Fourth Amendment: Does Technology Blur the Lines? Our Findings.

As a Supreme Court justice, one has the responsibility in deciding cases that will establish precedents as the Constitution of the United States is concerned. Justices have to uphold the constitution’s integrity as times change, a difficult task. In particular, the fourth amendment rights of Americans have become especially blurred due to recent technology. As the amendment was written, citizens are endowed with the right to be “secure in their persons, houses, papers, and effects,” and these rights cannot be violated without a court-ordered warrant, issued under probable cause to conduct such a search or seizure; however, as technology evolves, justices must look at the spirit of the amendment, not just its literal interpretation. “Smart phones” that contain global positioning technology, and drone usage are two examples of recent technologies that have made the fourth amendment difficult to interpret and uphold.

With the advent of cellular phones that can be located using global positioning satellite technology, government agencies now have the ability to track an individual’s location and activities. Although our 18th century founding fathers couldn’t possibly conceive such technology and establish laws governing its use, as justices, we would not allow the use of such tracking without a warrant, because we feel that it violates one’s right to be secure in their person. To decide otherwise would also open the door to scrutiny that could escalate to harassment. Tracking also violates a person’s “effects”: the cell phone of the citizen. Justice Antonin Scalia, in the 2012 case of United States v. Jones, concurred with our opinion that GPS tracking without a warrant is unconstitutional. This opinion was echoed by Justice Alito in that such tracking violates an “individual’s reasonable expectation of privacy.” Although in the case of U.S. v Jones, the GPS device was placed on Jones’s Jeep, we feel that the situations are similar enough to have established precedence.

Another recently-emerged technology that blurs the lines of fourth amendment rights is small drones that are easily purchased and can be outfitted with cameras. These drones can be flown over an individual’s private property and used to surveil them. Such use, if unchecked, promotes a very similar situation to unwarranted GPS tracking. It violates a person’s rights to come and go, free of harassment, but it also violates the sanctity of one’s home. As written, the people have a right to be “secure… in their homes.” Although an exception has been made for the aerial photography of “open fields,” a precedent was set in the case of Dow Chemical Co. v. United States, in 1986, which concurs with our opinion that the warrantless aerial photography of a person’s home, including the immediate area surrounding the home (curtilage), is unconstitutional.

As shown, technology must be carefully placed within legal boundaries as it emerges. Cell phone tracking and drone surveillance are only two examples of this. Certainly it can be said that with such new technology, the rights provided by the fourth amendment are not as clear as in the 18th century, when the amendment was written and technology was simple. Given that these boundaries and rights have been blurred by these technologies, it is only with careful consideration that clearer definitions can be drawn.