



VIEW*S* & VISIONS

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Technology and Privacy in the World of Criminal Justice

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During his tenure, Mr. Goodwin has prosecuted numerous cases of regional and national significance. He has also led efforts to tackle prescription drug and heroin abuse and rebuild communities ravaged by drugs and violence. He previously served as the Chief of the office's Economic Crimes Section, and also served as the office's lead computer hacking and intellectual property crimes prosecutor.

Mr. Goodwin received his law degree from the Washington and Lee University School of Law in Lexington, Virginia, after graduating with honors from West Virginia University, where he earned a degree in economics. Goodwin has served on the board of directors of what is now West Virginia Legal Services, a statewide organization that serves the poor.

The explosion in information technology offers tremendous promise in many areas of society and the economy. But it also creates risks, particularly to individual privacy. This tension is a constant theme in today's policy discourse, in criminal justice as much as anywhere.

Let me start with some overarching points:

First, there is a direct relationship between technology and crime detection. As information technology and forensic technology has improved, our ability to solve crimes also has improved.

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Second, there is an inverse relationship between information technology and privacy. Generally, information technology equals less privacy. Today, we have more access to more information about other people's lives than at any time in human history.

Third, improvements in our ability to detect crime are almost always coupled with decreases in individual privacy. If everyone had 100 percent privacy, then everyone could hide anything they wanted with no fear of detection. At the other end of the spectrum, if there were zero privacy – if we could somehow know everything everyone does – then we'd be able to solve 100 percent of the crimes.

So which would be better? One hundred percent privacy with no ability to solve crimes? Or being able to solve every crime at the complete expense of privacy?

Clearly, the answer lies somewhere in the middle. Solving crimes is very important. It's my job, so of course I feel that way, but justice for victims of crimes and for society as a whole is an indispensable feature of civilization itself. Yet individual privacy – a citizen's right to have a space to themselves that their government can't invade without a very good reason – is also something that society can't function properly without.

Our Constitution, and in particular the Fourth Amendment, has struck a balance between those two competing values for over 200 years. It's evolved slowly over time as circumstances dictated. But the explosion of technology over the past few decades, especially over the past 10 to 15 years, has raised questions that the founders certainly never anticipated.

We are living in the middle of a revolution in information and communication technology. I got my first computer in 1983. It was an Apple IIe. The memory was 64K. I still remember how amazing that was at the time, 64,000 bytes of memory. You could do anything with that much memory.

That was a little more than 30 years ago. Today, the Apple iPhone I have in my pocket has 10,000 times more memory than my Apple IIe did. This tidal wave of technology has brought enormous benefits. It's sparked an incredible increase in productivity.

It has also transformed what's possible in law enforcement. Take for example advances in camera technology. Practically every person reading this has a cell phone with a camera in it. For law enforcement, the same advances in video technology means we have infinitely more evidence at our disposal. It means that if we want



to watch a house, we don't have to do an old-fashioned stakeout anymore. Now we can post a hidden camera somewhere outside, and it beams the video right back to our office or iPhones.

In the past few years, law enforcement has started using a new device called a license plate reader. A license plate reader is a camera that scans the license plate number on every car that passes it. It can take those numbers and instantly run them against a database of plate numbers and raise red flags for stolen cars, wanted persons or suspects in crimes.

Another great development for law enforcement is email. Writing an email feels much less formal than writing a letter, so people – even people who should know better – will say things in email that they'd never say in a letter.

All of this – and believe it or not, I'm just scratching the surface – is good news for catching criminals. Thanks to all this technology, we are able to solve crimes today that in 1980 or 1970 never would have been solved. That means more criminals off the streets and justice for more victims.

What could be wrong with that?

Well, the feeling of vague discomfort that many may have experienced from the picture I just painted has to do with the ironclad rule I offered earlier: A greater ability to solve crimes almost always coincides with a decrease in personal privacy. The more we know about someone, the easier we can catch them when they break the law. But that doesn't mean everyone is thrilled that the government can now know so much about them – or that they should be.

Over the next few decades, a lot of work will go into balancing this enormous new crime fighting potential with the requirements of the Fourth Amendment and the demands of individual privacy. Those of us on the front lines, whether prosecutors or privacy advocates, must be careful to preserve the delicate balance that has marked this area of our society since the Bill of Rights. ▽

