

The Baldy Center for Law & Social Policy
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Podcast transcript begins

[Azalia]: Hi everyone this is the podcast of the Baldy Center for Law and Social Policy produced at the University at Buffalo. I am your host and producer Azalia Muchransyah.

For several months now we have been living in a pandemic. This episode I have Mark Bartholomew on the phone with me. Mark is a professor at UB Law School and we are going to talk about contact tracing and a plan of universities reopening in the fall semester.

Mark, can you please tell us what contact tracing is?

[Mark]: Sure. So, contact tracing is just trying to get a sense of when someone is...is infected in this case we're worried about the coronavirus but contact tracing has been around for a while and then also get a sense of who an infected person came in contact with. And the idea here is that when you have this kind of information... public health officials when they have this kind of information, they can contain the spread of infection. They can find out who an infected person interacted with; contact them; quarantine them; and reduce the spread.

We're all kind of very aware of I think of some of these techniques based in the last few months. You can get a lot of information even things further back in time. So the key is really once they know that a person is infected, can they pinpoint your contact of that person in a relevant window? So if someone just tests positive for the coronavirus in the last week and you contacted them six months ago that data is not very useful but within a certain window your contact with that person can be pretty relevant to deciding whether you should be quarantined as well.

[Azalia]: Is contact tracing mandatory?

[Mark]: From what I understand most contact tracing at this point is voluntary. It's a good idea to, when if someone calls you to respond because that provides valuable information to health officials and there might be certain occasions where your participation in contact tracing could be required.

So, I did some research on restaurants rolling out new contact tracing requirements and it might be a situation well if you want to get served at the restaurant you better provide your information for contact tracing. So you might have a relationship to particular entity which requires you to participate but for the most part contact tracing is voluntary.

[Azalia]: With the plan to reopen universities in the fall semester, how do you think contact tracing is going to be implemented?

[Mark]: I think universities as they think about opening up are (are) very interested in contact tracing and from what I understand universities across the country are thinking about what we can implement to track infected students and to enforce social distancing even before people become infected or at least before we can learn if they're (they're) infected. Because things are happening so quickly I can't say I know much at this date about the UB plan and I think the UB plan is also being tailored for the for the arrival of students in the in the fall but I do know that contact tracing is an important part of what universities are thinking about because the universities really really want to open, that's important to their bottom line to have face-to-face instruction again, but they also really really want to avoid another outbreak, could hurt them financially, it could subject them to lawsuits maybe in particular situations so they really want people to come back but they want people to come back and keep any kind of infection to a minimum.

The part that's most interesting to me because I write on Law & Technology issues is the use of technology here and there's been kind of this surge to develop an app, an app that can handle the work of contact tracing in an effective manner and you can see why universities and public health officials and other organizations be attracted to this because almost all of us carry around these smartphones and if the smartphone could somehow have a perfect map of everyone we come in contact with and when we come in contact with someone within that six-foot window that we keep hearing about now and it could tell us about that when we've come in contact with someone who's been infected that can be really valuable for a couple reasons. One it can be automated so, once there is a realization you've been in contact with a person who becomes infected then you can automatically be notified about this and take your own steps. Also our own recollections can be faulty so I'm not going to remember that I came in contact with someone you know ten days ago but the app could remember that.

So, we've seen the biggest players in Silicon Valley, Google and Apple, racing to develop an app that can deal with contact tracing and then individual universities across the country, UB amongst them have developed their own apps to try to deal with this as well.

[Azalia]: What are the ways do you think universities could enforce this?

[Mark]: I know there are plans in several universities to require a certain check-in every day where you report if you have any symptoms: do you have a cough; do you have a runny nose; do you have a fever; and that might be something you just have to do every day to get into your email or your online class portal and then you know at this point I don't know too much about it being mandatory or at least heavily enforced but schools would really really want you to upload these apps and use them because they're not very effective unless you have a critical mass of students using them. From various sources that I've heard that like a 60% user rate is going to be required to really make these things effective and so that will probably take various forms. There might be rewards for

students who use them. There might be persuasion saying you know do your part use these apps, and who knows you might see more you might see penalties for students who don't use these apps as well.

