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ARTICLES

Before You Press Record: Unanswered Questions Surrounding the First Amendment Right to Film Public Police Activity

Jesse Harlan Alderman 485

In 2011 and 2012, two circuit courts of appeals held that there exists a positive First Amendment liberty to record police officers in the public performance of their official duties. The opinions represent a swift response to the hundreds of arrests of ordinary citizens for filming police that have received national and local publicity in recent years. After a recitation of the two opinions, Glik v. Cunniffe *and* ACLU of Illinois v. Alvarez*, this Article discusses four unresolved questions that remain: (1) Will future courts that have not addressed the issue be persuaded by Judge Richard A. Posner's dissent in Alvarez?; (2) Which constitutional standard of review will future courts apply to laws that infringe the right?; (3) Is surreptitious recording of police in the public exercise of their duties protected from punishment by the First Amendment, or only open recordation?; and (4) In other jurisdictions, are officers entitled to qualified immunity from civil liability for arrests of recorders of public police activity because the First Amendment right to record is not "clearly established"?*

Reconsidering the Gathering/Publication Dichotomy: Recording as Speech? What Next?

Steven Helle 537

The First Amendment information-gathering right has always been inferior to the long-established right to speak and publish. As such, the danger has been that a court concerned, for example, with prejudicial publicity could characterize the issue as gathering instead of publication—and apply a more relaxed standard. Indeed, the transparent concern in most gathering cases has been with the ultimate publication. When states defend statutes prohibiting recording without the consent of all parties to a conversation, the asserted "privacy" interests are generally not threatened by the physical act of recording, but by the disclosure of the content of the recording. Thus, when the State of Illinois attempted to defend its Eavesdropping Act, even when the recordings would be of police officers performing their duties in public, the Court of Appeals for the Seventh Circuit dismissed the privacy interests, conflated gathering and expression, and provided a roadmap for future courts to analyze such cases as direct threats to freedom of speech.

New Private Privacy Intrusions in Illinois During Prelitigation Civil Claim Investigations
Jeffrey Parness 563

In Lawlor v. North American Corporation of Illinois*, 2012 IL 112530, the Illinois Supreme Court first recognized the intentional tort of intrusion upon seclusion. It then applied the tort in favor of a former employee against a former employer whose agents deceitfully investigated the employee in contemplation of future civil litigation. In* Lawlor*, the employer's lawyer was also involved in the investigation. Under certain circumstances, under the* Lawlor *rationale that lawyer could also be liable in tort to the former employee. Lawyer liability after* Lawlor *could be founded on either the intentional or unintentional acts of either the lawyer or the lawyer's agent. Liability might fail, however, if there was a privacy waiver.*

Domestic Surveillance Via Drones: Looking Through the Lens of the Fourth Amendment
Dr. Saby Ghoshray 579

Prompted by a newly minted governmental conceptualization of domestic surveillance, this Article focuses on a set of legal and philosophical dimensions to evaluate whether drone-enabled surveillance of citizens comports with fundamental liberty. Identifying the post-9/11 landscape as a primary contributor to the emergence of a security-centric society, this Article provides an interpretative gloss on the contemporary legal framework's tendency toward immunizing governmental surveillance of its own citizens. By evaluating how the original understanding of the Fourth Amendment may have been attenuated within jurisprudence, this Article provides a stark reminder of why the aspiratory dimensions of the Framers' view of liberty is in conflict with the ensuing pervasiveness of drone surveillance. In combining social contract theory with the individual rights paradigm espoused by Warren and Brandeis, this Article further establishes that individuals in the contemporary American society have a long-standing constitutional inheritance to be secure within their private seclusion. This leads to the author's conclusion that, first, the Fourth Amendment is still sufficiently robust to address the emerging complexities of domestic drone surveillance, and, second, when empowered and augmented by the continued relevance of social contract theory, the Fourth Amendment remains a bulwark against introducing domestic drones at present.

COMMENT AND NOTE

Illinois's Freedom of Information Act: More Access or More Hurdles?
Alyssa Harmon 601

Although the 2009 amendments to the Illinois Freedom of Information Act (FOIA) were intended to increase government transparency, the amendments lack the necessary sanctions, neutral oversight, and incentives for compliance with the Act. The purpose of enacting such "Sunshine" laws is to simplify the road to public access and rebuild public trust in government. This purpose has not yet been realized in Illinois. This Comment argues that sanctions against public bodies should be strengthened in order to increase compliance with the Act, that a cost-effective path to enforcement of the law should be created

in order to increase incentives for citizens to enforce their right to know, and that an independent review board should be formed to handle FOIA requests.

Stop, Collaborate, and Listen!: The Effect of Collaboration on Innovation and Policy in Medicaid Reform as Applied to the Illinois SMART Act and the New York Approach

Bailey Standish.....631

Recently, both Illinois and New York found themselves between a rock and a hard place as they were forced to choose where to save on providing vital medical services for their aging and poor residents. In order to cut their bloated budgets, the states took two approaches yielding vastly different results. After a brief background on Medicaid, the Illinois SMART Act, New York's reform model, and collaboration theory, this Legislative Note compares the approaches in Illinois and New York and seeks to explain why they yielded different results by applying collaboration theory to Medicaid reform. This Note argues that the SMART Act demonstrates the adverse effects of a top-down, non-collaborative approach to legislation when compared to the New York Model, which made similarly sweeping cuts while collaborating with interested parties. The juxtaposition of the Illinois and New York approaches dictates that state leaders would best serve their constituents by utilizing collaboration and constant communication whenever possible.