote, “With today's majority decision, the officer can now, figuratively, reach in, grab the wallet and pull out the identification. So much for our right to be left alone or as the majority says to wander freely and anonymously if we choose.”

(look back up at audience) It is amazing to have this kind of disagreement among the judges. Justice Agosti also disagreed with Justice Young’s ideas that we freely tell people who we are every day, so why is it such a big deal to tell it the police. She goes on to say *(look at notes again)* “What the majority fails to recognize is that it is the **observable** conduct, not the identity, of a person, upon which an officer must legally rely when investigating crimes and enforcing the law.”

(look back up at audience) In the end Hiibel loses again. Three strikes, is he out? I wonder if he will finally admit defeat and just go back to the ranch. Sam Harris reporting.

Student 1: No he doesn’t give up yet. Once again, Mr. Hiibel and attorney Dolan strongly agreed with the minority opinion and felt their case was still solid. After all, the U.S. Supreme Court had already agreed in the Terry case that you didn’t have to give your name. So the Nevada law was obviously in clear conflict with the Federal law. So on July 22, 2003 a petition was submitted by the Nevada Public Defender’s office to the U.S. Supreme Court.

Student 2: Right and did you know that only 1-2 percent of the petitions sent to the court are actually heard? But Hiibel was lucky, and the Court determined that his case was worthy to be examined.

Reporter: So a case that resulted in a \$250 fine in Winnemucca is going all the way to the Supreme Court. But Hiibel no longer stands alone. He has been gathering support across the country including the ACLU, several other privacy groups and advocates for the homeless. The president of the Electronic Privacy Information Center, in an interview, stated that “If Hiibel loses, the government will be free to use its extensive databases to keep tabs on people. A name is no longer a simple identifier; it is the key to a vast cross-referenced system of public and private databases, which lay bare the most intimate features of an individual’s life.”

Now it is time to go to the street. We want to hear your opinions (*go out into the audience and pause the DVD for discussion*)

- 1) What do YOU think is the greatest threat to your privacy and why?
- 2) When do YOU think your privacy is more important than law enforcement?
- 3) Do you think the Nevada statute requiring you to give YOUR name should be repealed by the Legislature?
- 4) What do you two think the U.S. Supreme Court should do?

On March 22, 2004, the Supreme Court of the United States heard arguments from both attorneys. Coincidentally, Hafen had moved from the Winnemucca DA’s office to the Attorney General’s office and the case followed him.

Student 2: It didn’t seem like the justices agreed with each other either. During the arguments, Justice O’Connor wanted to know why this case is any different from any traffic stop where the officer has the right to ask for your license.

Student 1: But Dolan argues that Hiibel wasn’t driving.

Student 2: Right, he was outside the truck. She also wanted to know if the fact that Hiibel was drunk counts for anything.

Student 1: His attorney argues there was never any finding that Hiibel was drunk in the first place. Justice Ginsburg pointed out that it’s a bit odd that the police can run the vehicle’s license plates, but not ask your name.

Student 2: Justice Scalia added, “I can’t imagine any responsible citizen who would object to giving his name.”

Student 1: Hafen, arguing for the state, focused on the idea that your name is neutral and non-incriminating. But, of course, Justice Ginsburg wanted Hafen to explain, what else is neutral.

Student 2: like your phone number or your e-mail address for example.

Student 1: Justice Stevens also expressed concern. Just because your subject is a known bad guy, does that automatically give the officer probable cause to make an arrest?

On June 21, the Supreme Court issued its decision and again they were split – 5-4. Supreme Court Justice Anthony Kennedy spoke for the majority.

Supreme Court Justice Anthony Kennedy: In the Hiibel case, there is no question that the initial stop was based on reasonable suspicion, satisfying the Fourth Amendment requirements. As we understand it, the Nevada law does not require a suspect to give the officer a driver’s license or any other document, just his name and the law is satisfied and no violation occurs.

Hiibel argues that his conviction cannot stand because the officer’s conduct violated his Fourth Amendment protections against illegal search and seizure. We disagree. Asking questions is an essential part of police investigations, does not violate the Fourth Amendment and helps solve crimes. The officer’s request was a common sense inquiry.

