United States v Jones\textsuperscript{1}

And the New Paradigm of Fourth Amendment Jurisprudence

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Abstract

The US Supreme Court recently ruled on the issue of government surveillance. A GPS tracking device illegally installed on a suspect’s vehicle by the FBI and thereby used in criminal investigations initiated a new dialogue on the topic. This case takes us back to some basic doctrines on the Fourth Amendment of the US Constitution. We analyze the key points of the SCOTUS decision and give emphasis to the developing notion of informational privacy. What privacy transformations do we view in relation to criminal law? Can illegally obtained evidence be judicially permitted? And what are the current trends here?

At the same time, we look beyond informational privacy discourses and focus on judicial behavior in the context of public security. Questions raised involve: a) how have Supreme Court justices reacted to technology challenges? And b) are particular interpretations preferred within the law enforcement context? We use the idea of the ‘living constitution’ as a driving force in judicial hermeneutics. Concurring opinions are discussed to show divergences.

Finally, certain institutional questions arise from this ruling. What political dynamics shape such decisions? Have SCOTUS justices deferred to the executive in security matters? Is technological change ‘a scapegoat’ used to refrain from strict scrutiny? And what kind of balances do we see in the judicial review of government surveillance?

\textsuperscript{1} 565 U.S. (2012), 23.01.2012
References


FABBRINI F., The Role of the Judiciary in Times of Emergency: Judicial Review of Counter-Terrorism Measures in the United States Supreme Court and the European Court of Justice, Yearbook of European Law (2009), pp. 664-697


GERAPETRITIS G., Fear over Rights: The Recent Case Law of the US Supreme Court, RHDI (2003), pp. 475-492


NOTE, Foreign Intelligence Surveillance and the Fourth Amendment, Harv. L. Rev. (1974), pp.976-1000


Trooper M., The Judicial Power and Democracy, EJLS (2007), 1:2

Tsakyrakis S., Proportionality: An Assault on Human Rights?, Jean Monnet Working Paper No.09/2008, NYU School of Law

Tsifosoglou A., Corporate Political Speech and Democracy, Administrative Law Journal (2009), pp. 800-804 [in Greek]


Vrontakis M., The Justice as a Judge of Balances, Values and Legislative Choices, Lecture of Vice President of the Hellenic Council of State (honoris causa) at Aristotle University of Thessaloniki School of Law, 28.02.2011, available at www.constitutionalism.gr [in Greek]
