Federal Appeals Court Rejects Illinois' Eavesdropping Law As Likely Violating The First Amendment

from the *good-for-them* dept

Free Speech
by **Mike Masnick**
Thu, May 10th 2012
9:09am

Filed Under:
eavesdropping, first amendment, illinois, richard posner

Permalink.
Short link.

We've been covering Illinois' ridiculous "anti-eavesdropping" law, which has been used a few times against individuals who **record the police** in public. For reasons that are beyond me, Illinois' attorney general has been not only quick to use the law (often in a very vindictive manner), but also has been pretty adamant in his defense that it was a perfectly reasonable law (despite other rulings that make it clear that recording police is perfectly reasonable). A few state courts have been **rejecting** the law as unconstitutional, but now a federal appeals court has weighed in and suggested that **the law may violate the First Amendment**. For now, it has simply sent the case back to the lower court to reconsider:

> *The Illinois eavesdropping statute restricts a medium of expression commonly used for the preservation and communication of information and ideas, thus triggering First Amendment scrutiny. Illinois has criminalized the nonconsensual recording of most any oral communication, including recordings of public officials doing the public's business in public and regardless of whether the recording is open or surreptitious. Defending the broad sweep of this statute, the State's Attorney relies on the government's interest in protecting conversational privacy, but that interest is not implicated when police officers are performing their duties in public places and engaging in public communications audible to persons who witness the events. Even under the more lenient intermediate standard of scrutiny applicable to contentneutral burdens on speech, this application of the statute very likely flunks. The Illinois eavesdropping statute restricts far more speech than necessary to protect legitimate privacy interests; as applied to the facts alleged here, it likely violates the First Amendment's freespeech and free-press guarantees.*

It's good to see more and more courts rejecting these cases that clearly serve no purpose other than to scare off whistleblowers. Frankly, the state government should have recognized this long ago and not only dumped such a law, but then refused to bring such cases or stand behind such a ridiculous and unconstitutional law.

Unfortunately, this ruling was not unanimous among the three judge panel. Well respected appeals court judge Richard Posner -- who had already **expressed concerns** that if people were allowed to film the police, they might continue to do so -- disagreed with his colleagues and wrote a dissent on the ruling. Posner's argument seems to hinge on the idea that police might discuss private things in public places (not that any of the cases to date seem to involve that), and thus he fears that a wholesale rejection of the law goes too far. Even so, that seems like a bizarre ruling. Why should others get into legal trouble (and face jailtime) just because someone decided to discuss private info in public? Shouldn't the onus be on the person making those statements not to have revealed them in public?

Posner uses the dissent to launch an attack on supporters of a strong First Amendment, arguing that such an interpretation is inconsistent with how the Bill of Rights was written and would obliterate all sorts of laws that go up against the First Amendment. That seems like a rather extreme extrapolation.

> *Even today, with the right to free speech expanding in all directions, it remains a partial, a qualified, right. To make it complete would render unconstitutional defamation law, copyright law, trade secret law, and trademark law; tort liability for wiretapping, other electronic eavesdropping, and publicly depicting a person in a "false light"; laws criminalizing the publication of military secrets and the dissemination of child pornography; conspiracy law (thus including much of antitrust law); prohibitions of criminal solicitation, threats and fighting words, securities fraud, and false advertising of quack medical remedies; the regulation of marches, parades, and other demonstrations whatever their objective; limitations on free speech in prisons; laws limiting the televising of judicial proceedings; what little is left of permitted regulation of campaign expenditures; public school disciplining of inflammatory or disruptive student speech; the attorneyclient, spousal, and physician-patient privileges in cases in which an attorney or spouse or physician would like to speak but is forbidden by the privilege to do so; laws making medical records confidential; and prohibitions against the public disclosure of jurors' names in cases in which jurors might be harassed. All these legal restrictions of free speech are permitted*

He goes on to point out that recording the police in public may make them not be able to do their job:

> *An officer may freeze if he sees a journalist recording a conversation between the officer and a crime suspect, crime victim, or dissatisfied member of the public. He may be concerned when any stranger moves into earshot, or when he sees a recording device (even a cell phone, for modern cell phones are digital audio recorders) in the stranger's hand. To distract police during tense encounters with citizens endangers public safety and undermines effective law enforcement.*

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Mason Wheeler: @Jeffrey Ugh, that article is totally missing the point. That's not DRM, it's *signing,* and it's completely reasonable. Actual DRM would be a very different (and very bad) thing.

Ninja: Just read it. It seems to me it's crypto signing and I'm kind of shocked they haven't used it for ages now.

Jeffrey Nonken: Yeah, seems like somebody is using a buzzword instead of an accurate description. Clickbait, mayhap.

Meantime, more evidence that you can't compete with free!

https://games.slashdot.org/story/18/06/26/154920
is-generating-more-revenue-than-any-other-free-game-ever?
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That seems like a pretty extreme hypothetical, and a nonsensical one once you think about it. If police are so distracted by someone filming them in public, they either shouldn't be in that job or need better training. It's hard to see how Posner's argument makes much sense, so I'm glad he was outvoted by his fellow judges, but his interpretation of the First Amendment is still worrisome.