Hiibel’s attorney further contends that the rancher’s conviction violates the Fifth Amendment’s prohibition on self-incrimination. The Fifth Amendment states that no person shall be compelled in any criminal case to be a witness against himself. However, Mr. Hiibel’s challenge must fail because in this case disclosure of his name presented no reasonable danger of incrimination.

As best we can tell, he refused to identify himself only because he thought his name was none of the officer’s business.

Even today, he does not explain how the disclosure of his name could have been used against him in a criminal case. The judgment of the Nevada Supreme Court is affirmed.

Reporter Sam Harris: Well, Mr. Hiibel has run out of options. But we must report that the dissent written by Justice Stevens presented a powerful argument.

Justice Stevens reminded us that because citizens are covered by the Terry Stop provisions, then it is no surprise Mr. Hiibel was safe to assume, as have we, that he had the right to not disclose his identity.

To quote the Justice, “A name can provide the key to a broad array of information about the person, particularly in the hands of a police officer with access to a range of law enforcement databases.” Justice Stevens then closed his opinion with the following words. ”The officer in this case told Mr. Hiibel that he was conducting an investigation and needed to see some identification. As the target of that investigation, Mr. Hiibel, in my view, acted well within his rights when he opted to stand mute. Accordingly, I respectfully dissent.” End quote

Well, the case is over with many groups excited about the result and others eagerly waiting for another case to challenge that decision. But as it stands now, under Nevada law, no matter what, you must give your name to a police officer if you are stopped under circumstances of reasonable suspicion.

Nevertheless, it is amazing that a relatively poor, uneducated man living in the middle of nowhere was able to fight for his right not to disclose his name all the way to the Supreme Court. You’ve got to give him credit for trying. This is Sam Harris signing off for KQRC News.

Student 2: As this presentation draws to a close, let’s consider some things we have told you about your right to privacy. Please remember that if you are stopped by an officer when you are not driving, **again, when you are not driving**, you are only required to give your name. From then on it is up to you whether you hand over written identification or answer any questions. Now if you do decide to answer any questions, just answer *only* the questions he asked. Don’t volunteer any additional information. Please, please be polite, no matter what. Being impolite and bad mannered can lead to you being arrested.

Student 1: The most important idea we want you to take with you when you leave here is the basic question. Do you do enough to protect your identity? Do you do enough to protect your privacy? Please be cautious where on the internet or your cell

phone you display your personal information or photos. Do you realize if you display your body on your cell phone, you are technically committing child pornography? That's an adult felony not to be taken lightly. Also be very careful when you answer a phone call or internet offer to get a "good deal" to buy something. Never give any credit card information or your social security number. *(pause)* Mr. Hiibel fought long and hard to protect his identity,

All: please do the same for yourself.

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NV SOCIAL STUDIES STANDARDS CORRELATION OF PRIVACY MATERIALS (MS Grades 6-8)

NATION BUILDING AND DEVELOPMENT

H2.12 Identify the individual and states rights protected by the Bill of Rights and their continuing significance.

H3. 9. Identify the 14th Amendment to the Constitution and its impact on the expansion of individual rights.

H4.12 Explain the significance of major news events in Nevada and their impact at the local, state, and national level.

CITIZENSHIP AND THE LAW

C13.6 Explain the necessity of the protection of individual rights in a democratic society.

C13.8 Identify and explain the rights, privileges, and responsibilities associated with Nevada and U.S. Citizenship.

THE FEDERAL SYSTEM: U.S., STATE AND LOCAL GOVERNMENTS

C14.1 Define federalism

C14.2 Give examples of how government powers are divided between national and state governments i.e., the state and federal judicial systems.

C14.11 Describe the function of the U.S. Supreme Court including **judicial review** using landmark court cases.

C14.12 Identify the state and local judicial processes, i.e., **juvenile, civil and criminal court** systems.

THE POLITICAL PROCESS

C15.6 Identify an example of a current issue that may require a public solution.

