

Can privacy withstand assault of technology?

Devices could bear witness against us

It's not unusual for me, the Press Association's hotline attorney, to take flack from the association's executive director for my whole-hearted embracing of technology and the benefits of computerization. However, this increased reliance on technology comes with a price, and perhaps it might be time for all of us to do a little thinking about whether our dependence on our smart phones and similar gadgetry may lead us into paths we should not tread.

What caught my eye on this subject was an argument this fall before the U.S. Supreme Court. Police officers were questioning whether a search warrant was necessary in order to use GPS tracking on a criminal suspect. In this case, the GPS involved installing a device on a suspect's vehicle in order to monitor his travels.

This would eliminate both the need to physically tail a person and also the need to enter a private space to attach a monitoring device. In short, what used to require a judge to enter an order or involve a large expenditure of money may no longer be so difficult.

Courts already have held that video surveillance of a person in a public place is not a violation of the right to privacy. And many of us now carry phones capable of being monitored electronically (remember that the Apple iPhone had an issue relating to this earlier this year when it announced that the phone was keeping a location database of the owner's travels in its software).

In fact, those of us with OnStar in our cars I assume are giving the company permission to monitor our every move, which no doubt could be subpoenaed in

case it is evidence that someone needs.

In the recent case, the attorney seeking permission to engage in such activity no doubt knew he was in trouble when Chief Justice John Roberts turned to him and suggested that "you could tomorrow decide that you put a GPS device on every one of our cars, follow us for a month; no problem under the Constitution?"

And Justice Alito responded, "With computers around, it's now so simple to amass an enormous amount of information. How do we deal with this? Just say nothing has changed?"

Well, of course things have changed. We are all compiling tons of information that we carry around with us, even unknowingly. But in thinking about this, it seems to me that we all need to be sensitive to this change in terms of the jobs we do in writing stories and in researching activities that we think the public will find important. It used to be that all we worried about were reporters' notes. Now, it seems clear, we need to worry about cell phone GPS records, lists of contacts in our cell phones, our records of calls, emails and texts that are generated in our smart phones and whether perhaps our cars may be the best witnesses against us if we get subpoenaed.

It won't be your camera that is seized when you are covering a story — it may be your phone with its vast database. And if you worry that perhaps the cops are tailing you, it may not be in that black car behind you — they may be watching your every move on their computer from the comfort of their

office chair.

I'm not saying we all need to get paranoid. (But perhaps at times a little healthy paranoia is not a bad thing. There may be someone watching!) Just realize that if you are covering a story with significant implications, you need to think not only about your home and office phones and whether they're bugged, but you need to realize that wireless interception of data is a real risk and that there could be third parties who have all the access they need to know where you've been and to whom you have been talking.

The hills may have eyes, but they no longer need to be looking at you to see what you're doing!



Jean Maneke, MPA's Legal Hotline attorney, can be reached at (816) 753-9000, jmaneke@manekelaw.com.