



Written by [Joe Wolverton, II, J.D.](#) on November 6, 2012

Will Police Drones Destroy the Fourth Amendment?

Although the president's use of drones to execute the war on terror and those he assumes are associated with it has so far occurred only outside the United States, soon drones will slice through the domestic skies, as well. While the sight of drones over U.S. cities and towns is rare now, the Federal Aviation Administration (FAA) predicts that by 2020, 30,000 of these unmanned aerial vehicles (UAV) will be patrolling American airspace.



Scores of these UAVs will be deployed by state and local law enforcement, adding to the many that will be sent airborne by the federal government.

In a report released as part of a Freedom of Information Act (FOIA) lawsuit, the FAA revealed that it has approved drone licenses for at least 18 organizations, including police departments in Seattle, Washington, and North Little Rock, Arkansas. A [story published November 3 in *The Hill*](#) reports that Houston, Texas; Miami-Dade County, Florida; and Arlington, Texas, are also ready to launch their high-tech eyes in the sky as soon as the ok is given by the federal government.

Aviel Sanchez of the Miami-Dade County Police Department is quoted in *The Hill* piece saying that although "his department received FAA authorization in July 2011," it has not sent a drone airborne.

"It's nice to have that capability. If it does ... provide a service while safeguarding our property, our personnel and the citizens, then by all means, we'll use that," Sanchez said, as reported by *The Hill*.

It is the use of those enhanced capabilities that is worrisome to constitutionalists.

Below is a brief sample of some of the information contained in the FAA disclosure regarding the use of drones by local law enforcement. As readers will discover for themselves, often the police department's description of their intended use for the drones does not match the scope of the permitted flight plans as indicated on maps included in the files.

For example, the Seattle Police Department was issued a license to fly drones within their jurisdiction, and it reported the following intent for their use of them:

The objective of our program is to create a higher standard of safety for members of our community by utilizing the Draganflyer [sic] X6 Unmanned Aerial Vehicle in support of numerous Law Enforcement related functions which could include but are not limited to:

1. Crash site related to interstate transport of hazardous materials,
2. Crash site related to railroad transport of hazardous materials,
3. Tactical support of law enforcement operations, and
4. Search and rescue operations

Within those four objectives are several constitutionally suspect issues. For example, no precise guidelines are mentioned regarding the scope of the searches to be conducted by drone, and there is no indication of how the "tactical support of law enforcement operations" will be conducted so as not to



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violate the Fourth Amendment's prohibition on warrantless searches and seizures. That is to say, will officers of the Seattle Police Department be required to submit an affidavit "[particularly describing the place to be searched and the persons or things to be seized](#)" in advance of launching the drone?

The privacy issue was the center of the article in *The Hill*:

"Drones should only be used if subject to a powerful framework that regulates their use in order to avoid abuse and invasions of privacy," Chris Calabrese, a legislative counsel for the American Civil Liberties Union, said during a congressional forum in Texas last month.

He argued police should only fly drones over private property if they have a warrant, information collected with drones should be promptly destroyed when it's no longer needed and domestic drones should not carry any weapons.

This is one of many critical considerations regarding the constitutional use of drones. As mentioned above, one of the most crucial of those inquiries concerns the application of the Fourth Amendment's prohibition against "unlawful searches and seizures" and the requirement that warrants be supported by affidavits "particularly describing the place to be searched, and the persons or things to be seized."

[In June, 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 that:](#)

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."

Constitutional conflicts rising in the wake of the domestic deployment of drones have already come up in court in [the case of Rodney Brossart](#), who became one of the first American citizens (if not the first) arrested by local law enforcement with the use of a drone owned by a federal agency. Police launched this loaner after Brossart held the police at bay for over 16 hours.

To bring the standoff to a close, the Grand Forks police SWAT team called the Grand Forks Air Force Base, home to one of the Department of Homeland Security's squadron of Predator drones. No sooner did the call come in than the drone was airborne, and Brossart's precise location was pinpointed with laser-guided accuracy. The machine-gun toting SWAT officers rushed in, tased, and then arrested Brossart on various charges.

North Dakota state prosecutor Douglas Manbeck defends the deployment of the drone, claiming, "The use of unmanned surveillance aircraft is a non-issue in this case because they were not used in any investigative manner to determine if a crime had been committed. There is, furthermore, no existing case law that bars their use in investigating crimes." [On August 1, 2012 Judge Joel Medd, agreeing with Manbeck](#), denied the defense's motion to dismiss.

Senator Paul's measure, if enacted, would give specific guidance to the judicial branch's understanding of the Fourth Amendment and the scope of its prohibitions. It would prevent citizens from being subject to surveillance without notice.



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In contrast, in *The Hill* article, Ben Gielow, general counsel for the Association for Unmanned Vehicle Systems International, thinks that the current guidelines are doing “a pretty good job of protecting our Fourth Amendment rights.”

The truth is we just don’t know. Drones require a new approach to key constitutional issues of search and seizure. Senator Paul’s bill 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.

A final question that must be asked is: What level of weaponization is permissible for the police? Does local law enforcement need the type of weaponry used by the military, whose mission is very different from that of law enforcement?

In fairness, however, drones aren’t bad *per se*. There are many lawful uses of drones, including wildfire control, tracking suspected criminals for whom a qualifying warrant has been issued, tracking of stolen vehicles, etc. It is their unconstitutional use that is objectionable and that Americans must oppose.

Photo of Predator UAV: AP Images



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