



Written by [Raven Clabough](#) on December 13, 2012

## Govt. Spying Out of Control, Notes Judge Napolitano

In an article [posted](#) by Libertarian-minded Judge Andrew Napolitano on [LewRockwell.com](#) on Thursday, Napolitano asserts that government spying has gotten out of control. According to Napolitano, both the Democratic and Republican Parties have justified the process of spying on American citizens and the violation of constitutional rights in the process, always under the guise of security, and in doing so, have violated their oaths to uphold the Constitution.



Napolitano begins by providing some historical background on domestic spying. According to Napolitano, the Foreign Intelligence Surveillance Act (FISA) of 1978 established a new standard for having to obtain search warrants. He noted,

The constitutional standard for all search warrants is probable cause of crime. FISA, however, established a new, different and lesser standard — thus unconstitutional on its face since Congress is bound by, and cannot change, the Constitution — of probable cause of status. The status was that of an agent of a foreign power. So, under FISA, the feds needed to demonstrate to a secret court only that a non-American physically present in the U.S., perhaps under the guise of a student, diplomat or embassy janitor, was really an agent of a foreign power, and the demonstration of that agency alone was sufficient to authorize a search warrant to listen to the agent's telephone calls or read his mail.

Further, the requirement of status morphed over time from "foreign agent" to "foreign person," and the act applied to Americans in contact with "foreign persons." With the inception of the Patriot Act in 2001, federal agents were permitted to write their own search warrants and amended FISA so that the FISA-issued search warrant requirement was not applicable when the foreign person is outside of the United States.

Putting this into perspective, Napolitano writes, "This means that if you email or call your cousin in Europe or a business colleague in Asia, the feds are reading or listening, without a warrant, without suspicion, without records and without evidence of anything unlawful."

Furthermore, information attained during this process of spying is permissible in a federal court.

The amendments to FISA found within the Patriot Act were to expire at the end of the month, but Napolitano points out that the House has already voted to extend the amended FISA statute, and the Senate is considering doing the same. He continued:

FISA gives the government unchecked authority to snoop on all Americans who communicate with any foreign person, in direct contravention of the Fourth Amendment. The right to privacy is a natural human right. Its enshrinement in the Constitution has largely kept America from becoming East Germany. Moreover, everyone in Congress has taken an oath to uphold the Constitution, which could not be more clear: "The right of the people to be secure in their persons, houses, papers, and effects..." shall not be violated, except via a warrant issued by a neutral judge upon the



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judge finding probable cause of crime. If we let Congress, which is a creature of the Constitution, change the Constitution, then no one's liberty or property is safe, and freedom is dependent upon the political needs of those in power.

And while Napolitano's focus in his article is on FISA and the Patriot Act, there are numerous examples of government spying run amok. Officials at the Maryland Transit Administration, for example, announced that private conversations on public buses are permitted to be recorded "to investigate crimes, accidents and poor customer service."

*The Baltimore Sun* [writes](#), "The first 10 buses — marked with signs to alert passengers to the open microphones — began service [in October] in Baltimore, and officials expect to expand that to 340 buses, about half the fleet, by next summer.... Microphones are incorporated in the video surveillance system that has been in place for years."

In addition to the surveillance equipment and signs to alert passengers of the open mics, the buses will be equipped with a "black box" that will be able to store 30 days of audio and video information. The "black box" is locked in an equipment compartment on each of the MTA buses. In the event of an accident involving passengers or a complaint against a driver, the box can be removed and the information can be downloaded for review. According to the MTA, the purpose of the program is to ensure passenger safety.

In Alameda County, California, the sheriff's office was [forced](#) to suspend the purchase of a surveillance drone after mass public outcry indicated fierce opposition to the plan. Privacy advocates slammed the sheriff's office with concerns that the use of surveillance drones will violate privacy protections. Members of the Electronic Frontier Foundation helped to orchestrate opposition to the plan.

The sheriff's office had reportedly downplayed concerns over privacy protections, asserting that the drone would be used to help in search and rescue missions. However, a July 20 internal memo revealed otherwise. *Mercury News* writes that the memo "shows the department identified uses other than search and rescue, including barricaded suspects, investigative and tactical surveillance, intelligence gathering, suspicious persons and large crowd control disturbances."

Trevor Timm of the Electronic Frontier Foundation notes, "We're not against drones entirely," but adds that the possibility exists for the drones to be used in "mission creep."

Additionally, the Environmental Protection Agency reportedly has been using aircraft to spy on cattle ranchers in Iowa and Nebraska. Nebraska's congressional delegation recently [submitted](#) a joint letter to EPA Administrator Lisa Jackson expressing concerns about the surveillance, to which the EPA replied that its use of the planes is well within the legal boundaries, as well as "[cost-effective.](#)"

Congress has already approved the deployment of approximately 30,000 drones in U.S. skies by the year 2020, prompting privacy advocates to question how the FAA will safeguard the American people from the aircraft.

Concerns that the drones would add to privacy violations were vindicated when a newly discovered Air Force intelligence brief revealed that surveillance data of American citizens captured by drones "accidentally" can be stored and analyzed by the Pentagon.

"Collected imagery may incidentally include US persons or private property without consent," the instruction states.

Critics have voiced concerns that the FAA has not developed proper privacy guidelines for the use of



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drones. And without federal guidelines for how the data is collected and used by drones, some fear that their use will result in constitutional violations.

And on Tuesday, PressTV [reported](#) that the federal government is preparing to expand the installation of surveillance devices that are being used on buses for use in street lights.

According to PressTV, "High-tech street lights with 'homeland security applications' are now being installed in major U.S. cities." The street lights are being rolled out in Detroit, Chicago, and Pittsburgh, with backing from the U.S. Department of Energy.



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