

Op-Ed

Submitted by the
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HIGH-TECH SPYING VERSUS PRIVACY

THE SUPREME COURT'S THERMAL-IMAGING CASE IS JUST THE
BEGINNING OF A MONUMENTAL FOURTH AMENDMENT DEBATE

BY STEVE DASBACH (770 WORDS)

Sitting in a squad car, police scan your house with an Agema 210 thermal imager.

The device, originally developed by the military, is so powerful it allows the police to, in effect, see through your walls. Law enforcement personnel can use it to monitor heat patterns inside your house — and see, for example, the unique heat signatures of a warm bath, you and your spouse in bed, or a lamp.

It's intrusive. But is it a search?

That's the question the Supreme Court faced this week, as it heard testimony in the case of Danny Kyllo, an Oregon man convicted of growing marijuana after police scanned his home with an Agema 210 and detected thermal evidence of several high-intensity growing lamps.

Kyllo appealed his conviction, arguing that scanning his home with such a device constituted a "search," and requires a search warrant to be legally permissible. Prosecutors disagreed, claiming that the Agema 210 measured only heat on the outside of the house, and did not penetrate the walls.

A Supreme Court decision is expected within the next several months. Whatever the ruling, however, it won't be the end of the high-tech surveillance versus privacy debate.

In fact, it's only the beginning, as a stampede of science-fiction-type spying devices runs headlong into the Fourth Amendment's protections against unreasonable search.

Although most Americans aren't yet aware of it, equipment lifted straight from the plot of a Tom Clancy technothriller is now being routinely used to search for drugs, enforce water-use laws, scan people in airports, and set property tax assessments across the USA.

Paranoid fantasy? Not at all: Such surveillance equipment is becoming an increasingly common tool for law enforcement.

Here's a quick sampling of how state government and federal agencies are *already* using exotic, high-tech surveillance technology to monitor Americans:

■ In North Carolina, several county governments use spy satellite photographs to search for unreported improvements that might increase property tax assessments.

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■ On the Mexican border, police use a “gamma ray scanner” to check tanker trucks for contraband, scanning right through the vehicle’s metal sides.

■ The Naval Surface Warfare Center has developed an “ion sniffer” that analyzes the chemical makeup of the air — and can detect, for example, traces of cocaine through the skin. It’s now being used to scan truck drivers for possible drug use.

■ In Georgia, the state’s Department of Revenue has started using NASA satellites to examine every one of the state’s 58,910 square miles for improper timber cutting.

■ In airports around the nation, the FAA has installed what critics call “X-rated X-rays” — new, high-tech scanners that can show your naked body through your clothes. The machines, called the BodySearch, are used to inspect suspected smugglers.

■ In Arizona, the state’s Department of Water Resources uses spy satellite photographs to monitor 750,000 acres of state farmland, and then compares the images to a database of water-use permits. Their goal: To discover which farmers don’t have irrigation permits, or have exceeded water-use regulations.

In other words, science fiction has become science reality. High-tech military equipment that was originally developed to use against America’s enemies is now being used against America’s citizens on a routine basis.

Even worse: The federal government is spending millions to develop the next generation of surveillance equipment. Currently under development by the Justice Department: A “super X-ray” — combining traditional X-ray technology, ultra-sound imaging, and computer-aided metal detectors — to reveal items hidden under clothes from up to 60 feet away.

And as spy satellite technology improves, as photo resolution becomes sharper, and as prices fall, government officials are already talking about using satellite surveillance to track items as small as backyard porches to check for zoning violations and construction permits.

These new devices raise a host of questions.

Should our government have the power to photograph us from space, spy on us through the walls of our homes, and examine trace elements of chemicals on our skin?

If the government photographs your property from a spy satellite, is a search warrant required? Or is there a hi-tech exemption to the Fourth Amendment?

If high-tech machines can “see” through your walls and your clothes, do you have any reasonable expectation of privacy? Does the very notion of privacy have any meaning anymore?

And, the most important question of all: Is this the kind of America we want to live in?

That’s a question that not only the Supreme Court but every American will have to answer as spy satellites, gamma ray scanners, and the Agema 210 thermal imager threaten to make the Fourth Amendment technically obsolete, and privacy a thing of the past.

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NOTE: A photograph of Mr. Dasbach and an electronic version of this essay are available. Call Press Secretary George Getz at (202) 333-0008 Ext. 222 for details.