



# **2016-2017**

## **DISCUSSION OUTLINE**

### ***Privacy: Maintaining a Sense of Self in Our Interconnected World***

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# Overview of Discussion

***“Problem-solving Discussion is an effort on the part of a small group to reach a solution to a problem through informal interchange of facts, inferences, and judgments. This method of discussion seeks consensus rather than majority rule. The focus of this event should be the encouragement of cooperation and critical thinking to arrive at the collective goal of better understanding and problem solving.” (MSHSL Rules and Policies Manual)***

The purpose and goal of the category of Discussion is to help students learn critical thinking skills, what constitutes quality research, effective group communication tactics, and problem-solving techniques. Unlike other forensics activities which are adversarial in nature, Discussion emphasizes that participants utilize consensus building tools to accomplish their goals. Encouraging a thoughtful exchange of substantive information, positive group interactions, and full participation by all should be the goal of every coach, student, and judge involved in this category. Game-playing and confrontational verbal (or non-verbal) tactics should be dissuaded.

## Overview of This Year’s Topic

In 1890, future U.S. Supreme Court justice Louis Brandeis wrote: “Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual ... the right ‘to be let alone’ ... Numerous mechanical devices threaten to make good the prediction that ‘what is whispered in the closet shall be proclaimed from the house-tops.’” The invention to which Brandeis was referring? The portable camera. Yet it is doubtful Brandeis could have foreseen the tussle between the competing interests of privacy and national security in our modern era. Coupled with the fact that the word “privacy” appears nowhere in the text of the U.S. Constitution, it is easy to see how what should be a simple subject can become remarkably complex. This year’s topic is intended to explore that complexity and determine where the boundaries of being “left alone” intersect and interact with, amongst others, legitimate business, governmental, and national security concerns. (<http://www.brandeis.edu/now/2013/july/privacy.html>)

# TASK INFORMATION

## Tasks at Invitational Tournaments

While the Minnesota State High School League does not limit the use of topic areas used for Discussion at invitational speech tournaments, the Discussion Committee recommends the following “schedule” to give students experience with all parts of the outline:

- **January – February 5: State Topics (I. Government/Public Space)**
- **February 6 – February 26: Section Topics (II. Corporate/Workplace/Consumers)**
- **February 27 – March: Subsection Topics (III. Personal/Individual)**

**Tournament Managers Please Note:** Whether or not you choose to follow the above schedule, it is vital that you communicate to your participating schools which part(s) of the outline you will use and how you will be organizing your Discussion rounds.

## Tasks at Subsection and Section Tournaments

Tasks for subsection and section tournaments will follow the procedure instituted in the 2016 season – Tournaments will no longer receive a full slate of tasks from which to choose. Instead they will receive a set of four or five tasks for those tournaments. Those tasks will be date specific; unique to one or two sets of tournaments and will not be repeated at other tournaments. Tasks may not be shared beforehand with teams competing at subsection or section tournaments.

## Tasks at State Tournament

State tournament tasks will follow the same procedure as previous seasons. Separate sets will be written for each day and chosen at random for each round of competition.

# ***Privacy: Maintaining a Sense of Self in Our Interconnected World***

The purpose of this outline is to examine the intersection of the legal, philosophical, and practical impacts of privacy across the spectrum of how people live their lives. It is not intended to focus solely on one specific aspect, but to integrate all three into solving the questions posed in the tasks.

## **2016 - 2017 MSHSL Discussion Topic Outline**

### **I. Government/Public Space – State Topic**

- A. Archiving and retrieval of official government communications (emails, voicemails, etc.).
- B. Collection of and access to personal information – Changing attitudes towards privacy (what should the government be allowed to know about us?).
- C. National security vs. individual liberty -- where does the line fall? (cyberwar/security vs. individual privacy).
- D. Protecting privacy across international borders (ex - Wikileaks, whistle blowers, varying degrees of legal protections).
- E. Freedom of Information Act -- What should and should not be considered “public”.
- F. Disclosure of access requests – Who should be allowed to request information -- of any kind -- and should you be allowed to know?
- G. Surveillance of everyday activities (technologies, profiling, class/racial disparities).

