

# ALPR and Privacy

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# Outline

- Understanding Privacy/ALPR Implications
- U.S. Constitutional Jurisprudence
- State Law Considerations
- Policy Considerations
- Conclusions

# Understanding Privacy/ALPR Implications

## **States of Privacy (Westin)**

1. Solitude
2. Intimacy
3. Anonymity
4. Reserve

## **ALPR has implications of two of those states of privacy**

- Anonymity
- Reserve

# Constitutional Protections

## **ANONYMITY--not generally protected--**

- No fourth amendment prohibition against tracking individuals across public space using enhanced sensory tools -*U.S. v. Knotts*, 460 U.S. 276 (1983).
- No fundamental right not to be observed by a camera on a public street-*Idris v. City of Chicago*, 552 F.3d 564 (7<sup>th</sup> Cir. 2009).
- No fourth or fifth amendment protections against compelled identification-*Hiibel v. Sixth Judicial Circuit Court, Humboldt County*, 542 U.S. 177 (2004).

# Constitutional Protections

## **ANONYMITY--not generally protected--**

- No fourth amendment prohibition to tracking individuals across public space using GPS -*U.S. v. Garcia*, 474 F.3d 994 (7<sup>th</sup> Cir. 2007)—see also *U.S. v. Mclver*, 186 F.3d 1119 (9th Cir. 1999), *cert. denied*. 528 U.S. 1177 (2000).
- Issue currently pending in DC Circuit Court of Appeals *U.S. Jones*, Docket No 08-0303 and 08-0304 consolidated, appeal of *U.S. v. Jones*, 451 F. Supp. 2d 71 (D.C.D. 2006) (use of GPS permissible to track on highway but not in parking garage).

# Constitutional Considerations (Data Compilations)

But if police follow a car around, or observe its route by means of cameras mounted on lampposts or of satellite imaging as in Google Earth, there is no search. Well, but the tracking in this case was by satellite. Instead of transmitting images, the satellite transmitted geophysical coordinates. The only difference is that in the imaging case nothing touches the vehicle, while in the case at hand the tracking device does. But it is a distinction without any practical difference.

*U.S. v. Garcia*, 474 F.3 994, 997 (7<sup>th</sup> Cir. 2007)

# Constitutional Protections

## **ANONYMITY --- But Consider ---**

- First amendment protection to maintain anonymity where there can be a showing that it is important to the free exercise of first amendment rights- *NAACP v. Alabama*, 357 U.S. 449 (1957).
- First amendment protections for anonymity may even apply to certain public acts such as signing petitions-*Doe v. Reed* , \_\_\_ F.3d \_\_\_, Docket No CV09-5456 BHS 9<sup>th</sup> Cir. October 22, 2009); *cert. granted, Doe v. Reed* Docket No 99-559 (January 16, 2009).

# Constitutional Protections

**RESERVE—with respect to compilations of public information no protection against use for legitimate governmental purposes or, where appropriate, dissemination—**

- No protection against government compilation of a database of controlled substance use designed to ensure appropriate enforcement -*Whelan v. Roe*, 429 U.S. 589 (1977).
- No protection against public dissemination of public arrest data (rap sheets) compiled by government- *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

# Constitutional Considerations (Data Compilations)

**A final word about issues we have not decided. We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files.**

***Whelan v. Roe*, 429 U.S. 589, 605 (1977)**

# Constitutional Considerations (Data Compilations)

**In sum, the fact that "an event is not wholly `private' does not mean that an individual has no interests in limiting disclosure or dissemination of the information." ...The privacy interest in a rap sheet is substantial. The substantial character of that interest is affected by the fact that in today's society the computer can accumulate and store information that would otherwise have surely been forgotten long before a person attains age 80, when the FBI's rap sheets are discarded.**

***Department of Justice v. Reporters Committee for Freedom of the Press,*  
489 U.S. 749, 770-1 (1989)**

# Constitutional Considerations (Data Compilations)

**Respondent ... expresses the generalized view that the result of the holding sought by the Government would be that "twenty-four hour surveillance of any citizen of this country will be possible, without judicial knowledge or supervision." [citation omitted]. But the fact is ... *if such dragnet-type law enforcement practices as respondent envisions should eventually occur, there will be time enough then to determine whether different constitutional principles may be applicable.* [citation omitted].**

