

Drones: A New Front in the Fight Between Government Interests and Privacy Concerns

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IN 1889 the Eastman Dry Plate and Film Company rolled out the first portable camera, stunning the public and revolutionizing the world of photography forever. However, a year later the same

camera was a source for countless scandals, as unscrupulous journalists used it to take pictures of celebrities and the country's wealthiest citizens.¹ Today we find ourselves in a similar situation, not

¹ Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, 4 HARVARD L. REV. 193 (1890).

from the Kodak, but the unmanned aerial vehicle. Unmanned aerial vehicles, commonly called drones due to the similarities between the humming sounds they emit and the worker bee,² have become almost omnipresent in our society, and while some champion them for their countless uses, in others they instill a sense of dread.

I. Big Brother is Watching: Usage of Drones at the Federal Level

The federal government itself uses drones to conduct a variety of tasks from scientific research to predicting weather, inspection of power lines, and even coordinating humanitarian aid. Unsurprisingly, drones also have military and intelligence purposes. On its face the concept isn't malicious, the government isn't watching us like big brother to stamp out dissent. Rather, drones are used in the fulfillment of legitimate goals like stopping crimes or solving missing person cases.

However, rights and interests do not exist in a vacuum and must

be weighed against each other to achieve a just result. In this instance, the counterbalance with the government interest is the right to privacy. The main issue when dealing with government interest versus the right to privacy at the federal level is that there is no central federal omnibus regarding aerial privacy in the United States. While the federal government defers to the FAA on aviation matters and the FAA has issued guidelines on operation of drones, the FAA has not issued guidelines on drones with respect to privacy.³ As a result, any guidance we can glean on aerial privacy is contained in a mish-mash of precedent and inferences drawn from other statutes.

Compounding the problem is the notable lack of precedent from federal case law. The Supreme Court has not dealt with a case involving aerial tracking.⁴ Most cases involving drones have dealt instead with foreign nationals suing the government or companies suing each other for copyright claims, and the remainder are frivolous claims.

² Mark Corcoran, *Drone Wars: The definition dogfight*, ABCNEWS.NET.AU, Feb. 28, 2013 available at <http://www.abc.net.au/news/2013-03-01/drone-wars-the-definition-dogfight/4546598> (last visited August 30, 2017).

³ Federal Aviation Administration, *Fact Sheet-Small Unmanned Aircraft Regulations*, June 21, 2016, available at https://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=20516 (last visited, August 30, 2017).

⁴ Taly Matiteyahu, *Drone Regulations and Fourth Amendment Rights: The Interaction of State Drone Statutes and the Reasonable Expectation of Privacy*, 48 COLUM. J L & SOC. PROBS. 265, 269 (2014).

In order to examine where we stand, we have to examine how case law has carved out the current status quo.

The bedrock of the right to privacy is the Fourth Amendment, which states:

“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.”⁵

Initially the Fourth Amendment applied only to personal property and trespassing on land, but it was expanded considerably in *Katz v. United States*.⁶ In *Katz v. United States* that the right to privacy was extended to protect people in places with a reasonable expectation of privacy. Charles Katz, a gambler, entered a phone booth to make several wagers unaware that the FBI had placed eavesdropping devices in the booth.⁷ Mr. Katz was arrested and filed suit, arguing that the recordings violated his privacy and the FBI’s actions constituted a

search under the Fourth Amendment.⁸ The Supreme Court agreed and held that a conversation is protected from unreasonable search and seizure under the Fourth Amendment if it is made with a “reasonable expectation of privacy.”⁹

However, this right is not absolute. The “plain view” doctrine allows an officer to search for and seize evidence without a warrant if the evidence is found in plain view during a lawful search or observation.¹⁰ In *Terry v. Ohio*, a limited search of a suspect to check for weapons when the officer had reasonable suspicion that a crime had either occurred or was about to occur, was found reasonable.¹¹ In *Smith v. Maryland*, the Supreme Court held there is no expectation of privacy when a person voluntarily shares information with a third party.¹² In *United States v. Knotts*, the Supreme Court held that individuals do not have an expectation of privacy when driving a car on public roads.¹³ “A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. When [Defendant]

⁵ U.S. CONST. AMEND IV.