### **II. Corporate/Workplace/Consumers – Section Topic**

- A. Whistle blowers - (Ethical considerations vs. privacy implications).
- B. Social media policies - Policing off the clock behavior.
- C. Monitoring of personal activities while on duty (results vs. time-on-task).
- D. Online reviews/surveys (Foursquare, Yelp, Google): Fact or fiction? Recourse?
- E. Public disclosure of private information (wages/salaries, health information, criminal backgrounds).
- F. Video/audio surveillance -- of consumers and companies (undercover and/or visible).
- G. Data breach accountability and responsibility (disclosure requirements, fiduciary “responsibility”).

### **III. Personal/Individual – Subsection Topic**

- A. Terms of Service/Agreement - Who reads them; should it matter? -- Profiting from “privacy”.
- B. Effectiveness of laws designed to protect personal privacy (HIPPA, FERPA, etc).
- C. Public disclosure/shaming of private behavior/communications.
- D. Advanced surveillance technologies (drones, auto-scanners, infrared cameras, biometrics).
- E. School-related privacy concerns (K-12, post-secondary) -- Students, staff, disclosure, public access.
- F. Encryption of and access to personal data (law enforcement, social media beneficiaries).
- G. Expectations of privacy across international borders (Wikileaks, whistleblowers, varying degrees of legal protections).

# BIBLIOGRAPHY

The bibliography is intended as a starting point for researching this topic, with each sub-point having at least two books/articles. General interest web sites are listed at the end. It is not meant to be exhaustive and presents a fraction of the resources available to prepare for Discussion rounds. A source listed in one area may be applicable to other subtopic points.

## I. GOVERNMENT/PUBLIC SPACE

### A. Archiving and Retrieval of Official Government Communications

1. Criteria for Managing Email Records in Compliance with the Managing Government Records Directive. *National Archives and Records Administration*, 6 April 2016. <http://www.archives.gov/records-mgmt/email-management/2016-email-mgmt-success-criteria.pdf>
2. Should Governments Bother Archiving Social Media? *Government Technology*, 15 August 2014. <http://www.govtech.com/Should-Governments-Bother-Archiving-Social-Media.html>

### B. Collection of and Access to Personal Information; Changing Attitudes Towards Privacy

1. Americans' Attitudes About Privacy, Security, and Surveillance. Madden, Mary and Rainie, Lee. *Pew Research Center*, 20 May 2015. <http://www.pewinternet.org/2015/05/20/americans-attitudes-about-privacy-security-and-surveillance/>
2. Public Opinion on Privacy. *Electronic Privacy Information Center*, May 2016. <https://epic.org/privacy/survey/>
3. NSA Ends Sept. 11- Era Surveillance Program. *NPR*, 29 November 2015 <http://www.npr.org/sections/thetwo-way/2015/11/29/457779757/nsa-ends-sept-11th-era-surveillance-program>

### C. National Security vs. Individual Liberty

1. Senate Passes Freedom Act, Ending Patriot Act Provision Lapse. Nelson, Steven. *US News and World Report*, 2 June 2015. <http://www.usnews.com/news/articles/2015/06/02/senate-passes-freedom-act-ending-patriot-act-provision-lapse>
2. Americans feel the tensions between privacy and security concerns. *Pew Research Center*, 19 February 2016. <http://www.pewresearch.org/fact-tank/2016/02/19/americans-feel-the-tensions-between-privacy-and-security-concerns/>
3. Controversial new cybersecurity law may compromise privacy. *Scienceline*, 24 January 2016. <http://scienceline.org/2016/01/controversial-new-cybersecurity-law-may-compromise-privacy/>

### D. Protecting Privacy Rights Across International Borders

1. The Whistleblower Protection Act: An Overview. *Congressional Research Service*. 12 March 2007 <http://www.fas.org/sqp/crs/natsec/RL33918.pdf> (Whistleblower Protection Act)  
\*Also of interest is *Intelligence Community Whistleblower Protection Act and Presidential Policy Directive 19*
2. *Data Across Borders*, *The Global Legal Post*, 6 December 2013. <http://www.globallegalpost.com/commentary/data-across-borders-96787229/>
3. *EU watchdogs permit Privacy Shield to run for one year*. *BBC News*, 26 July 2016. <http://www.bbc.com/news/technology-36893920>

