Law, Technology & Society:
No Place to Hide in a Surveillance Society

Law & Society 251
Skidmore College
Spring Semester 2006
Time: Tuesdays & Thursdays, 3:40 p.m.-5:00 p.m.
Room: Tisch Learning Center, Room 301

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Office: PMH 220W (by the elevator)
Office Hours: TBA, or by appointment

“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.” —Justice Louis Brandeis

Tentative Syllabus

Course Description:

This seminar considers the historical foundation and current status of information law and policy in the United States and international contexts. We will explore a variety of issues concerning information privacy (i.e., the gathering, use and protection of information about individuals, groups and organizations) as well as other subjects related to the influence, impact and interrelationship between technology, the law and modern society. Topics will include the right of access to information, the free flow and use of information, the value of personal information, commercial uses of personal information (such as data mining and other marketing techniques), citizens’ access to government (including e-voting), and the roles of individuals, government and the private sector in protecting information privacy in the modern, post-9/11 information age. We will also consider the impact of law and technology on society in related fields such as intellectual property, antitrust/unfair competition, and consumer protection laws. Specific topics and materials may be adjusted according to current events and students’ experience with and interests in information law.

The course will trace the origins information privacy in American law, through Constitutional law, tort law, and modern statutory law. Case studies of landmark privacy decisions, legislation and regulations illustrate how expectations of privacy are translated into legal frameworks. The course examines recent controversies involving workplace surveillance, health care records, direct marketing, and the use (and misuse) of the Social Security number. The course also considers the impact of the European privacy directive, the growth of the Internet, access to governmental information (FOIA), the recommendations of the 9/11 Commission (and the response of Congress), and the availability of cryptography on the future of privacy law.

As new technologies are constantly developed, they increasingly raise privacy and other legal concerns—the Internet, GPS wireless location-based services, and RFID chips are just a few examples. In addition, the post-9/11 focus on national security and fighting terrorism has brought with it new concerns about governmental intrusions on personal privacy. This course provides an in-depth look into privacy, information law, and related technologies as well as self-regulatory efforts. Students will study information and privacy law from philosophical, historical, legal, policy, and technical perspectives.

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Class reading assignments will include analysis of statutes, regulations and cases as well as current articles and other materials involving technology and privacy issues. Students will also learn to read and analyze court decisions and some administrative regulations concerning these topics. In this discussion-based seminar, students will develop advocacy skills in classroom debate, while individual in-class presentations and final research papers will allow students to explore particular topics within the larger scope of the field.

**Texts:**

Three texts are required for all students:


Additional selected reading materials will consist of newspaper articles, book chapters, statutes, regulations, cases and other excerpted materials which will be assigned and made available to the class in advance of their discussion, either by handout and/or on WebCT.

Other highly recommended, but not required, titles (on open reserve in the Library) for this course:
- Fred H. Cate, *Privacy in the Information Age* (Brookings Institution, 1997)
- Simson Garfinkel & Beth Rosenberg, eds., *RFID* (Addison-Wesley, 2006)
- Harry Henderson, *Privacy in the Information Age* (Facts On File, 1999)
- Derrick Jensen & George Draffan, *Welcome to the Machine* (Chelsea Green, 2004)
- Frederick Lane, *The Naked Employee* (Amacom, 2003)
- Jeffrey Rosen, *The Unwanted Gaze* (Random House, 2000)
- Mark A. Rothstein, ed., *Genetic Secrets* (Yale University Press, 1997)
Course Requirements, Evaluation and Grading:

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<tr>
<th>Component</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Participation</td>
<td>25%</td>
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<tr>
<td>Attendance &amp; Discussion</td>
<td>15%</td>
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<td>Response Essays</td>
<td>10%</td>
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<tr>
<td>In-Class Presentation</td>
<td>15%</td>
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<tr>
<td>Midterm Exam</td>
<td>25%</td>
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<td>Final Paper</td>
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Participation:

The participation grade in this course will consist of evaluation of three areas: regular & punctual attendance, active and informed student participation in classroom discussions and in the online discussion forum, and short written response essays at the end of each course segment.

