

Legal Studies 391C - *No Place to Hide: Law and Politics of Information* – Fall 2008  
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106 Gordon Hall  
Office Hours: TuTh 2.30 – 3.30 and by appt.

**Overview:** There is no place to hide from the eyes of state and society – or so goes the claim. Each of us is a living – breathing – data emitting object, we leave data wherever we go and virtually in whatever we do, it is just a matter of that data being consumed and interpreted into meaningful information by individuals, groups, and organizations. Social phenomena like norms and law structure the data terrain of social life, creating protections for some data while providing multiple avenues for much data to be transmitted, processed, and used for a variety of purposes. This course is designed examine the growing social and political significance of data and the law’s role in structuring the data terrain and the ways in which data images may be manipulated and acted upon. While this is a vast and growing terrain, we will focus on the discourses of surveillance and privacy in the Anglo-American tradition. And particularly, we will be largely exploring two prongs of that inquiry – (i) that which is concerned with production and consumption of information about individuals in the everyday “living of their lives” and (ii) that which is concerned with searches and/or seizures by the State for investigation purposes.

**Work and Evaluation:** Quizzes and/or response essays (40%); Exam(s) (50%) ; Participation (10%). Quizzes or exams can only be made up if you clear it in advance w/ Professor. ONE extra credit project (details TBA).

**Materials:** There will be a course packet available from Collective Copies. There will be several books from Food for Thought in Amherst (or you can get them online or elsewhere as you like). There will be online materials that you will be provided instructions as to how to access.

**Books:** George Orwell’s 1984, Margaret Atwood’s Handmaid’s Tale, Franz Kafka’s The Trial (optional – if you want to do extra credit).

**Schedule:** Course is broken into three overlapping phases. **Phase One** sets the stage metaphorically and theoretically. **Phase Two** Survey (not exhaustive) of Privacy and Surveillance in law / theory up through contemporary. **Phase Three** is more specific case studies in particular issue areas – w/ respective treatment of statutory and/or case law as necessary.

### 1. Phase 1: Introduction and Thought Provokers (9/2 – 9/11)

Thought provokers: “Not what I meant,” – socio/legal profiling (“Froggy Goes a Courtin’” from NPR program *This American Life*, : Goto <http://www.thislife.org/>; Click on “On The Radio” – go to the archives for 2005, select the 5/6 show “Not What I Meant”; “Poll: Americans OK with surveillance cams,” [http://www.upi.com/NewsTrack/Top\\_News/2007/07/29/poll\\_americans\\_ok\\_with\\_surveillance\\_cams/6884/](http://www.upi.com/NewsTrack/Top_News/2007/07/29/poll_americans_ok_with_surveillance_cams/6884/). “First Shot: Candid Camera,” <http://www.valleyadvocate.com/article.cfm?aid=1569>, Valley Advocate, 6/28/07 “ACLU helps woman accused of illegal taping,” *Commonwealth v. Hyde*, 434 Mass. 594, (2001) - online, From Solove’s *The Future of Reputation*, pp. 1-11 (handout); *Washington v. Tyler*, 54 P. 3d 147 (2002) – online; “Confessional Web site creates headache for college,” (handout); *Hamp. Gaz.*, 5/12/08; “When the Bullies Turned Faceless,” *NYT*, 12/16/07 – handout; *U.S. v. Drew* grand jury indictment, [http://blog.wired.com/27bstroke6/files/my\\_space\\_lori\\_drew\\_indictment.pdf](http://blog.wired.com/27bstroke6/files/my_space_lori_drew_indictment.pdf); *Other readings and materials TBA.*

