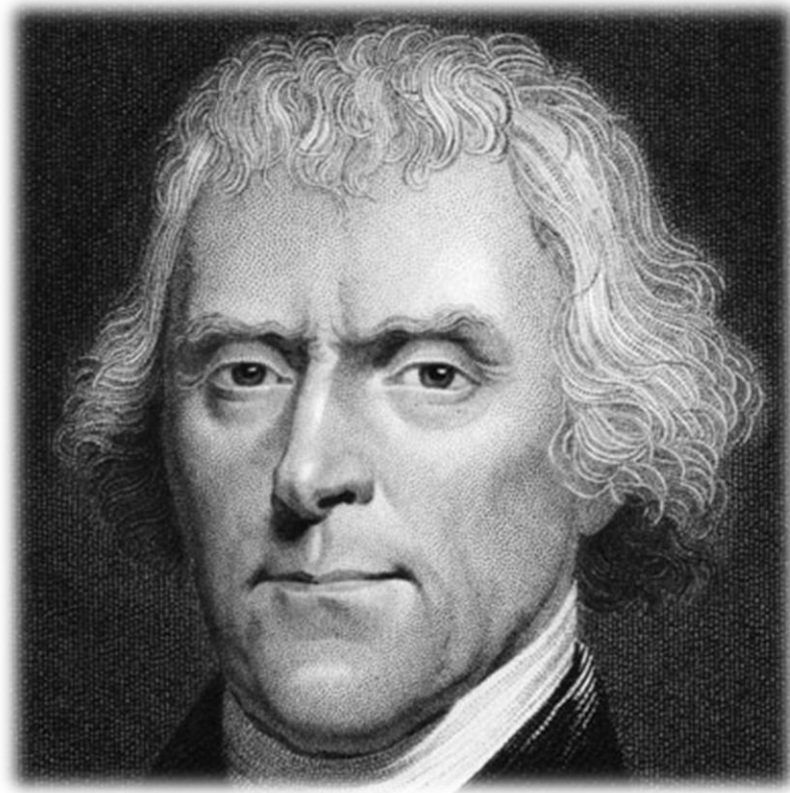


Chapter Four: Civil Liberties

“When people fear their government, there is **tyranny**.
When Government fears their people, there is **liberty.**”



- Thomas Jefferson

3rd President of the United States and author of the Declaration of Independence

Defining Civil Liberties

1446 BC: Moses asks Pharaoh for religious freedom

1215: Magna Carta - imposed upon a king by his subjects

1500s: Protestant Reformation

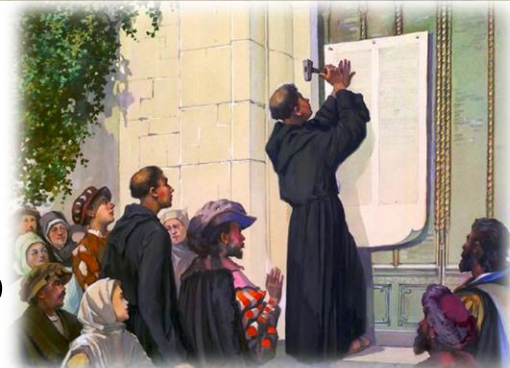
1620: Pilgrims land at Plymouth Rock for the sake of pursuing religious liberty (the first of many to travel to the New World for the same reason).

1632-1704: John Locke: sole purpose of government is to protect God-given right to life, liberty, & property.

1776: Declaration of Independence: Endowed by our Creator with Inalienable Rights include life, liberty, and pursuit of happiness.

1789: After Constitution was ratified in 1788, the U.S. government is established *by the people* to secure their rights to life, liberty, property.

1791: Then, Bill of Rights (first ten Amendments) ratified in the U.S. Constitution



Origins of the Bill of Rights

“Originally, the Constitution provided very limited protection of civil liberties.” (Textbook p.92) Not true; The U.S. Constitution is a document of *negative liberties* not positive rights for a reason! (as discussed in Ch. 2)

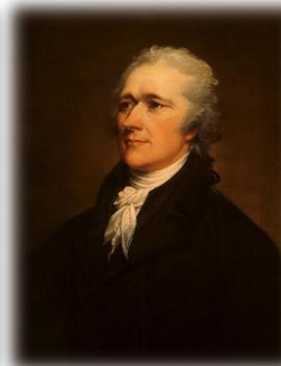
The Rights of Criminal Defendants can be found in the 4th, 5th, 6th, & 8th Amendment, and in Article I of the U.S. Constitution.

