



DRONES, WAR AND SURVEILLANCE



2014



PRESBYTERIAN CHURCH (U.S.A.)
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THE REV. DR. GRADYE PARSONS
STATED CLERK OF THE GENERAL ASSEMBLY

Dear Members and Friends of the Presbyterian Church, and
those with public responsibility for matters of military security and surveillance:

This report contains an ethical assessment of the costs and benefits of drones (remotely piloted aircraft) for military and intelligence use, and a treatment of related forms of electronic surveillance. Recognizing that technological innovation often races ahead of moral reflection, this is one church's effort to think and pray about the consequences of new forms of warfare and information gathering. Framing this report's recommendations is a call for more public discussion of these new technologies and more public disclosure of the facts by government agencies in the service of greater accountability. Both the growing military use of drones and the growing collection of communications data require public justification, particularly when human rights and civil liberties may be threatened. This report is thus offered as a resource for public discussions at national and state levels, for adult study in our congregations and presbyteries, and for consideration in ethics and religion classes in colleges and seminaries.

I write to persons within and outside our church in my capacity as Stated Clerk of the General Assembly, the highest policy making body of our denomination, to confirm that this policy statement was approved by the 221st General Assembly of the Presbyterian Church (U.S.A.) on June 20, 2014, meeting in Detroit, Michigan. Social witness policies of this kind are part of the larger public witness of our church and are advisory to our members, congregations, and councils. They appeal to the free Christian conscience of members and more broadly to ethical concerns for the common good shared by all citizens and citizens of other nations. It is a core belief of our Reformed Protestant tradition that Christians have a public responsibility to work with others to help reform the societies in which we live. Naturally, no Presbyterian is required to affirm the specifics of any social witness policy; in our view they derive from the influence of God's Spirit on our representative assemblies, working with material prepared by expert volunteer study teams and staff.

At the same time, policies of this kind direct the work of agencies of the General Assembly itself. The church maintains an Office of Public Witness in the capital and a Presbyterian Ministry at the United Nations with full non-governmental organization status. Members of our church also participate in the military and intelligence agencies of the United States, along with chaplains, and are valued and knowledgeable participants in consideration of these matters. Their voices were heard in the General Assembly committee deliberations and on the plenary floor.

The recommendations (in bold type) come in four sections, which were debated and voted upon separately, though all depend on the supportive study material that follows which reviews current practices and Christian analysis. The fourth and shortest section deals with the nature of our church buildings and worship services in relation to surveillance, seeking to honor the unsearchable mystery of God who calls all of us all to be peacemakers and to respect the humanity of all people.

Yours in Christ's Service,

(The Rev.) Gradye Parsons, Stated Clerk

Please see inside back cover for purchase information.

Drones, War and Surveillance

**A Resolution by the 2014 General Assembly of
the Presbyterian Church (U.S.A.)
June 19, 2014**



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Presbyterian Church (U.S.A.)
100 Witherspoon Street, Louisville, Kentucky 40202

Approved by the 221st General Assembly (2014)
Presbyterian Church (U.S.A.)

A policy statement is an excerpt from the Minutes of the General Assembly of the Presbyterian Church (U.S.A.)

Developed by
The Advisory Committee on Social Witness Policy (ACSWP)
of the General Assembly Mission Council/Presbyterian Mission Agency
www.pcusa.org/acswp or www.presbyterianmission.org/ministries/acswp
See also www.justiceUnbound.org for current discussion

DRONES, WAR AND SURVEILLANCE

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DRONES, WAR AND SURVEILLANCE

RECOMMENDATIONS

As with the introduction of past military technologies, the development of moral and legal guidance for the use of drones (remotely piloted aircraft) and cyber/digital surveillance has trailed their deployment. To help remedy this, the Advisory Committee on Social Witness Policy (ACSWP) recommends that the 221st General Assembly (2014) of the Presbyterian Church (U.S.A.):

A. Affirms the following statement and approves Recommendations A.1.–A.8. as follows:

Drones used by the Central Intelligence Agency (CIA) and United States Armed Forces for national security can easily penetrate enemy lines and linger to conduct surveillance, which enables them to isolate and identify targets more accurately, choose blast trajectories, and use lower-yield weapons. Because they can attack with less collateral damage than other weapons and without jeopardizing the lives of U.S. military personnel, military officers and civilian leaders are tempted to use them frequently, sometimes in ways that violate national sovereignty and human and constitutional rights. Because they arouse resentment among local populations, even when used sparingly, military drones may undermine strategic objectives (such as winning support of a population facing an insurgency). Because drone programs have been secret, they cripple the capacity of citizens to interpret the “blow-back” they arouse and to exercise democratic oversight over foreign policy. And because they are already receiving substantial research and development funding in the U.S. and elsewhere, they are increasingly “the new face of war.”