⁶ *Katz v. United States*, 389 U.S. 347 (1967).

⁷ *Id.* at 348.

⁸ *Id.* at 350-352.

⁹ *Id.* at 351.

¹⁰ *Maryland v. Buie*, 494 U.S. 325 (1990).

¹¹ *Terry v. Ohio*, 392 U.S. 1 (1968).

¹² *Smith v. Maryland*, 442 U.S. 735 (1979).

¹³ *United States v. Knotts*, 460 U.S. 276 (1983).

travelled over the public streets he voluntarily conveyed to anyone who wanted to look, the fact that a person is travelling on a particular road in a particular direction, the fact of whatever stops he made, and his destination when he exited public roads onto public property.”¹⁴ In *California v. Ciraolo*, the Supreme Court ruled that the defendant’s yard was not constitutionally protected from observation from a public vantage point, such as public airspace.¹⁵

While these cases would seemingly have little relevance to drones, they are actually vital. The ruling in *Ciraolo* could be interpreted to allow unrestricted usage of drones in public airspace over any surface. As a result of the ruling in *Knotts*, it may be found that drones can surveil moving targets and continue to track their location in public. Finally, the warrant exception established in *Terry* may be interpreted to allow law enforcement to use drones to search areas to protect officers.

But for every push in one direction, there is a pull in the opposite. In *Kyllo v. United States*, the police used thermal imaging to see inside the defendant’s house to determine if he was growing

marijuana.¹⁶ The Supreme Court ruled that this was a search as it constituted an intrusion into the defendant’s home.¹⁷ In *United States v. Jones*, the Supreme Court held that the police attaching a GPS tracker to the defendant’s car also constituted a search.¹⁸ The Court found that the GPS tracker constituted a trespass on the defendant’s personal effects and thus was a search per se.¹⁹

While not impacting the usage of drones directly, these opinions nevertheless affect them indirectly. As a result of *Kyllo*, the government cannot equip drones with devices that can see inside homes. The ruling in *Jones* may make certain types of drones, particularly miniature drones that can closely follow people, unavailable to law enforcement.

While these cases deal with privacy generally, we must also look to other cases that illustrate how privacy and drones have clashed. Unfortunately, most of those cases have been frivolous, and were dismissed for reasons other than violation of privacy. For example, in *Whitaker v. Barksdale AFB*, Ms. Whitaker alleged the Air Force and five other agencies were not only spying on her, but also

¹⁴ *Id.* at 281-282.

¹⁵ *California v. Ciraolo*, 476 U.S. 207 (1986).

¹⁶ *Kyllo v. United States*, 533 U.S. 27, 29 (2001).

¹⁷ *Id.* at 34-35.

¹⁸ *United States v. Jones*, 565 U.S. 400 (2012).

¹⁹ *Id.* at 952.

stalking her with drones.²⁰ The defendants moved to dismiss based on lack of subject matter jurisdiction, insufficient service of process, and failure to state a claim.²¹ While a government agent can be sued under a *Bivens* action, Ms. Whitaker attempted to sue each agency as a whole.²² The Court found that not only had she failed to state a claim upon which relief could be granted, but the defendants also were protected by sovereign immunity, and the Court dismissed her claims under Federal Rule of Civil Procedure 12(b)(1).²³ Amusingly, Ms. Whitaker filed a subsequent frivolous lawsuit, *Whitaker v. Huerta*. In that suit, Ms. Whitaker claimed the FAA was spying on her due to a dispute she had with a former airman.²⁴ Ms. Whitaker filed a *Bivens* action against the head of the FAA claiming the FAA was stalking her with drones. However, she was unable to prove the FAA was spying on her or that she was being spied on at all, and that suit was dismissed for failure to state a claim.²⁵

