

## **No First Amendment Protection for Unlawfully Obtained Information**

The First Amendment does not guarantee the right of the press to publish unlawfully obtained sensitive information of marginal public value, the Seventh Circuit found.

The opinion said it answers the long-standing “still-open question” created when the U.S. Supreme Court found that a newspaper could publish unlawfully obtained information if the newspaper itself did not participate in the illegal activity. In *Bartnicki v. Vopper* the Supreme Court specifically said it was not addressing the issue of when the press obtained the material illegally.

The case concerns a story by the Chicago *Sun-Times* criticizing the composition of a police line-up in a highly publicized case involving the nephew of former Chicago Mayor Richard Daley. The line-up consisted of R. J. Venecko and five Chicago police officers. The article highlighted the physical similarities of the police officers. The article gave the name, age, height, weight, and eye color of the police officers. The paper also ran a photo of the line-up.

The *Sun-Times* obtained the names of the officers and the photograph using a freedom of information request to the Chicago Police Department. The officers did not contest the use of their names and the photograph obtained from the Police Department, but objected to personal information, which the *Sun-Times* obtained from driver’s license records with the Illinois Secretary of State in violation of the Driver’s Privacy Protection Act (DPPA). The act prohibits individuals from knowingly obtaining or disclosing “personal information” from a motor vehicle record.

The *Sun-Times* argued that the DPPA’s definition of “personal information” did not include height, weight, eye color, or age, so the information was not restricted by the act. The Seventh Circuit found that while DPPA does not mention age, height, weight, or eye color those traits do qualify as personal information.

The Seventh Circuit rejected the newspaper’s argument that the First Amendment permits publication. “Although Sun-Times claims that, in acquiring and disclosing truthful information, it engaged only in ‘perfectly routine, traditional journalism,’ it cannot escape the fact that it acquire that truthful information *unlawfully*,” the court said.

Moreover, publishing the age, weight, height, and eye color of the officers had “negligible” value. The story included a picture of the line-up, so “their personal information is largely redundant of what the public could easily observe from the photographs themselves. Therefore, Sun-Times’s publication of the Officers’ personal details both intruded on their privacy and threatened their safety, while doing little to advance Sun-Times’s reporting on a story of public concern.”

*Scott Dahlstrom et al v. Sun-Times Media, LLC*, Seventh Cir. No. 14-2295 issued February 6, 2015.

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