The Presbyterian Church (U.S.A.)...

1. Encourages the church to engage in and lead the public in a robust discussion of the moral use of drones in national security. This discussion should be informed by biblical principles, as well as “Just War” and “Just Peacemaking” criteria.
2. Opposes in principle the targeted killing or assassination of suspects these weapons facilitate and grieves the deaths these weapons facilitate.
3. Urges the United States Congress to pass legislation governing military drones. These laws should articulate procedures that put checks on executive power and establish civilian oversight. The goal is to ensure that in any justification of targeting human beings that the fundamental rights of all humans are protected, international law upheld, noncombatants safeguarded, and the larger goal of peace and justice advanced. To these ends, the Central Intelligence Agency should not run any part of the weaponized drone program and should focus on intelligence collection as its primary mandate.
4. Urges the U.S. to make public and submit its rules for military drones to institutions of the international legal community for analysis and evaluation. Together with other nations, we may develop international conventions governing their use and prevent a “drone race.” Under the Law of Armed Conflict (LOAC), the United States and other nations should be held responsible for drone uses that violate the rules of war or human rights such as acts of terrorism; assassination (killing without due process); destruction of natural resources, habitat, and infrastructure; and other crimes.

5. In the absence of conventions outlawing drone use in combat or counterterrorism, urges that targeted killings of suspected terrorists be given more effective judicial and congressional review through the use of warrants, advocates for the accused (such as a privacy advocate and/or opposing counsel in Foreign Intelligence Surveillance Act/surveillance court proceedings), and regular after-the-fact public reporting by any and all secret courts, so that elected bodies may evaluate the costs and benefits of counterterrorism measures and find alternatives, and so that no one person, even a president acting in military capacity, could order the killing or indefinite detention of a suspected enemy exempt from judicial review.

6. Urges, in cases where the proposed targeted killing of suspects amounts to the declaration of war, that congressional approval (beyond surveillance court approval) be sought, as for other wars, and that any such declaration or approval include tax revenues sufficient to cover all costs expected from these military operations.

7. Supports the prohibition of fully autonomous or “robot” drones that designate targets and “decide” to shoot combatants based on computer calculations and automated reactions and urges review of targeting decisions such as those based on tracking call phone SIM cards that may lead to unintended deaths.

8. Instructs the appropriate offices of the Presbyterian Mission Agency and the Office of the General Assembly, in ecumenical and interfaith cooperation whenever possible, to advocate for such legal protections of human rights and regulation of military drones (UAVs), and to produce resources to interpret and assist discussion and exploration of the use of remotely piloted aircraft and related technologies.

B. Affirms the following statement and approves Recommendations B.1.–B.3. as follows:

Since drones are able to linger over targets for large spans of time without detection, their domestic use by governmental agencies, commercial enterprises, and civilians presents significant privacy and civil liberties concerns.

The Presbyterian Church (U.S.A.)...

1. Encourages the church to engage in and lead the public in a robust discussion of the moral dimensions of domestic drone use, including Federal Aviation Administration regulations.
2. Recommends that the United States Congress, other Federal, state, and/or local agencies, as appropriate, pass legislation and/or regulations governing the use of domestic drones so that Constitutional rights are upheld.
3. Urges the adoption of policies that would prevent domestic drones from being weaponized.

C. Affirms the following statement and approves Recommendations C.1.–C.3. as follows:

Cyber surveillance technologies present tremendous opportunities for misuse. Information gathered by these means may be used to ruin individual lives, distort the political process, and steal intellectual property. Public accountability includes regular and specific disclosure of the number and kind of warrants issued; the status of data collected by private companies, the National Security Agency (NSA), and other agencies; safeguards to protect the content of personal communications; and regular reporting to and by a strengthened Privacy and Civil Liberties

Oversight Board of the U.S. Congress. We believe citizens deserve public justification of any data collection programs that track their communications, phone calls, texts, purchasing, and location data, and that may treat them as suspects. We uphold a legal distinction between whistleblowing and espionage and maintain that employees and contractors of the U.S. government have a duty to protect human and Constitutional rights and a right to present evidence of such motivation and public benefit in open court if charged with “leaking” or violating classified information restrictions, which themselves need rigorous justification. We deplore unjustified or excessive punishment of whistleblowers, whose rights to fair trial and honorable treatment in prison must be respected.

