Louis Brandeis:
Louisville’s Connection to the Right of Privacy

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Today we rally in support of the Fourth Amendment, which protects our bodies and our personal lives from unreasonable searches and seizures by our government.

The Fourth Amendment is also part of what we consider a larger Right to Privacy, the right to be let alone. It is the right to determine for ourselves who may know the intimate details of our lives.

Louisvillians should be very proud and protective of the Right to Privacy, because it – as we know it today – was actually born here in Louisville.

The first, most prominent legal voice for modern American privacy rights was a Louisville native named Louis Brandeis. He was born in 1856 and was raised in a house just a few blocks south of here on Broadway. The son of Jewish immigrants from what is today the Czech Republic, Brandeis was a gifted student and legal mind who attended Harvard Law School and eventually became a Justice of the U.S. Supreme Court.

Before his time on the Court, he founded a private law practice in Boston with a Harvard classmate named Samuel Warren. In 1890, Brandeis and Warren wrote an article for the Harvard Law Review called “The Right to Privacy.” This article, way ahead of its time, laid the foundation for how we now think about personal freedom.
In 1916, President Woodrow Wilson nominated Brandeis to join the U.S. Supreme Court. Brandeis was strongly opposed by conservative Senators who viewed his long record of public advocacy and defense of personal freedom as too radical for the Court. Despite this opposition, Brandeis was narrowly approved and served on the Court until 1939.

In 1928, during Prohibition, a case called Olmstead v. United States came before Brandeis and the Supreme Court.

Federal officers had tapped the phones of suspected bootleggers. The wire taps revealed a complex network of illegal alcohol distribution and the suspects were convicted.

Roy Olmstead, one of those convicted, challenged the warrantless wire taps as a violation of the Fourth Amendment. But because federal agents didn’t trespass on any private property or seize tangible things in their investigation, a majority of the Court, led by former president William Howard Taft, ruled the government didn’t violate the Fourth Amendment.

Justice Brandeis disagreed, and wrote what is today considered one of the greatest dissents in Supreme Court history. It would inspire future rulings such as Griswold v. Connecticut and Roe v. Wade.

His words, written in 1928, are more relevant than ever in light of today’s revelations about spying by the National Security Agency and other government agencies. I’d like to share with you several quotes from the Olmstead dissent.

Justice Brandeis wrote:

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men. To protect that right every
unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.

Brandeis went on:

Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficial. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

And in closing, Brandeis warned his fellow Justices:

If the Government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of criminal law the end justifies the means – to declare that Government may commit crimes in order to secure the conviction of a private criminal – would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

In closing, I want to thank you for carrying on the great legacy of Justice Louis Brandeis, one of Louisville’s greatest sons, by joining us here today.