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Your Right to Privacy: A Selective Bibliography

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Your Right to Privacy: A Selective Bibliography

Sandra S. Klein

ABSTRACT. An awareness of relevant contemporary legal thought in the area of privacy is especially important today in light of what appears to be an increasing hostility to the notion of individual privacy. The following bibliography considers privacy in terms of concept and application, and should prove useful to scholars, practitioners, and those seeking to gain more knowledge about this very important and complicated area of law.

In a world that appears increasingly hostile to individual privacy, an awareness of relevant contemporary legal thought is important. Especially critical to involved practitioners, such an understanding of issues related to privacy is also a matter of immediate and continuing concern to the general public. With constitutional privacy rights subject to reinterpretation by both courts and congress, with state governments recognizing the political value inhering to the question of privacy, and with the growing public worry about unwanted intrusions into individual lives, it is not unreasonable to assume that privacy as a public and private issue is one unlikely to lose importance.

Perhaps the earliest consideration of legal issues pertaining to an individual's reasonable expectation of privacy protection was that written by Samuel D. Warren and Louis D. Brandeis in their landmark article, "The Right to Privacy," *Harvard Law Review*, v. 4,

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1890-91, pp.193-220. Although almost exactly a century old, the comments are in many ways strikingly contemporary. Warren and Brandeis illustrate how common law principles are extended to become the basis for the protection of a right "to be let alone," to allow for the protection of both tangible and intangible property against physical harm or social compromise. The article notes how a technologically sophisticated world more readily allows for a compromise of the basic privacy of the individual, and that the common law should be the vehicle of choice for a suitable remedy: "the legal doctrines relating to infractions of what is ordinarily termed the common-law right to intellectual and artistic property are, it is believed, but instances and applications of a general right to privacy . . ."

Standing at the forefront of legal analysis, Warren and Brandeis began the examination of an issue that is still being vigorously considered a hundred years later. Again, whether in a private or a public sense, privacy, as a critical area of legal and social concern, is not likely to soon be out of the limelight.

The bibliography which follows considers privacy in terms of concept and application, it is divided into books and periodical articles that deal with the issue of privacy in a manner which is quite broad. (Chapters in books are treated as periodical articles.) Because of the importance of timeliness in considering legal issues, the time span examined is from 1980-1991. The articles selected for inclusion were taken from journals indexed in the Index to Legal Periodicals, and only those articles that were a minimum of ten pages in length were included to insure that the topic was discussed in more than just a superficial fashion.

Given that the most likely audience for this bibliography is legal practitioners and social scientists, and taking into account the fact that most of the articles are written by members of these same groups, it is understandable that certain pieces assume some minimal level of subject-matter expertise. In general, then, these articles offer special value to the individual already well-versed in a single aspect of the privacy question who is seeking either a greater depth of understanding, or a new scholarly insight. It is also the case, however, that the beginning student of privacy, once having initially read into the area via selections

from the monographs section, will find these articles equally valuable.

Virtually every article included here adds its own, often extensive, internal bibliography that serves as an intensive introduction to the primary literature relevant to the specific subject matter under consideration.

In total, the references cited function as both a summary of existing thought, and as a potential springboard to new bases of approach to this complicated and socially-relevant concern. With this rich analytical past, the scholarly future of the privacy issue should indeed be exciting.

