

Use of drones in policing offers promise, but also raises privacy concerns that need to be addressed

November 27, 2018

West Hempfield Township police Chief Mark Pugliese believes that drone technology is part of the future of policing.

One of the department's drones has a thermal imaging camera that can help locate a person during a search and rescue mission. As Blest noted, "The ability to get a video-recorded bird's-eye view of a scene will help police capture more investigative information."

The use of drones, Pugliese told Blest, "is going to be unlimited."

Therein lies both our hope and our fear.

We can see the positive potential for the use of drone technology in the scenario laid out in Blest's article:

For more than nine hours Dec. 21, 2017, motorists were barred from using Route 30 between Wrightsville and Prospect Road in West Hempfield Township while investigators reconstructed a fatal crash scene.

"Using a drone as a reconstruction tool, we could do it in a quarter of the time," Pugliese said.

Moreover, because West Hempfield now has drones, the department has been asked to be part of the South Central Terrorism Task Force, a group of first responders on call for major incidents in south-central Pennsylvania. Ephrata already is part of the group.

That task force is charged with handling mass-casualty events that exceed the capabilities of individual police departments. The more resources it has, the better it is for all of us.

McKim said his department's drone program is "something we're looking to develop and use more and more."

His department, he said, is careful to abide by federal regulations.

Significantly, he also said this: "Privacy and constitutional rights are very high on our priority list."

So that means seeking warrants, when necessary, for searches using the drones. In our view, it also means, more fundamentally, imposing limits on the use of a technology that seems limitless in its application.

Both the Cato Institute — the libertarian think tank co-founded by Charles Koch — and the American Civil Liberties Union have expressed concerns about law enforcement use of drones and the implications for privacy, and they are concerns we share.

Both organizations have pointed out that drone usage may have implications under the Fourth Amendment, which guarantees the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

Because the U.S. Supreme Court has not yet weighed in specifically on drone usage in law enforcement, the Cato Institute recommends that lawmakers provide protections for citizens.

“Police could treat drones like police cruisers, flying up and down streets on the lookout for crime, understandably prompting a sense of unease among citizens who may come to feel as if they are under the ever-watchful eyes of the authorities,” Matthew Feeney, director of Cato’s Project on Emerging Technologies, wrote in a position paper.

Enacting laws requiring that police get warrants for drone surveillance would guard against “persistent and indiscriminate surveillance of entire towns and cities,” he wrote.

Both organizations agree — as do we — that drones hold promise for use in emergency situations when lives are at risk: when a child is lost in a wooded area, for instance, or a hostage crisis is unfolding.

They also agree that limits ought to be imposed on the retention of drone footage.

The Cato Institute calls for limited public access to such footage. We’d go further, and urge lawmakers to reform Pennsylvania Act 22, which governs access to audio and video gathered by law enforcement agencies including via drone.

We agree with Melissa Melewsy, media law counsel for the Pennsylvania NewsMedia Association, who said “audio and video gathered by law enforcement agencies should be presumptively public under the Right to Know Law, with each request reviewed on its own facts when determining whether release is required, with the ability to appeal denials without filing a lawsuit.”

The Right to Know Law “addresses situations where privacy and other concerns can be addressed and weighed against the public interest,” she noted. “There will be occasions when public access can — and should — be limited, but in many cases, public access will promote accountability and foster trust and understanding between law enforcement and the communities they serve.”

To further ensure transparency and public faith in law enforcement’s use of drones, policies for their usage should be written and made public.

“While it is legitimate for the police to keep the details of particular investigations confidential, policy decisions regarding overall deployment policies — including the privacy tradeoffs they may entail — are a public matter,” the ACLU notes.

And such policies should be formulated with the input and approval of the municipality’s supervisors, commissioners or council members.

It’s essential, as Lancaster County District Attorney Craig Stedman told Blest through a spokesman, that drone usage be “compliant with all laws.”

We deeply appreciate the work of law enforcement in Lancaster County, and we support the use of technology that makes police work more effective, more efficient, and safer for both the police and the communities they serve.

But we need to hold on to some reasonable expectations of privacy — to use a certain phrase — in this world in which privacy is under siege.

Benjamin Franklin famously wrote, “Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.”

There’s some debate about what Franklin actually meant, but the words apply in this circumstance.

The price of liberty, as another famous quote puts it, is eternal vigilance. Those words also seem to apply here.