A 200-level, seminar-style course requires the active, informed and regular participation of every student to achieve the seminar objectives. That is, a fundamental requirement of this course is that students will read each assignment fully, before coming to class, and will take responsibility to advance each class discussion. Consequently, it is essential that every student have regular, punctual attendance and actively participate in classroom discussion and the electronic discussion group (on WebCT). Quality and succinctness are valued more highly than quantity. That said, no student should feel hesitant to share an idea, question or comment with the rest of the class.

You cannot participate if you are not in class. Being absent on a particular day will result in a “0” participation grade that day. Sports-related absences must be requested, in writing, in advance, and all classroom work must be made up. Some invalid excuses for missing class include: doctor’s appointments (I don’t schedule other appointments during class, neither should you), missing flights, vague “family emergencies” (those family emergencies that are acute enough to involve the Dean’s Office are valid). In general, documentation is useful, but not always sufficient, for absolution of absences.

**I expect you to contact me in advance if you will be unable to attend a particular class.**

**More than two absences will result in a lower grade for participation.**

In addition to regular attendance and participation, students will write short response essays at the end of each course segment/chapter which will analyze and reflect on the assigned material in light of related issues presented in that and other segments. Essays will not merely summarize the text.

In-Class Presentations:

Each student will make one in-class oral presentation (approximately 10 minutes in length) on a topic related to the course and approved by the instructor at least one week before the presentation. The assignment is comprised of: selecting a unique topic, identifying and supplying a short reading for classmates (as a paper or electronic document or other resource), contextualizing the topic in a 5-10 minute presentation, leading a class discussion of the common reading and the subject, and handing in a 1000-word paper on the day of the presentation (no extensions will be
Creativity in the presentation is greatly appreciated and strongly encouraged. Potential topics and the schedule for in-class presentations will be discussed during our first week.

At least two weeks before your presentation, you will need to pay close attention to any and all information privacy law issues that are mentioned in the media. Topics may be found in national newspapers, magazines, television news programs, and reputable Internet sources (approved by me in advance); a suggested list of sources will be provided in the first week of class.

The presentation will explain to the rest of the class the significance of a specific current concern, controversy, or other issue involving information law, technology and society and will connect to the overall themes of the seminar. Each presentation should offer information or raise issues not covered in the assigned readings or general classroom discussion. However, a mere recitation of the occurrence of the event will not suffice. After briefly presenting the news event or problem, focus the majority of your time on analyzing the subject so that the class can understand the issues involved. You will have an opportunity to raise questions for the group that you think are worth exploring, and may wish to e-mail (or post on the discussion forum) a few questions in advance.

Like the oral presentation, the 1000-word paper will provide a critical analysis of the topic. That is, the paper will not simply summarize the news story or other source on which the report is based. Rather, it will analyze and discuss the topic as it relates to a broader discussion of a course theme.

**Final Paper:**

Each seminar participant shall write an original research paper. The paper should address a narrow topic approved by the instructor and within the scope of the seminar. The research paper may (but need not) address the same (or related) topic as a student’s in-class presentation; if so, the paper should expand greatly on that subject. You may choose any topic that relates to one of the basic questions posed by the seminar. Alternatively, you may choose another information law problem raised by contemporary technology, yet which remains within the scope of the course. However, the topic may not be one on which you have previously written another paper for academic credit.

**Final Paper Timeline:**

*Week Four – Submit one-page abstract*
You should submit an abstract that identifies your issue/topic, the questions deemed worthy of exploration, the scope of your research paper, and the intended relevance/impact of your research paper. The abstract should be double-spaced; with one-inch margins; with a blank line between title, name, and main content paragraph(s); and be not more than 350 words in length.

