May 3, 1999
Upcoming Publication

• “Regulating Drones Under the First and Fourth Amendments”
  – William and Mary Law Review, forthcoming
  – Marc Blitz, James Grimsley, Stephen Henderson, and Joseph Thai
What is a Right to Privacy?

• In 1890, Louis Brandeis (later a Supreme Court Justice) extolled privacy as: “a right to be left alone”.
“Kodakers”
Language of Threat & Violence

• Terms used to describe the cameras:
  – "deadly weapons", "deadly little boxes", “the click of their shutters was ominous and dreadful", "an instrument of torture ... which is driving the world mad",

• Terms used to describe amateur photographers:
  – “Kodakers”, “camera fiends”, “Kodak fiends”
"[a]mateur photography has the reputation of possessing in its various forms all those seductive charms in the enjoyment of which the weary, earthbound mortal is released from durance vile and translated, for the time being, into some seventh heaven of bliss. Opium, hasheesh, even the fascinations of Monte Carlo are supposed to pall before its many attractions."

- New York Times, 15 July 1889, 8; 16
Do we have a constitutional right to privacy, and where it is defined?
“Bill of Rights”

- First Amendment (Privacy of Beliefs):
  - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
“Bill of Rights”

• Third Amendment (Privacy of Home):
  – No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.
“Bill of Rights”

• Fourth Amendment (Privacy of the Person and Possessions):
  – The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
“Bill of Rights”

• Ninth Amendment (More General Protection for Privacy?):
  – The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.
First Amendment

• Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
News Helicopters
ACLU and News Helicopters

• “Taking photographs of things that are plainly visible from public spaces is a constitutional right".

• “Aerial newsgathering provides a unique and important perspective on breaking news, allowing for coverage that would otherwise be impossible to obtain on the ground.”
First vs. Fourth Amendment

• The police do not have to “shield their eyes” to things that are plainly visible to the public. - *California v. Ciraolo*

• When technology is “in general public use” for a particular purpose, the Fourth Amendment does not restrict such law enforcement use. - *Kyllo v. United States*
WW I Air Surveillance
Google Earth
Persistent Surveillance

VS.
Results of OU Survey

<table>
<thead>
<tr>
<th>How do you feel about using ...</th>
<th>% Oppose (1–3)</th>
<th>% Unsure (4)</th>
<th>% Support (5–7)</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Ground</em> cameras to continuously monitor streets and businesses? (p60a)</td>
<td>24</td>
<td>18</td>
<td>58</td>
<td>4.81</td>
</tr>
<tr>
<td><em>Drone</em> cameras to continuously monitor streets and businesses? (p60b)</td>
<td>46</td>
<td>20</td>
<td>34</td>
<td>3.77</td>
</tr>
</tbody>
</table>

From: "US Public Perspectives on Privacy, Security, and Unmanned Aircraft Systems", Kerry G. Herron, Ph.D., Hank C. Jenkins Smith, Ph.D., and Carol L. Silva, Ph.D., March 2014
Public Perception of “Drone”
FAA Authority

“The FAA is responsible for air safety from the ground up. Under 49 U.S.C. § 40103(b)(2), the FAA has broad authority to prescribe regulations to protect individuals and property on the ground and to prevent collisions between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects. Consistent with its authority, the FAA presently has regulations that apply to the operation of all aircraft, whether manned or unmanned, and irrespective of the altitude at which the aircraft is operating. For example, 14 C.F.R. § 91.13 prohibits any person from operating an aircraft in a careless or reckless manner so as to endanger the life or property of another.” - faa.gov
Airspace Ownership?

- *Cuius est solum, eius est usque ad coelum et ad inferos*:
  - "whoever's is the soil, it is theirs all the way to Heaven and all the way to Hell"
Does technology have the potential to protect our privacy versus threaten it?
1984 – by George Orwell
Thank You!

James L Grimsley
Associate Vice President for Research
Cell: 405-514-7365
VPR Office Suite in 3PP
jgrimsley@ou.edu