

RIGHTS OF THE ACCUSED PRIVACY AND THE FOURTH AMENDMENT

Procedure cont.

Suggest that this discussion might, on the surface, seem far fetched, but in reality there are many aspects of technology that are changing so fast as to make this procedure a possibility in the future. Consider X-ray equipment used for airport security. There is good reason to think about how we might perceive our right of privacy in the future.

- 2.** Distribute and read **Student Handout: PRIVACY THEN, NOW AND YET TO COME**.
Read. Discuss
- 3.** Divide the class into groups of 6.
- 4.** Distribute and assign **Student Handout: PRIVACY AND TECHNOLOGY, YOU BE THE JUDGE**, Clarify directions.
- 5.** When groups have worked through the assignment as directed in their groups, discuss each side of the three examples in class with students giving the arguments from the group discussions. These could be listed on the board.
- 6.** As a result of the group and class discussions, students should decide which side presented the most compelling arguments and complete the judge's opinion section of the activity sheet. This part of the lesson can be completed as homework if class time does not permit.

Day 2

- 1.** Discuss the judge's (student's) decisions assigned in the previous lesson. Be sure that students explain the rationale used to arrive at these decisions.
- 2.** Discuss the actual decisions of the Court in these cases. (See **ANSWER KEY**)
- 3.** Discuss with students that some elements of today's technology give us reasons to think about our concept of privacy. In some ways our privacy seems to be diminished and yet in some ways, life in society seems safer. Explain that this topic will be explored in this lesson.
- 4.** Distribute **Student Handout: TODAY'S TECHNOLOGY AND PRIVACY**
- 5.** Work in groups of 6.
- 6.** Discuss each issue presented and complete the chart as directed.

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Procedure cont.

7. When the groups have completed the discussion and the chart, discuss the findings together as a class. A tally could be made of all the group responses.

Day 3

1. Return to the groups of 6. Discuss and complete the activity **Student Handout: THE COURT 2100**. Possible terms to use for motivation include:

Robots programmed by someone else for use by disabled, elderly, etc.

Sensors that monitor activity in home or office

Monitor systems to measure work or conversations.

Medications which control behavior procedures

Memory transplants

Subliminal messages

Transplants: brains, limbs

Is privacy the same today as it was in the 1800's?

2. Present group ideas to the class. Make composite list on board.

3. Recap: Will the 4th Amendment as we know it stand up to advancing technology and protect our right of privacy?

Other options:

1. Students could be assigned various types of research into present day technology or the predictions of futurists.

2. Portray the three cases included in a modified courtroom atmosphere, directing students to role play an argument before a judge. Each student would argue one side of the issue and the student assigned as judge would offer an opinion.

3. Follow up on the exercise by writing an essay based ideas set forth in the activity **THE COURT 2100**.

4. Debate items of interest in class. Divide the class into two groups and brainstorm as many arguments as possible for one side or the other.

5. The police, computer specialists or other community people could be brought in to discuss new types of technology that relate to privacy issues. Ask students for parent references. Instruct each to address the issue of privacy.

Student Handout: PRIVACY THEN, NOW AND YET TO COME

Have you ever heard two children squabbling over a toy that each felt was "mine?" Did you ever argue with your parents over issues related to "your room?" Did you every have a question about who can search your pockets or purse? These are all issues of personal privacy. Issues of privacy and private ownership are deeply rooted in the ways in which we live our lives.

Issues of privacy have roots in history. During the Colonial Period, England attempted to tell colonial Americans what products they could produce and with whom they could trade. Americans totally disregarded the directives and carried on business as they saw fit. They knew that what they were doing was against English law. Even prominent American businessmen became smugglers. The English government cracked down on this illegal activity and searched colonial property at will. The colonists were outraged at these searches. Later, when the Constitution was written and a Bill of Rights was being added, Americans wanted to be sure that the new government would not repeat the type of searches that the English government had carried out. Because of this, the Fourth Amendment was included. It states, "*The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and siezures, shall not be violated.*"

Today we continue to be concerned with our rights of privacy and freedom from unreasonable searches. It is obvious, however, that the society in which we live is very different from that of the framers of the Constitution. Technology has dramatically altered the way we live. Consider some of the changes that have taken place.