MONOGRAPHS AND LOOSE-LEAF SETS

- Barnett, Randy E., editor. **The Rights Retained by the People: The History and Meaning of the Ninth Amendment.** Fairfax, Virginia: George Mason University Press, 1989.
- Barron, Jerome A., and C. Thomas Dienes. **Constitutional Law.** St. Paul, Minn.: West Publishing Co., 1987. Includes glossary of terms, and table of cases.
- _____. **Constitutional Law In a Nutshell.** 2nd edition. St. Paul, Minn.: West Publishing Co., 1991. The issue is discussed on pages 162-185.
- Benn, Stanley, and Gerald Gaus. **Public and Private in Social Life.** London: St. Martin's Press, 1983. An interdisciplinary examination of the basic concepts of public and private. The authors consider privacy as a function of law, of property, of psychology, especially as they pertain to Western cultures. The dichotomy between public and private is seen as an ideological issue, with liberalism more clearly associated with the strongest separation of terms. The conceptual nature of public and private is also viewed in the context of the social life experienced by cultures, both Western and non-Western, democratic and Marxist. Includes index of names and subjects.
- Bloustein, Edward J. **Individual and Group Privacy.** New Brunswick, New Jersey: Transaction Books, 1978. This work is a compilation of four essays written by the author on the subject

of privacy. The essays were written "over a thirteen-year period and represent distinct stages in the development" of the author's views on the subject.

- Ernst, Morris L., and Alan U. Schwartz. **Privacy: The Right to Be Let Alone.** New York, N.Y.: The Macmillan Company, 1962. Traces the history of the right of privacy through case law, in a format designed to be understandable to the layperson.
- Goode, Stephen. **The Right to Privacy.** New York: Franklin Watts, 1983. Addresses the issue of the increasing threats to privacy in a society that is becoming more and more technologically advanced. Discusses the history of the right to privacy, and provides definitions of privacy and associated concepts.
- Goodman, Mark N. **The Ninth Amendment: History, Interpretation, and Meaning.** Smithtown, New York: An Exposition-University Book, 1981. The Ninth Amendment is sometimes referred to on a partial constitutional basis in privacy rights analysis. This brief text considers the Ninth Amendment from both historical and interpretive perspectives, seeking to view the amendment in terms that illustrate a sound constitutional underpinning. Because the author assumes this amendment's meaning is not strictly clear on its face, he spends considerable time detailing principles of constitutional construction and interpretation, making appropriate use of relevant historical political and judicial commentary.
- Hayden, Trudy, and Jack Novik. **Your Rights to Privacy: the Basic ACLU Guide For Your Rights to Privacy.** New York, N.Y.: Avon Books, c1980. The authors attempt to present, for the layperson, the right to privacy under present (1980) law, and suggestions are offered as to how this right can be protected.
- Hixson, Richard F. **Privacy in a Public Society: Human Rights in Conflict.** New York, N.Y.: Oxford University Press, 1987.
- Lockhart, William B., et al. **Constitutional Law: Cases-Comments-Questions.** 6th ed. St. Paul, Minn.: West Publishing Co., 1986. See pages 454-550. Includes index.
- Marks, Thomas C., Jr., and John F. Cooper. **State Constitutional Law in a Nutshell.** St. Paul, Minn.: West Publishing Co., 1988. Mentions the fact that the federal constitution does not specifically confer a right to privacy on citizens, and that

the existence of such a right is therefore dependent upon judicial construction.

- Nowak, John E. and Ronal D. Rotunda. **Constitutional Law**. 4th ed. St. Paul, Minn.: 1991. Includes table of cases. The right of privacy is discussed in a number of sections, including those on the topics of: Abortion, Sexual Autonomy, and the Right to Die.
- O'Brien, David M. **Privacy, Law, and Public Policy**. New York, New York: Praeger Publishers, 1979. Includes a bibliography, an index of Supreme Court cases, and a Name and Subject Index.
- Patterson, Bennett B. **The Forgotten Ninth Amendment: A Call for Legislative and Judicial Recognition of Rights Under Social Conditions of Today**. Indianapolis, In.: The Bobbs-Merrill Company, Inc., 1955.
- Rotunda, Ronald D. **Constitutional Law: Principles and Cases**. St. Paul, Minn.: West Publishing Company, 1987. See pages 295-315. Includes index.
- Rotunda, Ronald D. **Modern Constitutional Law: Cases and Notes**. St. Paul, Minn.: West Publishing Co., 1989.
- Rotunda, Ronald D., John E. Nowak and J. Nelson Young. **Treatise on Constitutional Law**. St Paul, Minn.: West Publishing Co., 1986. Includes index and table of cases, and is updated with pocket parts.
- Rule, James, Douglas McAdam, Linda Stearns, and David Uglow. **The Politics of Privacy**. New York: New American Library, 1980. Discusses the fact that the issues of privacy has been "politicized." That is, people have begun to see privacy as a right in need of protection, and protection has come in the form of public action which has led to legislative and judicial action. Includes a bibliography and an index.
- Schoeman, Ferdinand David, editor. **Philosophical Dimensions of Privacy: An Anthology**. Cambridge: Cambridge University Press, 1984.
- Shattuck, John H. F. **Rights of Privacy**. Skokie, Il.: National Textbook Co., c1977. Includes bibliographical references and index.
- Shaw, Stephen K. **The Ninth Amendment: Preservation of the Constitutional Mind**. New York: Garland Publishing, Inc., 1990.

