

Privacy

- For over 100 years, law has recognized individual's right to be let alone.
- Constitution does not explicitly mention any right of privacy.
- Supreme Court has long recognized right of personal privacy.
- Certain “zones” of privacy.

▶ Privacy

- Two different privacy interests.
- Interest of the individual in “independence in making certain kinds of important decisions” or *autonomy interest*.
- Interest in avoiding disclosure of personal matters” or *the right to confidentiality*.
- Right to confidentiality based on an expectation of privacy.

▶ *Confidentiality*

- Confidential communication–privileged communications such as those between spouse, physician–patient, attorney–client, confessor–penitent, etc.
 - Without guarantee of confidentiality, victims may not come to receive services.
 - Indigent victims should have the same parameters of privacy that are given to victims who seek private counseling.
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▶ *Confidentiality*

- Confidentiality is the cornerstone of providing services for victims.
- The zone of privacy afforded by the victim/counselor relationship can be the first step on the long road to healing.
- Allows the victim to fully disclose without fear of public scrutiny.

▶ Privileges

- Law protects certain communications from “compelled disclosure” in testimony.
- Protected communications are called “privileged” communications.
- Classified into three categories:
 - Privileges designed to protect individual, e.g. privilege against self-incrimination;
 - Privileges designed to protect the government, e.g. executive privilege;
 - Privileges designed to protect the sanctity of certain relationships.

▶ Privileges

- All three designed to protect some interest or relationship that for public policy reasons is deemed more important than the lack of information.
- Privileges we discuss today are in third category: privileges justified by the special relationship of trust between parties, and necessity for assuring complete mutual disclosure.

▶ *Justification for the third category*

- ▶ Social utility of the relationship is so substantial it outweighs society's interest in having all possible evidence in court.
 - ▶ Relationship depends upon strict confidentiality between the parties for its value.
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- ▶ **Four fundamental conditions, that dictate the need for creation of the privilege:**
 - ▶ Communication must originate in confidence that it will not be disclosed.
 - ▶ Element of confidentiality must be essential to the full and satisfactory maintenance of the relationship between the two parties.
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▶ **Four fundamental conditions, that dictate the need for creation of the privilege:**

- ▶ Relationship must be one, which, in the opinion of the community, ought to be sedulously fostered.
- ▶ Injury that would inure to the relationship by the disclosure of the communication must be greater than the benefit thereby gained for the correct disposal of litigation.

Privacy, Confidentiality and Privilege

- ▶ **Right to privacy plus the need for confidentiality leads to the creation of the privilege. The assertion of the privilege affirms the right to privacy and prevents the disclosure of confidential communication.**