The introduction of the automobile has dramatically altered transportation, and it is almost impossible to imagine getting from one place to another without it. People travel from one state to another with relative ease compared with the slow, often difficult ways in which colonial Americans were forced to travel.

New types of communication, namely the television, have made learning of news an instantaneous event. No longer do Americans rely on letters delivered by a messenger on horseback for the news. The 1990 conflict between the U.N. and Iraq over annexation of Kuwait was an example of this technology. For the first time, Americans were able to witness the events of war "live" on their T.V.'s.

A third advancement that we see having tremendous effect is the invention, development and use of computers. Some individuals refer to this time as the "age of information." Computers enable us to deal with vast amounts of information and it is virtually impossible to compare this to any system even imagined by colonial Americans.

We can only imagine what we might see in the future. We know technology will continue to change. We know that inventions will allow us to do things in the future which today seem impossible. We know you will grow up to live in world very different from that of the founding fathers and different even from that of today.

Consider some of the ideas set forth by Isaac Asmiov's book, *Your World 2000*, in which the reader is presented with ideas of how technology might affect life in the future. In

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Student Handout: PRIVACY THEN, NOW AND YET TO COME cont.

the introduction, Asimov states *"The new technology could shorten the working week and give us more time to enjoy holograms, 3-D TV or computer games. With more leisure time we could well lead less stressful lives and enjoy better health. New drugs will give us better pain relief, with technology improving spare-part surgery as well as microsurgery. Lasers, video and satellites may be used in war as well as in peace to develop new missiles, aircraft and submarines and even to wage war from space."*

Asimov suggests that computers will find their way into all aspects of life. There will be a vast networks of computers which will serve as experts and replace individuals in the work place.

Asimov suggests that the use of gasoline might be abandoned in favor of more energy efficient fuels. Electric cars or high speed trains might be substituted for the cars we use today.

Biotechnology will allow for more transplants and biological engineering. Computers will record many aspects of our health and life will be sustained for longer periods of time.

These few examples demonstrate clearly that technology continues to reshape the society in which we live.

We have for the last 200 years relied on the U.S. Constitution to provide the structure for American society. We know our lives today are vastly different from those of Jefferson and Franklin, and we know the lives of our great-grandchildren are going to be vastly different from ours. Consider this question: will the U.S. Constitution be able to continue to provide the means for achieving an orderly society as set forth in the Preamble without tramping down the rights of the individual as identified in the Bill of Rights? This was the fundamental problem facing the founding fathers, it is the problem we face today, and it will continue to be a dilemma for Americans who succeed us, regardless of the technological state in which each society lives.

Student Handout: PRIVACY AND TECHNOLOGY: YOU BE THE JUDGE

The six goals of our government are clearly expressed in the Preamble to the Constitution which states *"We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."*

This simply means that there needs to be cooperation between the national and state governments, laws must be fair and all citizens need to be treated equally, communities must be free from crime and disorder, there needs to be a way to protect citizens from foreign attacks, there must be concern for the quality of people's lives, and people should be free from unnecessary and unjust laws.

The Preamble, therefore, empowers the government to make laws to this end.

At the same time, the Bill of Rights sets forth certain areas of life into which the government must not intrude. The Bill of Rights makes it very clear that certain personal liberties must be protected.

Amendment IV states *"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,:"*

Sometimes the interests of the state and the liberties of the individual come into conflict with one another. At that point, the courts might be called upon to determine when personal liberties must be limited for the good of the state, or the powers of the state must be limited to protect the rights of the individual.

You are going to be the judge. You will be provided an opportunity to determine this point of conflict between the individual and the state, past, present and future!

Directions: Work in groups of 5-6. Read and discuss the cases presented. Complete the activity as directed wherein you must list all of the rights of the individual which must be protected and all of the activities of the government which are necessary in order to achieve the orderly society described in the Preamble.

In the cases that were actually tried, your teacher will tell you the findings of the court.