Stone, Geoffrey R., et al. **Constitutional Law**. Boston, Mass: Little, Brown and Company, 1986. See especially: Chapter 6 "Implied Fundamental Rights," section F "'Modern' Substantive Due Process: Privacy, Personhood, and Family." Pp. 840-900. Includes text of relevant cases. There is a 1989 supplement to update this monograph.

Taylor, Alton L., issue editor. **Protecting Individual Rights to Privacy in Higher Education**. San Francisco, Ca.: Jossey-Bass Inc., 1977. (New directions for institutional research. no. 14.) Addresses the issue of the potential threat to personal privacy created by the growing trend to consolidate personal information in computer databases. Discusses privacy as a concept, and as it relates to education.

PERIODICAL ARTICLES

Abernathy, M. Glenn. "The Right of Privacy" In **Civil Liberties Under the Constitution**. Columbia, S.C.: University of South Carolina Press, 1985, pp.578-591. Traces the history and development of the right of privacy through discussion of key cases.

Allen, Anita L. and Erin Mack. "How Privacy Got Its Gender." *Northern Illinois University Law Review* 10:3(Summer 1990): 441-478. The authors contend that the social context within which the privacy tort was conceived must be considered in light of the clear, in their minds, stamp of male hegemony that the tort bears.

Andre, Steven J. "Privacy as an Aspect of the First Amendment: the Place of Privacy in a Society Dedicated to Individual Liberty." *University of West Los Angeles Law Review* 20(1988): 87-112. Discusses the case of Board of Directors of Rotary Int'l v. Rotary Club of Duarte, (107 S. Ct. 1940 (1987)), in which the issue of the exclusion of women from a private association was addressed. While the Court found against the association, it did strongly suggest that intimate relationships within organizations may well be deserving of protection under the first amendment. This is the first time that the Court has acknowledged that the right to privacy includes the right to "intimate association."

Prior to the Rotary decision, the right of "intimate association" was seen "as a derivative of substantive due process . . ." The author goes on to "explore the first amendment right to privacy alluded to in Rotary . . ."

- Calore, Patricia A. "The Right to Financial Privacy Act and the SEC." *Washington and Lee Law Review* 39:3 (Summer 1982): 1073-1094. The Right to Financial Privacy Act (RFP) was an attempt by Congress "to accommodate the conflicting interests of legitimate government investigation and an individual's right to conduct business without government intrusion." This article addresses the issue of the applicability of the RFP to the Securities Exchange Commission (SEC).
- Cantu, Charles E. "Privacy." *Saint Louis University Public Law Review* 7:2(Fall 1988): 313-336. Discusses the need for a new definition of privacy in light of advances in technology, and because of the fact that the right to privacy as interpreted by the Supreme Court, has become a constitutional as well as a common law right.
- Classen, H. Ward. "Restricting the Right to Smoke in Public Areas: Whose Rights Should be Protected?" *Syracuse Law Review* 38:3(Fall 1987): 831-857. There has been an increasing amount of discussion and concern about the potential health risks associated with smoking tobacco; not only for the smoker, but for those individuals exposed to secondary smoke. As a result, many employers have eliminated smoking in the workplace, and there is growing pressure to stop smoking in all public areas. This article traces relevant case law, and explores the right to privacy as it applies to smokers; and contrasts that right with the state's interests in protecting the health of its citizens.
- Copple, Robert F. "Privacy and the Frontier Thesis: an American Intersection of Self and Society." *American Journal of Jurisprudence* 34(January 1989): 87-131. The author suggests that the articulation of the frontier and privacy theories at virtually the same time in the 1890's was not merely an intellectual coincidence. He suggests, instead, that the need for privacy was a natural outgrowth of the fact that there was no frontier left. The transformation from frontier to established settlement led to an increase in the number of people in any given place, and led to

