Why Privacy Matters: Debunking the Nothing-to-Hide Argument

In today’s society, the word “privacy” has become ubiquitous. We see it every day: on HIPAA forms, social networking sites, online transactions, et cetera. In his essay, “Why Privacy Matters Even If You Have ‘Nothing to Hide’”, published in May of 2011, Professor Daniel J. Solove argues that the issue of privacy affects more than just individuals hiding a wrong. Solove jumps right into his dissection of the “I’ve got nothing to hide” argument, which is so often mentioned in discussions regarding the government’s gathering and analysis of our personal information. He explains how this argument stems from an inadequate definition of what privacy is and the value that privacy possesses. The adherents of the nothing-to-hide argument state that because the information will not be disclosed to the public, the “privacy interest is minimal, and the security interest in preventing terrorism is much more important.” (Solove, para. 8)

Solove states that discussions about government data collection and surveillance do not focus on the problems associated with the processing and storage of the information gathered. Rather, they only focus on the collection and use of personal data. He argues that the process of information storage and analysis creates a power imbalance between people and the government. They collect small, seemingly harmless, pieces of information about us, which they combine together to make assumptions about our lives. Because we are not aware of the data that they possess, and because this data has been taken out of context, we are unable to correct any errors or misconceptions that the government might have about our actions. Solove explains how the nothing-to-hide argument focuses only on one or two minute types of privacy problems, while ignoring the others. Privacy is not often threatened by a single extreme act, but rather by a slow accumulation of small unobtrusive acts. Each act may seem innocuous, but in time “the government will be watching and knowing everything about us.” (Solove, para. 30) Solove states that even if you have nothing to hide, “the government can harm [us] inadvertently, due to errors or carelessness.” (para. 32) In conclusion, he contends that when you understand the vast amount of privacy
concerns associated with government data collection and surveillance, the nothing-to-hide argument is less persuasive.

Daniel J. Solove is a law professor at the George Washington University Law School. He is an internationally known expert in privacy law and has authored nine books. He is also the founder of TeachPrivacy, a company that provides privacy and data-security training programs. This essay is an excerpt from his new book, Nothing to Hide: The False Tradeoff Between Privacy and Security, published in May of 2011 by Yale University Press. The essay was also published in May of 2011 in *The Chronicle of Higher Education*, a newspaper and website that presents news and information to academic professionals. This essay is a response in a continued discourse regarding the invasions of privacy and other privacy issues. Solove was so often confronted with the power and ubiquity of the nothing-to-hide argument that it became the exigent event that led to this particular discourse. This kairotic essay addresses the implications of continued government data collection and surveillance, before these practices become signed into permanent law as part of the USA PATRIOT Act. Solove intends to refute the “nothing-to-hide” arguments by systematically acknowledging each claim and then using logic to discredit them. He introduces potential problems of government information gathering and surveillance that are often overlooked, with an intention to remind the audience of the importance of privacy. Solove effectively convinces the audience that the “nothing-to-hide” argument does not adequately cover all of the problems that arise from government information gathering and surveillance: through building his ethos as a moral and credible writer by demonstrating his scholarly credibility and expertise, as well as through establishing his logos by presenting the audience with logical arguments and conclusions, and finally through developing his pathos through the use of dramatic and emotional language in order to appeal to the audience’s emotions.

Throughout the introduction of this excerpt, Solove focuses on building his intrinsic ethos and creates an ethical appeal to the audience. It is formatted as a preview of what will be discussed in greater detail in the body of the essay. He begins by stating a common syllogism that is the antithesis to Solove’s
argument; “I’ve got nothing to hide…only if you’re doing something wrong should you worry, and then you don’t deserve to keep it private.” (Solove, para 1) This statement juxtaposes the title and builds trust between Solove and the readers by recognizing a common belief held by members of the audience. In order to establish a relationship and persuade the audience, Solove begins strengthening his perceived moral character by alternating between the two opposing points-of-view; effectively proving that he is fair-minded. His effort to objectively explain the reasoning behind the nothing-to-hide argument creates a sense of good-will between Solove and the audience. To bolster the credibility of his claims, Solove quotes fellow privacy experts, authors, and scholars throughout his introduction. For example, he quotes Nobel Prize winner Aleksandr Solzhenitsyn, who declared “everyone is guilty of something or has something to conceal. All one has to do is look hard enough to find what it is.” (para. 6) These quotations enable Solove to identify with the audience and speak to his credibility and trustworthiness.

