

2011: A Civil Liberties Year in Review

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It's been a year of populist uprisings, economic downturns, political assassinations, and one scandal after another. Gold prices soared, while the dollar plummeted. The Arab Spring triggered worldwide protests, including the Occupy Wall Street protests here in America. Nature unleashed her forces with a massive earthquake and tsunami in Japan, flooding in Thailand and Pakistan, a severe drought in East Africa, and a famine in Somalia. With an [unemployment rate](#) hovering around 9.5 percent, more than 4 million Americans passed the one-year mark for being out of a job. After a death toll that included more than 4,500 American troops and at least 60,000 Iraqis, the U.S. military [officially ended its war](#) in Iraq. At the conclusion of their respective media circus trials, Casey Anthony [went free](#) while Conrad Murray [went to jail](#). And Will and Kate [tied the knot](#), while Demi and Ashton broke ties. All in all, it's been a mixed bag of a year, but on the civil liberties front, things were particularly grim.

Welcome to the new total security state.

The U.S. government now has at its disposal a technological arsenal so sophisticated and invasive as to render any constitutional protections null and void. And these technologies are being used by the government to invade the privacy of the American people. Several years ago, government officials acknowledged that the nefarious intelligence gathering entity known as the National Security Agency (NSA) had exceeded its legal authority by eavesdropping on Americans' private email messages and phone calls. However, these reports barely scratch the surface of what we are coming to recognize as a "security/industrial complex" -- a marriage of government, military and corporate interests aimed at keeping Americans under constant surveillance. The increasingly complex security needs of our massive federal government, especially in the areas of defense, surveillance and data management, have been met within the corporate sector, which has shown itself to be a powerful ally that both depends on and feeds the growth of governmental bureaucracy.

GPS tracking and secret spying on Americans.

Technology, having outstripped our ability as humans to control it, has become our Frankenstein's monster. Delighted with technology's conveniences, its ability to make our lives easier by performing an endless array of tasks faster and more efficiently, we have given it free rein in our lives, with little thought to the legal or moral ramifications of allowing surveillance technology, especially, to uncover nearly every intimate detail of our lives. Consider how enthusiastically we welcomed Global Positioning System (GPS) devices, which use orbiting satellites to produce accurate and continuous records of their position and of any person or object carrying the devices, into our lives. We've installed this satellite-based technology in everything from our phones to our cars to our [pets](#). Yet by ensuring that we never get lost, never lose our loved ones and never lose our wireless signals, we have also made it possible for the government to never lose sight of us, as well. Indeed, as [a case](#) before the U.S. Supreme Court makes clear, the government is taking full advantage of this technology to keep tabs on American citizens, and in the process, is not

only violating the Fourth Amendment's prohibition against unreasonable searches and seizures but is putting an end, once and for all, to any expectation of privacy in public places. Sen. Ron Wyden (D-OR) and Rep. Jason Chaffetz (R-UT) have [introduced a bill](#) that would require police to obtain a warrant and prove probable cause before tracking someone via GPS. Senators Al Franken (D-MN) and Richard Blumenthal (D-CR) have [also sponsored legislation](#) to "require companies to get a user's consent before sharing cell phone location information."

Internet surveillance.

In late July 2011, the House Judiciary Committee passed the cleverly titled "Protecting Children from Internet Pornographers Act of 2011," which [laid the groundwork](#) for all Internet traffic to be easily monitored by government officials. Most recently, the [Stop Online Piracy Act \(SOPA\)](#), making its way through the House of Representatives, and its sister legislation in the Senate, the Protect IP Act (PIPA), have shown the government's intent to control all Internet traffic. The bills, which are supposedly intended to combat copyright violations on the Internet, are written so broadly so as to not only eliminate Internet piracy but replace the innovative and democratic aspects of the Internet with a tangled bureaucratic mess regulated by the government and corporations.

Intrusive pat-downs, virtual strip searches and screening stations.

Under the direction of the Transportation Security Administration (TSA), American travelers have been subjected to [all manner of searches](#) ranging from whole-body scanners and enhanced pat-downs at airports to bag searches in train stations. Visible Intermodal Prevention and Response (VIPR) task forces, comprised of federal air marshals, surface transportation security inspectors, transportation security officers, behavior detection officers and explosive detection canine teams laid the groundwork for the government's effort to secure so-called "soft" targets such as malls, stadiums, bridges, etc. Some security experts predict that checkpoints and screening stations will eventually be established at *all* soft targets, such as department stores, restaurants, and schools. Given the virtually limitless number of potential soft targets vulnerable to terrorist attack, subjection to intrusive pat-downs and full-body imaging will become an integral component of everyday life in the United States.

More powers for the FBI.

As detailed in the FBI's operations manual, rules were [relaxed](#) in order to permit the agency's 14,000 agents to search law enforcement and private databases, go through household trash, and deploy surveillance teams, with even *fewer* checks against abuse. FBI agents were also [given the go-ahead](#) to investigate individuals using highly intrusive monitoring techniques, including infiltrating suspect organizations with confidential informants and photographing and tailing suspect individuals, without having any factual basis for suspecting them of wrongdoing. These new powers extend the agency's reach into the lives of average Americans and effectively transform the citizenry into a nation of suspects, reversing the burden of proof so that we are now all guilty until proven innocent. Thus, no longer do agents need evidence of possible criminal or terrorist activity in order to launch an investigation. Now, they can "proactively" look into people and groups, searching databases without making a record about it, conducting lie detector tests and searching people's trash.

Patriot Act redux.

