

# Conclusions

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New technologies are transforming every component of the criminal justice process and will potentially make law enforcement much more efficient and more effective. They also raise questions about how constitutional principles, especially those protections and rights found in the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments, apply to people accused of or convicted of crime.

In investigating crimes, identifying suspects, and gathering evidence, technologies (especially electronic technologies and technologies based on the biological and social sciences) are changing the nature of police work. When police capabilities are enhanced, the possibility that those capabilities will be misused—either deliberately or inadvertently—is also increased. Lawmakers and courts may need to reexamine both the scope of constitutional limitations on police power and their application to particular activities and procedures.

Electronic surveillance technologies have repeatedly challenged the scope of protection against “unreasonable searches and seizures” (Fourth Amendment) because information is no longer necessarily embedded in “persons, places, papers, and effects” as it was in 1787, and because technology repeatedly modifies what the Supreme Court has called “a reasonable expectation of privacy.” Biological technologies promise to raise similar questions. Both remote sensing and “intimate sensing” (the testing of bodily conformations, fluids and tissues, or mental processes), as well as the aggregation or accessing of information in computer databases, have enormously expanded the capability of government to gather and use information about individuals. They may become more pervasive and more invasive in the future.

If nonlethal or less-than-lethal weapons, still generally unsatisfactory for most law enforcement purposes, become highly effective and reliable in the future, then the use of conven-

tional weapons would almost certainly be challenged as an unnecessary or disproportionate use of force. What is judicially permissible and socially acceptable at one time has often been challenged when technology changes.

Throughout the criminal justice system, officials continually make decisions that require specialized knowledge, judgment, and discretionary choices. Arrests, pretrial release, sentencing, probation, and parole, for example, require complex choices. Social science research, statistical analysis, predictive models, simulation, expert systems, and other computer-assisted techniques are increasingly being used to aid those who must decide. More consistent decisions is one important objective, and this supports the constitutional values of due process and equal protection of the laws. At the same time, techniques that are derived from the study of groups and populations, when applied to individuals, maybe challenged as potentially discriminatory.

There are currently strong and conflicting pressures to increase the rates of apprehension and punishment of offenders, on the one hand, and to alleviate the overcrowding of prisons on the other. This is leading to new emphasis on alternatives to prison, including privately run prisons, home arrest using electronic monitoring, and the “treatment” of antisocial and violent behavior by drug and hormone therapy. Some of these alternatives may be challenged on the grounds that they violate constitutional protections against cruel and unusual punishments or constitutional rights to privacy, due process, and equal protection. Yet to the extent that these alternatives are perceived as preferable to prison, they maybe demanded on the grounds of equal protection of law or nondiscrimination.

As record keeping and sharing become an integral and ever more essential component of criminal justice, issues related to data quality and confidentiality become very important.

Repeated challenges to the legitimacy of civil justice administration have been made on these issues. Procedures can be built into or programmed into automated information systems that greatly enhance the reliability, correctness, and confidentiality of data in criminal justice records, but many States and, in some cases, Federal agencies are not using these procedures. Courts have ruled that criminal justice agencies have a duty to implement such procedures, but they have not generally required agencies to keep and disseminate accurate data. In general, they still leave the burden of forcing agencies to correct information on the shoulders of the person about whom the data is collected. Neither law nor constitutional precedents in this area have yet accommodated to the problems and perils that accompany the benefits of the information age.

Many of the technological innovations reviewed in this report can offer significant social benefits, including the reduction of crime and the just and equitable administration of justice. Unfortunately, these same recent advances in technologies have also created the tools that may widen the net of social control, and have the effect of chilling the exercise of constitutional rights. That these technologies

are well intended is not questioned. As Justice Brandeis noted nearly 60 years ago:

Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.<sup>1</sup>

Applying Justice Brandeis' admonition to the introduction of technology in a democratic society, government must of necessity establish protective boundaries within which new technologies will operate. Technology throughout history has been a double-edged sword, equally capable of improving or endangering a civilized world. The benefits of these technologies are clear and should not be lost through fear of potential abuses; those abuses can be avoided through the diligent attention of citizens, elected officials, the courts, criminal justice administrators, and practitioners of science and technology.

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<sup>1</sup>Dissenting opinion of Justice Brandeis, *Olmstead v. United States*, 277 U.S. 438 (1928).