- Writs of *habeas corpus*? (show me the body)
- *Ex post facto* law? (retroactive punishment)
- Prohibition of bills of attainder? (punishment without trial)



Debate by Federalist over BOR at the Constitutional Convention

- People have Inalienable, natural rights
- Constitution's enumerated powers
- Impractical to enforce
- Dangerous to list rights
- Most states had a bill of rights



(Madison, Hamilton, Jay: Federalist Papers)

Selective Incorporation and the Fourteenth Amendment

Importance of the Ninth Amendment?

Importance of the Tenth Amendment?

Incorporation Doctrine?

The **due process clause of the 14th Amendment** made the Bill of Rights applicable to the states.

Selective incorporation?
(Textbook p. 96)

Amendment	Right	Date	Case Incorporated
I	Speech	1925	<i>Gitlow v. New York</i>
	Press	1931	<i>Near v. Minnesota</i>
	Assembly	1937	<i>DeJonge v. Oregon</i>
	Religion	1940	<i>Cantwell v. Connecticut</i>
II	Bear arms	2010	<i>McDonald v. City of Chicago</i>
III	No quartering of soldiers		Not incorporated
IV	No unreasonable searches or seizures	1949	<i>Wolf v. Colorado</i>
	Exclusionary rule	1961	<i>Mapp v. Ohio</i>
V	Just compensation	1897	<i>Chicago, B&Q R.R. Co. v. Chicago</i>
	Self-incrimination	1964	<i>Malloy v. Hogan</i>
VI	Double jeopardy	1969	<i>Benton v. Maryland</i>
	Grand jury indictment		Not incorporated
	Right to counsel	1963	<i>Gideon v. Wainwright</i>
	Public trial	1948	<i>In re Oliver</i>
	Confrontation of witnesses	1965	<i>Pointer v. Texas</i>
	Impartial trial	1966	<i>Parker v. Gladden</i>
	Speedy trial	1967	<i>Klopper v. North Carolina</i>
	Compulsory trial	1967	<i>Washington v. Texas</i>
VII	Criminal trial	1968	<i>Duncan v. Louisiana</i>
	Civil jury trial		Not incorporated
VIII	No cruel and unusual punishment	1962	<i>Robinson v. California</i>
	No excessive fines or bail		Not incorporated

First Amendment

Freedom of Religion

“Congress shall make no law respecting an establishment of *religion*, or prohibiting the *free exercise* thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Freedom of Religion (to publicly display, advocate for, protest, and proselytize or evangelize) vs. **Freedom of Worship** (gather, pray, sing)

[City of Houston demands pastors turn over sermons](#)

What is the Separation of Church and State!?! 1644: Roger Williams, and...

[U.S. Supreme Court - prayer at council meeting](#)

What is the [Establishment clause?](#) (5:39)

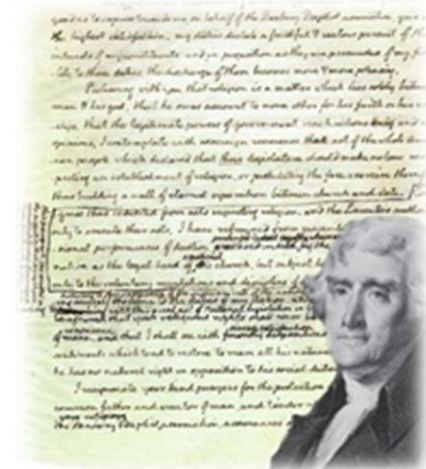
What is the [Free Exercise clause?](#)

Amish exemptions: education, Social Security, Obamacare.

Religion vs. Law: Accept legal consequences.

But raising public conscience can lead to

changes in the law (Abolitionist Movement; MLK Jr.)



