

LEGAL STUDIES 460 / LIS 460
SURVEILLANCE, PRIVACY, AND POLICE POWERS
FALL 2016
T/R 2:30-3:45

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I. COURSE OBJECTIVES

Government agencies have broad police power to act for the public good. This includes the ability to conduct extensive surveillance and gather substantial information about individuals and organizations. But the ability to conduct surveillance is delimited by various laws that protect privacy. Further, many people argue that we have moral claims to privacy, regardless of legal protections. As a result, the interface between surveillance and privacy is deeply contested. That interface is the subject of this course. In examining it, we will pursue a number of lines of inquiry. These include: What is privacy? Do we have moral rights or claims to privacy, and if so on what basis? For what reasons can we override privacy rights? What evidence do we have about the efficacy of privacy protections and surveillance initiatives? How do laws fostering surveillance and protecting privacy function in theory and in practice? Are our surveillance practices fair (and how might we make such a determination)?

Keeping in mind those lines of inquiry, the goals of this course are to:

1. Introduce some of the major issues in state surveillance and privacy;
2. Critically examine a number of different approaches to the above issues; and,
3. Develop students' abilities to articulate and discuss complex issues and arguments surrounding important social, political, legal, and moral questions.

II. REQUIRED TEXTS

Readings and other materials for this course will be made available via Learn@UW.

Note: I will occasionally add relevant news items, articles, and other content to Learn@UW. Although it does not appear on the syllabus, such material is fair game for exams.

III. ASSIGNMENTS, EVALUATION, AND GRADING

Your final grade will be based on two examinations, a final paper, and a couple of short writings. In addition, your active and thoughtful participation in class can positively affect your grade, up to half a letter grade. Attendance is not part of your grade.

SURVEILLANCE AND PRIVACY IN THE NEWS (SPiNS) – 10%

Two times during the semester you will be required to find a recent news story about a surveillance and privacy issue, trend, case, technology, law, practice, or related matter, prepare a summary of the story and its relation to course content in a paper of one page or less. The news story must have been published no more than 7 days before the presentation. If I call on you during your week, you will have 60 seconds for your presentation, timed strictly. You will turn the SPiNs into a dropbox on Learn@UW; in addition, you will hand to me a printout of the story and a short memo describing the story and its relevance. I will assign presentation weeks at random.

SPiNs will be graded on:

- Creativity and novelty (does it replicate lots of what other students have done? Is it merely a front-page story in national newspapers?)
- Terse, accurate representation of the story.
- Clear articulation of how the story is related to the course content (do you pick out a conceptual framework, law, case, technology, or issue that directly relates to your story?)

Your grade is based on whether your SPiN is a (1) creative, novel story that you (2) clearly, tersely, and accurately represent, and which (3) neatly and plausibly relate to course content.

Avoid social media stories unless they involve state-oriented surveillance.

EXAMS – 30% EACH

The exams will be a combination of multiple choice, short-answer, and essay questions. They will be designed to test your understanding of the material from the readings and class. You will not be asked to provide novel insights on the exams, but you will be asked to synthesize / make connections between materials from class. Note that we will NOT cover all of the readings and other materials during class time, but you will be responsible for understanding the material and incorporating it into exams. This is especially true of the less demanding material.

The midterm is on **October 20** during class. The final is on **December 19** from 7:25pm to 9:25pm, room TBD.

PAPER (30%)

You will be required to write a research paper of 8-10 pages on one of the topics I will provide in a separate document. I will allow you to choose a different topic only in exceptional cases, and only if you articulate the topic to me clearly, in writing, and I think it is worthwhile and well thought-out. I will hand out additional materials pertaining to the paper during the first few weeks of class.

The papers will be due **November 22**.

Grade Scale

A	94 and above
AB	89-93
B	84-88
BC	79-83
C	70-78
D	60-69
F	59 and below

I round to the nearest whole point (hence, 93.5 is rounded to 94 and 93.49 is rounded to 93).

I do not give extra credit, though excellent participation can count in one's favor up to half a letter grade. (Poor participation does not count against one's grade.)

IV. COURSE MANAGEMENT

SCHEDULE AND DUE DATES

The exam, paper, and SPIN due dates are fixed; I only allow for paper extensions and exam rescheduling for extraordinary and university-approved excuses. The reading schedule, however, is subject to change, depending upon on how quickly we move through the readings. I will likely pause to work through some related matters along the way. I will announce changes in class and on the course webpage.

The penalty for late work is 5% of assignment points per day late.

STUDENTS WITH DISABILITIES

It is my intention to fully include persons with disabilities in this course. To request academic accommodations, you must register as soon as possible with McBurney Disability Resource Center (1305 Linden Drive; 263-2741; www.mcburney.wisc.edu.)

RELIGIOUS OBSERVANCE

Any student for whom religious observances conflict with class attendances or mandatory academic requirements should let me know within the first two week of class in order that we can make appropriate arrangements for make-up work.