In *Jacobus v. Huerta*, the plaintiff claimed the FAA put him on a

terrorist watch list for an argument with another pilot and the FAA was buzzing his house with drones and full-sized planes.²⁶ The court dismissed his claim for implausibility, stating that the FAA has no authority or ability to do what Mr. Jacobus was alleging.²⁷ In *Kanno v. Three Unknown Agents of the Fed. Marshals*, the plaintiff claimed he was being “slowly burned to death by the incredible weapons on domestic drones” by the Government.²⁸ The court dismissed this suit for failure to state a claim under *Bivens*.²⁹

Kanno is one of the most influential figures in the legal landscape with regard to drones. This case was the third in a series of six nearly identical cases filed by Mr. Kanno for similar reasons. Each of Mr. Kanno’s cases alleged that either the federal government or the Oklahoma state government was trying to kill him with drones, all of which were dismissed for failure to state a claim. However, the most absurd case is *Allums v. Department of Homeland Security*, in which the plaintiff claimed the government was harassing him and trying to bomb him with drones for

²⁰ *Whitaker v. Barksdale AFB*, No. 14-2342, 2015 U.S. Dist. LEXIS 16905 (W.D. La. Feb. 11, 2015).

²¹ *Id.* at *2.

²² *Id.* at *18, 19.

²³ *Id.* at *20.

²⁴ *Whitaker v. Huerta*, No. 15-644, 2015 U.S. Dist. LEXIS 88556 (W.D. La. Jul. 7, 2015).

²⁵ *Id.* at *6-8.

²⁶ *Jacobus v. Huerta*, No. 3:12-cv-02032, 2013 U.S. Dist. LEXIS 60880 (S. D. W. Va. Feb. 22, 2013).

²⁷ *Id.* at *10, 11.

²⁸ *Kanno v. Three Unknown Agents of the Fed. Marshals*, No. CIV-11-32-D, 2011 U.S. Dist. LEXIS 74208 (W.D. Okla. Jul. 11, 2011).

²⁹ *Id.* at *2.

being a whistleblower and for telling the American public about crimes before they happened.³⁰ The court dismissed his claim because he failed to provide the name of the agency that was actually harassing him with drones or any evidence that an agency was actually doing so.³¹ While these cases provide insight into the evidence necessary to support a claim regarding drone misuse, they have provided little guidance on aerial searches.

As it stands now, the right of personal privacy and government interests have been in a veritable death match; at each turn, they have tried to outpace and curtail each other. However, drones have the potential to give government interest an edge. In the words of Ben Miller, a Mesa County sheriff's deputy, "Not since the Taser, has

technology had so much promise for law enforcement."³² This is thanks, in part, to a non-drone case, *Florida v. Riley*, in which the Supreme Court held that aerial surveillance above 400 feet does not constitute a search and does not require a warrant.³³ Theoretically, the only true restriction on government drones is the quality of the camera.

As a result, government has embraced drones with open arms. For example, the Department of Homeland Security uses drones to patrol the border.³⁴ They also use them to track suspected drug traffickers.³⁵ Additionally, they frequently lend out drones to local law enforcement, such as when they assisted in recovering cattle stolen by a rancher engaged in a standoff with the government.³⁶ It

³⁰ *Allums v. Dep't. of Homeland Sec.*, No. 13-cv-00807, 2013 U.S. Dist. LEXIS 115053 (N.D. Cal. Aug. 14, 2013).

³¹ *Id.* at *19.

³² Peter Finn, *Domestic use of aerial drones by law enforcement likely to prompt privacy debate*, WASH. POST, January 23, 2011.

³³ *Florida v. Riley*, 488 U.S. 445 (1989).

³⁴ Declan McCullagh, *DHS built domestic surveillance tech into Predator Drones*, CNET, (Mar. 2, 2013, 11:30 AM), <https://www.cnet.com/news/dhs-built-domestic-surveillance-tech-into-predator-drones/>.

³⁵ Patrick Tucker, *DHS: Drug Traffickers Are Spoofing Border Drones*, DEFENSE ONE, (Dec. 17, 2015), available at <http://www.defenseone.com/technology/2015/12/DHS-Drug-Traffickers-Spoofing-Border-Drones/124613/>.

