



PRIVACY AND NEW TECHNOLOGY

OVERVIEW: This workshop allows students to act out a legislative hearing dealing with cell phones and whether or not the government must obtain a warrant before viewing content on a suspect's phone. It challenges students to think about how our conception of privacy can change with new technology, while at the same time allowing them to experience a mock legislative hearing.

TIME: At least **one hour**, ideally a little more to allow for follow-up discussion.

BACKGROUND KNOWLEDGE NEEDED: Students do not need any background knowledge before doing this workshop, though a basic familiarity with the 4th Amendment and the legislative process will make the lesson even more impactful.

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- I. **Icebreaker** (5 minutes)
- II. **How A Bill Becomes Law** (5 minutes)
- III. **Introduction of Bill** (8 minutes)
- IV. **Activity** (~45 minutes)
- V. **Wrapping Up the Lesson** (Remaining Time)
- VI. ****Student Handouts****
 - a. Legislators
 - b. P. Smith, privacy expert
 - c. A. Jones, defense attorney
 - d. J. Lee, Maine State Police
 - e. R. Thomas, Prosecutor

PRIVACY AND NEW TECHNOLOGY

– LESSON OUTLINE –

This lesson, created by the ACLU of Maine, uses real-life cases to explore the tension between freedom and safety that arises every time we develop new technology. In this interactive workshop, students will explore and discuss the challenges that new technologies – such as cellphone tracking – pose to the right to privacy. By conducting their own legislative hearing, students will also gain a better understanding of the process by which lawmakers debate topical issues such as these.

Note: All times are estimates and should be adjusted according to total time available.

I. ICEBREAKER (5 minutes)

Ask students how much they can learn about a person by looking at them, vs. by looking at their phone?

1. Ask students to name the things they can tell about you just by looking at you (hair color, height, tattoos, marital status) and write them on the board. There probably won't be many.
2. Then ask the students what they could tell about you if you handed over your cell phone (where you last drove based on map, who you talk to and for how long, what games you like to play, your grocery list, etc. You might need to prompt them, e.g. what if you looked through the photos on my phone? You would see that I have two cats) and write them on the board. This list should be much longer than the other one.
3. Use this exercise to illustrate how much information about us our phones store, without us really thinking about it.

II. HOW A BILL BECOMES LAW (5 minutes)

1. Sponsor introduces it, often at the request of a constituent
2. Public hearing in committee – spend some time discussing key aspects:
 - a. Testimony
 - b. Questions from legislators
3. Lobbying
4. Work session in committee
5. Committee vote – ought to pass/ought not to pass
6. Full floor vote

III. INTRODUCTION OF BILL (8 minutes)

1. Read summary of the proposed bill. (This is found atop all of the handout sheets so students will have it for reference later on.)
2. Explain terms:
 - a. *Warrant*: A written order issued by a judge or other authorized person commanding a law enforcement officer to perform some act incident to the administration of justice
 - b. *Probable cause*: Apparent facts discovered through logical inquiry that would lead a reasonably intelligent and prudent person to believe that an accused person has committed a crime
3. Talk about who might have an interest – who would make a good witness

This bill is based on an actual bill that was passed by the Maine Legislature and became law in 2013, titled **LD 1377, “An Act to Protect Cellular Telephone Privacy.”** For reference, [you can find the full text of the bill here.](#)

IV. ACTIVITY (~45 minutes)

1. **Divide students into 5 groups** – legislators; 2 groups for; 2 groups against. Pass out bill text and handouts. (5 minutes)
 - ❖ NOTE: *All student handouts needed for this workshop are included at the end of these instructions. There is one handout sheet for each of the five groups. Each one contains a summary of the bill at the top of the page followed by instructions and tips for the group to use.*
2. **Tell students that they have 12 minutes to prepare for the hearing.** Their instructions are on the handouts, but review them briefly. (15 minutes)
3. **Arrange the room with a table in the front for the legislators and chairs for those who will be testifying.** Remind students that each speaker will have two minutes to speak. Have students take their positions in the room. (2 minutes)
4. **Turn the hearing over to the chairperson of the committee,** who should call the hearing to order, ask for testimony from the citizens, and allow time for questions after each speaker. (12 minutes)
5. **After all testimony, ask the committee to debate the bill in front of the rest of the class.** They may also propose amendments and vote on them immediately. Advise students that they will have 5 minutes to debate and amend the bill. (5 minutes)
6. **Take a vote on the bill** and ask the legislators to explain why they voted the way they did. (5 minutes)

V. WRAPPING UP THE LESSON (Remaining Time)

After conducting the mock legislative hearing, you'll want to wrap up the lesson by making connections to real events taking place around privacy and technology. Below are a few ideas that should help you lead a good wrap-up discussion, as well as a list of free online resources from the ACLU. Feel free to pick and choose the ideas that work best for your classroom.

