

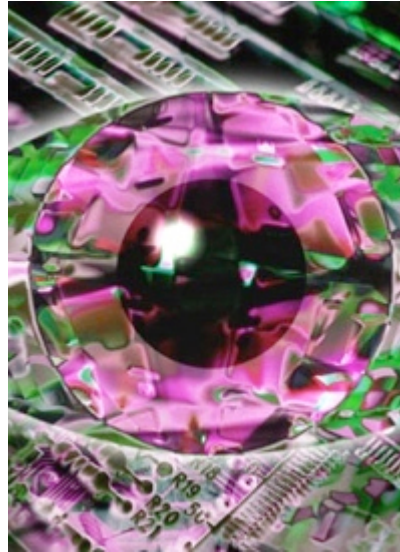


Written by [Bob Adelman](#) on October 19, 2010

Removing “Technical” Obstacles to Surveillance

Buried in an otherwise innocuous-appearing article in the New York Times about wiretapping was this chilling sentence: “The issue [of surveillance of individuals by law enforcement agencies] has added importance because [these technologies] developed by the United States to hunt for terrorists and drug traffickers can also be used by repressive regimes to hunt for political dissidents” [emphasis added].

Under the Communications Assistance to Law Enforcement Act passed in 1994, telephone and broadband companies are required to allow law enforcement agencies to conduct surveillance of a “target” immediately. But with the advancement of technology, obstacles to conduct wiretaps and other such surveillance have delayed their efforts, sometimes for months. In one case cited, a communications carrier was unable to complete over 100 wiretap orders because of delays in modifying its ever-changing technologies.



John Whitehead, founder and president of *The Rutherford Institute*, wrote that such “technology has become our Frankenstein’s monster. Delighted with technology’s conveniences...we have given it free rein in our lives, with little thought to the legal or moral ramifications of doing so.” He says that because of citizens’ enthusiasm for Global Positioning System (GPS) devices for their convenience so that “we never get lost, never lose our loved ones and never lose our wireless signals, we are also making it possible for the government to never lose sight of us, as well.”

In a case decided in January in the Ninth Circuit Court of Appeals, *United States v. Pineda-Moreno*, efforts to track and follow the defendant by attaching a mobile tracking device to the undercarriage of his vehicle were found not to violate his Fourth Amendment rights to unreasonable searches and seizures. Law enforcement agents used various types of mobile-tracking devices, about the size of a bar of soap, magnetized in order to be attached underneath his car. [According to the decision](#), “Once in place, the tracking devices recorded and logged the precise movements of [his] vehicle.” The court concluded that such activities “did not violate [his] Fourth Amendment rights by affixing the mobile tracking devices to the underside of his Jeep while it was parked ... in his driveway, which is ‘only a semi-private area’ [or] while it was parked on a public street and parking lot — areas where Pineda-Moreno can assert no reasonable expectations of privacy.”

The case was decided 3-2 with Chief Judge Alex Kozinski [dissenting strongly](#):

Our court now proceeds to dismantle the zone of privacy we enjoy in the home...and in public. The



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needs of law enforcement, to which my colleagues seem inclined to refuse nothing, are quickly making personal privacy a distant memory....

The facts are disturbingly simple: Police snuck [sic] onto Pineda-Moreno's property in the dead of night and attached a GPS tracking device to the underside of his car. The device continuously recorded the car's location, allowing police to monitor all of Pineda-Moreno's movements without the need for visual surveillance. The panel holds that none of this implicates the Fourth Amendment....

After concluding that entering onto Pineda-Moreno's property and attaching a tracking device to his car required no warrant, probable cause, founded suspicion or by-your-leave from the homeowner, the panel holds that downloading the data from the GPS device, which gave police the precise locus of all of Pineda-Moreno's movements, also was not a search, and so police can do it to anybody, anytime they feel like it....

I don't think that most people in the United States would agree with the panel that someone who leaves his car parked in his driveway outside the door of his home invites people to crawl under it and attach a device that will track the vehicle's every movement and transmit that information to total strangers. There is something creepy and un-American about such clandestine and underhanded behavior. To those of us who have lived under a totalitarian regime, there is an eerie feeling of déjà vu.

Articles like that from the *New York Times* mask what's really going on. As Benjamin Franklin noted, "Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety."

What's worse is the giving up of essential liberty for the sake of convenience.



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