Congress pushed through a [four-year extension](#) of three controversial provisions in the USA Patriot Act that authorize the government to use aggressive surveillance tactics in the so-called war against terror. Since being enacted in 2001, the Patriot Act has driven a stake through the heart of the Bill of Rights, violating at least six of the 10 original amendments -- the First, Fourth, Fifth, Sixth, Seventh and Eighth Amendments--and possibly the Thirteenth and Fourteenth Amendments, as well. The Patriot Act has also redefined terrorism so broadly that many non-terrorist political activities such as protest marches, demonstrations and civil disobedience are considered potential terrorist acts, thereby rendering anyone desiring to engage in protected First Amendment expressive activities as *suspects* of the surveillance state.

Drones over America.

Attached as an amendment to the "Federal Aviation Administration (FAA) Air Transportation Modernization and Safety Act" (S.223), the legislation allowing drones -- pilotless, remote-controlled aircraft that have been used extensively in Iraq, Afghanistan and Pakistan -- to fly in general American airspace [cleared Congress](#), thanks to support from military contractors and a lack of opposition from those who should know better, including an American populace preoccupied with rising gas prices, a dismal economy and endless wars abroad. However, police agencies across the nation are already [beginning to use spy drones](#), and some officials are considering outfitting them with "nonlethal" weapons. Just recently, police in North Dakota working with U.S. Customs and Border Patrol [arrested](#) a family of farmers using information acquired by a spy drone. The FBI and DEA also use spy drones in their domestic police work.

Increased arrests for recording encounters with police.

Thanks to ubiquitous cell phone technology, more Americans are recording police encounters. Consequently, police have begun [arresting those who attempt to record them](#), citing wiretap laws as justification for the arrests. While many of those wrongly arrested for recording police activity were acquitted, the courts [have not been consistent](#) in affirming the First Amendment right of citizens to record police activity.

Terrorism Liaison Officers.

In another attempt to control and intimidate the population, the government has introduced Terrorism Liaison Officers (TLOs) into our midst. TLOs are firefighters, police officers, and even corporate employees who have received training to spy on and report back to government entities on the day-to-day activities of their fellow citizens. These individuals are [authorized to report](#) "suspicious activity" which can include such innocuous activities as taking pictures with no apparent aesthetic value, making measurements and drawings, taking notes, conversing in code, espousing radical beliefs, and buying items in bulk. With the Director of National Intelligence now pushing for a nationwide program, you may soon see these government-corporate agents in a town near you.

Fusion centers.

TLOs report back to so-called "fusion centers" -- data collecting agencies spread throughout the country, aided by the National Security Agency -- which constantly monitor our communications, everything from our Internet activity and web searches to text messages, phone calls and emails. This data is then fed to government agencies, which are now interconnected -- the CIA to the FBI, the FBI to local police -- a relationship which

will make a transition to martial law that much easier. As of 2009, the [government admitted](#) to having at least 72 fusion centers. A map released by the ACLU indicates that every state except Idaho has a fusion center in operation or formation.

Merger of the government and the police, and the establishment of a standing army.

At all levels (federal, local and state), through the use of fusion centers, information sharing with the national intelligence agencies, and monetary grants for weapons and training, the government and the police have joined forces. In the process, the police have become a "standing" or [permanent army](#), one composed of full-time professional soldiers who do not disband. In appearance, weapons and attitude, local law enforcement agencies are increasingly being transformed into civilian branches of the military. Indeed, the average citizen is helpless in the face of police equipped with an array of weapons, including tasers, etc. The increasing militarization of the police, the use of sophisticated weaponry against Americans, and the government's increasing tendency to employ military personnel domestically have us teetering on the edge of a police state.

Court rulings affirming the right of police to invade our homes without warrants.

In [Barnes v. State](#), the Indiana Supreme Court broadly ruled that citizens don't have the right to resist police officers who enter their homes illegally, which is the law in most states. Yet consider how many individuals have been killed simply for instinctively reaching for any kind of weapon, loaded or not, during the initial trauma of a SWAT team raid. In [Kentucky v. King](#), the U.S. Supreme Court gave police carte blanche authority to break into homes or apartments without a warrant. Specifically, the court ruled that if a SWAT team arrives at the wrong address but for whatever reason suspects the citizen inside the home *may* possess drugs, these armed warriors can break down the door and invade your home -- all without possessing a warrant.

Bringing the war home.

America became the new battleground in the war on terror. A perfect example of this is the National Defense Authorization Act of 2012, which was [passed by the Senate](#) with a vote of 93-7. Contained within this massive defense bill are several provisions which, taken collectively, re-orient our legal landscape in such a way as to ensure that martial law, rather than the rule of law -- our U.S. Constitution, becomes the map by which we navigate life in the United States. In short, this defense bill not only decimates the due process of law and habeas corpus for anyone perceived to be an enemy of the United States, but it radically expands the definition of who may be considered the legitimate target of military action.

What does 2012 hold for us? Only time will tell. But as Jane Addams, the first U.S. woman to receive the Nobel Peace Prize [advised](#), "America's future will be determined by the home and the school. The child becomes largely what he is taught; hence we must watch what we teach, and how we live." If we want to avert certain disaster in the form of authoritarianism, then we'd do well to start teaching the principles of freedom to our young people right away and hope the lesson sticks.

John W. Whitehead is an attorney and author who has written, debated and practiced widely in the area of constitutional law and human rights. Whitehead's concern for the persecuted and oppressed led him, in 1982, to establish [The Rutherford Institute](#), a nonprofit civil liberties and human rights organization whose international headquarters are located in Charlottesville, Virginia