## E. Freedom of Information Act

1. Freedom of Information Act: Frequently Asked Questions. United States Department of *Justice*. <https://www.foia.gov/faq.html>
2. Court: Private-Account Email Can Be Subject to FOIA. *Politico*, 5 July 2016 <http://www.politico.com/story/2016/07/private-email-freedom-of-information-225100>
3. Your Right To Federal Records. *General Services Administration* (GSA). [http://www.gsa.gov/graphics/staffoffices/Your\\_Right\\_to\\_Federal\\_Records.pdf](http://www.gsa.gov/graphics/staffoffices/Your_Right_to_Federal_Records.pdf)

## F. Encryption of and Access to Personal Data

1. Accessing personnel records: A balancing act between privacy, public's right to know. Student Press Law Center, 8 April 2015. <http://www.splc.org/article/2015/04/accessing-personnel-records>
2. Privacy - Government Information Requests- Apple, Inc. 2016. <http://www.apple.com/privacy/government-information-requests/>
3. Overview of the Privacy Act of 1974 (and related). *U.S. Department of Justice*. <https://www.justice.gov/opcl/privacy-act-1974>

## G. Surveillance of Everyday Activities

1. Secret Cameras Record Baltimore's Every Move From Above. *Bloomberg BusinessWeek*, 23 August 2016. <https://www.bloomberg.com/features/2016-baltimore-secret-surveillance/>
2. How our culture of surveillance dictates our lives. *USA Today*, 24 January 2014. <http://www.usatoday.com/story/cybertruth/2014/01/24/how-pervasive-surveillance-influences-how-we-live/4808699/>

## II. CORPORATE/WORKPLACE/CONSUMERS

### A. Whistle Blowers.

1. 11 Common Workplace Privacy Issues (and 4 Common-Law Claims). *HR Daily Advisor*, 11 December 2013 <http://hrdailyadvisor.blr.com/2013/12/11/11-common-workplace-privacy-issues-and-4-common-law-claims-2/>
2. A better approach for corporate whistleblowers. *National Constitution Center*, 9 January 2012. <http://blog.constitutioncenter.org/2012/01/a-better-approach-for-corporate-whistleblowers/>

### B. Social Media Policies

1. Why Monitoring Employees' Social Media Is a Bad Idea. *Time*, 22 May 2015. <http://time.com/3894276/social-media-monitoring-work/>
2. Laws Try to Resolve Employer-Employee Social Media Conflicts. *Wall Street Journal*, 28 May 2015. <http://blogs.wsj.com/riskandcompliance/2015/05/28/laws-try-to-resolve-employer-employee-social-media-conflicts/>

### C. Monitoring Of Personal Activities While On-Duty

1. Balancing Employee Monitoring with Privacy Concerns. *Business News Daily*, 27 June 2014. <http://www.businessnewsdaily.com/6685-employee-monitoring-privacy.html>.
2. Monitoring your employees through GPS: What is legal, and what are best practices? *Greensfelder*, 18 February 2016. <http://www.greensfelder.com/business-risk-management-blog/monitoring-your-employees-through-gps-what-is-legal-and-what-are-best-practices>

#### D. On-Line Reviews/Surveys

1. We Say We Want Privacy Online, But Our Actions Say Otherwise. *Harvard Business Review*, 16 October 2016. <https://hbr.org/2015/10/we-say-we-want-privacy-online-but-our-actions-say-otherwise>
2. Sued For Posting Negative Online Business Review? Vazquez, Christina. *Local 10 News*, 16 September 2015. <http://www.local10.com/consumer/know-your-rights/sued-for-posting-negative-online-business-review->

#### E. Public Disclosure of Private Information

1. Employee Privacy Laws. *Fair Measures, Inc.* (A general overview that does include articles relating to this sub-point.) <https://www.fairmeasures.com/workplace-issues/employee-privacy-laws/>
2. Publication of Private Facts. *Digital Media Law Project.* <http://www.dmlp.org/legal-guide/publication-private-facts>

