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Does technology have to trump privacy rights?

Privacy advocates in recently years have expressed the concern that privacy is disappearing as people voluntarily disclose all kinds of information — including their every waking move — on the Facebook, Twitter and other Internet platforms.

They fear that companies, such as Internet giant Google, are collecting extensive amounts of data about users' spending habits and preferences in ways never before possible.

The issue of the loss of privacy is all the more disturbing when the government, as opposed to private entities, uses the newfound technologies to collect information about the movement, actions and habits of its private citizens.

Last week, the New York State Court of Appeals heard oral arguments regarding that very issue. At issue in *People v. Weaver* was the admissibility of evidence obtained without a warrant by law enforcement through the use of a GPS tracking device.

The courts below concluded that the evidence was admissible. In *People v. Weaver*, 52 A.D.3d 138 (Third Dept. 2008), the majority held that the defendant had no expectation of privacy regarding public movements that would have been visible via the naked eye: "Inasmuch as constant visual surveillance by police officers of [the] defendant's vehicle in plain view would have revealed the same information and been just as intrusive, and no warrant would have been necessary to do so, the use of the GPS device did not infringe on any reasonable expectation of privacy and did not violate defendant's Fourth Amendment protections. See *People v. Wemette*, 285 AD2d 729, 729- 730 (2001), leave denied 97 NY2d 689; *People v. Edney*, 201 AD2d at 499."

Judge Leslie E. Stein, issued a lengthy dissent, opining that a warrant should have been required since technology increased the intrusiveness and duration of the monitoring, necessarily altering the analysis: "[W]hile the citizens of this state may not have a reasonable expectation of privacy in a public place at any particular moment, they do have a reasonable expectation that their every move will not be continuously and indefinitely monitored by a technical device without their knowledge, except where a warrant has been issued based on probable cause. ... At some point, the enhancement of our ability to observe by the use of technological advances compels us to view differently the cir-

cumstances in which an expectation of privacy is reasonable. In my opinion, that point has been reached in the facts before us."

During oral arguments at the Court of Appeals, judges came down on both sides of the issue.

Judge Eugene Pigott seemed to agree that a warrant was not required prior to placing a GPS device on a car parked in a public place: "They have a device here that they at some point decided they wanted to use. ... And there's nothing that says they cannot."

Chief Judge Jonathan Lippman, on the other hand, expressed concern regarding privacy rights if limitations are not placed on the ability of law enforcement to indefinitely monitor a person's each and every move: "We have to also consider the opportunity for abuse."

Chief Judge Lippman's point is of the utmost importance. Technological advances are changing our lives in ways we never before imagined. New devices are being invented that enhance the ability of law enforcement officers to observe and follow our movements in ways not envisioned just 10 years ago. Who knows what capabilities law enforcement will have 20 years from now?

It is for that very reason that reasonable limits must be set regarding the warrantless use of technologies that enhance the senses of law enforcement officers.

Certainly law enforcement should be able to use the most up-to-date technologies available to them, but not indiscriminately.

Judicial oversight of the use of advanced technologies is necessary to prevent baseless, invasive and limitless intrusions into the lives of law-abiding Americans.

As technology transforms our lives, the interpretation of our laws must adapt to realities not envisioned when the laws were first established. The failure to do so will render our laws and constitutional protections obsolete, irrelevant and ineffective.

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