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Anonymous Coward, *10 May 2012 @ 9:22am*

obviously thinks that public officials should be able to do what they want and not be held accountable by their employers, the public. makes me distrustful of what his real agenda is

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> **AndyD273** (profile), *10 May 2012 @ 11:38am*
>
> **Re:**
>
> As a judge, he's a public employee. We might hold him accountable for things that he does that go against the best interest of the public.
> It only makes sense.
>
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Anonymous Coward, *10 May 2012 @ 9:25am*

but i thought if you're not doing anything wrong, you have nothing to worry about?

what are these fine, upstanding cops worried about?

[**reply to this** | **link to this** | **view in chronology**]

rubberpants, *10 May 2012 @ 9:28am*

All these legal restrictions of free speech are permitted

Maybe we should look at getting rid of some of those.

[**reply to this** | **link to this** | **view in chronology**]

Dr Evil, *10 May 2012 @ 10:14am*

Re:

don't worry, Obama is all over it....

[reply to this | link to this | view in chronology]

E. Zachary Knight (profile), *10 May 2012 @ 9:30am*

insider

It is disturbing how many people view basic freedoms such as the right to speak freely and the right to defend yourself. Why would anyone want to limit such freedoms?

[reply to this | link to this | view in chronology]

Mason Wheeler, *10 May 2012 @ 10:22am*

Re:

Because an "absolute right" is a very dangerous thing. Just look at Florida, where a guy's accused of murdering a kid and calling it self-defense because there's a law on the books that can make that a viable legal defense even if it's not true. (And for the record, I'm not taking any position on whether or not that's what actually happened, only that it's a possibility, and if it didn't happen in this case, it easily could in another.)

The list of restrictions the judge gave on absolute free speech is pretty reasonable. I don't agree that everything he named is worthwhile--and I certainly don't agree with the way he extrapolated it into the police-monitoring argument--but his premise is fundamentally sound. Would you really want to live in a world where it's considered a sacred, legally-protected right to yell "FIRE!" in a crowded theatre?

[reply to this | link to this | view in chronology]

MadCow (profile), *10 May 2012 @ 10:44am*

Re: Re:

While you state you haven't taken a position, you essentially have taken a position by calling it "murder". Murder, by most people's understanding, is an illegal killing of a person due to whatever reason. While the kid was in fact killed, we still don't have any proof as of yet that is convincing enough to say "Yes, it was cold blooded murder." It could legitimately be self defense in some manner. I find it unlikely that we'll even discover what truly happened in this particular case due to abysmal police investigation at the time.

[reply to this | link to this | view in chronology]

John Fenderson (profile), *10 May 2012 @ 10:50am*

Re: Re: Re:

> *Murder, by most people's understanding, is an illegal killing*

Legally, this is so. But (and I know this depends on where you live) a substantial number of people consider any intentional killing of a human being for any reason to be murder in a nonlegal, colloquial sense. It might be justifiable murder, but murder nonetheless.

[reply to this | link to this | view in chronology]

Anonymous Coward, *10 May 2012 @ 10:33pm*

Re: Re: Re: Re:

Justified murder is an oxymoron. By definition, murder is unjustified killing. Lets not confuse killing with murder. All murder is killing, not all killing is murder.

[reply to this | link to this | view in chronology]

Mason Wheeler, *10 May 2012 @ 11:01am*

Re: MadCow

Please read what I said more closely. I said that he has been accused of murdering someone and claiming that it was legitimate self defense, which is absolutely true: that accusation has been made, and has been widely reported in the media.

Whether that accusation is correct, or whether it was actual self defense, is what I'm not taking a position on. I was simply using that as an example that should be familiar to the audience.

[reply to this | link to this | view in chronology]

John Fenderson (profile), *10 May 2012 @ 10:46am*

Re: Re:

> *Because an "absolute right" is a very dangerous thing.*

I wouldn't say dangerous, I would say impossible. If we consider all constitutional rights as absolute and without exception, that makes the constitution an unusable document right off the bat.

I don't think you could pick a single right out to make unconditional. You'd have to make them all unconditional. But many of them are at odds with each other, and exercising one can impinge on another.

It's the nature of rights in general: they're a balancing act, and compromises are required in order to advance liberty overall as much as possible.

[**reply to this** | **link to this** | **view in chronology**]

Pwdrskir (profile), *10 May 2012 @ 1:17pm*

Absolutely Wrong

Being a big Governista lover has blinded you. You can�t think of a single right that is not given to you by Govt? That's sad.

�Because an "absolute right" is a very dangerous thing.� Reply *�I wouldn't say dangerous, I would say **impossible**.�*

Regardless if you believe in a Creator or not, why do you think an "absolute right" must be written? A Natural Right is an Absolute Right. A Legal Right is something that Govt can strip away if they see fit.

Barring any violations by a person,
Isn't the right to live an absolute right? Or can Govt just remove one�s life when they see fit as G. Bernard Shaw argued?
Isn't the right to liberty an absolute right? Or can Govt lock up people up on a Robespierre whim?

Balance that on your pin head.