DISRUPTIONS

Please avoid disruptions (arriving late, talking in class, texting, reading non-course materials, or packing to leave before the period ends), and please turn off cell phones. I don't grade attendance. Thus, if you'd rather be doing something other than coming to class, you're free to do so.

CONTACTING THE INSTRUCTOR

I will be in my office during office hours (unless I post a note in advance on Learn@UW) and you can just drop by. Otherwise, email is the best way to communicate with me. Allow me a day to respond, though I'll generally respond more quickly than that. Please put "Legal Studies 460" and a brief description in the subject line. I get a lot of email, and that will make it easier to see.

V. ACADEMIC INTEGRITY

QUIZZES AND EXAMINATIONS: READ THIS CLOSELY

Food and beverages are prohibited in the classroom during the tests. Students must remove caps, hats, and sunglasses. The examinations will begin promptly at the beginning of the period and end when the proctor calls

time. Students must cease writing the moment the proctor calls time. After the proctor calls time, students receive no extra time to finish writing. Students who arrive late receive no extra time.

ACADEMIC MISCONDUCT: READ THIS CLOSELY

The overwhelming majority of students are hard working and honest about their schoolwork. The instructor has great respect for the effort students put into preparing for this course.

Unfortunately, there are occasional instances of academic misconduct ("cheating").

Part of the value of a degree from the University of Wisconsin-Madison lies in the standards of academic honesty and integrity maintained by the campus. To avoid academic misconduct, it is important that students understand how academic misconduct is defined in this course and the expectations the instructor has of each student.

Students have the right to expect that they and other students will be graded fairly, and students have rights of due process should they be accused of misconduct. Students also have an obligation to conduct their academic work with honesty and integrity according to University standards. Therefore, it is important that students:

- become familiar with the rules of academic misconduct;
- ask the instructor if you are unsure what behaviors constitute academic misconduct in a specific class or assignment;
- let your instructors know if you think you see incidents of misconduct;
- be aware that helping someone else to cheat is a violation of the rules and may result in misconduct charges against you.

The examinations are closed book. Students must remove and stow away everything from the desk, seat, floor, and area around them. Students must turn off and store cell phones and other electronic devices. If anyone sees papers, notes, readings (or any other materials), a cell phone, or any electronic/communicative device within a student's reach or area during the examination, then the instructor will assume that the student is cheating, and she will engage the academic misconduct process. Put another way: papers, notes, readings (or any other materials), a cell phone, or any electronic or communicative device within a student's reach or area during the examination is *prima facie* evidence of academic misconduct.

Before the examination, students will be required to certify that they have not engaged in academic misconduct while preparing for or during the course of a graded exercise.

ACADEMIC MISCONDUCT: WHAT TO DO IF YOU SEE SOMEONE CHEATING

Honest students are rightfully distressed when they see cheating occur. Students may sometimes see behaviors that the instructor does not notice. Cheating threatens the integrity of the classroom, and cheating can affect the grade distribution scale.

Students should feel free to discuss their concerns and observations with the instructor. He will want to know about these concerns or observations, and he will decide whether or not to take action in or to take steps to prevent cheating in the future. The instructor may ask you if you would be willing to testify at a hearing (although you will not be forced to do so). If you still have concerns after talking with the instructor, you may consult with your Academic Dean or with staff in Student Advocacy and Judicial Affairs.

Students may help other students by warning them that cheating is a violation of the UW System Administrative Code and may result in severe consequences. The instructor and the University do impose disciplinary sanctions upon students that commit academic misconduct. The instructor vigorously pursues all academic misconduct cases.

The rules about academic misconduct are located here: <http://students.wisc.edu/saja/misconduct/UWS14.html>.

VI. COURSE AGENDA AND READINGS

NOTE: Schedule is subject to change. There may be a guest lecture, which the schedule will change to accommodate.

WEEK 1: SEPTEMBER 6

INTRODUCTION

- Syllabus

SOME BACKGROUND

- Federal Bureau of Investigation, Office of the Inspector General, "A Review of the FBI's Investigation of Certain Domestic Advocacy Groups," pp. 1-28, 93-158, 173-191
- Peruse: *The Guardian*, NSA Files

WEEK 2: SEPTEMBER 13

SO WHAT?

- Waldron, "The Image of Balance"
- Posner, "An Economic Theory of Privacy"
- Gavison, "Privacy and the Limits of Law" (excerpt)

LEGAL FOUNDATIONS: FOURTH AMENDMENT AND PHYSICAL SEARCHES

WEEK 3: SEPTEMBER 20

POLICE POWERS, FOURTH AND FIFTH AMENDMENTS

- Solove, Rotenberg, Schwartz, "Law Enforcement, Technology, and Surveillance" (excerpt)
- Watch: Don't Talk to Cops parts I and II

WEEK 4: SEPTEMBER 27

PRETEXTS AND PROFILING

- *Whren v. U.S.*
- Schauer, *Profiles, Probabilities, and Stereotypes* (excerpts)
- Harris, *Profiles in Injustice* (excerpts)

WEEK 5: OCTOBER 4

PROFILING: SOME HISTORY AND RECENT CASES

- U.S. Department of Justice, "Investigation of the Ferguson (MO) Police Dept." **Bring copy (either paper or electronic) of report to class.**
- Joseph, "Feds Regularly Monitored Black Lives Matter Since Ferguson," *The Intercept*, <https://theintercept.com/2015/07/24/documents-show-department-homeland-security-monitoring-black-lives-matter-since-ferguson/>
- Stuntz, "Fourth Amendment and Distributions"
- Also peruse U.S. Department of Justice, "Investigation of the Baltimore City Police Department" (August 10, 2016).