³⁶ Jason Koebler, *The Time the Federal Government Used a Predator Drone to Arrest Armed Ranchers*, MOTHERBOARD, (Jan. 27, 2016, 11:25AM), https://motherboard.vice.com/en_us/article/the-time-the-

is perhaps because of the lack of regulation that the FBI maintains a fleet of drones for surveillance.³⁷ The FBI has been using drones since 2006 and employs them in a variety of ways. Generally, they use them to track suspects and locate individuals via heat signatures. They also frequently use them in situations where an agent's life is at risk, in hostage situations, and in one instance, to spy on a domestic bomber.

Initially, FBI had no privacy policy with respect to drones.³⁸ Their rationale was that there was "no need" to write privacy guidelines as there is no expectation of privacy of anything that is visible from the air.³⁹ However, later the FBI stated that privacy guidelines are needed and they are in the early stages of writing them.⁴⁰ The Department of Homeland Security has also recognized this need and issued its own guidelines.⁴¹ Despite appearances to the contrary, the government's intentions are not malicious. But in order to prevent each agency from having its own

federal-government-used-a-predator-drone-to-arrest-armed-ranchers.

³⁷ David Kravets, *FBI Admits It Surveils U.S. With Drones*, WIRED, June 2003, available at <https://www.wired.com/2013/06/fbi-drones/> (last visited August 30, 2017).

³⁸ Brian Bennett, *FBI has been using drones since 2006, watchdog agency says*, L.A. TIMES, September 2013, available at <http://www.latimes.com/nation/nation-now/la-na-nn-fbi-using-drones-2006->

guidelines and potentially opening the door to an invasion of privacy, a strong, consistent federal policy is needed. The problem is summarized best in *Entick v. Carrington*, the state may not do anything but what is expressly authorized by law.⁴² Fortunately, when there is a dearth of federal legislation or precedent, courts will examine and sometimes apply laws from the state level to fill the void.

II. Little Brother is Watching Too: Usage of Drones by the States

Austin, Texas, 2009. At sunrise a SWAT team was standing ready to execute a search warrant, but expressed concerns about the subject's house. The officer in charge didn't want to send up a helicopter as he was afraid that the defendant would shoot it down. Therefore, the police deployed a wasp, a small remote-controlled drone, to fly above the house and allow them to examine the property. Once they were sure of what they

20130926-story.html (last visited August 30, 2017).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Shahid Buttar, *DHS Issues Privacy Guidelines on State and Local Drones*, ELECTRONIC FRONTIER FOUNDATION, (Jan. 6, 2016) <https://www.eff.org/deeplinks/2016/01/dhs-issues-guidance-state-and-local-drones>.

⁴² *Entick v. Carrington*, 19 Howell's State Trials (1765).

were getting into, they raided the house and arrested the suspect.⁴³

Unsurprisingly, law enforcement at the local level has embraced drone technology and the conflict with the right to privacy, as seen at the federal level, is repeated here. “The United States Government has exclusive sovereignty over the airspace of the United States” and has formed the FAA to regulate traffic, and establish national safety standards for flying.⁴⁴ The biggest challenge for local legislatures is that the FAA is considered to have “preempted the field” to prevent states from establishing separate guidelines for traffic and safety.⁴⁵ However, the FAA has stated that this does not apply to states using their police power to regulate how their local law enforcement personnel use drones⁴⁶ or to prevent voyeurism.⁴⁷ As a result, between 2013 and today, every state had introduced

some form of legislation to regulate drone usage in one way or another, with most regulating their usage by law enforcement.⁴⁸

As of 2017, virtually every state has enacted drone legislation with respect to law enforcement.⁴⁹ While there are some variations in the language, the formula remains essentially the same. Absent extreme circumstances such as an imminent danger to life or property, the usage of a drone by law enforcement is prohibited, absent a search warrant.

For example, the Virginia Assembly passed Virginia Code § 19.2-60.1, which prohibits the use of a drone by law enforcement personnel, unless a search warrant has been obtained.⁵⁰ North Dakota enacted Century Code § 29-29.4-02, which limits the usage of drones by law enforcement barring a warrant, and renders any evidence collected inadmissible unless it fell under an

⁴³ Finn, *supra* n. 32.