#### F. Video/Audio Surveillance

1. 6 steps to avoiding liability from video surveillance in the workplace. *Inside Counsel*, 19 May 2015. <http://www.insidecounsel.com/2015/05/19/6-steps-to-avoiding-liability-from-video-surveilla>
2. Workplace Monitoring: Is it Ethical and Legal? *Sanford-Brown Blogs*, 20 January 2014. <http://www.sanfordbrown.edu/Student-Life/blog/January-2014/Workplace-Monitoring-Is-It-Ethical-And-Legal>

#### G. Data Breach Accountability and Responsibility

1. Target's data breach highlights state role in privacy. *USA Today*, 10 February 2014. <http://www.usatoday.com/story/news/nation/2014/01/16/target-data-breach-states-privacy/4509749/>
2. Privacy will hit tipping point in 2016. *CNBC*, 9 November 2015. <http://www.cnn.com/2015/11/09/privacy-will-hit-tipping-point-in-2016.html>

### III. PERSONAL/INDIVIDUAL

#### A. Terms of Service/Agreement -- Profiting from "privacy"

1. Terms Of (Ab)Use. *Electronic Frontier Foundation.* <https://www.eff.org/issues/terms-of-abuse>
2. 'Terms and Conditions May Apply': The Death of Privacy. *The Daily Beast*, 11 July 2013. <http://www.thedailybeast.com/articles/2013/07/11/terms-and-conditions-may-apply-the-death-of-privacy.html>
3. Microsoft's new small print – how your personal data is (ab)used. *EDRi*, 17 June 2015. <https://edri.org/microsofts-new-small-print-how-your-personal-data-abused/>. (This is one example of many of how tech companies use TOS agreements to "strip mine" personal data. Round tasks may include any of these types of agreements and their implications.)
4. Companies are making money from our personal data – but at what cost? *The Guardian*, 31 August 2016. <https://www.theguardian.com/technology/2016/aug/31/personal-data-corporate-use-google-amazon>

## B. Effectiveness of Laws Designed to Protect Personal Privacy

1. Few Consequences For Health Privacy Law's Repeat Offenders. *ProPublica*, 29 December 2015. <https://www.propublica.org/article/few-consequences-for-health-privacy-law-repeat-offenders>
2. Privacy Concerns for ClassDojo and Other Tracking Apps for Schoolchildren. *New York Times*, 16 November 2014. <http://www.nytimes.com/2014/11/17/technology/privacy-concerns-for-classdojo-and-other-tracking-apps-for-schoolchildren.html>
3. What Parents Need To Know About Big Data And Student Privacy. *NPR*, 28 April 2014. <http://www.npr.org/sections/alltechconsidered/2014/04/28/305715935/what-parents-need-to-know-about-big-data-and-student-privacy>

## C. Public Shaming/Disclosure of Private Behaviors/Communications

1. Ronson, Jon. *So You've Been Publicly Shamed* (2015). ISBN #1501231847.
2. Media and Public Shaming: Drawing the Boundaries of Disclosure. *Reuters Institute for the Study of Journalism*. <http://reutersinstitute.politics.ox.ac.uk/publication/media-and-public-shaming>
3. What is the price of public shaming? *CBC News*. 24 March 2016. <http://www.cbc.ca/news/canada/toronto/public-shaming-cbc-forum-1.3506189>

## D. Advanced Surveillance Technologies

1. New surveillance technology can track everyone in an area for several hours at a time. *Washington Post*, 5 February 2014. [https://www.washingtonpost.com/business/technology/new-surveillance-technology-can-track-everyone-in-an-area-for-several-hours-at-a-time/2014/02/05/82f1556e-876f-11e3-a5bd-844629433ba3\\_story.html](https://www.washingtonpost.com/business/technology/new-surveillance-technology-can-track-everyone-in-an-area-for-several-hours-at-a-time/2014/02/05/82f1556e-876f-11e3-a5bd-844629433ba3_story.html)
2. Privacy Fears Grow as Cities Increase Surveillance. *New York Times*, 13 October 2013. [http://www.nytimes.com/2013/10/14/technology/privacy-fears-as-surveillance-grows-in-cities.html?\\_r=0](http://www.nytimes.com/2013/10/14/technology/privacy-fears-as-surveillance-grows-in-cities.html?_r=0)
3. Location Privacy: The Purview of the Rich and Indigent. *Krebs On Security*, 5 September 2016. <http://krebsonsecurity.com/2016/09/location-privacy-the-purview-of-the-rich-and-indigent/?platform=hootsuite>.