WEEK 6: OCTOBER 11

PROFILING AND FAIRNESS; CATCH-UP

- *Utah v. Streiff*
- Bostock and Fessenden, "Stop-and-Frisk Is All but Gone from New York," http://www.nytimes.com/interactive/2014/09/19/nyregion/stop-and-frisk-is-all-but-gone-from-new-york.html?_r=0
- Rivera et al "A Few Blocks, 4 Years, 52,000 Police Stops," *New York Times* July 11, 2010
- Amand Cox, "Roland Fryer Answers Reader Questions about His Police Force Study," <http://www.nytimes.com/2016/07/13/upshot/roland-fryer-answers-reader-questions-about-his-police-force-study.html>
- Geller et al, "Aggressive Policing and the Mental Health of Young Urban Men"
- (Optional) Greenberg, "Studying New York City's Crime Decline: Methodological Issues"
- (Optional) Rudovsky and Rosenthal (debate), "The Constitutionality of Stop-and-Frisk in New York City" <http://www.pennlawreview.com/debates/index.php?id=49>

Watch: Frontline (Jelani Cobb), "Policing the Police," <http://www.pbs.org/wgbh/frontline/film/policing-the-police/>

WEEK 7: OCTOBER 18

REVIEW, CATCH-UP, EXAM

Exam: October 20, during class.

WEEK 8: OCTOBER 25

SURVEILLANCE AND TECHNOLOGY

- Olmstead (excerpt)
- Katz (excerpt)

WEEK 9: NOVEMBER 1

SURVEILLANCE AND TECHNOLOGIES, CONT'D

- *U.S. v. Miller* (excerpt)
- *Smith, Place, and Caballes* (excerpts)
- *Kyllo* (excerpt)
- *Florida v. Jardines* (excerpts)
- *U.S. v. Jones* (excerpts)
- *U.S. v. Riley* (excerpts)

WEEK 10: NOVEMBER 8

MORE AUTOMATION...

- Rich, "Machine Learning, Automated Suspicion Algorithms, and the Fourth Amendment"
- Angwin et al, "Machine Bias: There's software used across the country to predict future criminals. And it's biased against blacks."
- *Wisconsin v. Loomis* (2016 WI 68)

NATIONAL SECURITY SURVEILLANCE

WEEK 11: NOVEMBER 15

SURVEILLANCE AND TECHNOLOGIES; NATIONAL SECURITY

- FISA 1802 and 1804 (CR)
- McAdams (FLETC), Foreign Intelligence Surveillance Act: An Overview (CR)
- Watch: Frontline, "United States of Secrets" (link at Learn@UW)
- *Klayman v. Obama*

WEEK 12: NOVEMBER 22

- Privacy and Civil Liberties Oversight Board, "Report on the on the Telephone Records Program Conducted under Section 215 of the USA Patriot Act and on the Operations of the FISC"
- Danks, "A Modern Pascal's Wager for Mass Electronic Surveillance"

Papers due.

WEEK 13: NOVEMBER 29

STEPPING BACK: KNOWLEDGE OF SURVEILLANCE

- Clapper v. Amnesty International
- Rubel, "Privacy and the USA Patriot Act: Rights, the Value of Rights, and Autonomy"
- Maass, "How Laura Poitras Helped Snowden Spill His Secrets"
- Review Waldron, "The Image of Balance"

PUBLIC HEALTH SURVEILLANCE

WEEK 14: DECEMBER 6

OVERVIEW OF PUBLIC HEALTH SURVEILLANCE

- Gostin, "Surveillance and Public Health Research" 287-330
- Review: Centers for Disease Control, "HIV Surveillance and Statistics," <http://www.cdc.gov/hiv/topics/surveillance/basic.htm>
- Fairchild and Bayer, "Ethics and the Conduct of Public Health Surveillance" *Science*
- Middaugh, Hodge, and Cartter, Reply to Fairchild and Bayer *Science* 2004

Fairchild and Bayer, Response

WEEK 15: DECEMBER 13

DIABETES SURVEILLANCE IN NEW YORK CITY

- Fairchild, Diabetes and Disease Surveillance
- Chamany et al: "Tracking Diabetes: New York City's A1C Registry"
- Rubel, "Justifying Public Health Surveillance"

Cont'd, catch up

FINAL EXAM: DECEMBER 19, 7:25PM