



Written by [Joe Wolverton, II, J.D.](#) on April 1, 2013

Is the Fear of Domestic Deployment of Drones Hysterical?

An NBC story on the domestic use of drones carried the following headline: [“Drones over America: How unmanned fliers are already helping cops.”](#)

The author of the “puff piece” begins by recounting the story of Rodney Brossart of North Dakota. From the first paragraph, it is easy to see which side NBC comes down on in the drone debate. From the article:



It was getting dark, and the sheriff of Nelson County, N.D., was in a standoff with a family of suspected cattle rustlers. They were armed, and the last thing anybody wanted was a shoot out.

U.S. Customs and Border Protection, which monitors police radio chatter, offered to help. Their Predator was flying back to its roost at the Grand Forks Air Force base and could provide aerial support. Did the sheriff want the assist?

Yep.

“We were able to detect that one of the sons was sitting at the end of the driveway with a gun. We also knew that there were small children involved,” Sheriff Kelly Janke told NBC News, remembering that tricky encounter in the early summer of 2011. “Someone would have gotten seriously injured if we had gone in on the farm that night.” He decided to wait.

The next day, the drone gave them an edge again by helping them choose the safest moment to make a move. “We were able to surprise them ... took them into custody,” Janke said. They also collected six stolen cows.

Rodney Brossart, the arrested farmer, sued the state, in part because of the cop’s use of a drone. But a [district judge ruled](#) that the Predator’s service was not untoward.

[The New American has covered this story](#) since the beginning, and there are several problems with NBC’s retelling of the events, problems that go beyond the merit of the charges against Brossart and his family.

In the original version of the story, the sheriff’s department placed a call to Grand Forks Air Force Base to see about getting a loaner drone to help them track and arrest Brossart.

In the story told by NBC, however, Customs and Border Protection (a division of the Department of Homeland Security) was “monitor[ing] police radio chatter” and “offered to help.”

Is it the practice of Homeland Security to listen to local law enforcement communication and to ride to the rescue of cops with military-grade weapons? Remember, Brossart was charged with stealing cattle (he was eventually charged with threatening peace officers, as well). Is it within the purview of federal agents to assist police in apprehending a suspected thief?

What of the Fourth Amendment’s prohibition against “unlawful searches and seizures” and the



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requirement that warrants be supported by affidavits “particularly describing the place to be searched, and the persons or things to be seized?”

Last summer, Senator Rand Paul (R-Ky.) introduced a bill to “protect individual privacy against unwarranted governmental intrusion through the use of unmanned aerial vehicles commonly called drones.” Paul’s bill mandates:

A person or entity acting under the authority [of], or funded in whole or in part by, the Government of the United States shall not use a drone to gather evidence or other information pertaining to criminal conduct or conduct in violation of a statute or regulation except to the extent authorized in a warrant that satisfies the requirements of the Fourth Amendment to the Constitution of the United States.

Senator Paul explained, “Americans going about their everyday lives should not be treated like criminals or terrorists and have their rights infringed upon by military tactics.”

Perhaps Americans don’t care anymore. Perhaps we have become so accustomed to the growth of the surveillance state that we have become immured to deprivations of our civil liberties and consider such violations routine. As [Conor Friedersdorf of *The Atlantic* asks](#), “Does anyone else feel as though a majority of Americans are unenthusiastic about living in a surveillance state yet rapidly resigning themselves to the inevitability of living in a surveillance state?”

The NBC pro-drone propaganda says almost with a perceptible yawn that “a flying robot doing a cop’s dirty work, and this kind of intervention is likely to be more and more commonplace, as the FAA fulfills a congressional mandate to increase its granting of drone permits.”

Don’t worry, is the message written between the lines. These drones are doing the “dirty work” and making us safer.

In almost every case, when government claims to be increasing safety, they are proportionally decreasing liberty.

Does the “dirty work” these drones are doing include violating pesky things like the Fourth Amendment? The Fourth Amendment exists to protect people from being treated like criminals and from having the never-blinking eye of government constantly monitoring their activity.

If one is suspected of criminal behavior, then law enforcement may seek a warrant. To be legally valid, that warrant must specify “the place to be searched, and the persons or things to be seized.”

This protection from tyranny has a long history in Anglo-American jurisprudence.

Speaking of the specificity requirement of arrest warrants, the imminent and influential jurist [William Blackstone wrote in 1768](#):

An arrest must be by corporal seising or touching the defendant’s body; after which the bailiff may justify breaking open the house in which he is, to take him: otherwise he has no such power; but must watch his opportunity to arrest him. For every man’s house is looked upon by the law to be his castle of defence and asylum, wherein he should suffer no violence.

And:

This warrant ought to be under the hand and seal of the justice, should set forth the time and place of making, and the cause for which it is made, and should be directed to the constable, or other peace officer, requiring him to bring the party either generally before any justice of the peace for



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the county, or only before the justice who granted it; the warrant in the latter case being called a special warrant. A general warrant to apprehend all persons suspected, without naming or particularly describing any person in special, is illegal and void for its uncertainty; for it is the duty of the magistrate, and ought not to be left to the officer, to judge of the ground of suspicion.

There is little argument that in the case of Rodney Brossart, the sheriff took upon himself the role of “judge of the ground of suspicion.” Furthermore, he violated the Fourth Amendment by sending an all-seeing robot to track Brossart on his own property, doing the “dirty work” of going where the police could not.

In fairness, judges are in need of more specific guidance in their understanding of the Fourth Amendment and the scope of its prohibitions. State legislatures should pass laws declaring that citizens can never be subject to surveillance without notice.

These laws would help judges apply the principles of the Fourth Amendment to drones in a very specific way. The standards presently used to judge the constitutionality of observation by helicopter or patrol car, for example, would be altered appropriately to fit the rapidly advancing drone technology. The improved legal framework would help law enforcement avoid legally suspect surveillance and would maintain the public’s protection against unconstitutional searches and seizures.

The potential weaponization of police drones is another important consideration, one that combines both constitutional issues of due process and the Fourth Amendment’s search and seizure limitations.

NBC says such concerns are unfounded.

“This hysteria of [a drone] hovering outside your backyard taking a video of you smoking a joint, it’s just that — hysteria,” said [Al Frazier](#), an ex-cop from Los Angeles who is now an assistant professor of aeronautics at the University of North Dakota, and a deputy at the Grand Forks sheriff’s office,” writes NBC.

[Writing in the Guardian \(U.K.\)](#), Glen Greenwald recognizes the clear and present danger in the rise of drone use domestically. Writes Greenwald, “This dismissive posture is grounded not only in soft authoritarianism (a religious-type faith in the Goodness of US political leaders and state power generally) but also ignorance over current drone capabilities, the ways drones are now being developed and marketed for domestic use, and the activities of the increasingly powerful domestic drone lobby.”

President Obama has authorized these drones to take to the skies, converting the land of the free into the land of the watched. Drone technology developed for the military will soon be deployed in the domestic skies and citizens will be instantly transformed into suspects. States and cities must now step into the gap and defend citizens from being deprived of their most fundamental rights.

Photo of U.S. Customs and Border Protection drone in Arizona: AP Images

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