

## FOREWORD

### 2023 CRIMINAL PROCEDURE DISCUSSION FORUM

*Russell L. Weaver\**

In May 2023, the University of Louisville held the Sixth Annual Criminal Law/Criminal Procedure Discussion Forum. The forum brings together prominent criminal law and criminal procedure professors to discuss matters of common interest. The 2023 forum focused on two topics: first, *The Future of the Right to Privacy*, encompassing how advancing technology is being handled under the Fourth Amendment, the NSA's surveillance and data collection program, and even the criminal issues raised in the abortion area; and second, *The Police and Society*, which sweeps in an array of topics such as confessions, stop and frisk, or no-knock warrants. The papers published here were submitted at the forum and provided the basis for the discussions.

Professor Ronald Rychlak's article, *Geofence Warrants: The New Boundary*, arguably fits into both of the two discussion topics. In this article, he discusses "geofences," which involve a virtual perimeter that surrounds an identified geographic area and uses sensors on the boundaries to detect the presence of electronic communication on either side of the boundaries. While geofences have many uses (*e.g.*, marketers may wish to target individuals who are inside the boundaries), the police can use them as well, such as to determine who might have been present at the scene of a crime. Professor Rychlak's article examines the privacy implications of geofences and their value as a law-enforcement tool while exploring the relationship and balance between the police and privacy interests.

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\* Professor of Law & Distinguished University Scholar, University of Louisville, Louis D. Brandeis School of Law. Professor Weaver wishes to thank the University of Louisville for its ongoing support for his research.

In their article, *Search, Seizure and Ordered Liberty*, Professor Luke Milligan and Robert Ranney argue that the concept of “ordered liberty” has played a “key role in U.S. constitutional law—patrolling the scope of federal rights and the boundaries of state sovereignty.” Yet, even though the concept “has settled many of the country’s most important and divisive constitutional questions,” it “remains an under-theorized and under-articulated idea in constitutional law (not to mention political theory).” The article examines the origins and development of ordered liberty principles in U.S. Supreme Court precedent in an effort to flesh out its content.

In his article, *Artificial Intelligence Systems and Criminal Procedure: AI, ChatGPT and Deep Fakes*, Professor Michael Losavio notes the potential dangers presented by AI and machine learning, including the capacity to injure others, and he worries that “the further weaponization of the fake imagery can do greater and greater harm to all institutions, as well as punishing the innocent at the behest of the guilty.” He contends that the legal system should address the issues related to AI “sooner rather than later.”

Professor Brannon Denning’s contribution to the symposium is entitled *Privacy and Autonomy Post-Dobbs*. In this article, he expresses concern that the *Dobbs* decision—which overruled the Court’s landmark decision in *Roe v. Wade*—“might have just pulled on a thread that could unravel the Court’s entire non-economic substantive due process jurisprudence that it kickstarted in the mid-1960s.” He notes the different positions taken by the justices regarding *Dobbs*’ implications, and ultimately brainstorms strategies for defending privacy cases like *Griswold* and *Lawrence* in a post-*Dobbs* world.

Professor Cynthia Alkon’s paper, *Negotiating Police Reform*, fits into the “police and society” topic. Following the murder of George Floyd in 2020 in Minneapolis, Professor Alkon created a simulation designed to help her students discuss police reform, police funding, and how issues of race play into these topics. Her article discusses how the simulation helps stimulate discussion about police reform, and she uses the article to reflect on the lessons she has learned about how to conduct and organize the simulation.

Dr. Islam Mohamed Radwan Elhadidy's article entitled *The recovery of looted antiquities In Egypt - Empirical Evidence and Analysis* examines "the extent to which the recovery of the looted antiquities through legal channels in Egypt can be explained by government-level variables." In the article, Dr. Elhadidy establishes an analysis which correlates a "country's ability to recover looted antiquities in terms of the country levels of sustainable development, innovation, and international cooperation." He ultimately concludes that the "respective impacts of international cooperation and innovation are insignificant due to the deteriorating performance of Egypt on both UN Globalization and Innovation indices."

My article, entitled *Privacy in an Age of Cybersurveillance*, focuses on the future of the right to privacy. The article recounts the actions Edward Snowden, a contractor with National Security Administration, who stole agency documents and turned them over to the press, revealing that the U.S. government was engaged in a massive, secret, cybersurveillance operation. The revelation sparked a national debate about privacy and whether the U.S. government should be involved in such operations. The article examines post-revelation developments and efforts to reign in the NSA's operation.