In the development of cyber warfare capability and use, we urge full consideration of the civilian and other collateral consequences of attacks on military or nuclear computer systems and electronic/communications infrastructure, and affirm that such covert warfare respect the rights of humans and the responsibilities of Christians to respect the lives and freedoms of sovereign peoples.

The Presbyterian Church (U.S.A.)...

1. Encourages the church to engage in and lead the public in a robust discussion of the morality of digital and electronic surveillance and of cyber warfare justifications.
2. Recommends the United States Congress pass legislation to increase accountability of surveillance agencies and commercial contractors engaged in surveillance. In particular, we call for greater transparency of the purposes and budgets of all “secret” agencies, including the expanded Special Operations Command (USSOCOM), even those whose regular operations may be justifiably concealed from most U.S. citizens for security reasons. We encourage the development of new forms of congressional oversight to monitor the government’s collection and use of phone, internet, and text message “meta-data.” We commend laws to protect whistleblowers, prevent collection of personal data without a warrant, and ensure diversity in judges reviewing warrants for individual surveillance, data-mining, and indiscriminate or bulk data collection, including that of non-U.S. nationals and foreign leaders.
3. Understanding that routine leniency toward people who violate their security clearances would undermine operational security, we encourage the consideration of pardon and/or the mitigation of punitive sentencing for whistleblowers along with rigorous analysis of any damages alleged to national security. To the extent that potential suspects fall under civilian rather than military jurisdiction, Department of Justice procedures should allow for the public interest to be represented appropriately in court. In cases where military tribunals do not allow for the full exercise of Constitutionally protected rights, as at Guantanamo and arguably in several whistleblower cases, the Department of Justice should be able to make appeals within the civil justice system.

D. Affirms the following statement and approves [technology recommendations] as follows:

The church’s emphasis on spiritual freedom of conscience and the work of the Holy Spirit in community lead us to maintain that congregational life is protected from governmental and commercial intrusion. In order to uphold both privacy rights and the separation of church and state, we regard all spaces of worship as surveillance-free zones. Aware of the potential for abuse by both government agencies and criminal enterprises, surveillance of individuals should only intrude into congregational life under extraordinary circumstances and in each case should require a warrant or court order. Recognizing the role of technology in facilitating overreaching surveillance,

the Presbyterian Church (U.S.A.) encourages the church to examine its own technological choices and, where feasible, use hardware and software, such as Free and Open Source software, that allows us to avoid participation in this surveillance except under extraordinary circumstances with a warrant or court order.

RATIONALE

[Note: In order to test the ideas behind this resolution, an earlier version of this rationale was widely distributed as a resource for Adult Education by special arrangement with *The Thoughtful Christian*, a product of the Westminster/John Knox Press. The Advisory Committee expresses its appreciation to the Press for this arrangement, and welcomes comment on it.]

I. Definition of Drones and Introduction

Drones or unmanned aircraft systems (UAS) are remotely piloted aircraft used for surveillance and/or destruction of military targets. Drones are controversial because they have become a key element of contemporary warfare, allowing the killing of opponents without risk to the drone operator and generally without due process or public notice. Compared with the fifty targeted killings during the Administration of George W. Bush, by February 2013 the Obama Administration had used drones more than 350 times, killing an estimated 3,500 people, mainly in Afghanistan, Pakistan, Yemen, and Somalia.¹ This brief study will examine the moral risks of using a method of warfare more similar to execution, the political risks of “blowback” from populations living under weaponized drones, and the dangers of a drone race among countries using new aerial platforms for boundary maintenance and the expansion of control.² Unless new rules can be developed and enforced internationally, drones will increasingly be the new face of military intervention and occupation as well as intelligence gathering.

There are also an increasing number of peaceful uses for these unmanned aircraft, some of which can be quite small and tailored to particular functions. Surveillance, however, is a primary drone function and one that frequently overlaps with the increase in cyber and digital surveillance by a variety of means. Documents revealed by whistle-blowers have revealed the enormous and intrusive scope of previously undisclosed surveillance of U.S. citizens, effectively treating all citizens as suspects and providing little public accountability for personal and mass data collected. Wide-ranging surveillance by the National Security Administration and other of the sixteen U.S. intelligence agencies has also violated the privacy of world leaders and possibly involved industrial espionage, a practice we deplore in cyber warfare efforts of other nations.