Solove further establishes his ethos through demonstrating his scholarly credit and portraying his expertise into the historical and international discourses regarding privacy concerns. In an effort to expand the audience to include international communities, Solove explains how privacy concerns are not just associated with the American government, but are an international topic of debate. He describes how the British government installed millions of cameras throughout cities in Britain and then declared, “if you’ve got nothing to hide, you’ve got nothing to fear.” (para. 3) In addition to appealing to a broader audience, Solove successfully portrays his scholarly credit with the historical discourse of privacy by citing historical works of literature; such as, Nineteen Eighty-Four, written by George Orwell, and The Trial, written by Franz Kafka. By acknowledging these historically famous books concerning the issues of government surveillance and data collecting, it is established that the discussion of privacy rights has previously been a topic of debate. This informs the audience that the rhetorical discourse regarding privacy rights is long-term and significant and establishes that Solove’s expertise in regards to the on-going discourse revolving around privacy.

While the introduction to Solove’s essay is mainly focused on creating an ethical appeal to the audience; he
reinforces his ethos throughout the paper by first, managing the rhetorical distance between himself and the audience, and secondly, by speaking in an active voice. These choices have the intent to establish and reinforce his authority to engage in this rhetorical discourse. The use of active subjects and verbs implies a sense of immediacy to the audience. In addition, Solove is effectively claiming responsibility of his statements, which reinforces his authority to the audience. For example, Solove argues, “regardless of whether we call something a ‘privacy’ problem, it still remains a problem, and problems shouldn’t be ignored.” (para. 12) This statement infers a sense of urgency to the audience and communicates a sense of authority on Solove’s account. By oscillating between speaking in the first, second, and third persons, throughout the essay, Solove is able to appeal to the audience in different ways at specific times. For example, during the introduction, Solove uses the third person in order to establish a sense of authority before he states his thesis. He concedes that the nothing-to-hide argument is formidable and he intends to illustrate how “it stems from certain faulty assumptions about privacy and its value” (Solove, para. 8).

The effect of transitions in grammatical person from first person to third person creates a “we-they” relationship, where Solove and the audience are the “we”, and are on one side of the argument, and the adherents of the nothing-to-hide argument are the “they”, and are on the other side. For example, Solove states that it is impossible to reduce privacy to one simple idea and “we need not do so.” (Solove, para. 11) This creates an equal relationship between Solove and the audience. He is not portraying himself as a superior and therefore creates good-will for the audience. In contrast, he argues that those who support the nothing-to-hide argument do not recognize the underlying problems because they do not cause a visceral type of injury, “proponents of the nothing-to-hide argument demand a dead-bodies type of harm.” (Solove, para. 26) The astute word choice creates a division between the two sides of the argument. The audience would not want to belong to the group that demands a “dead-bodies type of harm,” therefore this reinforces the solidarity of connection between Solove and the audience. Because Solove effectively portrayed his intrinsic ethos throughout the introduction to the audience, he continues his use of transitions in grammatical person throughout the remainder of the essay to logically and emotionally appeal
Solove devotes the body of his essay to logically appealing to the audience. He does this by examining the weaknesses of the deductive arguments that make up the “nothing-to-hide” argument, and by explaining the inductive reasoning behind his argument. He begins by explaining that the adherents of the nothing-to-hide argument do not accurately define privacy. By analyzing how complex privacy is, and how it can not be reduced to one singular definition, he logically appeals to the audience and infers that some of the assumptions of the nothing-to-hide arguments are false. He states that privacy “is a plurality of different things that do not share any one element but nevertheless bear a resemblance to one another.” (Solove, para. 10) He then gives examples of privacy invasions to support his statement; such as, voyeurism, blackmail, and improper use of personal data. These tangible examples enable the audience to further understand the complex nature of defining privacy. Another example of a deductive weakness in the nothing-to-hide argument is the “assumption that privacy is about hiding bad things.” (Solove para. 17) Solove argues that accepting this assumption, is not acknowledging the many things that are not bad that people might want to hide, which could lead to the inhibition of First Amendment rights. Through Solove’s explanations of the weaknesses in the nothing-to-hide argument, he created an opportunity to logically appeal to the audiences inductive reasoning. Next, Solove begins building his argument with definitions and examples. He begins with the logical explanation of aggregation, which Solove defines as the “fusion of small bits of seemingly innocuous data.” (para. 19) For example, if someone bought a book about cancer, and then purchased a wig, the government could infer that that person had cancer and was undergoing treatment. Solove continues presenting arguments based on definitions to describe situations in which the government could misuse personal information. Consequently, he logically builds his inductive argument in order to persuade the audience. He concludes his inductive argument and the body of his essay with a metaphor, and one last logical appeal to the audience. He states, “although society is more likely to respond to a major oil spill,
gradual pollution by a multitude of actors often creates worse problems.” (Solove, para. 29) Solove is stating that because he has shown that the government’s invasion of our privacy creates a many problems, we must not allow it to continue because it will lead to major long-term complications.

