

Coming: Even more FBI warrantless searches?

by [Nat Hentoff](#), Aspen Daily News Columnist

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On May 9, FBI Director Robert Mueller strongly recommended that Congress reauthorize the 2008 Foreign Intelligence Surveillance Act (FISA) Amendments Act by the end of the year. This law allows federal authorities, including the FBI, to conduct warrantless searches. These are beyond the Attorney General's Guidelines for Domestic FBI Operations that let the FBI avoid going to a court to get a warrant to track Americans suspected of terrorist ties.

In 2008, Barack Obama, then a senator from Illinois, pledged he would "unequivocally oppose" the FISA Amendments Act but, as is sometimes his custom, he voted for it. ("FBI chief urges restoration of searches without warrants," Jerry Seper, [washingtontimes.com](#), May 9).

Seper, quoting Mueller, writes that "the law allows the collection of vital information about international terrorists 'while providing a robust protection for the civil liberties of Americans.'"

How is that possible when Americans who are being spied on don't know it and therefore can't question the lawfulness of the tracking?

When reauthorized, this law will add to what the American Civil Liberties Union and its policy counsel on national security, immigration and privacy, Michael German, call "suspicionless surveillance," which keeps growing around the country through local and state authorities, the FBI and the mammoth databases of the National Security Agency (NSA).

As I've reported, German worked inside the FBI for 16 years on domestic terrorism and other investigative matters before being recruited by the Constitution to join the ACLU.

German objects to constant "suspicionless surveillance," as it "invades the privacy of innocent persons and, failing to require a factual basis creating reasonable suspicion and probable cause before initiating surveillance, opens the door to:

"Biased policing, leading to unconstitutional racial and religious profiling and spying on political activists in violation of their First Amendment rights" ("FBI Official Agrees With ACLU: Suspicionless Surveillance is Ineffective and Counterproductive," Michael German, [aclu.org](#), March 9).

Wow! Have presidential rivals Obama and Mitt Romney said a word about this? Don't they care when the Constitution is being ravaged? Will this come up in any of their debates or in press interviews during the campaign?

German continues, referring to his time in the FBI: "Based on my experience in law enforcement, I have also argued that suspicionless surveillance is ineffective and counterproductive as a security measure because it fills intelligence databases with useless information and undermines community support for legitimate law enforcement and intelligence activities directed at real threats."

I wonder if the NSA cares at all about that.

German may have startled FBI Chief Mueller by praising Newark, N.J., Special Agent in Charge Michael Ward for what he said to The (N.J.) Star-Ledger about New York Police Commissioner Ray Kelly's suspicionless, large-scale spying operation on Muslims (simply for being Muslims), a practice enthusiastically supported by Mayor Michael Bloomberg.

Courageous dissenter Ward said: "But (the NYPD) coming out and just basically mapping out houses of worship and minority-owned businesses (to spy on the Muslims who are there) — there's no correlation between the location of houses of worship and minority-owned businesses and counterterrorism" ("Recent NYPD spying uproar shakes FBI's foundations in N.J. terror intelligence," Jason Grant, nj.com, March 7).

But that's what Police Commissioner Kelly's counterterrorism police did in New Jersey and also at various colleges in New Jersey, New York, Connecticut and Pennsylvania, where they spied on students. The police even monitored a small elementary school in a private home in Newark.

Adds German, quoting from Ward's interview with The Star-Ledger: "There should be 'an articulable factual basis' for domestic intelligence collection, such as a 'specific reason why we're looking at this location, this person.'"

Furthermore, German points out how Ward describes "the negative impact these types of operations have on the FBI's relationship with the Muslim community."

Then comes this jab at Michael Ward's boss from German: "Unfortunately, the view that both Ward and the ACLU share isn't reflected in the FBI's policies, or its practices. To the contrary, FBI policies permit the kind of surveillance Ward rightly criticizes."

So far there's been silence from Obama, Mueller, Attorney General Eric Holder and most of the media.

And what about the Republican presidential candidate, who's been silent thus far? I wish he'd say something about both the FBI violations and the Federal Aviation Administration's prediction that "30,000 drones could be in the nation's skies by 2020" ("Drones over U.S. get OK by Congress," Shaun Waterman, washingtontimes.com, Feb. 7).

Judge Andrew P. Napolitano, a dauntless warrior for our Constitution, warns us to prepare for this ultimate raid on our privacy:

"The whole reason we have a Bill of Rights is to assure that tyranny does not happen here, to guarantee that the government, to which we have supposedly consented, will leave us alone. Do you think the government accepts that? Would you feel safe with a drone in your backyard? Would you feel like you were in America?" ("Is there a drone in your backyard?" Judge Andrew P. Napolitano, foxnews.com, May 17).

There are still eight years before these darting government spies make us wary of looking to the heavens, lest a swarm of tiny drones equipped with facial recognition technology take an interest in us.

Do you agree with The Rutherford Institute's John Whitehead when he says: "We are truly entering a new era. Once the realm of science fiction and dystopian literature, the all-seeing surveillance state, powered by the latest and greatest in robot technology, is the reality with which we must now contend" ("The Empire Strikes Back: Attack of the Drones," rutherford.org. April 30).

What do you think we should do about finding a place for the Constitution in this new era? Americans shouldn't give up being American.

Nat Hentoff is a nationally renowned authority on the First Amendment and the Bill of Rights.

He is a member of the Reporters Committee for Freedom of the Press, and the Cato Institute, where he is a senior fellow.