



## Surveillance Skeptics/Debunkers Get Rude Awakening

Not long ago, factions on both sides of the political aisle — from Republican Senator Charles Grassley in 1994, to liberal Supreme Court Justice Stephen Breyer in 2008 — viewed allegations of massive prying by government agencies, which purportedly tracked the personal information and activities of private citizens, as lunatic-fringe alarmism. But in the aftermath of *United States v. Jones* last week, even former skeptics are worried that the proverbial boat has sailed.



Over the Veterans Day weekend — which some might view as ironic — three articles appeared simultaneously in the *Washington Post* outlining the extent to which tracking, monitoring, data collection, and surveillance have merged to impact both the way folks conduct their lives and, more importantly, the very notion of “privacy” — leading some to question whether anybody should even have it. Two of the *Post* articles — one by [Jonathan Turley](#), a professor of public-interest law at George Washington University, “Are you being watched? It’s your fault,” and another by [David Cole](#), a professor of constitutional law at Georgetown University, “Big Brother is here” — were particularly insightful. Jonathan Turley cut to the chase when he [wrote](#) that “[c]itizens have largely accepted the false premise that privacy is the enemy of security and have supported ever-widening surveillance powers.” In other words, there appears to be *a general public endorsement of intrusive government*.

The essence of the Supreme Court case *United States v. Jones* was whether the Constitution allows police to put a tracking device on a car without either a warrant or the owner’s permission, leading to the more important question of whether Fourth Amendment rights are violated when government uses any sort of tracking method that monitors either a person’s whereabouts, beliefs, or activities.

The question is no theoretical exercise. Professor Turley notes that video surveillance alone “has become a \$3.2 billion industry....” In an age of at least 16 devices that allow a person’s activities and



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whereabouts to be cross-referenced 24/7, populations worldwide are moving ever closer to limitless policing power. Consider this eye-popping list:

- speed, red light, and other traffic-cum-revenue devices (like EZ Passes for paying tolls) that also serve as surveillance monitors;
- electronic key cards for employees, hotel guests, and even homeowners (replacing manual locks);
- networks of closed-circuit TV “security” cameras that incorporate facial recognition software;
- computer-keystroke monitoring capability, spyware, and “cookies”;
- new emergency-service GPS-based packages like the popular OnStar, fast on its way to must-have status in cars and other consumer vehicles;
- Smartphones that also use GPS-type technologies to accommodate customer “apps”;
- instantaneous, computerized record-keeping flagging everything from a new credit-card transaction to prescription pickup;
- voice-recognition technology reaching even through walls; scanning devices that “see” through both things and people;
- sales of [microchip implants](#) to families under names like “the Babysitter” and “the Constant Companion” to stem fears of baby-abductions, executives being kidnapped, and elderly family members getting lost;
- long-range thermal imaging and laser-listening/interception capability (such as TV programs accessed); and
- ostensibly anonymous polls, surveys, or questionnaires that are discreetly “slugged” (using barcodes, embedded identifiers, and other concealed detectors).

Little wonder the Obama administration felt confident presenting the [outrageous argument](#) in *United States v. Jones* that “the government is free to track citizens without warrants because citizens expect to be monitored”!

The fact that a suspected drug dealer was, in fact, caught — drugs, cash, and all — by attaching a global positioning system (GPS) device beneath the suspect’s car became suddenly immaterial, and not just to privacy watchdog organizations. The bust having been made without a warrant suddenly trumped worries over criminal activity by raising the very real possibility that modern technology has rendered Fourth Amendment guarantees relating to government searches and seizures not only obsolete, but *the very idea of privacy moot*. And if that part of our Constitution is archaic, what else is, too? More to the point, says Professor Turley, “elementary and high school students are now accustomed to being under surveillance on their buses and in their schools...[so] continuous monitoring is just part of life.”

But 20- and 30-somethings are similarly acclimated. When young adult residents were polled as to how they felt about Prince George’s County, Maryland’s contract with a “speed”-camera vendor whose mechanisms clocked a bicyclist going an impossible 57 miles per hour, none of the four interviewed for the Nov. 14 [Washington Times](#) complained about speed traps *per se* — devices that are, in reality, revenue/surveillance cameras. Instead, they cast their criticisms in terms of calibration and the particular intersection. That drivers are routinely entrapped and fleeced didn’t concern them: “You don’t want people being run over,” opined a 27-year-old. “I don’t mind speed cameras,” enthused another.

Both Professors Turley and Cole allowed that a 1967 decision may have inadvertently set a disastrous precedent for Fourth Amendment rights by proclaiming that it “protects people, not places.” Both also alluded to the obvious events of September 11, 2001, which spurred government to broaden the



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breadth and scale of warrantless surveillance. But it was already on the march long before that.