[**reply to this** | **link to this** | **view in chronology**]

Mason Wheeler, *10 May 2012 @ 1:39pm*

Re: Absolutely Wrong

> *Isn't the right to liberty an absolute right? Or can Govt lock up people up on a Robespierre whim?*

Not on a whim, no, but with due process of law? Yes, absolutely. I wouldn't want to live somewhere where that wasn't true, and for all your rhetoric, I don't think you would either. (If you do, try moving to Somalia. They've had no government, "big" or otherwise, to enforce the laws for years now. Should be a paradise, right?)

[**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *29 May 2012 @ 9:23pm*

Re: Re: Absolutely Wrong

exactly the retards who go on about get rid of government, have no clue, go to somalia, no gov for 20 years now? paradise of freedoms, please move there soon

[**reply to this** | **link to this** | **view in chronology**]

Pwdrskir (profile), *26 Oct 2012 @ 3:07pm*

Re: Re: Re: Absolutely Wrong

Stalin and Mao killed 100+ Million in the name of Govt for "the greater good" moron.

[**reply to this** | **link to this** | **view in chronology**]

John Fenderson (profile), *10 May 2012 @ 4:16pm*

Re: Absolutely Wrong

> *Being a big Governista lover has blinded you.*

If you think I'm a big governista, then you simply don't understand me.

> *You can�t think of a single right that is not given to you by Govt?*

The government doesn't give any rights whatsoever, so I can think of a whole slug of rights that is not given by the government.

However, my point is that these rights naturally conflict with each other in a lot of ways, such that exercising one deprives someone else of another. The government has a proper role in managing this problem so that on the whole everyone's liberty is maximized.

Think about it -- if it's not the role of government, then whose role is it? because the conflicts have to be, and will be, resolved in one way or another.

[**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *10 May 2012 @ 11:37am*

Re: Re:

Let me get this straight. It is OK for the police to film pulling you over and writing a citation, but I can't film that same act? Even if I am the one being pulled over??

We aren't talking about yelling 'Fire' in a crowded room. We aren't talking about child pornography. We are talking about filming something we see.

Do you have any clue how many times you are on camera and recorded, just driving down the freeway? Going out in public? All that is OK, but it is NOT OK if it is me filming a cop (or fireman or public official). Give me a break!

It's like Facebook syndrome. I want to yell to the world, but I don't want the world to use it against me.

[**reply to this** | **link to this** | **view in chronology**]

Mason Wheeler, *10 May 2012 @ 1:36pm*

Re: Re: Re:

That's not "straight" at all. I explicitly stated that I did not agree with the way the judge tied it to cop-filming, because that's a bunch of crap. But that doesn't mean that his premise is bad, it means the logic he uses to work from that premise is bad. The premise is a good one, and I don't like seeing people try to demonize a good argument just because it's used together with a bad argument.

It's called intellectual integrity, and it's in far too short supply these days, pretty much everywhere. Left, right, center and everything in between seems to have abandoned the very concept of critical thinking, and it drives me up the wall.

[**reply to this** | **link to this** | **view in chronology**]

Pwdrskir (profile), *10 May 2012 @ 12:42pm*

America's defense of Absolute Rights

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."

Regardless if you believe in a Creator or not, why do you think an "absolute right" has to be written? A Natural Right is an Absolute Right vs a Legal Right that Govt can strip away if they see fit.

Isn't the right to live an absolute right?
Isn't the right to liberty an absolute right?

Your thinking process regarding rights is dangerous to others.

[**reply to this** | **link to this** | **view in chronology**]

John Fenderson (profile), *10 May 2012 @ 12:54pm*

Re: America's defense of Absolute Rights

> *Regardless if you believe in a Creator or not*

In the sense they meant it, we all believe in a Creator of some sort, even it the Creator is "natural processes" or "your parents".

I've long been fond of that phrase in the preamble. If you look at how it came about, it's a nice little bit of finesse. The revolutionary thing about the Constitution was that it did not rely on any sort of deity as the source of authority. However, making that too explicit was politically problematic, so they came up with that phrase as a bit of a nod without tying anything to a god.

[**reply to this** | **link to this** | **view in chronology**]

John Fenderson (profile), *10 May 2012 @ 12:58pm*

Re: America's defense of Absolute Rights

Oh, I forgot the actual important part:

> *Isn't the right to live an absolute right?*
> *Isn't the right to liberty an absolute right?*

No, on both counts. It is possible to sacrifice both of those rights if you commit the right crimes, get the right job, or a handful of other ways.

[**reply to this** | **link to this** | **view in chronology**]

btr1701 (profile), *10 May 2012 @ 4:28pm*

Re: America's defense of Absolute Rights

> Your thinking process regarding rights is dangerous to others
.
Maybe the government should do something about that.

[**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *29 May 2012 @ 9:25pm*

Re: America's defense of Absolute Rights

if that is your choice to argue for rights, you need to learn some history, the man who wrote that, owned slaves, while he wrote it, he meant all white men are created equal, try again

[**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *10 May 2012 @ 3:00pm*

Re: Re:

Have you tried yelling "FIRE!" in a crowded theater lately?

Not only is it almost impossible to find a crowded theater these days due to lack of decent content and alternative delivery methods (aka PIRACY...)