NV SOCIAL STUDIES STANDARDS
CORRELATION OF PRIVACY MATERIALS
(HS Grades 9-12)

SOCIAL RESPONSIBILITY AND CHANGE

H3.13 Analyze major news events and their impact at the local, state, and national, levels

H3.17 Analyze how ideals and institutions of freedom, equality, justice, and citizenship have changed.

H4.6 Analyze how major sources of tension or conflict influenced the current political climate in the United States, i.e., September 11th, Patriot Act, and security issues.

CITIZENSHIP AND THE LAW

C13.1 Explain the concept of the rule of law in the establishment of the U. S. Constitution.

C13.4 Describe how the Nevada and U.S. Constitutions serve as devices for preserving state and national principles and as vehicles for change.

C13.5 Analyze the United States Constitution and its amendments in protecting individual rights, including the Fourteenth Amendment's provisions for due process and equal protection of individual rights through the examination of landmark cases, i.e., Terry v. Ohio (1968,) Vernonia School 47J v. Acton (1995) etc.

C13.6 Examine the rights of citizens and how these rights are protected and restricted.

THE FEDERAL SYSTEM: U.S. AND LOCAL GOVERNMENTS

C14.3 Provide contemporary examples of federalism i.e., state and federal judicial systems.

C14.13 Explain the state and local judicial processes such as juvenile, civil and criminal court systems.

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THE GOVERNMENT, PRIVACY AND YOU

STUDENT EDITION

GOALS

At the end of this lesson you will be able to:

- Explain the meaning of privacy and what is not private;
- Recognize the importance of privacy law in your own life;
- Put in your own words why it is important for you to protect your own privacy; and
- Know several legal terms related to privacy law and policy.

TERMS FOR YOU TO KNOW

In Loco Parentis - a Latin phrase that means “in the place of a parent in their absence” and refers to the legal responsibility of a person or organization (*i.e.*, schools) to assume some of the functions and responsibilities of a parent in their absence.

Legitimate Expectation of Privacy - a belief that there is a thing or place where a person can expect privacy and that society agrees.

Policy - a plan or course of action by a government, political party or business intended to influence and determine decisions and actions.

Probable Cause - a realistic belief that a crime has been committed, is currently being committed or will be soon be committed, and there is sufficient evidence to warrant an arrest or search and seizure. **Probable cause** has a stronger standard of proof than **reasonable suspicion** and can lead to an arrest. Evidence is the key difference between **probable cause** and **reasonable suspicion**.

Reasonable Suspicion - a strong belief that a person might have been, is or is about to be engaged in criminal activity based on specific facts or deductions that can be clearly explained. A police officer has the legal right to stop and ask a person questions under the lower standard of **reasonable suspicion**. The police officer may frisk a suspect or detain the suspect briefly, but may only arrest if evidence is obtained to move to **probable cause** or a warrant is issued.

Warrant - a written order by an official of a court authorizing an officer to search in a specific place for specified objects and to seize them if found. The objects sought may be stolen goods or physical evidence of the commission of a crime or crimes (*e.g.*, narcotics weapons or bloodstains).

WHAT IS PRIVACY?

As early as 1890, Justice Louis Brandeis defined privacy as simply the right “to be left alone.” In the following years, that definition has grown to mean that privacy is the right

to keep secrets from others as well as the right to keep anyone from intruding into your private space.

What does the word privacy mean to you?

WHAT IS NOT PRIVATE?

The definition of privacy sounds simple enough, doesn't it? Okay, what is your private space- your room, your diary, your house, your locker, your backpack, your computer, your cell phone? Not anymore. Under certain circumstances, most often with a **warrant**, law enforcement or school officials can have access to all those things. It is important for you to know that students in public schools, individuals at work, prisoners, immigrants and even celebrities have specific limits on what is private and what is not.

For example, officers can seek a **warrant** signed by a judge that will give them permission to search for specific items in your home, such as your computer or your cell phone. Remember that in a school setting, with only **reasonable suspicion**, school administrators may search your locker, backpack and/or purse.

What are some important items that you want to keep private?

WHAT EFFECT HAS MODERN TECHNOLOGY HAD ON YOUR PRIVACY?