⁴⁴ 49 U.S.C. § 40103.

⁴⁵ Federal Aviation Administration, Office of the Chief Council, *State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet*, December 17, 2015, <https://www.faa.gov> (last visited, August 30, 2017).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ National Conference of State Legislators, *Current Unmanned Aircraft State Law Landscape*, <http://www.ncsl.org/research/transportation/current-unmanned-aircraft-state-law-landscape.aspx>, July 25, 2017 (last visited August 30, 2017).

⁴⁹ *Id.*

⁵⁰ The law only allows for a warrantless search: (1) To assist in a search pursuant to an Amber Alert; (2) when Senior Alert is activated; (3) during a Blue Alert; (4) where the use of an unmanned aircraft system is determined to be necessary to alleviate an imminent danger to any person; (5) for training exercises, or (6) with consent. VA. CODE ANN. § 19.2-60.1.

existing warrant exception.⁵¹ Florida enacted Statute § 934.50, which follows the North Dakota law, but adds exceptions for usage of drones to prevent a terror attack, to prevent the destruction of evidence, to prevent a suspect from escaping, or to aid in the location of a missing person.⁵² Texas has followed suit with Tex. Gov. Code § 423.002(8), which requires a search warrant when drones are used by law enforcement. The law also allows drones to be used for arrest warrants.⁵³ Unlike at the federal level, it seems that a proper balance has been struck.

One of the fundamentals of the Fourth Amendment is the right of a person to retreat into his or her home in the face of unreasonable government intrusion. The

founders believed and later courts affirmed, that the simplest way to prevent unjust government intrusion was to obtain a proper search warrant. Before federal guidelines were established, legislation dealing with drones was a proverbial crazy quilt. North Dakota upheld a conviction that involved a drone to collect information.⁵⁴ Several cities banned them outright,⁵⁵ and Texas limited them to very specific usages.⁵⁶ California prohibited their use by paparazzi,⁵⁷ but did not follow suit as to their use by law enforcement.⁵⁸ North Carolina attempted to introduce its own license and safety requirements. While untested in court, undoubtedly, they would be preempted by federal law.⁵⁹ Utah

⁵¹ N.D. CENT. CODE § 29-29.4-02.

⁵² FLA. STAT § 934.50 (2016).

⁵³ TEX. GOV. CODE ANN. § 423.002(8).

⁵⁴ Jason Koebler, *North Dakota Man Sentenced to Jail in Controversial Drone-Arrest Case*, U.S. NEWS, (Jan. 15, 2014, 11:55 AM), available at <https://www.usnews.com/news/articles/2014/01/15/north-dakota-man-sentenced-to-jail-in-controversial-drone-arrest-case> (last visited August 30, 2017).

⁵⁵ Kevin Kelly, *Menlo Park Bans All Drones*, MERCURY NEWS, Aug 24, 2016, available at <http://www.mercurynews.com/2016/08/24/menlo-park-bans-drones-at-all-city-parks/>.

⁵⁶ 4 TEX. ADMIN. CODE §2013.

⁵⁷ CAL. CIVIL CODE § 1708.8.

⁵⁸ Elizabeth Weise, *California governor vetoes drone bill*, USA TODAY, Sept. 10, 2015 available at <http://www.usatoday.com/story/tech/2015/09/10/california-drones-veto-governor-jerry-brown-news-photographers/71987132/>.

⁵⁹ Kevin Promfret, *Federal Preemption of State and Local Regulations of Drones*,

even considered allowing officers to shoot down rogue drones.⁶⁰ There were no safety regulation leading to incidents, such as when a drone filming the running of the bulls in Virginia crashed into the crowd.⁶¹ In fact, the laws were so undefined that an attorney was able to get motorized paper airplanes listed as drones, meaning that for a period, a pilot's license was required to operate one.⁶²

Since their institution, clear guidelines have allowed states to incorporate drones for legitimate purposes while separating the conflicts with privacy by instituting a search warrant requirement to protect the privacy of citizens. The new drone legislation isn't anything new. It is an update of existing privacy laws to encompass the new technology. The federal government should craft a statute based on existing state statutes.