But the reality is that nobody listens anymore, or they look at you like YOU are on fire (perhaps they assume the fire is in your pants?...), or they check their 'Theater on fire?' app and say, "Nope, the theater is not on fire... see".

It's almost impossible to get a crowd of people to trample each other just by screaming FIRE these days...

Why can't we go back to the old days when you could cause mass panic and potential casualties just by yelling in a crowded theater?

[**reply to this** | **link to this** | **view in chronology**]

Mason Wheeler, *10 May 2012 @ 3:38pm*

Re: Re: Re:

I went to see *The Avengers* a few days ago, and it sure was crowded! And I would have gone to see it last week, but by the time I got to the theatre it was sold out for the entire day. So that's even more crowded! (And I don't live in a very big city, either.)

When I go see movies, which I do fairly frequently, it's usually either packed (over 75% of capacity) or almost empty. What I don't see very often at all is a *moderately* full theater. :P

[**reply to this** | **link to this** | **view in chronology**]

btr1701 (profile), *10 May 2012 @ 4:25pm*

Re: Re:

> Would you really want to live in a world where
> it's considered a sacred, legally-protected right to
> yell "FIRE!" in a crowded theatre?

If there really is a fire, you bet.

[**reply to this** | **link to this** | **view in chronology**]

Mason Wheeler, *10 May 2012 @ 4:57pm*

Re: Re: Re:

Please don't be pedantic. The idea of "shouting FIRE in a crowded theatre" is a well-known concept, universally understood as referring to a malicious and false act whose only purpose is to incite a panic that will bring harm to others.

Obviously the rules are different in case of a real fire, but that's not the situation being discussed when this phrase is invoked.

[**reply to this** | **link to this** | **view in chronology**]

btr1701 (profile), *10 May 2012 @ 5:50pm*

Re: Re: Re: Re:

> Obviously the rules are different in case of a
> real fire, but that's not the situation being discussed
> when this phrase is invoked.

No, you're just invoking the wrong phrase. Go back and read the case from which it originates. The prohibition was on falsely shouting fire in a crowded theater, not just shouting it in general.

[**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *10 May 2012 @ 10:32pm*

Re: Re:

Zimmerman lied in court. When asked in court he said that he thought the kid was his (Zimmerman's) age. But in the 911 call, when asked by the police, he said he thought the kid was much younger.

Ironically, the prosecutors who were cross examining him missed this completely. It was the mainstream media (I think it was CNN) that caught it.

[**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *11 May 2012 @ 12:51am*

Re: Re: Re:

Need to find that bit unedited so we can tell if he said he thought the victim was around the same age as himself when he was 'defending' himself, and younger after the fact when he had time to calm down and think. I don't trust the media to not edit it so that it sounds like he's lying.

[reply to this | link to this | view in chronology]

Joe, *19 May 2012 @ 5:27am*

Re:

"Think of the children!" (TM)

I guess that pretty much explains it, heh.

[reply to this | link to this | view in chronology]

Designerfx (profile), *10 May 2012 @ 9:32am*

normally I thought posner was regarded as a genius

when it comes to this first amendment stuff, how can he not get it? He's the circuit court judge! This is like....unbelievable for someone in a position at such a level. It's like he does not like the very concept of transparency or accountability.

[reply to this | link to this | view in chronology]

Almost Anonymous (profile), *10 May 2012 @ 10:06am*

Re: normally I thought posner was regarded as a genius

Maybe he used to be a dirty cop, and he's just trying to protect the rights of all the other dirty cops out there.

[reply to this | link to this | view in chronology]

Keii (profile), *10 May 2012 @ 9:33am*

Illinois is not unfamiliar to unconstitutional laws.

[reply to this | link to this | view in chronology]

Dr Evil, *10 May 2012 @ 9:40am*

hey mom, watch this.......

based on the law, hearing aids, a glass pressed against the wall, and tin cans with a stretched string between them are all devices that can allow someone to hear a conversation. therefore all illegal.
the law further talks about expectation of privacy. that alone should shoot down the states entire argument - since when should an officer - who purposely dresses in a distinctive uniform (and often has a specially marked vehicle) in order to be recognized in public - expect privacy when �in public? They are a special kind of public servant (ooo there�s the word public again) and should expect no privacy when on duty. Speeding in your police car? In public. Soliciting a bribe? In public. Eating a donut? Painfully, in public. Funny that the penalty for recording an officer soliciting the bribe is greater than offering one. Besides, they need to learn to be recorded - when their overlords finish the world wide panopticon most of the rank and file will be IN it, not monitoring others.

[reply to this | link to this | view in chronology]

Anonymous Coward, *10 May 2012 @ 9:40am*

" If police are so distracted by someone filming them in public"

Wouldn't that mean that CCTV makes it impossible for police to do their jobs?

[reply to this | link to this | view in chronology]

Keii (profile), *10 May 2012 @ 9:46am*

Re:

Nope. For the children, your argument is invalid.

[reply to this | link to this | view in chronology]

E. Zachary Knight (profile), *10 May 2012 @ 9:47am*

insider

Re:

No. Those cameras are on their side and are watching their backs. It is those evil criminals with cellphone cameras that are the problem.