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Student Handout: PRIVACY AND TECHNOLOGY: YOU BE THE JUDGE cont.

Case 1: Police officers believe a person who might be connected with a recent bombing is hiding out in M. Mapps house. They knock on the door and M. Mapp refuses to allow them in. The officers return 3 hours later with more officers and forcibly enter the house. In the basement of the house, the officers find obscene materials. M. Mapp is arrested and convicted of possessing obscene materials.

Mapp's Liberties	Community interests

Break into 2 groups. One group will argue *in favor of protecting Mapp's liberties* and the other will argue *in favor of community interests*.

Q. Which side seems to have the most compelling argument?

YOU BE THE JUDGE. Explain how you would rule in this case. Be convincing. Use phrases from the appropriate part of the Constitution to support your ruling.

Case 2: Police can board long-distance buses, trains and commercial airplanes and ask passengers' permission to search their luggage.

Passengers rights	Safety interests of society

Break into 2 groups. One group will argue *in favor of protecting the liberties of the passengers* and the other will argue *in favor of protecting the safety interests of society*.

Q. Which side seems to have the most compelling argument?

YOU BE THE JUDGE. Explain how you would rule in this case. Be convincing. Use the appropriate parts of the Constitution to support your argument.

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Student Handout: PRIVACY AND TECHNOLOGY: YOU BE THE JUDGE cont.

Case 3: Vast amounts of information are held in computers. While scanning for information regarding credit, a technician discovers that J. Brown has been concealing illegal business transactions which appear to involve large exchanges of cash for what might be "illegal" drugs. The police are called in, and J. Brown is convicted for his activities.

Brown's liberties	Community safety interests
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Break into two groups. One group should argue *in favor of Brown's liberties* and the other should argue *in favor of community interests*.

Q. Which side seems to have the most compelling arguments?

YOU BE THE JUDGE. Explain how you would rule in this case. Be convincing. Use appropriate parts of the Constitution to support your argument.

ANSWER KEY: Privacy and Technology: You be the Judge

Case 1. *Mapp v. Ohio* (1961)

Police officers received a tip that Dolly Mapp was hiding a fugitive in her house and that she was in possession of a number of betting slips used for illegal gambling. When the officers arrived at her home, she refused to let them in without a search warrant. The police officers left. Three hours later, they returned and forced their way into Ms. Mapp's home. The officers thoroughly searched the house. Although they did not find the fugitive or the gambling materials, they did find obscene materials which were later admitted as evidence in Mapp's trial for possession of obscene materials. Mapp was convicted. She appealed her conviction. The the U.S. Supreme Court ruled that her Fourth Amendment right to be secure from unreasonable searches and seizures had been violated by the action of the police. The exclusionary rule was applied, and her conviction was overturned. The exclusionary rule is a method of enforcing the protections provided by the Fourth Amendment by excluding evidence obtained in violation of the Fourth Amendment from a criminal trial.

Case 2. *Florida v. Bostick* (1991)

Terrance Bostick was a passenger on a Greyhound bus traveling from Miami to Atlanta when police officers boarded the bus and ask for passengers' permission to search their bags. Mr. Bostick allowed the officers to search his bag in which they found cocaine. Mr. Bostick tried to have the evidence of the cocaine suppressed at his trial for possession of illegal drugs. The court denied his request, and Mr. Bostick was found guilty. On appeal to the U.S. Supreme Court, the Court found that Mr. Bostick had been free to refuse to let the officers search his bag and that by failing to do this he had given the officers permission for the search. The search was not a violation of the Fourth Amendment.

Case 3.

The Bill of Rights protects individuals from unreasonable actions by state and federal government officials. In this case, the implicating data was discovered by a computer technician, not a state or federal employee. The U.S. Supreme Court has held that the Fourth Amendment does not apply to private individuals. Therefore, the technician could turn over the information to the police, and they could use it in J. Brown's trial.

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You are the modern Rip Van Winkle Supreme Court of the future who awakes in the year 2100. Visualize and list as many cases as you can imagine which might come before you in light of the changing technology we see today.



Student Handout: THE COURT 2100
Bibliography

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