Additionally, a more pressing issue with drones must be addressed. The largest danger from

drones doesn't come from either federal or state governments because both can be regulated by the public. The biggest dangers of drones come from misuse by the public itself.

III. "Owning a Drone Does Not a Pilot Make": Usage of Drones by the Public⁶³

"If Paparazzi armed with telephoto lenses have long been the scourge of the rich and famous, civilian drones are fast becoming the new menace to the ordinary man on the street."⁶⁴

Civil use of drones is governed by FAA regulation part 107.⁶⁵ Under Part 107, the FAA has issued some guidelines on drones with respect to privacy: namely, the prevention of drones flying over people not directly participating in the operation. The major benefit toward privacy is that this makes overhead surveillance by private parties illegal and prohibits them

Property Drone Consortium, Nov. 2015, available at <http://propertydrone.org/wp-content/uploads/2016/08/162059120715federal-preemption-state-and-local-regulation-of-drones.pdf>.

⁶⁰ Kelsey D. Atherton, *Utah Bill Would Let Police Shoot Down Drones*, POPULAR SCIENCE, (Feb. 26, 2016), <http://www.popsci.com/utah-lawmakers-pave-way-for-legal-drone-shootdowns>.

⁶¹ Alexis C. Madrigal, *Drone Hits Spectators Watching the Running of the Bulls (in Virginia.) Yes, everything about this *is* weird.*, THE ATLANTIC, (Aug. 26, 2013) available at <https://www.theatlantic.com/>

[technology/archive/2013/08/drone-hits-spectators-watching-the-running-of-the-bulls-in-virginia/279040/](https://www.theatlantic.com/technology/archive/2013/08/drone-hits-spectators-watching-the-running-of-the-bulls-in-virginia/279040/).

⁶² John Goglia, *FAA Approves Use of Drone Paper Airplane. Yes. Really*, FORBES, (Aug. 27 2015, 2:24 PM), <https://www.forbes.com/sites/johngoglia/2015/08/27/faa-approves-first-ever-commercial-drone-operation-in-a-paper-airplane-yes-really/#7610d60f16e1>.

⁶³ ALEX MORITT, IMPROMPTU SCRIBE (1st ed. 2004).

⁶⁴ *Id.*

⁶⁵ 14 C.F.R. § 107.

from operating drones indoors altogether.⁶⁶ However, the laws fail to account for people using drones to observe people from afar.

As a result, paparazzi no longer have to climb trees or stalk celebrities to get pictures. There have been countless examples of drones being used to capture images of people from public figures like Nelson Mandela⁶⁷ to celebrities like Kanye West.⁶⁸ Even ordinary people are not immune. In New York, a 66-year-old woman got the scare of a lifetime when a drone came smashing through her 27th story apartment window.⁶⁹ The battle between the right to privacy and government interest at this level is simply not present. Instead the two have merged against the threat of personal interest.

To combat this, members of the public have gone to increasing

lengths to prevent drone observation. The first problem is people shooting at them. There have been so many instances of people shooting down drones that the FAA has requested it to stop.⁷⁰ There have even been articles about the most efficient ways to shoot down drones.⁷¹ A few years ago there was a serious attempt to bring about "drone hunting legislation in Colorado."⁷² Anti-drone clothing can be bought, which prevents drones from locating you based on heat signature or facial recognition.⁷³ In perhaps the most ridiculous measure, some hotels have begun to recruit birds of prey to attack drones and bring them down.⁷⁴ In addition, drones have been used for other less ethical reasons. There have been several cases of people using drones to spy on their neighbors,⁷⁵ industrial

⁶⁶ 14 C.F.R. § 107.39.

⁶⁷ Reuters, *Not a Vulture, but a Drone: Cameraman detained at Mandela Hospital*, (Jun. 29, 2013 06:33 AM), <http://mg.co.za/article/2013-06-29-not-a-vulture-but-a-drone-police-detain-cameraman>.