[reply to this | link to this | view in chronology]

JMT (profile), *10 May 2012 @ 2:39pm*

Re:

Never mind CCTV, what about the TV show *Cops*? They've been "distracting" police for 23 years!

[reply to this | link to this | view in chronology]

Chris Brand (profile), *10 May 2012 @ 9:47am*

where does he live ?

"the right to free speech expanding in all directions" - really ? Perhaps this is some strange usage of the word "expanding" that I wasn't previously aware of...

[**reply to this** | **link to this** | **view in chronology**]

Almost Anonymous (profile), *10 May 2012 @ 10:05am*

Silly judge

> *Posner's argument seems to hinge on the idea that police might discuss private things in public places (not that any of the cases to date seem to involve that), and thus he fears that a wholesale rejection of the law goes too far.*

Hasn't he ever heard of the widely deployed "Cone of Silence"? http://en.wikipedia.org/wiki/Cone_of_Silence

> *An officer may freeze if he sees a journalist recording a conversation between the officer and a crime suspect, crime victim, or dissatisfied member of the public. He may be concerned when any stranger moves into earshot, or when he sees a recording device (even a cell phone, for modern cell phones are digital audio recorders) in the stranger�s hand.*

Why would the office freeze or be concerned if he has nothing to hide?

[**reply to this** | **link to this** | **view in chronology**]

Joe, *19 May 2012 @ 5:34am*

Re: Silly judge

They can discuss it in public where everyone can hear it but if someone can prove that it was said, it suddenly becomes an issue?

I prefer an umbrella over a cone. ;)

I could make the same argument as the judge about drivers. Shouldn't police not pull people over because it makes them nervous and might cause a wreck? Same with marked police cars. They cause people to drive well below the speed limit in the left lane and thus increase the risk of pileups. Yeah, it's a stupid and braindead argument and I agree with you about it not making sense.

[**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *10 May 2012 @ 10:23am*

An officer may freeze if he sees a journalist recording a conversation between the officer and a crime suspect, crime victim, or dissatisfied member of the public.

Then he or she is a weakling and a coward -- and should not only be fired on the spot, but blacklisted from public service for life. They're not fit to be a **public** *servant*.

[**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *10 May 2012 @ 10:36am*

Judge Posner

Unlike many others, I've never been particularly impressed by Judge Posner's abilities as a legal scholar.

[**reply to this** | **link to this** | **view in chronology**]

---

iambinarymind (profile), *10 May 2012 @ 10:37am*

Courts Represent the State...

The court system & the black robed men that claim authority within it, are inherently biased to the State. They are paid by the State via stolen money ("taxes") and people somehow expect these black robed men to be objective?

Until we allow competition in a free market of courts, arbitration systems, and dispute resolution organizations, we will not even come close to having real justice.

For some examples of possible voluntary & consensual solutions, check out these two free to download books:
"Chaos Theory" by Robert P. Murphy
"Practical Anarchy" by Stefan Molyneux

[**reply to this** | **link to this** | **view in chronology**]

Rapnel (profile), *10 May 2012 @ 10:45am*

Who watches the watchers?

I can and I will.

[**reply to this** | **link to this** | **view in chronology**]

MrWilson, *10 May 2012 @ 10:56am*

The simple solution is to just record the cops all the time so they get used to it and they won't be concerned about whether or not they're being recorded because they will just know that they are in fact being recorded.

Otherwise we should file charges against the producers of the tv show Cops for interfering with officers while they're on duty.

[reply to this | link to this | view in chronology]

Helpful Proofreader, *10 May 2012 @ 11:07am*

In case you'd like to know, the IL Attorney General is a She...

http://illinoisattorneygeneral.gov/about/bio.html

[reply to this | link to this | view in chronology]

Helpful editor, *10 May 2012 @ 11:33am*

Re: In case you'd like to know, the IL Attorney General is a She...

The defendant in the case is the Cook County State's Attorney, Anita Alvarez, not the Illinois Attorney General. Please clarify.

[reply to this | link to this | view in chronology]

Helpful Proofreader, *10 May 2012 @ 11:56am*

Re: Re: In case you'd like to know, the IL Attorney General is a She...

Who is the 'his defense' being talked about in:

For reasons that are beyond me, Illinois' attorney general has been not only quick to use the law (often in a very vindictive manner), but also has been pretty adamant in his defense that it was a perfectly reasonable law (despite other rulings that make it clear that recording police is perfectly reasonable).

Helpful Proofreader(?)

[reply to this | link to this | view in chronology]

AndyD273 (profile), *10 May 2012 @ 12:09pm*

Re: Re: Re: In case you'd like to know, the IL Attorney General is a She...

"but also has been pretty adamant in his (Illinois' attorney general) defense"

That's how I read it anyway, since he's also the one using the law in a very vindictive manner.

[reply to this | link to this | view in chronology]

Helpful Proofreader, *10 May 2012 @ 12:22pm*

Re: Re: Re: Re: In case you'd like to know, the IL Attorney General is a She...

...which leads me to my original question, the sentence starts talking about the IL Attorney General, and then uses 'he' in the last part of the sentence. Even if what you were saying it should be the IL Cook County Attorney General, both of those Attorney General are women. So who else is a He?