a need for the creation of an officially recognized right to a certain degree of social distance and a legal means to protect personal privacy.

Davis, Melissa M. "Voicing Concern: an Overview of the Current Law Protecting Singers' Voices." *Syracuse Law Review* 40:4-(1989): 1255-1278. Singers and other well-known personalities are frequently used in advertisements. An association is made between the celebrity and the product, and, the connection, it is hoped, will lead to improved sales. Sometimes, a celebrity look-alike or sound-alike is used in lieu of the real celebrity. The result being that advertisers gain the advantage of association without having to get authorization from or give compensation to the celebrity. This article reviews the statutory provisions and legal theories that celebrities have relied upon to develop a protectible interest in their identities.

DiVita, Nicholas L. "John Locke's Theory of Government and Fundamental Constitutional Rights: a Proposal for Understanding." *West Virginia Law Review* 84:4 (June 1982): 825-848. The author discusses a theory of our constitutional system, "and the way in which that theory may color how we think of a constitutional liberty case."

Dunlap, Mary C. "Where the Person Ends, Does the Government Begin? An Exploration of Present Controversies Concerning 'the Right to Privacy.'" *Lincoln Law Review* 12:2(Spring 1981): 47-75. The purpose of this article is to analyze, describe and critique the constitutional structuring of the space between the privacy accorded to the very wealthy and that provided to death row inmates. One extreme having virtually no privacy, and the other enjoying almost complete privacy.

Ehlke, Richard. "The Privacy Act After a Decade." *The John Marshall Law Review*. 18:4(Summer 1985): 829-846. After ten years of operation, the Privacy Act shows itself to be less than perfect, especially in terms of overly broad exemptions, compromises, and qualifications. The Act is difficult to administer and difficult to enforce, and individuals seeking remedy under this law are well-advised to be both legally skilled and more than a little patient. This article consists of a brief description of the Act and its various amendments (to 1985), as well as a discus-

- sion of litigation trends associated with the Privacy Act as they existed at the time the article was written.
- Epstein, Richard A. "A Taste for Privacy? Evolution and the Emergence of a Naturalistic Ethic." *Journal of Legal Studies* 9:4(December 1980): 665-681. Addresses the question of the extent to which an evolutionary theory of behavior can account for the growth of a human willingness to regard certain interests, like individual privacy, as legitimate.
- Feinberg, Joel. "Autonomy, Sovereignty, and Privacy: Moral Ideals in the Constitution?" *Notre Dame Law Review* 58:3 (December 1982): 445-492. Argues that the term "privacy" has been misused in interpreting the Constitution and Bill of Rights. The author maintains that, upon review of Supreme Court decisions, it becomes clear that what is really being discussed is the concept of personal autonomy. He then goes on to define and explicate the differences between the concepts of autonomy, sovereignty and privacy.
- Galie, Peter J. "The Other Supreme Courts: Judicial Activism among State Supreme Courts." *Syracuse Law Review* 33:3 (Summer 1982): 731-793. The primary subject of this article is the judicial activism of state supreme courts and the extent to which judicial activism at the state level raises different questions than activism at the federal level. A number of state supreme court decisions are examined from the years 1955 to 1980, including some that address the right to privacy.
- Gavison, Ruth. "Privacy and the Limits of Law." *Yale Law Journal* 89:3(January 1982): 421-471. Historically, the privacy concept has been defined in terms of property, reputation, and mental distress. This article attempts to define privacy as a legal right of its own without reference to other legal notions. To do this, it is suggested that privacy be defined as a coherent "neutral concept," that privacy "have coherence as a value," and that privacy be defined in such a way as to make it "useful in legal contexts." Privacy is said to be "a unique concern that should be given weight in balancing values" useful to legal privacy rights analysis.
- Gyves, William S. "The Right to Privacy One Hundred Years Later: New York Stands Firm as the World and Law around it