### 2. Phase 1: Metaphors of Privacy (9/16 – 9/25)

Atwood’s *Handmaid’s Tale*; “I Spy Doesn’t Everyone?” *NYT* 9/7/06 (handout); “When Information Becomes T.M.I.” *NYT* 9/10/06 (handout); “In Your Facebook.com” *NYT* 1/8/06 (handout); “This is your space,” Amanda Geffer, *NewScientist*, September 16-22, 2006, pp. 46 – 48, “I’ll have to ask my friends,” Sherry Turkle interviewed by Liz Else pp. 48 – 49, “Things you wouldn’t tell your mother,” Alison George, pp. 50 – 51, “I saw the best minds of my generation destroyed by Google,” Bruce Sterling, pp. 52-53 (handouts); “Bilking the Elderly, With a Corporate Assist,” *NYT* 5/20/07 (handout); “28 Mile Virtual Fence Is Rising Along the Border,” *NYT* 6/26/07 (handout); “FBI vs. spies on campus: Agency warns, offers advice on detection,” *Hamp. Gazette*, 6/13/07 (handout); “Full Constitutional Protection for Some, but no Privacy for the Poor,” *NYT* 7/16/07 (handout). *Other readings and materials TBA.*

### 3. Phase 1: Metaphors of Meaning for Surveillance Society and Spheres of Privacy (9/30 – 10/9)

Orwell’s *1984*; Kafka’s *The Trial* (if you want to do the extra credit – details TBA); Solove’s Chapter 3 “Orwell and Kafka” – **Course Packet**; *McVeigh v. Cohen* (983 F. Supp. 215 (D.C. 1998)) – online; *Remsburg v. Docusearch* (816 A. 2d. 1001 (N.H. 2003)) – online; “British Miscreants Caught on Camera Face Loudspeaker Lectures,” *NYT* 4/5/07 (handout); *Other readings and materials TBA.*

#### 4. Phase 2: Privacy and Surveillance Survey (10/16 – 10/23)

J.S. Mill's excerpt from "On Liberty" (handout); John Locke's Theory of Civil Government (handout); Solove's Chapters 4 and 10 - **Course Packet**. Olmstead v. U.S. (277 U.S. 438 (1928)), Goldman v. U.S. (316 U.S. 129 (1942)), Katz v. U.S. (389 U.S. 347 (1967)), Florida v. Riley (488 U.S. 445 (1989)), Kyllo v. U.S. (533 U.S. 27 (2001) –online. *Other readings and materials TBA.*

#### 5. First Exam (TBD)

#### 6. Phase 2: Wiretapping w/out Warrants and National Security (10/30 – 11/4)

U.S. v. U.S. District Court (407 U.S. 297, (1972)); ACLU v. NSA (438 F. Supp. 2d 754); ACLU v. NSA (493 F.3d 644, (2007)) and the 6<sup>th</sup> Circuit reversal (2007 U.S. App. LEXIS 16149) – online; *Other readings and materials TBA.*

#### 7. Phase 3: Datavalance and the Naked Machine (11/6 – 11/11)

Rosen, Prologue – **Course Packet**; Lyon, Chapter 1 – **Course Packet**.

#### 8. Phase 3: Case Studies and Second Exam– (Remainder of Semester)

- *GPS and real time surveillance* – U.S. v. Knotts (460 U.S. 276, (1983)), U.S. v. Karo (468 U.S. 705, (1984)), NEW US v. Garcia, 474 F. 3d. 994 (*Need Date*) - *online*; "GPS Tracking Technology: The Case for Revisiting Knotts and Shifting the Supreme Court's Theory of the Public Space Under The Fourth Amendment," Otterberg, 46 B.C. L. Rev. 661 - *online*; *Other materials TBA.*
- *DNA Sampling / Surveillance* – U.S. v. Kincade (379 F.3d 813, (2004)); Quander v. Johnson (370 F. Supp. 2d 79, (2005)); Kohler v. Englade (470 F. 3d 1104, (2006)) - *online*; *Other materials TBA.*
- *Drug Testing (and related)* –Tunnel, Chapters 1, 4 - **Course Packet**; Skinner v. Railway Labor Executives' Association et. al. (489 U.S. 602, (1989)); Natl. Treasury Employees Union v. Von Raab, (489 U.S. 656, (1989)); Vernonia School District v. Wayne Acton, (515 U.S. 646, (1995)); Bd. Or Ed. of Pottawatomie v. Lindsay Earls, (536 U.S. 822, (2002)) – *online*; *Other materials TBA.*
- *Background Checking* –O'Harrow Chapter 5 – Look Me Up Sometime – **Course Packet**; *Other materials TBA.*

#### 9. Second Exam (TBA)