[reply to this | link to this | view in chronology]

MrWilson, *10 May 2012 @ 2:00pm*

Re: Re: Re: Re: Re: In case you'd like to know, the IL Attorney General is a She...

That's not your attorney general, that's a man, baby!

[reply to this | link to this | view in chronology]

Andrew D. Todd, *10 May 2012 @ 11:17am*

"Rat Control"

In the first place, there is an established method for communicating privately in a public place... it's called "whispering." Similarly, at this point, cellphones are ubiquitous.

There is a certain type of policeman who thinks it is too time-consuming to abide by the rules when dealing with unimportant people, especially the extreme variety of unimportant people known as homeless people, or street people. The policeman deliberately breaks a few bones with his nightstick, rather than going to the trouble of assembling evidence which will stand up in court. Occasionally, the policeman gets out of control, and kills someone over a trivial offense, vide Kelly Thomas. Sufficient video (and audio) inevitably exposes the policeman's lies about self-defense, and turns the case into Willful and Premeditated Murder. In the extreme cases, in Brazil and Columbia, during the 1980's, policemen went around shooting street children. With all of South America suddenly moving to the city in an uncontrolled way, there were large numbers of abandoned children living on the streets of cities such as Rio De Janeiro and Bogota. The proper welfare institutions were simply not organized on a scale to deal with this influx, and the street children necessarily supported themselves by petty theft, begging, prostitution, etc. In certain countries, the police expediently dealt with the problem as one of "rat control."

[reply to this | link to this | view in chronology]

AndyD273 (profile), *10 May 2012 @ 12:04pm*

The real problem

When my pregnant wife went into the hospital to get an ultrasound, I wanted to film the process so we could show people the baby moving and stuff. So I asked the technician if I could record the little monitor with my cell phone camera. She said that because of liability the hospital policy said no cameras. They are so scared of lawsuits that you aren't allowed to film births anymore like you could when I was young, because if someone wanted to, they could take the recording out of context and sue the hospital.

It's probably the same thing for cops, even the honest ones.
If I saw you walking toward me with a camera or other recording device, it would make me think that you had an agenda, and recordings can be altered to show anything.

The solution? More cameras. Put a shoulder mounted camera on every cop, and don't allow them to be shut off. Record every second of every day that an officer is in uniform.
Stream the video live to recording units in each squad car, the police station, and some centralized state or federally controlled location.

Then any good cop will be able to know that if he/she acts within the law, then all will be well, and any doctored record that someone else makes will be thrown out.

And for the bad cops, if a camera gets shut off or otherwise disabled, then there is a suspension. It may get some of the good cops, but not as many.

[**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *10 May 2012 @ 12:49pm*

Re: The real problem

i think that has more to do with the hospital/lab wanting you to BUY the official ultrasound pictures. i had a camera in the delivery room a year ago with no objections.

but yea, you're right that that's the excuse they'll give. however, is that a valid excuse? NO! it's a bullshit excuse. and there is NO valid excuse for not allowing recording police.

cops are trusted and expected to be the best and brightest. they should have integrity and be honest. fuck me, we give them power to take your life if they feel it's necessary.

these fuckers that are against putting the police in check need to have their heads examined (or removed).

[**reply to this** | **link to this** | **view in chronology**]

BeeAitch (profile), *10 May 2012 @ 2:48pm*

Re: The real problem

While I agree that this hospital's policy is a shitty one, they are a **private** institution, and can therefore set their own policy in this regard.

The difference is that the police are **public** 'servants', and therefore should have no reasonable expectation of privacy on the job.

[**reply to this** | **link to this** | **view in chronology**]

Joe, *19 May 2012 @ 7:29am*

Re: Re: The real problem

Actually, you have a right to your medical records and if you don't it's time to change the laws or get out of Dodge.
Now, if they want to charge a few grand a page for them... heh, that probably wouldn't fly either, but you never know with some states.

[**reply to this** | **link to this** | **view in chronology**]

AnonCow, *10 May 2012 @ 12:14pm*

Couldn't you make the opposite argument? That if police know they COULD be videotaped performing their actions in public and that they are UNABLE to stop the videotaping, they are can focus solely on performing their duties.

Anyone who lives in the public eye (celebrity, politician, police officer, etc....) should always go about their job, and even their off-duty public activities, as if a camera crew was following them around. If they are uncomfortable with that or cannot live up to the standard it requires, they may want to choose a different profession.

[**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *10 May 2012 @ 3:59pm*

Re:

While I do appreciate that nowadays for some bizarre reason, you can actually be a celebrity purely for being a celebrity, but in the past and in many cases still today, celebrities can be people who are actually talented at doing something.
Being good enough at something that people want to watch the tv show that you are in or host or the movie that you star in should never mean that anyone should think they have a right to invade your privacy when you are off duty.
Police, when off duty also, should have an expectation of privacy, but on duty and in public not so much.

[**reply to this** | **link to this** | **view in chronology**]

Simple Mind (profile), *10 May 2012 @ 12:16pm*

recording arrests should be mandatory

It should be mandatory that police record every encounter with the public. Why rely on he-said/she-said given that we have the technology? Also, if you are always recording yourself anyway, it is hard to get startled if you notice someone else recording you.