We don't think about these things I think as much as we should but the architecture of how these systems are designed really affect us so is it going to be voluntary or like with the push security protocols is it going to be mandatory you just don't have any way to access the things you need to access and unless you participate in this kind of regime. And so the way these things are designed will really determine I think how we feel about them, but also determine how effective they are and how many people participate. I think most of this is done by contract where there's a thought that well if you want this service, you have to do this for us. Now there are going to be certain things that a university or other entity couldn't do with their app so there might be certain information that they could collect that they wouldn't be free to disclose to other individuals so they might have to take certain precautions to keep this information secure. Just the same way that when you go shopping say Target. Target collects your credit card information and your frequent shopper information but they're supposed to take certain steps to keep that information secure and at least provide you notice if they're transmitted to other people. So there are certain legal requirements that that schools will have to be able to comply with in that respect.

But I think I for the most part if a school decides that they want students to use this, it'll be hard for students to opt out. Going to school doesn't work the same way other consumer transactions do, right? On the first day of class you can't decide, well Harvard is not for me I think I'll pick up and go to Yale on the next day right? You're kind of, we're stuck right so it's we're not as free to decline these things and I should point out that there are a bunch of things that we already use giving up some of our privacy disclosing certain information that we've already forfeited and probably don't think too much about anymore. So to the extent you use a swipe card say you go to the gym or you have to get into a locked building you know that can keep a record of what you do or if you swipe your card at the dining hall and it's really hard to try to go to the gym and try to get into a building try and go to the school cafeteria without using those things. Sometimes there's ways to get around it maybe you can bring cash but for convenience often we're already giving information to various businesses all the time.

[Azalia]: It seems like there's a trade-off between fighting the pandemic and privacy. What's your opinion on this?

[Mark]: In the late 90s early 2000s, Congress is actually poised to really enact some privacy protection measures for the fairly new environment of the internet and so there's a lot of support for privacy protections even though Silicon Valley was opposed to it. And then what happens? 9/11 and all of a sudden after 9/11, there was very much of thought of privacy is not that important we need as much information as possible to deal with security threats and so this legislation that was keyed up and ready to move was put aside and so the steps that we were willing to take in 1999, we still haven't been willing to take and it's all the way to 2020.

I think before the coronavirus we saw some movement about, look at the public reputation of Facebook. Once they were thought of as kind of this great actor, Facebook can only be a good thing, but after the 2016 election and other things there's been some thoughts well maybe Facebook needs to be regulated. Maybe we can't trust individual users that just have make their own decisions with regard to Facebook because Facebook does what it wants most of the time. And then the question is well with the coronavirus and the need for information I think good reasons for requiring people to disclose information for tracking where people move to deal with outbreaks, are we going to see another situation where the pendulum is swinging more towards security and further away from privacy.

One thing that I personally get frustrated with is sometimes I talk to people and they say "well I'm really worried about the government collecting information on me but not private businesses. Now I trust Facebook or I trust Walmart but I don't want the government having this information." And I think you know I think both are serious and we can talk about that more if you want but the other thing to realize is that it's not like information collected by private actors is hermetically sealed from the government. Sometimes there's an exchange between these parties sometimes there's law enforcement requests sometimes it's voluntarily disclosed. In one really interesting thing is that people now have really embraced these Amazon Ring security systems for their front doors but often those things are broadcast directly by the homeowner to local police departments, to the government. I mean there's really a tension between functionality and privacy so the technologies that are available are pretty amazing so you mentioned these in-home speaker assistants right and I've done a little reading on this and they have the capability now to detect a cough even maybe a particular kind of cough that the kind of dry cough that might be associated with the coronavirus. And so I've seen data scientists say, you know what we should do we should set the wake word for Alexa to not be Alexa or not just Alexa but this particular cough once we have that particular cough we'll know oh here's someone who should be on a radar for suffering from the coronavirus.