Solove continues to build his on his logos by presenting the audience with two analogies. The first analogy is based on George Orwell’s, *Nineteen Eighty-Four*, which Solove states “depicts a totalitarian society ruled by a government…that watches is citizens obsessively.” (para.13) The Orwell metaphor focuses on the harms of surveillance, such as inhibition and social control. He then argues that current legal and policy solutions center on the problems associated with the Orwellian metaphor. The audience is then presented with the second analogy, that of Franz Kafka’s, *The Trial*, where a “bureaucracy uses people’s information to make important decisions about them, yet denies the people the ability to participate in how their information is used.” (Solove, para. 14) Solove describes the Kafkaesque metaphor as portraying a different kind of problem, one that doesn’t result in inhibition, but leads to a sense of helplessness and powerlessness and alters the relationships that people have with their government. This logical appeal to the audience clarifies Solove’s claim that we aren’t considering all of the effects of government data collection. After logically convincing the audience that the nothing-to-hide argument is faulty and that his own argument is more inclusive, Solove begins his emotional appeal to the audience.

Solove begins concluding his essay with the intent of building his pathos. He emotionally appeals to the audience’s sympathies and imagination. He begins using more dramatic, emotional language, such as, “privacy is often threatened not by single egregious act but by the slow accretion of a series of relatively minor acts.” (Solove, para. 29) Due to this change in language the audience identifies with Solove’s point of view and they become aware of the urgency associated with action. Solove begins appealing to the audience’s imagination by mentioning all of these “minor acts”. He starts the list with the government monitoring of phone calls, then talks about an “elaborate network of video surveillance,” (Solove para. 30) next is satellite surveillance. Then he begins getting personal in order to invoke feelings
of unease within the audience. He begins with analyzing your finances, then mentions the government combing through your health records and employment records. “Each step may seem incremental, but after a while, the government will be watching and knowing everything about us.” (Solove para. 30) In a final persuasive effort, Solove emotionally appeals to the audience’s identity and self-interests. He accomplishes this by discussing the possible consequences the audience could encounter if the government is allowed to continue collecting and storing personal data. Solove asks a series of questions in the second person, with the intent that the audience will have a greater emotional response by imagining themselves as the person in question. For example, “what if it denies you the right to fly? What if the government thinks your financial transactions look odd…and freezes your accounts?” (Solove, para. 30-31) These questions solicit feelings of anger and frustration within the audience. Solove capitalizes upon this emotional response and concludes his argument with the statement “even if you have nothing to hide, the government can cause you a lot of harm.” (para.31) This last persuasive statement lingers with the audience because they will naturally bend in the direction of what is advantageous to them.

Through the effective use of rhetorical tools and the mindful arrangement of this essay, Solove persuades the audience that the nothing-to-hide argument is a narrow, one-sided way of conceiving privacy. Solove uses his expertise in the art of rhetoric by focusing his introduction on ethically appealing to the audience. By managing the rhetorical distance between himself and the audience he builds a relationship and establishes his authority, while not portraying himself as a superior. He establishes his credibility and portrays his scholarly credit through his citations of literature and quotations from privacy experts. He then concentrates on logically appealing to the audience throughout the body of his essay. By displaying the weaknesses of the deductive reasoning that makes up the nothing-to-hide argument, Solove is able to build his inductive argument. In addition, Solove presents the audience with two analogies enabling them to make logical conclusions. In an effort to make a lasting impression on the audience, Solove reserved his emotional appeals for the conclusion. Through the use of dramatic and emotional language, Solove was able to appeal to the audience’s sympathies and imagination and leave them with the reminder that “in the end, the nothing-to-hide argument has nothing to say” (Solove, para. 33).
References