[reply to this | link to this | view in chronology]

John Fenderson (profile), *10 May 2012 @ 12:46pm*

Re: recording arrests should be mandatory

In practice, they do this already. It helps provide evidence to defend the police in lawsuits (when the police aren't in the wrong).

Of course, when the police *are* in the wrong, these recordings often end up mysteriously lost.

[reply to this | link to this | view in chronology]

Anonymous Coward, *10 May 2012 @ 3:06pm*

All I can think of is Watergate...

"A president or cabinet official may become distracted when they realize that there are secret tape recordings of their conversations. This becomes even more distracting when the recorded conversations reveal racism, abuse of power, grotesque violations of the constitution, and ever-more frantic attempts at a cover-up. To distract the executive branch during tense encounters with foreign governments, members of congress, or their own covert operatives endangers public safety and undermines effective government."

Thanks, Posner. I never understood before just how tense it can make our public officials, when there's a chance that somebody could actually document their wrong-doing. Clearly, allowing them to feel comfortable doing their jobs is far more important than ensuring that they perform their jobs effectively, legally, and carefully.

[reply to this | link to this | view in chronology]

Anonymous Coward, *10 May 2012 @ 3:27pm*

Posner complains that free speech is expanding. If he thinks it should be contracted he should lead by example and shut up.

[reply to this | link to this | view in chronology]

Androgynous Cowherd, *10 May 2012 @ 9:16pm*

Posner rebuttal

Posner's examples of restrictions of free speech strike me as fairly questionable, in various different ways, as follows:

> *defamation law*

Aka the Streisand Effect law. These days using it seems to be worse than useless. The best way to counter defamation seems to be with more speech. Maybe it always was.

> *copyright law*

Color me radical, but I suspect we'd actually get on just fine without this.

> *trade secret law*

And this.

> *and trademark law*

And possibly this. See false advertising, below.

> *tort liability for wiretapping, other electronic eavesdropping,*

The act of wiretapping is not speech, though the act of disclosing the results is. Wiretapping and other eavesdropping should still be regulated.

> *and publicly depicting a person in a �false light�;*

See defamation law, above.

> *laws criminalizing the publication of military secrets*

This may be necessary, but I'd say it should be starkly limited:

1. Like present trade secrets, once there's widespread knowledge proved among rival nation-states the secret status should be automatically lost.

2. Secrets relating to battle maneuvers or other things like that should only be enforced in wartime; and should have a short time limit on the secrecy. Once the secret battle plan has been used (or rendered moot) in battle, after all, the reason for keeping it secret no longer applies.

3. Secrets relating to capabilities and weapons systems should lose secrecy once these are widely known, per 1 above, or obsolete, unless they would if revealed enable small-scale actors to construct WMDs.

4. Likely nothing else should be eligible for military secrecy save a) battle plans and similar matter (and only during wartime; e.g. stuff analogous to the D-Day plans and landing sites) and b) the stuff in item 3 above.

> *and the dissemination of child pornography;*

More controversial, but this should probably also not be criminal. The dissemination, in and of itself, harms no-one, and it's increasingly possible to become guilty in that area inadvertently. Furthermore, criminalizing it encourages the concealment and destruction of evidence of much more serious crimes, even by people who come across such evidence without themselves having been involved in those crimes and who would not otherwise have a motive to do so.

> *conspiracy law (thus including much of antitrust law);*

As I understand it, conspiracy law doesn't prohibit speech per se. Rather it prohibits certain combinations of speech and action, since an action in furtherance of the conspiracy is required for guilt. So, much stronger free speech guarantees are not incompatible with conspiracy law.

> *prohibitions of criminal solicitation,*

If this means soliciting criminal acts, e.g. paying someone to kill someone, that should be coverable under other laws, e.g. attempted murder.

> *threats and fighting words,*

I'm not sure these should be prohibited. "Threats" are sometimes in jest. Fiction could be taken out of context. On the other hand, credible threats should remain grounds for closer scrutiny and possible intervention. For instance, the one who uttered the threat may be surveilled and if they try something jailed for assault or whatever. Or the one threatened can use it as grounds to obtain a restraining order, violation of which can again lead to the threatener being jailed.

> *securities fraud,*

Like conspiracy law, this one requires more than just speech. It requires a financial transaction as well. For example, touting a stock after buying some at a low price, then selling when the price goes up. Touting a stock you have no financial interest in would be pure speech.

> *and false advertising of quack medical remedies;*

False advertising in general seems to again be a problem specifically in combination with a transaction: the sale to a consumer confused or misled as to the origin, nature, efficacy, or whatever of the product. I'd suggest that a sale under such circumstances constitutes fraud, and that fraud law can be used in lieu of distinct false advertising law and also in lieu of trademark law. Passing off Bob's Cola as Coca-Cola to a paying customer would simply constitute fraud.

> *the regulation of marches, parades, and other demonstrations whatever their objective;*

Why should such things be regulated? If the activity is peaceful and nonobstructive there's no legitimate need, if it's violent there are existing laws against assault, and if it's obstructing traffic or creating some other nuisance there are generally laws that cover that, such as city noise bylaws.

