

1  **Privacy**

- Those willing to give up a little liberty for a little security deserve neither security nor liberty.

Benjamin Franklin

2  **Invasion of Privacy**

- Complex as libel – even more idiosyncratic.
- Warren & Brandeis, “The Right to Privacy” Harvard Law Review (1890)
- People have a right to be left alone.
- Privacy law is composed of three distinct bodies of law: constitutional, statutory and tort.

3 

- Constitutional protection of privacy:
  - Argument is that the Framers recognized in the Constitution that there are certain fundamental personal rights - not to be relinquished to the government.
  - 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Amendments
  - Griswold v. CT, SCOTUS, (1965)
  - Roe v. Wade 1973
  - Stanley v. Georgia (1969)
  - Kyllo v. U.S. (2001)

4 

- Statutory:
  - Federal: Arose out of concerns about the immense amount of information about individuals contained in the computers of government agencies and private industries.
  - Federal Privacy Act (1970)
  - Federal Fair Credit Reporting
  - State versions of the Privacy Act (more variations among states than in libel law)
  - US Patriot Act (shift towards government invasion of privacy)
  - FISA and NSL’s
  - State law – what makes this tort so varied.
  - NYS Consolidated Laws – Civil Rights Code, Article 5

5 

- Then there is tort law (these are torts after all).
  - This was the focus of Warren and Brandeis –
  - Constitution changes focus of protection
  - NY State law provides the venue for a civil action against certain types of invasions of privacy.

6  **Invasion of Privacy Torts**

- Appropriation
- Intrusion
- Embarrassing facts (private facts)
- False Light

Different states recognize all, some or none of these torts.

7  **Invasion of Privacy v. Libel**

- Privacy – how you are affected; Defamation – what other people think of you.
- Only people have a right to privacy whereas corporations can sue for libel
- Injunctions can occur in invasion of privacy tort but are difficult (appropriation and intrusion – Jackie-O)
- Can libel the dead, but in some states heirs can sue for invasion of privacy (appropriation, typically).