*Week Six – Submit proposed bibliography*
You should submit a list of sources you have found thus far in your research (7 minimum). The citations should be in either *Chicago Manual of Style* format (15th Edition, U. of Chicago Press, 2003) or law school “blue book” format (*The Bluebook: A Uniform System of Citation*, 17th Edition, Harvard & Yale Law Reviews, 2000). No limits; not necessary to have read all sources.

*Week Nine – Submit annotated bibliography and thesis statement*
You should submit an annotated list of sources, limited to those sources that will be used in the final paper; there must be at least five sources (journal article-length, or longer) in addition to class-assigned readings. The citations should retain the format used for the proposed bibliography.
An annotated bibliography provides a concise paragraph for each source, explaining what each source offers the reader and how it is relevant to your research paper. In other words, an annotated bibliography includes only sources that you have already read and identified as relevant; you may need to read more than these five sources to find the ones that will produce a successful paper. In addition, this annotated bibliography will also include an opening paragraph containing the thesis statement for the paper.

**Week Eleven – Submit paper outline**

You should submit a detailed outline of their final paper, including the revised thesis statement. The outline should include topic sentences for each argument/idea/paragraph, demonstrate an understanding of the subject(s) to be covered, and establish the organization of the arguments and evidence to be presented. For each included idea, argument or quotation, provide appropriate source attribution (author, page) for later formal citation.

**Finals Week – Submit final paper**

Most satisfactory papers will fall within the range of 3,500 to 4,500 words, not including citations (preferably footnotes, or use endnotes). Papers must be submitted electronically and in hard-copy not later than 5:00 p.m. EDT on the date the final exam is scheduled for this course (date TBA). The hard-copy version should be printed on letter paper, with a cover/title page, using one-inch margins, double-spaced Times Roman 12-pt. type, and with all pages numbered. Corresponding electronic versions should be emailed to me not later than the deadline (in MS-Word, RTF or PDF format). Turning in either version after the deadline, or without the other version, will result in a lower grade.

Grading will be on the basis of clarity of analysis and expression, persuasiveness of argument, originality of thought and authorship, and familiarity with course and other source materials.

**General Classroom Guidelines:**

Do not be late—you will be counted as “absent” after I take attendance and class begins

Do not bring food to class

Do not talk or pass notes during class (this includes sending text or IM messages on electronic devices during class time); all cell phones should be turned OFF during class time

Do not sleep in this class—if you are so tired that you cannot actively participate, stay home

Do not get up and leave during class—if it is a biological necessity that you leave class for some reason, please communicate that to me in some way. Otherwise, please respect the integrity of the classroom and respect your peers by not disrupting the class.

**Reading Assignments & Schedule:**

Please note that most weeks we will discuss more than one topic, but that topics are not assigned to specific days. I will inform you which readings need to be done for each class as we cover the material. You need to check your e-mail at least once a day to ensure that you are notified of any changes in reading assignments. Every reading may not be covered during class time, but may be tested on the midterm examination and/or be related to questions for assigned response essays.

**NOTE:** Assignments, and page numbers, are subject to change. All “textbook” page references below are to Solove, Rotenberg & Schwartz, *Information Privacy Law* (2nd edition, Aspen, 2006).
Week 1:
Introduction & The Origins of Privacy I: Foundations of U.S. Privacy & Information Law
textbook: 1-27, 30-38
No Place to Hide, Introduction
Information Ethics, Introduction (p. 11-21 only)
The Soft Cage, Chapter 1, “Life in the Glass Box” (handout—available on WebCT)

The Origins of Privacy II: Defining/Critiquing Privacy: Philosophical Perspectives
The Digital Person, Chapter 3, “Kafka and Orwell: Reconceptualizing Information Privacy” (handout—available on WebCT)
On Liberty, by John Stuart Mill (handout—available on WebCT); skim 193-205 material

Week 2:
Privacy and the Media I: Information Gathering and the Press
textbook: 75-76, 80-81, 84-102
Privacy, Photography and The Press, by T. Allen (Article 17 from Information Ethics)