And there are other things that they can do. They can detect certain kinds of breathing and whether it's shallow breathing that might mean the person would be in trouble. But to unlock that functionality we would have to give up a lot of privacy, right, we'd have to say I want Amazon to keep a record of this, I want Amazon to be able to notify the authorities if they think I have coronavirus. Now all that would make for a very effective system for trying to pinpoint when someone's been infected quickly, but I think most of us aren't willing to have aren't willing to give up that information about ourselves, at least at this point.

I hope we talk about how kind of this balance between privacy and security hasn't always stayed in one place it shifts over time. At least this point I don't think we're comfortable with that I think Apple and Google and Amazon know that people aren't comfortable with that so they're trying to assure people look we're not proposing anything like this your privacy is important to us. And the University I should say as well are trying to say we're developing these apps but we really think privacy is important,

they're mostly going to be voluntary, they're going to use Bluetooth to respect a certain zone of privacy for people.

The real question is will enough people participate when it's this voluntary, this decentralized, or will either coercion from different entities force people to participate more or if we get another spike in the fall, will fears about illness you know very real fears, lead to people sacrificing more of their privacy, maybe adopting an app where they have to disclose more about themselves and don't can't rely on anonymity.

[Azalia]: So are we going to live in a world where surveillance is the new normal?

[Mark]: So we've all kind of heard stories or are vaguely aware of stories where information that was disclosed to one actor for a seemingly benign purpose becomes someone else's information used for a purpose we don't like so much and then particularly when one piece of information is correlated with another piece of information and so instead of just a few data points we have a whole cluster which, happens incredibly rapidly in our online transactions all of a sudden you can know somebody really really well from just a few data points that have been harnessed into one (one) package. So, we have to be aware of that too. I think I think a lot of people would say I'm willing to give up a certain amount of information about myself to deal with a public health crisis. But I think the key is making sure that when we give this information up we want it to be used for the right purpose we want to be kept secure and we want that information to go away fairly soon as soon as the health crisis is over.

What we've seen sometimes in the past is there's a fears there's a sense of a need for security, we give up the information and we pass new laws to require the information to be disclosed but then we get used to it or it's hard to take that law back or put the genie back in the bottle and so we live with a new normal of surveillance. And so I think that's a big concern as we think about how we can use technology to deal with the coronavirus. In some ways it would make sense if the contact tracing data went to the government right away, right it's the public health officials who are going to figure out how to stop the spread of the virus and what they need to do and how to deploy government resources so in some ways we should be happy if this information goes to the government...On the other hand I think because we know that people are concerned about privacy and concerned about not only dealing with the virus but (but) having their information kept private, a lot of these apps are being developed in a way that tries to strike a balance. So Bluetooth technology is going to be used for a lot of these apps where the Bluetooth signal when you get within six foot of a person will keep a record but will be kept only on the person's phone not a central location and it'll be kept anonymized. So the idea here and this is what Google and Apple are trying to insist on in their own app, is this will all be personal choice you'll disclose things if you choose to. If you find out you're infected you'll put that on the app and let other people know and it won't be subject to a government entity looking at a list and saying ah Mark Bartholomew has the coronavirus and now I know that about him.

So we see kind of apps that are designed to really protect personal privacy and then we see other examples of very centralized systems, systems that don't use Bluetooth but

specific location tracking so they there is a real record of exactly where I went and who I came in contact with that other people can see. Now for stopping the coronavirus you might say that's the best system in a way because if someone isn't doing a good job of quarantining or letting people know if they're infected a government entity could know that and take steps to stop it. Well if we're concerned about personal privacy or maybe this information being used for purposes we don't like, then a more decentralized system where the individual has a lot of choice over it makes more sense so there's really an effort to strike a balance here.

[Azalia]: That was Mark Bartholomew and this has been the Baldy Center for Law and Social Policy podcasts produced at the University at Buffalo. For more episodes visit our website Buffalo.edu/BaldyCenter. Also follow our social media on Facebook and Twitter @BaldyCenter. I'm your host and producer Azalia Muchransyah. Until next time keep your physical distance, wear your mask properly, and don't forget to wash your hands.