First Amendment

Freedom of Speech, Assembly, and the Press

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Protected Speech (7:57)

Political Speech (Alien and Sedition Act);

Symbolic Speech; Hate Speech; Assembly; Blasphemy;

Against Public Figures? [“Obama 2016”](#) (1:30)

Unprotected Speech

Fighting words; Libel (written); Slander (spoken);

Commercial Speech; Obscenity; [Protesting?](#) (2:54)



First Amendment

Freedom of Speech, Assembly, and the Press Cornerstone of Free Society!

Free Societies Vs. Totalitarian Governments: [Support of Radio Free Europe](#) (:56)

North Korea: While their constitution provides for freedom of speech and the press, the government prohibits the exercise of these rights in practice, unless it is in praise of the country and its government and leader.

United States: We have the 1st Amendment; We not allow 'Prior restraint' (1798: Alien and Sedition Act); We have Freedom of Information Act.

But, [U.S. Distrust in Media Hits New High](#): 60% do not trust the mass media to report the news fully, accurately, and fairly.

[2012 Campaign Coverage](#)

Also, the Department of Justice imposes a

[Chilling Effect For Free Press](#) (6:29)

[World press freedom index 2014](#)

2014 - USA is #46! (2009 – USA was #20)

[Risen calls Obama 'greatest enemy of press freedom in a generation'](#)



The Second Amendment

The Right to Bear Arms

“A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.”

“I ask, Sir, what is the militia? It is the whole people. To disarm the people is the best and most effectual way to enslave them.”

- George Mason: Co-author of the Second Amendment during Virginia's Convention to Ratify the Constitution, 1788



The Second Amendment

The Right to Bear Arms

“A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.”

1775: British try to disarm the Colonists by taking the weapons stored in Concord.
Nazi Germany, Soviet Union, Mao's China

[D.C. v Heller - D.C. lift gun ban](#) (:33-4:56)

Gun Laws: Kennesaw, GA V. Chicago, IL

[Gun Homicide Rate Down 49%](#)

[Since 1993 Peak; Public Unaware](#)

[Women defy gun owner stereotype](#) (3:20)

[Mom hides children, shoots intruder](#) (1:33)

[Obama's gun violence measures: Work?](#)

[Milwaukee sheriff: Arm yourself, don't hide under a bed](#) (:32)



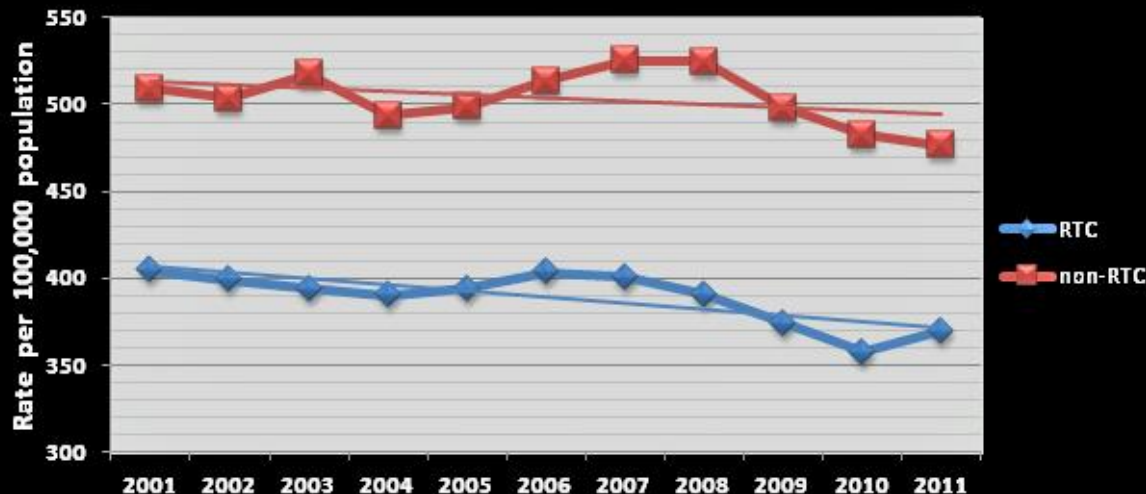
“More Guns, Less Crime”