- Change." *St. John's Law Review* 64:2 (January 1990): 315-334. Discusses the apparent reluctance of the New York courts to recognize a common-law right to privacy.
- Halpern, Sheldon W. "The 'Inviolate Personality'—Warren and Brandeis After One Hundred Years: Introduction to a Symposium on the Right of Privacy." *Northern Illinois University Law Review* 10:3(Summer 1990): 387-399. This introductory article provides an "analytical groundwork for a discussion of the right to privacy," and presents an overview of the articles that follow in this "Symposium" issue.
- Hirshleifer, Jack. "Privacy: Its Origin, Function, and Future." *Journal of Legal Studies* 9:4(December 1980): 649-664. Addresses the question of whether or not a theory of natural selection can explain an innate preference for privacy, and a collective desire for its legal protection.
- Hogan, John C., and Mortimer D. Schwartz. "The False Air of Scholarship." *Whittier Law Review* 4:2 (Spring 1982): 191-215. The authors suggest the development of a new area of tort law to protect a scholar or scientist from the use of his name, academic research, reputation or influence, in such a way as to lend an air of authenticity to a work which may or may not be in compliance with the views of the cited authority.
- Horowitz, Morton J. "The History of the Public/Private Distinction." *University of Pennsylvania Law Review* 130:6(June 1982): 1423-1428. The author argues that only in the 19th century was there "a clear separation between constitutional, criminal, and regulatory law—public law—and the law of private transactions—torts, contracts, property, and commercial law." In more recent times, such a distinction between public and private law has come under attack, especially as more and more commentators argued that this dichotomy reflected an underlying conservative economic and political view. In the contemporary return to political conservatism, the limitation of private greed and domination again was constrained, coupled with a return to the notion that public and private laws are fundamentally distinct. The author is concerned that such a dichotomy is fundamentally harmful to a belief that there is a "distinctively public realm standing above private self-interest."

- Jack, Louis Bernard. "Constitutional Aspects of Financial Disclosure under the Ethics in Government Act." *Catholic University Law Review* 30:4(Summer 1981): 583-603. The Ethics in Government Act of 1978(E.G.A.) requires that high-level federal officials periodically disclose to the public their personal finances and the finances of their spouses and dependent children. The question addressed here is: is this requirement a violation of privacy. The author concludes, based on a survey of relevant case law, that it is possible for such disclosure to be legislated in a "constitutionally permissible fashion."
- Koehlinger, Jeffrey S. "Substantive Due Process Analysis and the Lockean Liberal Tradition: Rethinking the Modern Privacy Cases." *Indiana Law Journal* 65:3(Summer 1990): 723-776. The author argues that the Supreme Court can continue to decide privacy cases like *Roe v. Wade* "only if it follows a moral philosophy approach to substantive due process analysis in the privacy area that is firmly rooted in the Lockean liberal tradition." He contends that "the essential purpose of the Lockean liberal tradition is to ensure that civil society and political institutions protect and promote, as far as is practicable, the 'rational liberty' of the individual."
- Lawrence, S. Bryan, III. "Curtilage or Open Fields? *Oliver v. United States* Gives Renewed Significance to the Concept of Curtilage in Fourth Amendment Analysis." *University of Pittsburgh Law Review* 46:3(Spring 1985): 795-819. The term "curtilage" has traditionally referred to the land and outbuildings immediately surrounding the home. The question addressed here is: where does curtilage end and open field begin, curtilage being entitled to fourth amendment protection, and open field not.
- Lubet, Steven. "Judicial Ethics and Private Lives." *Northwestern University Law Review* 79:5-6 (December 1984): 983-1008. Addresses the question of the extent to which judges should be subject to discipline for activities that do not involve a conflict of interest or dishonesty. Explores the limitations placed on the most private aspects of judges' lives by the Code of Judicial Conduct.
- Mnookin, Robert H. "The Public-private Dichotomy: Political Disagreement and Academic Repudiation (Symposium: the Pub-