RECAP THE LATEST DEVELOPMENTS IN PRIVACY AND TECHNOLOGY:

Just in the past year there have been several major revelations on the scope of government surveillance – most notably coming from former NSA contractor Edward Snowden in 2013. If you haven't already covered the current events surrounding government surveillance and cell phone privacy, here are a few of the big developments to cover with your students:

[Supreme Court Says Phones Can't Be Searched Without Warrant](#) (New York Times)

[NSA tracking cellphone locations worldwide, Snowden documents show](#) (Washington Post)

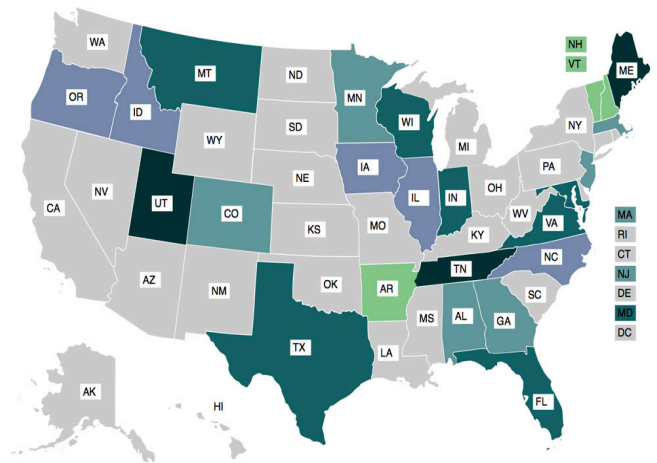
[Cellphone data spying: It's not just the NSA](#) (USA Today)

MAKE CONNECTIONS TO BROADER ISSUES:

Any of the following topics should lead to good discussion. Pick the ones that fit your class best and throw in any of the additional suggested questions if the conversation dries up.

**** WHY IS MAINE UNIQUE? Draw on your students' knowledge of their state and its politics to discuss why Maine has been so successful in passing privacy legislation:**

Most of the big changes to privacy laws in the past few years have come at the state level and not from the federal government. Interestingly, Maine has been one of the national leaders in this area, passing several new laws (including the one this workshop revolves around) meant to protect the privacy rights of individuals. *But why? What makes Maine unique? Is it our political landscape, the attitudes of our citizens, or something else that allows for privacy bills to be greeted so warmly here?*



The darker states have greater privacy protections for technology. As you can see, Maine is positioned as a national leader alongside Utah and Tennessee. [CHECK OUT THE FULL INTERACTIVE MAP ONLINE.](#)

**** HOW MUCH DO WE VALUE PRIVACY? Draw on your students' experiences with social media to discuss the psychology of an individual's need (or lack thereof) for privacy:**

Ultimately government should reflect the will of the people, but do the people really want privacy anymore? In a [recent Supreme Court case](#) involving GPS searches, Justice Samuel Alito stated that "expectation of privacy" is a changing concept and that although warrantless tracking might be unconstitutional today, if society shifts away from valuing privacy that one day he might find similar surveillance to be acceptable. *Is he right? Should the government's ability to conduct surveillance be related to the value its people actually place on privacy? How might we interpret the effect of social media in light of recent revelations around government surveillance?*

**** DO PRINCIPALS GET AN EXCEPTION? Draw on your students' experiences with school-issued laptops to explore what it feels like to be watched and what the proper role of a school is in this debate:**

Most schools have the ability to monitor the screens of any computer used on their network. As such, most students have experienced this surveillance on a personal level, or are at least aware that it exists. *Putting aside the legal questions, how does this make students FEEL? Does it change viewing habits? Is it comforting to know someone is helping to keep them safe or does it feel like an invasion of privacy? How should schools be regulated in comparison to police?*

**** HOW SHOULD LAWS EVOLVE? Draw on your students' knowledge of history to discuss how the writers of the Constitution might have viewed our modern day debate over privacy:**