John Lott, Jr. and Bill Landes

“States that allow law-abiding citizens to carry concealed handguns enjoy a 60 percent decrease in multiple-victim public shootings and a 78 percent decrease in victims per attack.” - *MGLC*

“With just one single exception, the attack on congresswoman Gabrielle Giffords in Tucson in 2011, every public shooting since at least 1950 in the U.S. in which more than three people have been killed has taken place where citizens are not allowed to carry guns.” - Lott

Average Violent Crime Rates by Right-to-Carry Status



[Restaurant with 'No Weapons, No Concealed Firearms' Sign Robbed at Gunpoint](#)

[Pennsylvania town packs heat, and wants visitors to know it](#)

Harvard Study: Gun Control Is Counterproductive

“Nations with stringent anti-gun laws generally have substantially higher murder rates than those that do not.”

Table 1: European Gun Ownership and Murder Rates
(rates given are per 100,000 people and in descending order)

Nation	Murder Rate	Rate of Gun Ownership
Russia	20.54 [2002]	4,000
Luxembourg	9.01 [2002]	c. 0
Hungary	2.22 [2003]	2,000
Finland	1.98 [2004]	39,000
Sweden	1.87 [2001]	24,000
Poland	1.79 [2003]	1,500
France	1.65 [2003]	30,000
Denmark	1.21 [2003]	19,000
Greece	1.12 [2003]	11,000
Switzerland	0.99 [2003]	16,000
Germany	0.93 [2003]	30,000
Norway	0.81 [2001]	36,000
Austria	0.80 [2002]	17,000

Table 2: Murder Rates of European Nations that Ban Handguns as Compared to Their Neighbors that Allow Handguns
(rates are per 100,000 persons)

Nation	Handgun Policy	Murder Rate	Year
A. Belarus	banned	10.40	late 1990s
[Neighboring countries with gun law and murder rate data available]			
Poland	allowed	1.98	2003
Russia	banned	20.54	2002
B. Luxembourg	banned	9.01	2002
[Neighboring countries with gun law and murder rate data available]			
Belgium	allowed	1.70	late 1990s
France	allowed	1.65	2003
Germany	allowed	0.93	2003
C. Russia	banned	20.54	2002
[Neighboring countries with gun law and murder rate data available]			
Finland	allowed	1.98	2004
Norway	allowed	0.81	2001

Notes: This table covers all the European nations for which the information given is available. As in Table 1, the homicide rate data comes from an annually published report, CANADIAN CENTRE FOR JUSTICE STATISTICS, HOMICIDE IN CANADA, JURISTAT.

Ben Franklin

“They who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.”

- Benjamin Franklin was a Founding Father, leading author, printer, political theorist, politician, postmaster, scientist, musician, inventor, satirist, civic activist, statesman, and diplomat.



Magna Carta 1215

(Revised in 1217 – seen below)

The [Magna Carta](#), considered the foundation of English common law, outlined the ideas of *habeas corpus* and placed limits on the king/government. These ideas are reiterated in the United States Constitution. (section 35)

arrows, or the like.

(34) No bailiff shall in future put any man on trial, nor to an oath, upon his own simple affirmation, without faithful witnesses produced for that purpose.

(35) No free-man shall be taken or imprisoned, or dispossessed, or be outlawed, or exiled, or in any other way victimised; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land.

(36) To none will we sell, to none will we refuse or delay right or justice.

(37) All merchants, unless they have been publicly prohibited beforehand, shall have safety and security in going out of England and in coming into England and in staying and in travelling through England, as well by land or water, to buy and sell, without any unjust exactions, according to ancient and right customs, excepting in the time of war and if they be of a country and if such are found in our land at the beginning of a

Law, Order, and the Rights of Criminal Defendants

The Fourth Amendment:

Unreasonable Searches and Seizures

“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.”

Therefore, the police may only search things in plain view, the person arrested, and things under the arrestee's immediate control.

Unreasonable Searches and Seizures

- **Warrants** needed based on **probable cause**.