Privacy and the Media II: Disclosure of Truthful Information
textbook: 102-131
Rationales for Freedom of Speech, by Kent Greenawalt (Article 15 from Information Ethics)

Week 3:
Privacy and the Media III: Privacy vs. First Amendment values
textbook: 131-144, 144-150 (skim), 150-157, 159; handouts
Digital Speech and Democratic Culture, by Jack Balkin (Article 16 from Information Ethics)

Privacy and the Media IV: Defamation and the Internet
textbook: 159-180, 181-185; handouts
Intangible Property, by Adam Moore (Article 9 from Information Ethics)

Week 4:
Healthcare & Genetic Privacy I: Confidentiality of Medical Information
The Social Life of Genes, by Margaret Everett (Article 12 from Information Ethics)
Biopiracy or Bioprivateering?, by Richard Stallman (Article 8 from Information Ethics)

Healthcare & Genetic Privacy II: Constitutional Protections, Genetic Information and Biometrics
No Place to Hide, Chapter 6, “The Immutable Me”

Week 5:
Privacy and Law Enforcement I: Government Surveillance and the Fourth Amendment
textbook: 207-227, 232-236, 238-263

Privacy and Law Enforcement II: Statutory Privacy Law
textbook: 263-277 (skim), 277-300
**Week 6:**
Privacy and Law Enforcement III: Intelligence, Terrorism and National Security
  textbook: 300-323

Privacy and Law Enforcement IV: Government Computer Searches & Police Records
  textbook: 323-343
  *Carnivore, The FBI’s Surveillance System*, by Griffin Dunham (Article 18 from *Info. Ethics*)

**Week 7:**
Privacy of Associations and the Constitution: Anonymity and Identification
  textbook: 451-455, 465-471, 480-484, 490-504, 504-522; handouts
  *Intellectual Property is Still Property*, by Frank Easterbrook (Article 6 from *Info. Ethics*)

**Midterm Exam:** **Thursday, March 9** – This is the only date on which the exam will be given (i.e. there will be no make-up exam). Students missing the exam will receive a “0” grade for the exam.

**Spring Vacation:** **Saturday, March 11 – Sunday, March 19**

**Week 8:**
Privacy, Records, and Computer Databases I: Access to Public Records & Government Data
  textbook: 523-542, 548-555, 560-561, 565-577

Privacy, Records, and Computer Databases II: Government Databases of Personal Information
  textbook: 577-621; handout
  *No Place to Hide*, Chapter 7, “Total Information Awareness”

**Week 9:**
Privacy, Records, and Computer Databases III: Private Sector Databases
  textbook: 623-664, 664-673 (skim)
  *No Place to Hide*, Chapter 3, “Who Am I?”

Privacy, Records, and Computer Databases IV: Private Sector Databases, continued
  textbook: 673-700
  *No Place to Hide*, Chapter 4, “The Matrix”

**Week 10:**
Privacy, Records, and Computer Databases V: Financial Information
  textbook: 700-735
  *No Place to Hide*, Chapter 5, “Look Me Up Sometime”

Privacy, Records, and Computer Databases VI: Government Access and Enforcement
  textbook: 735-764

**Week 11:**
Privacy and Place I: Privacy at Home and School
  textbook: 765-798

Privacy and Place II: Privacy at Work
Employee Monitoring, by Adam Moore (Article 13 from Information Ethics)

Week 12:
International Privacy I: Data Protection In Europe
textbook: 869-900

International Privacy II: Data Protection In Europe
textbook: 900-915, 918-922, 922-929 (skim), 929-930, 932-957 (skim), 957-967

Week 13:
Is There Privacy After 9/11?
  No Place to Hide, Chapter 8, “The Government’s Eyes and Ears”
  National Security at What Price?, by Jacob Lilly (Article 20 from Information Ethics)
  GAO Secure Flight Report (handout)

Week 14:
New Developments and Review
textbook: ?
  No Place to Hide, Chapter 10, “No Place To Hide”
  RFID (handout)
  Global Positioning System, E-911 and OnStar (handouts)