

Milliron's privacy was invaded by face recognition technology

[Technology](#)



Rob Milliron, a construction worker, was enjoying his lunch in an entertainment area of Tampa, Florida, when a government camera equipped with face recognition technology took his photograph. The photo was used without Milliron's consent in an article published in the U. S. News & World Report. When a woman in Oklahoma misidentified Milliron after seeing that photo and contacted the police department to have him arrested on child neglect charges, the man in the picture was forced to explain his innocence to law enforcement agencies.

He told a newspaper once his explanation had been accepted: " They made me feel like a criminal" (Alexander & Richert-Boe). This case raises ethical concerns regarding governmental use of facial recognition surveillance. Although common use of this technology is yet to be realized in the United States, its future in areas of security and public safety appears rather promising. However, as Milliron's case shows, there is an issue of legality that federal statutes have not yet addressed with reference to face recognition surveillance.

In order to understand the legality of face recognition technology, we have to bring into consideration the Fourth Amendment (Bennett, 2001). The United States Supreme Court held in *Katz v. United States* that the Fourth Amendment would afford constitutional protection in those areas in which an individual reasonably expects privacy. For a private or public space to be recognized as one that is outside the bounds of search, both the individual occupying the space as well as society must recognize privacy interest in the space in question.

Courts allow the use of video surveillance only in places where people do not have reasonable expectations of privacy. These places may include sidewalks as well as public streets, workplaces in addition to entertainment areas (Bennett). Because Milliron should not have expected privacy in the public area he occupied, the fact that government cameras took his photograph cannot be considered unethical.

Bennett writes that “[c]ourts have found repeatedly that warrantless video surveillance of public areas does not violate the Fourth Amendment, and it seems likely that courts will take the same approach toward public surveillance systems incorporating facial recognition software” (164). This is true despite the fact that facial recognition technology is marked by an unreasonable privacy invasion, and “ all individuals in the camera’s path are subject to a police lineup” (Kasindorf, 2001).

Bennett’s claim that face recognition technology would not have a conflict with the Fourth Amendment is based on the fact that the new technology does not involve the kind of physical intrusion, such as the drawing of blood or the taking of urine samples that the Fourth Amendment’s searches involve. Moreover, the Supreme Court has maintained that new technological devices that enhance the senses of law enforcement are entirely constitutional.

The Supreme Court has further held that observations using technologies such as biometrics are made in areas where the police have a clear right to be present. Such observations are a part of plain view surveillance that may also be performed without the technology in question. Finally, it has been

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maintained that no technology may be considered an intrusion where the lack of the technology poses a threat to the security of the people (Bennett). Although this line of reasoning is entirely acceptable, the fact remains that Milliron's photograph was used without his consent.

His subsequent experience with the photo was uncomfortable enough to refer to the publishing of the photo as misuse of information on the part of the government. It was an invasion of Milliron's privacy to publish the photo without his consent. So, even though the government is correct to use face recognition surveillance in public places for security reasons, it should vow never to misuse the information it gathers thus for security reasons alone.

Milliron and other members of the general public should be asked whether they would agree to have their photos published with the caption, " You can't hide those lying eyes in Tampa," as did Milliron's photo in the U. S. News & World Report (Alexander & Richert-Boe). Clearly, the government should be held as a lawbreaker if it takes photographs for security reasons and publishes them for other reasons.