How should courts adapt principles that were enacted in the late 1700s to problems that never could have been imagined at that time? (This is a great chance to discuss differences between strict constructionism, originalism, textualism, etc.) *Are cell phones unique from a privacy perspective, or should they be treated the same as "old-school" items like diaries or cameras? How might generational differences affect how specific groups of people react to changes in technology? Which branch of government is best suited to make decisions about privacy and new technology?*

FREE ONLINE RESOURCES

The ACLU of Maine updates our blog multiple times every week. We frequently write about privacy and its relation to new technology. So if you want to discuss the most current local topics with your students, consider checking out a list of our most recent posts:

www.aclumaine.org/tags/privacy

For updates on national privacy, check out the ACLU's blog on civil liberties in the digital age:

www.aclu.org/blog/free-future

Here are some other free resources if you want to explore related issues of government surveillance in more detail with your students:

[You Are Being Tracked: Automatic License Plate Readers](#)

[Rein in the Surveillance State](#)

Bill Summary: An Act To Protect Cell Phone Privacy

This bill requires law enforcement agencies and officers to get a warrant based on probable cause before obtaining content contained on cell phones, including text messages, voicemail, photos, and call records.

Instructions for Legislators

First, select a chairperson. The chairperson is responsible for seeing that each committee member's views are heard during committee meetings, for chairing the hearing, for calling witnesses to testify, and for announcing the committee's decision. During the hearing, the chairperson should make sure that speakers do not take more than their allotted time and keep order.

Committee members should review the proposed law and prepare questions for the witnesses whose names are listed below. Each legislator should have at least one question prepared to ask one witness.

Each witness will have up to two minutes to speak, plus time for questions.

Witnesses:

In favor of the proposed law:

P. Smith, privacy advocate

A. Jones, defense attorney

Against the proposed law:

J. Lee, Maine State Police

R. Thomas, prosecutor

1. As a legislator, how would you vote on this law? Be ready to explain your answer.
2. What other arguments can you think of either for or against this proposed law?
3. Can you think of other possible solutions to this problem? Should you amend the law?

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Instructions for P. Smith: privacy expert, in favor of the bill

Select a spokesperson. Work together to prepare a two-minute argument that best expresses the views of P. Smith and any additional arguments you can think of to support why this law should be passed.

Examples:

The police aren't allowed to read our personal letters without a warrant, and there's no reason our texts and cell phone records should be any different. Once that happens, we will be living in a total surveillance state.

People act differently when they know they are being watched, even when they aren't doing anything wrong. If we think our texts are being read, we can't go about our daily lives in a normal way.

1.) What other arguments can you think of for this proposed law?

2.) Can you think of other possible solutions to this problem?

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Instructions for A. Jones: defense attorney, in favor of the bill

Select a spokesperson. Work together to prepare a two-minute argument that best expresses the views of A. Jones and any additional arguments you can think of to support why this law should be passed.

Examples:

We can't be sure that a police officer has good intentions for obtaining this info, which is why they should get permission from a neutral person like a judge, in the form of a warrant.

Reading a person's text messages and cell phone records without a warrant is unconstitutional because it violates the 4th Amendment protection against unreasonable search and seizure.

1.) What other arguments can you think of for this proposed law?

2.) Can you think of other possible solutions to this problem?

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Instructions for J. Lee: Maine State Police, against the bill

Select a spokesperson. Work together to prepare a two-minute argument that best expresses the views of J. Lee and any additional arguments you can think of to support why this law should be rejected.

Examples:

Police officers are honorable and should be trusted to do their jobs and not break the law. We don't need more laws putting restrictions on what we can do.

This law could make us all less safe by making it harder for the police to intercept the communications of dangerous people.

1.) What other arguments can you think of against this proposed law?

2.) Can you think of other possible solutions to this problem?

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Instructions for R. Thomas: Prosecutor, against the bill

Select a spokesperson. Work together to prepare a two-minute argument that best expresses the views of R. Thomas and any additional arguments you can think of to support why this law should be rejected.

Examples:

We need all the tools we can get to collect information about people who might be breaking the law, so that it is easier to bring them to justice.

Getting a warrant could take too much time and by then it might be too late.

1.) What other arguments can you think of against this proposed law?

2.) Can you think of other possible solutions to this problem?