The issue of privacy has become even more complicated with the expansion of technology. Who is going to decide what sites you can go to on the Internet or what you can write on your Facebook page, for example? Blogs, Facebook and YouTube are all considered to be public places even if you enter them, write in them or post photos from your own homes.

Where do you think the government, law enforcement or your school get the authority to determine what is private and what is not?

WHAT ARE THE SOURCES OF PRIVACY LAW AND POLICY?

Privacy is not mentioned directly in the Constitution. However there are several suggestions in the Bill of Rights, specifically in the First, Third, Fourth, Fifth and Ninth Amendments, as well as the Fourteenth Amendment. These establish that privacy should be a protected right. Other sources include law that has been passed down through the ages called common law, special laws called torts that give people the right to sue if they believe their privacy has been violated, laws passed by the state legislature, and school district policy.

DO THESE LAWS AND POLICIES HAVE ANYTHING TO DO WITH ME?

Yes! Let's examine five cases with decisions that directly impact you.

CONSIDER THIS CASE

CONSIDER THIS CASE DIRECTIONS: Your teacher will divide your class into five groups with each group assigned one of the cases. It will be the responsibility of your group to **discuss** the information and the case and **guess** what you think the decision will be. You will then select a spokesperson or two to **teach the rest of your class about your case**. When you are finished your teacher will tell you the actual decision.

1. YOUR CAR

It is often a mistaken belief that police cannot search an individual's car. The first case to address the privacy rights of an individual and his car was in the 1920's when prohibition officers searched a car looking for liquor that was illegal. The simple fact that cars can be moved supports a search without a **warrant** as long as law enforcement has **probable cause**.

CONSIDER THIS CASE: *UNITED STATES V. ROSS* (1982)

A reliable informant notified a detective that a man known as "Bandit" was selling illegal drugs out of the trunk of his car. The informant gave detailed information of the appearance of both the car and "Bandit." Other detectives located the car and learned it belonged to Albert Ross, who used the alias "Bandit." After observing the car for awhile, the officers saw a man matching the description of "Bandit" enter the car and drive away. They then pulled the car over and asked Ross to get out. One of the officers found a pistol in the glove compartment and in the trunk, a brown paper bag filled with small bags of powder, \$3,200 and traces of another powder which the police laboratory later determined was heroin. No warrant was obtained.

What do you think?

*Do you think the police had the right to search the car and its glove compartment and trunk when their **probable cause** was solely based on information from an informant? If you agree, does that mean that if you told school or police authorities that a student at your school was selling drugs out of his car they would have the right to search it?*

2. YOUR SCHOOL

There are many limits to privacy rights within your school. Your right to privacy is lower in schools because there must be a balance between personal rights and the need to maintain a safe learning environment for the students.

School districts have been given great power to establish policies to protect all students. The notion of *in loco parentis* states that school administrators can act in the place of your parents.

CONSIDER THIS CASE: *VERNONIA SCHOOL DISTRICT V. ACTON* (1995)

In the late 1980's, Oregon's Vernonia School District saw a spike in drug use in high schools. The students became increasingly bold and unruly in their drug use. The administration learned that the student athletes were not only drug users, but also were popularizing drugs. A variety of methods were used to intervene, but with little success. In 1989, after receiving input from the parents, the school district made the decision to begin drug testing student athletes "to protect their health and safety." In fall 1991, James Acton, then a seventh grader, signed up to play

football but was denied participation because he refused to complete the drug test. His family filed suit on the basis that his privacy was being invaded in the requirement of a urine sample.

What do you think?

What would you expect to be the result of this case? Do you think students involved in extracurricular activities other than athletics should be tested for drug use? Why or why not?

3. YOUR CLOTHES

School districts are responsible for creating and implementing policies, rules and regulations that govern behavior and promote an environment for learning while still protecting the rights of individual students. Cases have established that students have reduced expectations of privacy in school, partially because staff is acting *in loco parentis* (in place of your parents). In this role, many school decisions can be made that are outside the normal range of governmental involvement.