- lic-private Distinction)." *University of Pennsylvania Law Review* 130:6(June 1982): 1429-1440. The terms public and private are used in this article as descriptive labels. They are used to distinguish clusters of activity that are presumably outside the legitimate bounds of government regulation and coercion (the private sphere) from those where government has a legitimate role (the public sphere). The author then goes on to describe and contrast the answers to the questions of whether or not certain activities should be considered "private," and, if so, what and why.
- Moore, Michael S. "Sandelian Antiliberalism (Symposium: Law, Community, and Moral Reasoning)." *California Law Review* 77:3(May 1989): 539-551. Provides a critique of Sandel's views on the right to privacy as traced in Supreme Court decisions. Argues that the correct word is "liberty," not "privacy."
- Mott, Kenneth and Lovette Mott. "Property and Personal Privacy: Interrelationship, Abandonment and Confusion in the Path of Judicial Review." *John Marshall Law Review*. 18:4(Summer 1985): 847-870. Historically, the right to privacy has been based in the concept of property rights, and has been linked with the fourth and fifth amendments. More recently, the Supreme Court has moved in the direction of privacy rights being seen in the context of the more open-ended term, "liberty." This article considers the argument that while this perspective seems on the surface to be a more open one, upon closer scrutiny it is in fact less powerful than the former, property-based, understanding of privacy in protecting personal rights. This overly-vague notion of "liberty" as a basis for privacy rights, has proven to be less effective in affirming and expanding individual civil rights than an expanded conceptualization of property, and it is therefore more appropriate for the judicial process to return to the earlier analytical basis if the public is to be best served.
- Parent, W.A. "A New Definition of Privacy for the Law." *Law and Philosophy* 2:3(December 1983): 305-338. Explains the need for a new definition of privacy, criticizes alternative accounts, and shows how this definition can be applied to contemporary American law.
- Patterson, Elizabeth G. "Property Rights in the Balance—the Burger Court and Constitutional Property." *Maryland Law Review*

43:3(Summer 1984): 518-570. Private property rights depend upon the basic notion of what property is. The concept of property has been a dynamic one from its early development in feudal England. The constitution protects property interests but the definition of property has proven a complex issue for courts. One aspect of this issue has been judicial dialogue representing social values protected by the institution of property, not the least of which is privacy. Zones of privacy, initially limited in context, have been expanded by the Supreme Court, relying as it has "on penumbras, underlying values, and tradition." This article concerns itself with the importance of the Burger Court's decisions regarding property, privacy, and other legal doctrine, as they relate to the interface between "the public as property owner, and the public as property regulator."

Pingrace, Donald R.C. "Stereotypification of the Fourth Amendment's Public-private Distinction: an Opportunity for Clarity (A Symposium of Critical Legal Studies)." *American University Law Review* 34:4(Summer 1985): 1191-1214. "This article examines the evolution of the ambiguity surrounding the public/private distinction and focuses on the development of the United States Supreme Court's fourth amendment doctrine."

Post, Robert C. "The Social Foundations of Privacy: Community and Self in the Common Law Tort." *California Law Review* 77:5(October 1989): 957-1010. The author argues that social norms are protected by the common law tort of invasion of privacy, and that these norms are what constitute, to a great extent, individual and community identity.