Around 1990, a then-youngish writer/analyst for *Business Week*, Jeffrey Rothfeder, decided, just for fun, to see how much information an admitted “technological neophyte” such as himself could dig up on a certain Vice President Dan Quayle, a man Rothfeder didn’t hold in particularly high esteem. He expected his self-imposed prank would be daunting. Only it wasn’t. His curiosity piqued, Rothfeder found there were already “upwards of five billion records ... in the United States that describe[d] each resident’s whereabouts and other minutiae ... [and] that moved from one computer to another five times a day on average.” This led him to Congress’ Office of Technology Assessment where he located a report stating that: “It’s virtually impossible for most citizens to know where files about them exist and nearly impossible for individuals to learn about, let alone seek redress for, misuse of their records.” Databanks, cell phones, and radio scanners were just the tip of the iceberg. With that, Rothfeder was hooked. He penned his watershed work, [Privacy for Sale](#), published in 1992. Other notables took up the cause in an avalanche of books and articles, but still our nation’s leaders failed to mobilize any effort to establish guidelines that might put the brakes on surveillance and monitoring technologies.

Rothfeder and his likeminded contemporaries didn’t know it then, but the source of such capability was a little-known technique (outside of advertising and marketing circles) known as “psychographic surveying” with a view to altering attitudes so that products could be sold to a public that would welcome them. A definition for “psychographics” is found in *Webster’s New World Communication and Media Dictionary*: “the study of social class based upon the demographics income, race, color, religion, and personality traits.” These characteristics, says the publication, “can be measured to predict behavior” — prediction being the point of the exercise.

That’s how advertisers were able, around 1970, to unexpectedly bring into America’s living rooms formerly unacceptable ad campaigns for, say, certain feminine products, diarrhea medications, and deodorants to audiences that still viewed such topics as being in bad taste.

But by soliciting (discreetly) the right kinds of input — “psychographic surveying” — marketing firms discovered they could turn a “bad taste” mindset into a “right-to-know” outlook and craft ads that people would accept. Today, adolescents listen with their parents to endless commercials about “erectile dysfunction” during Sunday afternoon football games, including admonitions to call a doctor if the implied wonderful product causes a side effect that “lasts four hours or longer” — spurring laughing-out-loud youngsters to take a closer look at the spam that makes its way to their computers. The joke may be on them, however, as government finds in such Internet orders a further excuse to monitor the Web.

So successful was psychographic methodology that soon entities ranging from school systems to political organizations were using it. Between 1975-1995, technical papers detailed state and nationwide plans for compiling, storing, and cross-matching computerized, private information. One, by behavioral scientists Richard Wolf and Ralph Tyler, cited “the [permissibility of deception](#)” in school assessments based on “the rights of an institution to obtain information necessary to achieve its goals.”

So it is unsurprising that today high-tech deception is pervasive, from [traffic-revenue scams](#) that make driving more dangerous, to school “tests” that look more for signs of political incorrectness than academic proficiency. The National Motorists Association revealed, for example, that six cities this year alone were caught deliberately shortening the timeframes for yellow/amber lights in an attempt to increase revenue when, in fact, it has been [proved](#) that extending the seconds of these same lights actually reduces accidents.



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Which brings us to the third article in the Veterans Day issue of the [Washington Post](#), a column which, unbeknownst to its author, Robert McCartney, dovetailed with the two law professors' articles: "No end in sight for teachers' paperwork plague." In it, he detailed, with direct quotes, the frustrations of countless teachers, all bemoaning their inability to create interesting lesson plans, or even teach, because of the Education Department's "mania for student data." They were buried in unnecessary paperwork. Actually, McCartney didn't name specifically the Education Department, but rather alluded to state and county laws which constitute the strings attached to federal dollars that keep state education agencies (SEAs) functioning. But it is the federal Department's National Center for Education Statistics (NCES) that demands gross invasions of privacy. These can be thoroughly examined [here](#) by scrolling down to the bottom of the Table of Contents page and clicking again, or see the bulleted list summarized [here](#).

Moreover, in today's Oprah world, divulging intimate information has morphed from "bad taste" into sport, and "public safety" has emerged anew as government surveillance, punctuated by deception. Did not a single national leader see this coming?

Actually, yes. General Dwight D. Eisenhower was way ahead in 1948, in his pre-presidential days. He [cautioned](#) in "An Open Letter to America's Students": "Our true strength is not in our machines, splendid as they are, but in the inquisitive inventive, indomitable souls of our people." And: "We cannot afford to allow or force the government to take over a question that properly belongs to us. Every time we do so we surrender some of our individual responsibility, and with it some of our freedom."

Twenty years later, a certain "green" teacher looking for teaching ideas in California's Westminster School District stumbled on a cache of civics textbooks in a curriculum repository: *FREEDOM: America's Choice* and *COMMUNISM: Menace to Freedom*. They carried, among other things, Eisenhower's "Open Letter." But the texts were stamped "obsolete" and destined for destruction in a few days. The era being the volatile 1960s, she rescued some 70 books and disseminated them to her eighth-grade students, insisting that Eisenhower's words be memorized and that essays be written, expanding upon the general's theme.

It goes without saying that no public school teacher in America would be permitted to do this today.

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