

DRONES_{ADD} UNNECESSARY **RISK** TO WORKERS' COMPENSATION INVESTIGATIONS

by Michael Evans

The use of drones in suspicious insurance claims presents excessive risk for regular deployment in private investigations. Public use of unmanned aerial vehicles exists in a legal gray area and is becoming increasingly regulated. Drones suffer from significant technical limitations, and most importantly do not offer meaningful improvement over current surveillance methods. However, drones can prove useful in some aspects of the industry, such as property and underwriting.

LEGALITY

The Federal Aviation Administration equates drones with “unmanned aircraft systems,” which it says are defined by law as “an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.”ⁱ Drones have been used by the military in both combat and surveillance roles and have now proliferated in the civilian world, but these consumer drones are significantly smaller and cheaper than the units employed by the military. The legality of drone use for general public use remains insufficiently explored and sparsely tested. *FAA v. Pirker* appeared to be a landmark ruling, as a federal judge declared drones are not aircraft.ⁱⁱ The NTSB reversed this ruling and drones must now be registered and subject to a number of regulations at the federal and local level.ⁱⁱⁱ For example, the North Carolina House of Representatives unanimously passed HB 1099, which prohibits photographing individuals or conducting surveillance with drones.^{iv} The Senate did not pass that bill, but a similar one was passed into law as part of the state budget.^v The North Carolina law carves out many exceptions for law enforcement, but bans surveillance of persons or private property without defining those terms.^{vi}

Additionally, amongst the legal quandaries at hand are the concept of airspace above private property and the reasonable expectation of privacy. The potential of an accidental invasion of privacy jeopardizes the outcome unnecessarily and heightens risk far more than traditional methods. In Texas, HB 912 put a variety of restrictions on filming with drones, including limiting altitude to eight feet high and requiring any filming to occur on public property.^{vii}

Most importantly, in the context of surveillance in private investigations, drones do not operate in a legal gray area and is a red herring used by some private investigators operating outside of the law. The flying of drones is quasi-regulated. The use of drones in private investigations is regulated, albeit not by name. Gaining an overlook position on a subject not otherwise afforded to the general public violates the reasonable expectation of privacy without question.

EFFICACY

Efficacy is a compelling argument against the use of drones for worker's compensation investigations. There remains no substitute for a professional investigator equipped with state of the art surveillance equipment to secure irrefutable evidence of claims abuse or fraud. The investigator is prepared to use her experience, training and intuition to deliver results in a way that is unmatched by even the most advanced consumer electronics. Surveillance, by necessity, is both a "light and fast," and covert trade. Drones have a short battery life which is reduced even further with the attachment of cameras and related equipment, leading to flight times of less than 10 minutes.^{viii} Also, these drones can produce significant noise and are not difficult to spot. The higher a drone flies, the lower the quality of the video, necessitating a proximity to the subject that could adversely impact the integrity of the investigation.

FUTURE CONSIDERATIONS

The insurance industry has a home for drones, and it is the realm of property claims. Drones can access areas that are otherwise difficult or dangerous, like those damaged by severe weather. They would also lend themselves well to more mundane insurance work involving roofs or large properties, for instance, and could prove invaluable in the underwriting process. Unmanned aircraft have already been put to use commercially for purposes such as aerial photography and crop monitoring.^{ix} They have been touted as a tool for infrastructure upkeep, and could be used to inspect structures like bridges and dams. This sector can fully take advantage of the benefits drones offer, while facing significantly fewer roadblocks than the workers compensation industry.



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- vii. "Summary and Analysis of the Texas Drone Law." DIY Drones. Accessed via: <http://diydrones.com/profiles/blogs/summary-and-analysis-of-the-texas-drone-law>
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- ix. Jansen, Bart. "Insurers Adopt Drones for Airborne Inspections." USA Today. 2016. Accessed via: <http://www.usatoday.com/story/news/2016/03/31/insurers-adopt-drones-airborne-inspections/82434322>