File Wi-Fi case under small-town injustice

by Jonathan Sidener

Occasionally, I have the version of the American Dream where I want to chuck it all and move to some quiet, rural town. Picket fences. Porch swings. Autumn pumpkin festivals.

But of course, every Mayberry has its Barney Fife. (For you twenty-somethings, that's a reference to a bumbling deputy from the bad old days when we only had three TV channels. Look for "Andy Griffith" on YouTube.)

Take Sparta, Mich., for example. Instead of Barney Fife, they have Andrew Milanowski, and he's chief of police.

The village of about 4,000 sits in Michigan's orchard country, which explains the large red apple on the village water tower. In the picturesque home of the Pumpkin Daze festival, you can carry a concealed weapon, but you can't borrow your neighbor's Wi-Fi.

Not on Chief Milanowski's beat, you can't.

Sparta's finest was alerted to a possible crime in progress outside a local business, the Union Street Cafe. It turned out to be a crime worthy of "The Andy Griffith Show," a police sitcom set in a town where the law was rarely broken. The risk of crime in Mayberry was so low that Deputy Fife was allotted only one bullet, and that was to be kept in his pocket.

According to reports in the Grand Rapids Press, Milanowski's forces were tipped off to a pattern of suspicious activity. Someone was parking in front of the aforementioned eatery for a while, and then driving off. This nefarious behavior happened several days in a row.

Police investigated. Repeatedly. After several days, they caught up with the perp, one Sam Peterson II, a local toolmaker and volunteer firefighter.

Milanowski made the collar himself. Peterson told the chief he was using the unsecured Wi-Fi network to check his e-mail during his lunch hour.

The chief wasn't sure whether there was a law being broken, but he was prepared to go to the mat.

"But Andy, if we allow people to access free Wi-Fi outside the restaurant instead of going inside, it could start a crime wave. Next thing you know, we could have jaywalking, right here in Mayberry."

Milanowski took the case to the county prosecutor, who apparently also has too much time on his hands.

It turns out that Michigan has a law against computer hacking, including wireless access of a computer system.

So the no-nonsense law of Kent County made an example of Peterson and his purloined e-mail. They threatened him with a felony charge - a possible five-year sentence and a fine of up to $10,000. But they allowed him to pay $400 and do 40 hours of community service.

Somehow, I don't think you would need F. Lee Bailey or even Matlock to get this case thrown out. First of all, I doubt you could prove Peterson used the wireless Internet without his confession, which likely came before he was read his rights. Do you think they actually read the guy Miranda rights for Wi-Fi piggybacking?

More important, the prosecutor would have to prove that Peterson obtained the Wi-Fi through "false or fraudulent pretense, representation or promise." In this case, the "fraud" involved sitting outside the restaurant instead of going inside.

The cafe offers free Wi-Fi to its customers, but also sends the wireless signal into the street. Laptop owners don't have to pretend, represent or promise anything. They just have to use the Wi-Fi signal that their laptops find for them.

If someone watering the lawn lets water run onto the sidewalk and my dog drinks from the puddle, is my dog stealing that water through fraudulent pretense? Of course not. It's freely accessible on public property.

It's the same with Wi-Fi.

This isn't the first time the issue has come up - a Florida man faced similar charges in 2005 - and it probably

won't be the last.

The problem is that the people writing the laws don't seem to understand Wi-Fi technology. And in these rare cases of prosecution, the people enforcing the law don't understand the technology.

The Federal Communications Commission - which does understand the technology - doesn't have a problem with piggybacking on an open Wi-Fi connection. Wi-Fi has a built-in feature that allows the system to be secured, to keep out neighbors and people parked on the street. In an interview about a year ago, an FCC spokesman suggested that consumers use the security features if they're concerned about Wi-Fi piggybacking.

My understanding of Wi-Fi technology falls somewhere between that of the FCC and the Michigan prosecutor. I paid a whopping $39 for my wireless router. Even my no-frills gadget has a firewall. If I left my system unsecured - I don't - my neighbors could piggyback on my signal without using my computer. They would be on their side of the firewall and I would be on my side. I could turn my computer off and they could still piggyback on my Internet connection.

The point is, borrowing a little Wi-Fi from your neighbor isn't hacking. There's an argument that it's unethical. But there's no way it's a felony in a sane world.

The kicker to the Sparta Wi-Fi story is that it wasn't the cafe that called the cops. The cafe owner didn't press charges. According to one news report, the tip came from the barbershop, where a caller expressed concern that Peterson was stalking an attractive female employee of a nearby business.

"But Andy, how can you say that there's no victim? Floyd over at the barbershop is pretty gosh-darned upset about all of this."

The way I see it, there are two victims here. First there's Peterson, who spent $400 rather than foot a hefty legal bill to fight a bad interpretation of an overly vague law.

And I personally have lost my American Dream.

I am going to stay out of Sparta, Mich.

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