**- *U.S. v. Knotts*, 460 U.S. 276, 284 (1983)**

# Constitutional Considerations (Data Compilations)

**The new technologies enable, as the old (because of expense) do not, wholesale surveillance. One can imagine the police affixing GPS tracking devices to thousands of cars at random, recovering the devices, and using digital search techniques to identify suspicious driving patterns. One can even imagine a law requiring all new cars to come equipped with the device so that the government can keep track of all vehicular movement in the United States. It would be premature to rule that such a program of mass surveillance could not possibly raise a question under the Fourth Amendment -- that it could not be a search because it would merely be an efficient alternative to hiring another 10 million police officers to tail every vehicle on the nation's roads.**

**- *U.S. v. Garcia*, 474 F.3 994, 998 (7<sup>th</sup> Cir. 2007)**

# State Law Considerations

## **More Expansive Privacy Protections Under State Constitutional Protections**

- Provisions of the Oregon Constitution addressing privacy are more expansive than fourth amendment protections requiring a warrant for GPS tracking-- *Oregon v. Campbell*, 759 P.2d 740 (Or. 1988) (prohibits tracking of vehicles in public with beepers without a warrant).
- Provisions of the Washington Constitution addressing privacy are more expansive than fourth amendment protections requiring a warrant for GPS tracking- -*State v. Jackson*, 76 P.3d 217 (Wash. 2003) (prohibits tracking of vehicles in public with GPS without a warrant).

# State Law Considerations

## **More Expansive Privacy Protections Under State Constitutional Protections**

- Provisions of Article 14 of the Massachusetts Declaration of Rights addressing privacy are more expansive than fourth amendment protections requiring a warrant for GPS tracking- *Commonwealth v. Connolly*, 454 Mass. 808; 913 N.E.2d 356 (Mass 2009)
- Provisions of the New York Constitution addressing privacy are more expansive than fourth amendment protections requiring a warrant for GPS tracking- *People v. Weaver*, 12 N.Y.3d 433; 909 N.E.2d 357 (NY 2009) (the court also concludes that a similar result would obtain under the fourth amendment)

# State Law Considerations

## Legislative Enactments

- Maine LD 1561—Proposed Statute— “The State or a municipality may not use a traffic surveillance camera to prove or enforce a violation of this Title [Maine vehicle code] or to collect data that could be used to uniquely identify a vehicle or individual.” Specifically prohibits the use of ALPR devices mounted on traffic signals.

# Policy Considerations

- Privacy is not a monolithic concept and is already afforded some constitutional protections.
- Privacy concerns and constitutional requirements need to be assessed and addressed (IACP Privacy Impact Assessment Report is a good start).
- Technology design should seek to mitigate privacy impacts.
- Developing computer technology presents challenges for data management.

# Policy Considerations

- Organizations need to develop written policies.
- Employees need to be trained and, when failing to adhere to policies--disciplined.
- Audits (Internal and External) should be conducted regularly.
- Policies should be reviewed and updated on a continuing basis to adjust to new technology and findings of deficiency.

# Legal Issues Outside Agency Control

- Data Retention Issues.
- Freedom of Information Act Requirements.
- Subpoenas and Court Orders.
- *Brady* Requirements, Evidence and Due Process Issues.

# Resources

- United States Federal Trade Commission, Fair Information Practice Principles, (cited at) <http://www.ftc.gov/reports/privacy3/fairinfo.shtm>
- American Bar Association, Criminal Justice Section Standards for Technology-Assisted Physical Surveillance, (cited at) [http://www.abanet.org/crimjust/standards/taps\\_blk.html](http://www.abanet.org/crimjust/standards/taps_blk.html)
- The Constitution Project, Guidelines for Public Video Surveillance, (Washington D.C.: The Constitution Project, 2007) (cited at) [http://www.constitutionproject.org/pdf/Video\\_Surveillance\\_Guidelines\\_Report\\_w\\_Model\\_Legislation4.pdf](http://www.constitutionproject.org/pdf/Video_Surveillance_Guidelines_Report_w_Model_Legislation4.pdf)

# Resources

- IACP, Privacy Impact Assessment Report for the Utilization of License Plate Readers, September 2009  
<http://www.theiacp.org/LinkClick.aspx?fileticket=N%2BE2wvY%2F1QU%3D&tabid=87>
- Donald Zoufal, *“Someone to Watch Over Me?” Privacy and Governance Strategies for CCTV and Emerging Surveillance Technologies*, (cited at) [https://www.hSDL.org/homesec/docs/theses/08Mar\\_Zoufal.pdf](https://www.hSDL.org/homesec/docs/theses/08Mar_Zoufal.pdf)

Thank you.

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