Better police surveillance technologies come with a cost, scholar says

EurekAlert!

CHAMPAIGN, Ill. — The ever-increasing adoption of digital surveillance technologies by local police departments may dramatically improve the efficiency of criminal investigations, but it also creates the opportunity for abuse and misuse, a University of Illinois expert in criminal law and information privacy says.

The widespread use of advanced surveillance technologies such as automatic license plate readers, surveillance cameras, red light cameras and facial recognition software by state and local police departments combined with a lack of oversight and regulation have the potential to develop into a form of widespread community surveillance, which ought to pose significant privacy concerns to law-abiding citizens, warns Stephen Rushin, a professor of law at Illinois.

"What's worrisome to me is that the technologies could be harnessed to monitor not just one person, but an entire community," he said. "For example, if police departments use license plate readers in concert with an extensive network of surveillance cameras, that means that they really do have the ability to monitor everyone all of the time. Legally speaking, that's troubling."

In 1997, about 20 percent of police departments in the U.S. used some type of technological surveillance. By 2007, that number had risen to more than 70 percent of departments, according to a paper Rushin wrote that will be published next month in the *Brooklyn Law Review*.

"This radical shift in policing is the beginning of what I call the 'digitally efficient investigative state,' where technological replacements for traditional investigations are used to dramatically improve the efficiency of surveillance," Rushin said.

While much of the attention on surveillance in the media focuses on the National Security Agency, there's not a lot of scrutiny on local domestic surveillance, Rushin said.

"I think that's because it's mostly local law enforcement that's undertaking this type of surveillance, and we don't tend to think of our local police force as being particularly scary, intimidating or worrisome," he said.

While technologies that give the state an "extrasensory ability" may violate an individual's reasonable expectation of privacy, technologies that merely improve the efficiency of otherwise permissible investigation techniques are presumptively permissible, Rushin said.

"Much of the Supreme Court's previous treatment of police surveillance has rested on the belief that individuals have no expectation of privacy in public places, and that surveillance technologies that merely improve the efficiency of police investigations comport with the Fourth Amendment," he said. "While officers must obtain a warrant before using some technologies, the courts generally do not regulate efficiency-enhancing technologies."

Those assumptions have been workable in the past because of the limited use and capability of efficiency-enhancing technologies. But with the advent of automatic license plate readers and surveillance cameras with biometric recognition, the efficiency of the surveillance itself is becoming a constitutional issue, Rushin said.

"Since no one has a reasonable expectation of privacy when they're in public, that

means that a police officer can do whatever a normal person can do without any kind of special approval," he said. "They can observe your license plate and write it down on a piece of paper and run it through a database. But now they could also use an automatic reader to scan license plates in bulk – up to 1,800 license plates per minute, in fact. That will invariably vacuum up enormous amounts of data on innocent people, too.

"So you have technology that might replace the efforts of dozens, even hundreds, of individual law enforcement officers."

In the absence of regulation, police departments across the country have developed dramatically different policies on the use of public surveillance technologies.

"Data retention policies vary dramatically from one place to the other, and many local departments don't have any policies whatsoever," Rushin said. "In fairness to law enforcement, part of that is because many smaller departments don't have many surveillance cameras or other devices. But that's changing. The rate at which they're adopting and utilizing these technologies isn't matching the rate at which they're adopting retention policies to regulate those new technological devices.

"What that means is that local police departments have been using surveillance technologies to retain more and more locational data without establishing policies on retention and data integrity."

According to Rushin, legislative bodies must take the lead and limit the retention, identification, access and sharing of data acquired by digitally efficient public surveillance technologies.

The paper also makes recommendations for ways that states could start to regulate the retention and integrity of surveillance data obtained by law enforcement surveillance technology. It proposes a model state statute that would be a "substantial step in reigning in the unregulated efficiency of emerging investigative and surveillance technologies," Rushin said.

"The model statute addresses some very core information privacy issues, so it's no different than in any other field where you're concerned about the second-hand use of data, or the abuse of data," he said. "It means establishing basic conditions on who can access the data. It would also give a police department discretion to craft unique data policies tailored to its community's specific needs, while also encouraging some level of statewide consistency."

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