Reilly, Lisa A. "The Government in the Sunshine Act and the Privacy Act." *George Washington Law Review* 55:4-5(May 1987): 955-968. The "Sunshine Act" was passed by the United States Congress in 1976 in the belief that the government should be accountable to the people for actions taken on their behalf. This act requires that all meetings of multi-member federal agencies be open to the public, unless discussion falls within one of ten narrowly defined exemptions. This article attempts to analyze the reasoning used by the D.C. Circuit Court in interpreting these statutes.

Silverstein, Mark. "Privacy Rights in State Constitutions: Models for Illinois?" *University of Illinois Law Review* 1989:1 (1989): 215-296. Because the right of privacy is not explicitly stated in the United States Constitution, if a state chooses to enumerate this right in its Constitution it can do so with a free hand. Illinois chose to incorporate this right into its new 1970 Constitution. However, the author argues, "the Illinois courts have seldom regarded the state right of privacy as a broad protection of individual liberty." Several examples of models employed by other states are included.

Siporin, Thomas Victor. "The Least Best Hope of Legal Services for the Poor in the Eighties: the Need for Public Sector Lay Advocates with Confidential Communications." *San Fernando Valley Law Review* 10 (January 1982): 21-58. Public sector lay advocates provide administrative support services to the poor, the elderly, and the handicapped, who often face difficulty in dealing with state and federal bureaucracies. While not attorneys, these advocates act in a much-needed assistance role, and, it is argued, should be accorded the same confidentiality privileges as those accruing to the attorney-client relationship. Such a privilege is said to be supported by elements of the 1st, 4th, 6th, and 14th amendments.

Stauffer, Robert R. "Tenant Blacklisting: Tenant Screening Services and the Right to Privacy." *Harvard Journal on Legislation* 24:1 (Winter 1987): 239-313. The author examines tenant screening services, a service which allows landlords to gather information about prospective tenants, and focuses on the dangers to privacy presented by the growth of such services.

Stoneking, James B. "Penumbra and Privacy: a Study of the use of Fictions in Constitutional Decision-making." *West Virginia Law Review* 87:4 (Summer 1985): 859-877. *Griswold v Connecticut* established "a new branch of jurisprudence extending constitutional protection to various aspects of privacy." The opinion was tied to the concept of "penumbral" rights, rights that are not specifically granted in the constitution, but which are penumbral (related, associated, implied) to those more express guarantees. In establishing a right of privacy associated with the use of contraception, the Court was implying the existence of incidental

rights necessary to implement more expressly stated rights. This discussion considers the role of such incidental judicial "fictions" in general, and, more specifically, as they are involved in the development of the right of privacy.

- Thomson, Judith Jarvis. "The Right to Privacy" In **Rights, Restitution, and Risk: Essays in Moral Theory**. Cambridge, Massachusetts: Harvard University Press, 1986, pp.117-134. The author points out the fact that privacy is not a very clearly defined concept, and presents examples of situations which may or may not be seen as violations of privacy depending upon the definition used. Arguments are presented for both pro and con.
- Tomaszewski, Catherine A. "Privacy in Photographs: Misconception since Inception." *John Marshall Law Review* 18:4(Summer 1985): 969-986. An individual's right to privacy extends to his photograph and the conduct of the person taking that photograph. Taking into account the history of photographic privacy, the author argues that most applications of this particular privacy concern are really restatements of other torts. Photographic privacy concerns are related to the location the photograph is taken in, the photographer's conduct, and privateness of the photograph's content. The author suggests that other factors to be taken into account should be breach of special relationships (as in doctor-patient), false statements, and appropriateness of a photograph for advertising purposes.
- Tribe, Laurence H. "Rights of Privacy and Personhood" in **American Constitutional Law**. 2nd ed. Mineola, New York: The Foundation Press, Inc., 1988, pp.1302-1435. Provides extensive discussion of the issue with numerous references to relevant cases. Includes index.

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