## E. School Related Privacy Concerns (K12-post secondary)

1. Student Computer Use Raises Privacy Concerns. Black, Lisa. *Chicago Tribune*, 28 September 2014 <http://www.chicagotribune.com/news/ct-school-tablets-privacy-met-20140928-story.html>
2. In Congress, New Attention To Student-Privacy Fears. *NPR*, 23 March 2015. <http://www.npr.org/sections/ed/2015/03/23/393399168/in-congress-new-attention-to-student-privacy-fears>
3. Education Research Needs Data. Hansen, Michael. *US News and World Report*, 25 March 2016. <http://www.usnews.com/opinion/knowledge-bank/articles/2016-03-25/student-data-privacy-and-education-research-must-be-balanced>

## F. Encryption of and access to personal data

1. Top Data Privacy Issues To Scare You In 2016. *InformationWeek*, 6 January 2016. <http://www.informationweek.com/strategic-cio/security-and-risk-strategy/top-data-privacy-issues-to-scare-you-in-2016/a/d-id/1323752>



2. Security Experts Oppose Government Access to Encrypted Communication. *New York Times*, 7 July 2015. [http://www.nytimes.com/2015/07/08/technology/code-specialists-oppose-us-and-british-government-access-to-encrypted-communication.html?\\_r=0](http://www.nytimes.com/2015/07/08/technology/code-specialists-oppose-us-and-british-government-access-to-encrypted-communication.html?_r=0)

G. Protecting privacy across international borders

1. Private lives are exposed as WikiLeaks spills its secrets. *Associated Press*, 23 August 2016. <http://www.mprnews.org/story/2016/08/23/wikileaks-collateral-damage-found>
2. Privacy Rights, Free Speech And The EU's Bid To Reach Beyond Its Borders. *Forbes*, 11 September 2015. <http://www.forbes.com/sites/danielfisher/2015/09/11/privacy-rights-free-speech-and-the-eus-bid-to-reach-beyond-its-borders/#16a637fb1cc0>
3. Policy Challenges of Cross-Border Cloud Computing. *United States International Trade Commission*, May 2012. [https://www.usitc.gov/journals/policy\\_challenges\\_of\\_cross-border\\_cloud\\_computing.pdf](https://www.usitc.gov/journals/policy_challenges_of_cross-border_cloud_computing.pdf)

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- Electronic Frontier Foundation ([www.eff.org](http://www.eff.org))
- General Services Administration <http://www.gsa.gov/portal/content/104250>
- Wired Magazine, [www.wired.com](http://www.wired.com). (Contains regular feature articles about online privacy and related issues.)
- Federal Trade Commission <https://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy>
- Family Educational Rights and Privacy Act <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- Health Insurance Portability and Accountability Act <http://www.hhs.gov/hipaa/index.html>

**Books:**

- Angwin, Julie. *Dragnet Nation: A Quest for Privacy, Security, and Freedom in a World of Relentless Surveillance*. ISBN: 0805098070
- Kennedy, Caroline and Alderman, Ellen. *The Right To Privacy*. (A bit dated but does offer some interesting case studies that still apply today.)
- Schneier, Bruce. *Data and Goliath: The Hidden Battles to Collect Your Data and Control Your World*. ISBN: 978-0393244816.
- Rotenberg, Marc. *Privacy in the Modern Age: The Search for Solutions*. ISBN: 1620971070
- O’Neil, Cathy. *Weapons of Math Destruction: How Big Data Increases Inequity and Destroys Democracy*. ISBN: 978-0553418811

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