> *limitations on free speech in prisons;*

Another one of questionable necessity. If you're worried about prisoners communicating with confederates on the outside to operate criminal enterprises, it's privacy of speech in prisons that is the problem, not freedom of speech in prisons. Disallow encryption products and monitor all communications, except for privileged lawyer-client ones.

> *laws limiting the televising of judicial proceedings;*

Questionable necessity.

> *what little is left of permitted regulation of campaign expenditures;*

Questionable effectiveness. We *do* need to get the influence of money out of politics but I don't think restricting campaign expenditures works very well. There are too many other ways for lobbyists to ply politicians with goodies, including simply "not doing it during a campaign". Perhaps we could require instead that politicians take a vow of poverty in exchange for lifetime welfare, or create a fund that provides equal funding to anyone running for office to what they can prove their competitors have received, or something like that to level the playing field. Or maybe it will solve itself. The issue of large corporate entities being able to skew media presentation of campaigners and issues by, in large part, owning the media may go away in the Internet age as the old broadcast media become increasingly irrelevant -- if, that is, we preserve strong free speech on the internet and avoid too much concentration of market power in too few ISPs.

> *public school disciplining of inflammatory or disruptive student speech;*

Absolutely disagree that there should be such "disciplining".

> *the attorneyclient, spousal, and physician-patient privileges in cases in which an attorney or spouse or physician would like to speak but is forbidden by the privilege to do so;*

I'm not even sold on the merits of these. In the attorney and physician cases, blabbing about confidential stuff could be regarded as an ethics breach by the professional bar, rather than being policed by the government; that would enable the privilege to exist without a government limitation on free speech.

> *laws making medical records confidential;*

See above, and see eavesdropping further above for when it's a leak rather than voluntary disclosure by a custodian of the records.

> *and prohibitions against the public disclosure of jurors� names in cases in which jurors might be harassed.*

Similar to "uttering threats", perhaps the solution is not to limit speech but to enhance enforcement of the law you fear will be broken -- violent crime laws in the case of threats and harassment laws in this case.

[**reply to this** | **link to this** | **view in chronology**]

> **Joe**, *19 May 2012 @ 7:34am*
>
> **Re: Posner rebuttal**
>
> So I take it that you consider yourself antigovernment or libertarian? ;)
>
> [**reply to this** | **link to this** | **view in chronology**]

Anonymous Coward, *29 May 2012 @ 9:21pm*

they do need to reword this some, officer safety does need to be taken into consideration

That seems like a pretty extreme hypothetical, and a nonsensical one once you think about it. If police are so distracted by someone filming them in public, they either shouldn't be in that job or need better training. It's hard to see how Posner's argument makes much sense, so I'm glad he was outvoted by his fellow judges, but his interpretation of the First Amendment is still worrisome.

guess you never did any law enforcement, or seem to care about officers lives, officer responding to a potential violent scene, domestic abuse, reported gunfire etc.., arrives at night time and someone comes walking or hell, some retard comes running up and pulls something dark from his pocket and begins to point it at the officer, and the officer shoots the person, now you idiots will start screaming excessive force, demand he go to jail, he was "only" pulling out his cell phone to film the officer.....

[**reply to this** | **link to this** | **view in chronology**]

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amorro, *29 Jul 2012 @ 12:55pm*

Melongo's Eavesdropping Case Dismissed: Another Blow To Illinois Eavesdropping Law

Upon the defendant's motion[1], Judge Goebel filed his written order[2] dismissing Melongo's eavesdropping case on June 19th, 2012. The state hasn't decided if it will appeal.
[1] http://www.illinoiscorruption.net/documents/MotionRequestAmendedOrder.pdf
[2] http://tinyurl.com/cqq6ahg
Melongo's motion : http://tinyurl.com/6nqv2se
State's response: http://tinyurl.com/73fwecf

[**reply to this** | **link to this** | **view in chronology**]

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jeanette, *31 Jul 2012 @ 6:25pm*

RCFP Article on Melongo's Case

RCFP's Article On Melongo's Dismissing her Eavesdropping Case:

http://tinyurl.com/cx45d4b

[**reply to this** | **link to this** | **view in chronology**] psimon (profile), *6 Jan 2014 @ 7:55pm*

Illinois Eavesdropping Still Alive

The illinoiscorruption.net has issued an informational video and a press release, to help the media and the general public in the upcoming oral argument at the Illinois Supreme Court hearing in Annabel Melongo�s eavesdropping case. The hearing is scheduled for January 14th, 2014, at the 18th floor of the Michael A. Bilandic Building, 160 N. LaSalle Street, Chicago at 9.30 am.

Video: http://www.illinoiscorruption.net/common/video-pressrelease.html
Press Release: http://www.illinoiscorruption.net/common/pressrelease.html

Please support this cause. The Illinois Eavesdropping law at its very core creates a two-class legal system wherein the conversations of the powerful and well-connected are protected to the detriment of the less powerful. The upcoming oral argument presents a unique opportunity for the common citizen to re-establish that legal balance that will unequivocally establish a right to record public officials in their public duties.

Therefore, please contribute to this all-important hearing by either attending it, writing about it, spreading the word or just forwarding the below video and press release to anybody who might be of any help.

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