⁶⁸ Kanye West, *I Fear Electrocutation by drone*, TMZ (Aug. 6, 2014, 3:20 PM), <http://www.t TMZ.com/2014/08/06/kanye-west-drones-paparazzi-electrocute-daughter-north-west-deposition/>.

⁶⁹ Larry Caldon, et. al. *Done Smashes Through Woman's Apartment Window*, NEW YORK POST, February 22, 2016, available at <http://nypost.com/2017/02/26/drone-smashes-through-womans-apartment-window/>.

⁷⁰ Eric Limer *How to Shoot Down a Drone*, POPULAR MECHANICS. (Aug. 5, 2015), <http://www.popularmechanics.com/flight/drones/how-to/a16756/how-to-shoot-down-a-drone/>.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Stealth Wear <https://ahprojects.com/projects/stealth-wear/> (last visited August 30, 2017).

⁷⁴ Emily Smith, *Hotels Recruit Falcons to take out paparazzi's pesky drones*, PAGE SIX, Sep. 29 2016, available at <http://pagesix.com/2016/09/29/hotels-recruit-falcons-to-take-out-paparazzis-pesky-drones/>.

⁷⁵ Chris Harris *Utah Couple Accused of Using Drone to Peep into Neighbors Homes*, PEOPLE-CRIME, Feb. 16, 2017 available at <http://people.com/crime/utah-couple->

espionage,⁷⁶ and to stalk people.⁷⁷ We risk not just an Orwellian nightmare of constant surveillance from drones, but also cluttered skies full of hawks, falcons, and eagles trying to bring them down.

In a far more practical move, state legislatures have begun to take action to protect the privacy of its citizens from drones. Most states have statutes preventing “peeping toms,” but as held in *Florida v. Riley*, people do not have an expectation

of privacy from the air.⁷⁸ As such, several states have put in place anti-voyeurism and anti-paparazzi statutes to combat spying on the public with drones. California, for example, recently enacted Civil Code § 1708, which prohibits paparazzi from using drones to take pictures.⁷⁹ Mississippi enacted Code § 97-29-61, which specifically criminalized the usage of drones for voyeurism.⁸⁰ Florida has passed a similar law.⁸¹ However, state laws are few and far between as the technology is simply too new. To safeguard privacy, we must press states to enact more legislation, because a private citizen does not need a warrant to see inside another citizen’s home.

accused-of-using-drone-to-peep-into-neighbors-homes/.

⁷⁶ Dedrone. <http://www.dedrone.com/en/newsroom/press-detail/corporate-espionage-being-enabled-by-drones>.

⁷⁷ Nick Bilton, *When Your Neighbor’s Drone Pays an Unwelcome Visit*, NEW YORK TIMES, Jan. 27, 2016, available at <https://www.nytimes.com/2016/01/28/>

[style/neighbors-drones-invade-privacy.html?_r=0](https://www.nytimes.com/2016/01/28/style/neighbors-drones-invade-privacy.html?_r=0).

⁷⁸ *Riley*, 488 U.S. 445.

⁷⁹ CAL. CIVIL CODE § 1708.8 (2015).

⁸⁰ MISS. CODE. § 97-29-61 (2015).

⁸¹ FLA. STAT. § 934.50 (2016).

IV. Conclusion: More Law is Needed to Prevent Lawsuits

All technology has a dark side, and drones are no different. The danger however is not in the technology itself, but how it is used. When used in the hands of emergency responders, drone technology can provide a better field of view and enter areas that would be perilous to people. In the hands of the paparazzi, drones reflect their namesake, buzzing homes and snapping pictures. While we may never be able to decide which right is paramount, the right of privacy or government interest, we can balance them. To this end state legislatures have taken what many believe to be the correct action. It is well settled, both in case law and in the U.S. Constitution, that a search as a result of a properly executed search warrant is not an invasion of privacy. However, the same volume of case law says we do not have an expectation of privacy in public or from above 400 feet, which has also opened the field to the less ethical usages of drones. Therefore, expanding the warrant requirement to regulate when drones may be used, as well as legislation on how they may be used, would allow us to incorporate this new technology and separate the benefits from the dangers it presents.