



## Con: Surveillance could violate residents' rights

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It wasn't until 2014 that the Supreme Court unanimously decided that police could not search the contents of a suspect's cellphone without a warrant.

By then, Apple had released the iPhone 5. It came with 16 gigabytes of data. Some of that data could be used to download the nearly 85 billion applications hawked in the Apple Store then, which did everything from editing selfies to letting users monitor their bank accounts.

"As technology advances, the law hasn't really been able to keep up with it," said Jonathan Blanks, senior research associate with the Project on Criminal Justice at the Cato Institute.

But Blanks said the Supreme Court already has indicated how it thinks police should use at least one capability of drones: thermal imaging.

In one case, law enforcement got a warrant to search a house they suspected had a marijuana grow operation inside. They were able to get that warrant in part because they showed the lower court judge who granted it thermal imaging of the house.

The late Justice Antonin Scalia wrote, "We think that obtaining by sense-enhancing technology, any information regarding the interior of the home that could not otherwise have been obtained without physical 'intrusion into a constitutionally protected area,' ... constitutes a search – at least where (as here) the technology in question is not in general public use."

Victoria defense attorney Brent Dornburg, who said he thinks drones are helpful in searches or in assessing bomb threats, agreed with this ruling.

"My argument would be that even if law enforcement saw that heat source, they would have to have more information to tie it to an illegal activity. Maybe that person had a bunch of tanning beds, or maybe they were growing tomatoes," Dornburg said.

The American Civil Liberties Union recommends that law enforcement agencies who use drones do the following:

- Deploy them with a warrant, in an emergency or when officials have a specific reason to believe that the drone will collect evidence related to a specific crime

- Retain images only when there is a reasonable suspicion they contain evidence of a crime or are relevant to an ongoing investigation
- Have the public's representatives develop a policy for drone usage, not the law enforcement agency, and make it available for review
- Make drone usage subject to open review
- Do not equip drones with weapons

“Five years ago, it was a federal agency using drones, and they were working under a research project or under the authority of a federal policing or immigration enforcement agency. Now that the technology has gone down to the local level, you can see more variation in policy, both good and bad,” said Matt Simpson, deputy political and legislative director of the ACLU of Texas.

Simpson said one should also ask local law enforcement agencies using drones if they share the images. He said if the agencies' drones monitor traffic, they can capture images of drivers' license plates, and a lot of information can be drawn from that.

Simpson said if that information goes to state and federal law enforcement without the public's knowledge, “that's not a very good model in terms of accountability and transparency.”