[When Cops Can Enter Your Home Without A Warrant?](#) (Video:28)

- **Probable cause** vs. **fishing expeditions**?
- **U.S. Patriot Act** and “**sneak and peak**” searches.
- **Exclusionary rule**



Law, Order, and the Rights of Criminal Defendants

The Fourth Amendment

Domestic Surveillance Post – September 11

Is the US Patriot Act of 2001 Constitutional? It has never been challenged and heard before the Supreme Court.

Act allows for searching library records, searching medical records, searching private property without notice, and foreign intelligence collection.

[7/12: Police request cellphone & Email surveillance without search warrant!](#) (4:30)

[8/13: Obama administration asks Supreme Court to allow warrantless cell phone searches](#)

[4/14 - Argued, 6/14 - Decision: Supreme Court 9-0](#)

["Get a warrant!"](#)

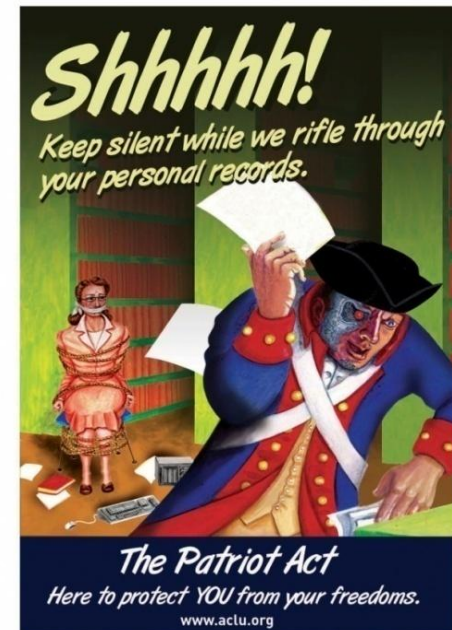
Expanding Government Authority:

post 2001 U.S. Patriot-Act;

post 2011 National Defense Authorization Act;
(challenge to the Sixth Amendment)

post 2013 NSA Revelations

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Law, Order, and the Rights of Criminal Defendants

The Fourth Amendment

Domestic Surveillance Post – September 11 (June, 2013-forward)

“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.”

[The Guardian: NSA Verizon Spying 4th Amendment](#) (start-3:22)

[The Guardian: Prism Internet spying – “Prism”](#) (start-1:55)

[Whistleblower - NSA Surveillance Edward Snowden](#) (12:34)

[Hero or Traitor?](#) (1:55) **Massive Spy Center**

[Obama: “If you can't trust us, we're going to have some problems.”](#) (:57) [Patriot Act Author Rep. Sensenbrenner](#)

[NSA surveillance played little role in foiling terror](#)

[NSA Tracking American People via Secret Courts](#) (5:50)

[Sen. Rand Paul lawsuit](#) (2:52) [Snowden Says](#)

[‘Many Other’ Spy Programs Remain Secret, For Now](#)



TOP SECRET//SI//ORCON//NOFORN

Hotmail Google Yahoo! Skype AOL e-mail & YouTube

PRISM Collection Details

Current Providers

- Microsoft (Hotmail, etc.)
- Google
- Yahoo!
- Facebook
- PaTalk
- YouTube
- Skype
- AOL
- Apple

What Will You Receive in Collection (Surveillance and Stored Comms)?
It varies by provider. In general:

- E-mail
- Chat – video, voice
- Videos
- Photos
- Stored data
- VoIP
- File transfers
- Video Conferencing
- Notifications of target activity – logins, etc.
- Online Social Networking details
- Special Requests

Complete list and details on PRISM web page:
Go PRISMFAA

TOP SECRET//SI//ORCON//NOFORN

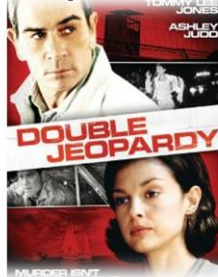
Law, Order, and the Rights of Criminal Defendants

The Fifth Amendment: Self-Incrimination

“No **person** shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

From the 5th Amd.