The range of school policies that pertain to privacy rights is broad. For example, how you choose to dress would seem to be a private decision. Yet, most school districts have established strict dress **policies** for pupils. For example, in Nevada, policies include limitations on the length of skirts and shorts, indicate that students must wear shoes with soles, may not wear crop tops or those with spaghetti straps, or hats. The dress code **policy** explains that outfits must provide “minimum coverage.” The district also prohibits slogans or advertising on clothing that is controversial, religious in nature, or obscene and might disrupt the educational setting.

CONSIDER THIS CASE: *JACOBS V. CLARK COUNTY SCHOOL DISTRICT (2008)*

Liberty High School in Henderson, NV instituted a **policy** requiring all students to wear "solid khaki-colored bottoms and solid-colored polo, tee, or button-down shirts (blue, red or white) with or without Liberty logos."

Kimberly Jacobs, then an eleventh-grader at Liberty, time after time violated the school's uniform **policy** (at least once by wearing a shirt containing a printed message reflecting her religious beliefs). Jacobs was repeatedly referred to the Dean's office and she was suspended from school five times for a total of twenty-five days. Although Liberty provided Jacobs with educational services during her suspensions, she claimed that she missed out on classroom interactions, her reputation was tarnished among her teachers and peers, she had a disciplinary record, and was unconstitutionally deprived of her First Amendment rights to free expression and free exercise of religion because of Liberty's enforcement of its mandatory school uniform **policy**.

Jacobs and her parents sued the District.

What do you think?

Should the way you dress in school be a private matter? Do you believe student uniforms assist school districts in the reduction of gang-related or bullying incidents on your campus? Why or why not?

4. YOUR BODY

There is no other area around privacy rights that is as controversial and heated as those directly related to the privacy of our own bodies. Parents, police and schools are becoming increasingly concerned about teens swapping more than messages as they face a rising number of ‘sexting’ incidents. A quick click and teens can instantly send nude images or videos of themselves to friends in a text on their cell phones or on computer sites as Facebook.

CONSIDER THIS CASE: PHILLIP ALPERT

Eighteen -year old Phillip Alpert was a senior at a high school in Orlando, Florida. Angry at his 16-year-old ex-girlfriend and as a way to get back at her, he forwarded some photos of her without clothes that she had given him. They were included in text messages to her family, friends and anyone on his contact list. He immediately realized he had made a dreadful mistake and apologized, but it was too late. The reaction from people receiving the photos was immediate and the police arrested Phillip on child-pornography charges. Child pornography is any visual representation of minors under the age of 18 that is highly sexual in nature.

What do you think?

Why is sending photos of undressed people to others considered a crime? Do you believe that sending pictures of yourself partially clothed can make you a child pornographer as well? What kinds of punishment do you think Phillip received from the courts?

5. YOUR BELONGINGS

The courts and school boards have given school administrators and teachers significant freedom in assuring that all students, faculty and staff are kept safe. This means that with **reasonable suspicion** that something illegal and possibly dangerous is in the possession of a student, administrators and sometimes school police have the right to search lockers, backpacks and other personal belongings.

CONSIDER THIS CASE: SAFFORD UNIFIED SCHOOL DISTRICT V. REDDING (2009)

After a fellow student told school personnel about a girl with several suspicious items in her day planner, 13-year-old Savannah Redding was taken to the office and accused of bringing prescription strength ibuprofen to school, a direct violation of school **policy**. After searching her backpack and outer clothing and finding nothing, the assistant principal took the girl to the nurse’s office where she was asked to remove her outer clothing. Her undergarments were searched, exposing her body to staff. No pills were found. The girl’s mother filed suit against Safford Unified School District #1 for conducting a strip search, in direct violation of Savannah’s Fourth Amendment rights against unreasonable search.

What do you think?

Do you think this search was unreasonable? Did the principal and the nurse take their responsibility too far? Was the student’s expectation of privacy violated?

You will now see a short play, *IT'S NONE OF YOUR BUSINESS . . . OR IS IT?*, based on the case of *Hibel v. Nevada 2004*. This case focuses on whether or not an individual **who is not driving** has the right to keep his or her name secret from the police.

