



Written by [Bob Adelman](#) on January 20, 2012

New York's Long-Distance Body Scanners Challenge 4th Amendment

New York Police Commissioner Joe Kelly (left) is considering the latest in technology — Terahertz Imaging Detection (TID) — to be mounted on police cars and allowing them to roam the streets of New York looking for people carrying guns. The NYPD, sometimes referred to as the world's "seventh largest army" with 35,000 uniformed officers, already does a brisk business frisking potential suspects, with little pushback. In the first quarter of last year, 161,000 New Yorkers were stopped and interrogated, with more than nine out of 10 of them found to be innocent. And there are cameras already in place everywhere: in Manhattan alone there are more than 2,000 surveillance cameras watching for alleged miscreants.



But the new technology will avoid the necessity of doing public pat-downs because it would allow officers to note, from their cruisers, who is carrying heat. The technology, effective up to 16 feet (with improvements in longer scans already being tested), measures body heat and indicates any "blockages" of that heat by metal obstructions, assumed in most cases to be handguns carried on the person. What it can do is "allow the NYPD to conduct illegal searches by means of scanning anyone walking the streets of New York," according to [the report at RT.com](#). "Any object on your person could be privy to the eyes of the detector, and any suspicious screens can prompt police officers to search someone on suspicion of having a gun, or anything else, under their clothes."

Commissioner Kelly assured investigators that the scanners would be used only in what he calls "reasonably suspicious circumstances." That's a long way from the language in the Fourth Amendment of the U.S. Constitution, which says: "The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The difference is being noted by the American Civil Liberties Union. Donna Lieberman of the NYCLU told CBS:

It's worrisome. It implicates privacy, the right to walk down the street without being subjected to a virtual pat-down by the Police Department when you're doing nothing wrong.

But Kelly isn't concerned: "We have involved our attorneys as we go forward with this issue. We think it's a very positive development."

Terahertz Imaging Detection is the next iteration of Fourth Amendment invasions of privacy. Last July



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Raven Clabough, writing for *The New American*, [warned about iris scans and facial recognition scans](#) and noted that Chicago has been keeping an eye on its citizens for some time now through the use of 10,000 cameras in public places. The ACLU of Chicago voiced similar concerns:

Chicago's camera network invades the freedom to be anonymous in public places, a key aspect of the fundamental American right to be left alone. Each of us then will wonder whether the government is watching and recording us when we walk into a psychiatrist's office, a reproductive health care center, a political meeting, a theater performance or a bookstore.

Mayor Richard Daley, reading from the same script as NYPD Policy Commissioner Joe Kelly, put a happy face on it: "We're not spying on anybody," adding that it's just a cost-effective way to fight crime.

All of this non-spying and non-surveillance on innocents is probably unconstitutional, [according to Bill Rounds](#). Rounds is a California attorney with special interest in privacy and the Fourth Amendment. He says that "if you have a reasonable expectation of privacy...the police need a warrant to conduct a search." But, he adds, "There is no reasonable expectation of privacy for things that are in plain view of the public [and] technologies that enhance the senses to be able to see what is in plain view, like common binoculars, can be used by police without a warrant. Something that is not visible to the naked eye [like a concealed weapon] is not in plain view" and would require either a warrant or the person's consent to a search.

In the 1967 Supreme Court case [Katz v. United States](#), the court ruled 7-1 that "electronic as well as physical intrusion into a place that is in this sense private may constitute a violation of the Fourth Amendment and...that an invasion of a constitutionally protected area by federal authorities is, as th[is] Court has long held, presumptively unreasonable in the absence of a search warrant."

In a more recent case, [Kyllo V. United States](#), the Supreme Court ruled that because the police did not have a warrant when they used an electronic device the search was presumptively unreasonable and therefore unconstitutional.

It is worthwhile noting that *Katz* was decided in 1967 and *Kyllo* in 2001, a very long time ago, legally speaking. To rely on judicial restraint to protect precious liberties is hardly likely to dampen the enthusiasm of either Mayor Daley in Chicago or police commissioner Joe Kelly in New York to continue to push the envelope of technological surveillance as far as possible. The best push back is an informed citizenry which is increasingly unwilling to be cast in the mold of "guilty until proven innocent."



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