- “plead the fifth”
- Miranda Rights
- Double Jeopardy
- Eminent Domain



New definition of Due Process & (6th Amend.) (4:11)

3/13 Filibuster of vote on CIA Director John Brennan (1:15)

Stand with Rand (2:46) When can the U.S. kill citizens? (2:24) 9/14 Enemy or Asset?

Brennan - Oath of Office 3/14 CIA searched Intelligence Committee computers

Law, Order, and the Rights of Criminal Defendants

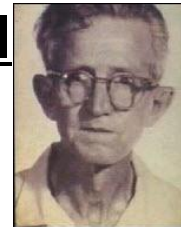
The Sixth Amendment:

The Right to Legal Council and a Jury Trial

“In all criminal prosecutions, the accused shall enjoy the right to a **speedy** and **public trial**, by an **impartial jury** of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be **informed of the nature and cause of the accusation**; to be **confronted with the witnesses against him**; to have compulsory **process for obtaining witnesses in his favor**, and to have the Assistance of Counsel for his defense.”

The Right to Legal Council and a Jury Trial

- Right to counsel: *Gideon v. Wainwright* (1963)
- Speedy and Public Trial by Jury



National Defense Authorization Act signed into law 12/31/11 authorizes the indefinite military detention of civilians, including U.S. citizens, without habeas corpus or due process, contained in the Authorization for Use of Military Force. (D) Sen. Carl Levin: WH wanted U.S. citizens included (1:09)
(R) Sen. Rand Paul: offers amendment to remove that language (start-1:55)

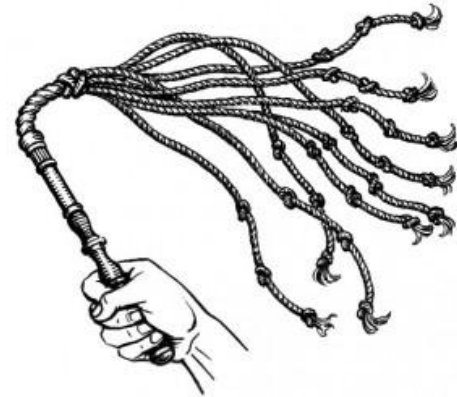
Law, Order, and the Rights of Criminal Defendants

The Eighth Amendment: **Cruel and Unusual Punishment** **(And) Privacy Rights**

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Cruel and Unusual Punishment

- The death penalty?
- “proportionality” (punishment should fit the crime)
- *Protecting the wrongfully accused (DNA Testing)*



Privacy Rights: Gay Rights

- Substantive due process doctrine

Privacy Rights: The Right to Die

- Importance of a living will
- Terri Schiavo Case (start-1:20) and the issue of Euthanasia:
issue involving morality, religion, science, and the government.



Privacy Rights: Abortion

The Due Process Clause of the 14th Amendment prohibits state and local governments from depriving persons of life, liberty, or property without certain steps being taken to ensure fairness.

1973: *Roe v. Wade*: trimester test-1st yes, 2nd health of mother, 3rd life of mother
40 Years Later, 54,559,615 abortions in U.S. – one every 30 seconds.

1992: *Planned Parenthood v. Casey* – “undue burden” State may NOT prohibit any woman from making the ultimate decision to terminate her pregnancy before **viability**. (States decide viability)

2007: *Gonzales v. Carhart* – upheld ban on partial birth abortion

Margaret Sanger: founder of Planned Parenthood

[CDC Abortion Surveillance report](#) [Alveda King](#)

[38 states have fetal homicide laws](#)

Some States require ultrasound before

abortion and only four have laws against

[Sex-Selective Abortions](#) (start-4:28) [House rejects bill](#)

[Abortion in Politics/Elections: Susan B. Anthony](#) (1:00)

[Proposed Abortion Legislation](#) (4:02)

[Banning late term abortions?](#)



14 week – not viable, but can hear sounds. Also, has fingerprints, can squint, frown, grimace, pee, grasp, and suck his thumb.



End of Chapter 4

“If freedom of speech is taken away, then dumb and silent we may be led, like sheep to the slaughter.”

- George Washington
1st President of U.S.