On May 23, 2013, President Obama addressed some of the moral and legal questions about the military use of drones, announcing that some new rules had been put in place, while still keeping the actual rules under secret classification. While suggesting that the use of lethal drones would be reduced and shifted from the CIA to the military, the president defended their continued use in the new period of more focused warfare, particularly in Afghanistan and Pakistan so long as our troops are there. After describing the range of drone uses, this study will look at the main ethical and legal questions and then return to the question of what kind of war their use implies. Drone warfare and its processes of target selection are likely to illustrate the tensions between governmental secrecy and public accountability for some time to come.

The surveillance work of drones raises broader and unavoidable considerations about electronic surveillance generally, which are treated in a section following the assessment of drones below.

A. *Peaceful and Military Purposes*

Aerial surveillance by spy plane became well-known with the shooting down of a U-2 reconnaissance plane in 1960 by the Soviets. Subsequently, the United States came to rely more on satellites, and with the advent of global positioning devices (GPS) on handheld smartphones with location applications, what had formerly been restricted to government surveillance has become widely accessible. Similarly, a wide sweep of engineering advances in cameras, telecommunications, nanotechnology, and computerization allow for real-time video of virtually any location on earth.

The primary peaceful uses for drones or UAVs—unmanned aerial vehicles—are in the following areas:

1. Policing and border surveillance, including the use of smaller drones to relay information from individual residences and inaccessible accident scenes.
2. Newsgathering, in some cases where manned helicopters would previously have been used.
3. Weather forecasting and atmospheric measurement, such as by the “Global Hawk” used by NASA, the National Aeronautics and Space Administration.³ Drones may also help in rescuing flood victims as well as tracking extreme weather.
4. Agricultural uses such as crop dusting and irrigation control.
5. Traffic control and crowd assessment.
6. Protection of archeological sites and endangered species, including measurement of climate change impacts.
7. Search and rescue operations across vast expanses of water or land.

The commercial and governmental use of UAVs in the United States is governed by the Federal Aviation Administration (FAA). Previous height restrictions (to 400 feet), no-fly zones around airports, and requirements that drones be kept in eye-range are all under review with many more permitted uses emerging.⁴ Along with official uses, the dangers of surveillance by neighbors and other forms of intrusion raise questions about privacy and civil liberties, extending the definitions of what might constitute reasonable search, permissible observation, and potential publication of images. While drones are used to patrol the U.S.-Mexico border and even to penetrate further into Mexico, several U.S. jurisdictions such as Seattle have sought permits to use drones for policing purposes. One city, Charlottesville, Virginia, became the first to oppose the domestic use of drones. Their February 4, 2013, resolution reads, in part: “The rapid implementation of drone technology throughout the United States poses a serious threat to the privacy and constitutional rights of the American people.”⁵

The military uses of the some 11,000 drones possessed by the United States have been mainly related to surveillance and the replacement of ground or submarine-based missile platforms. Since 2002, the United States has been the primary user of drones in warfare, equipping the airplane-sized Predator and Reaper drones with sophisticated missiles designed to hit targets of varied size. There are also smaller drones, such as the 400-pound Shadow, or the backpack-sized Switchblade, that carry little or no weaponry.⁶ Lesser numbers of drones have been produced by Russia, China, Israel, and Iran, and as many as seventy countries have some form of drone or aerial robot.

The basic operation of large and small drones is by pilots on the ground, often based in the United States, who are able to observe targets for long periods of time due to advances in flight duration. This capacity for prolonged observation has reportedly added to the accuracy of drone targeting and a reduction in civilian deaths (often termed “collateral damage”). The work of drone pilots has been compared to video-game play, but the strain of long observation, the detailed knowledge of their human targets and the required examination of sometimes grisly impact scenes has led to forms of PTSD among drone operators.⁷ This kind of stress can be intensified rather than relieved by the daily transitions from the warzone on screen to normal family life on a safe U.S. military base.

Under the rules of war, drone pilots (and the people they may be with) are legitimate military targets. While the lives of drone pilots in the U.S. may be physically safe, the life of spotters and intelligence personnel on the ground in remote areas of Pakistan, Yemen, or Somalia is less so. U.S. military and covert personnel as well as local opponents of Al Qaeda, Taliban, or other groups send in data to guide the selection of targets, often with remarkable precision. Other targeting comes through identification of cell phone frequencies and intercepted communications. Sometimes the status of targeted persons is disputed, with allegations that U.S. forces are given the names of family or tribal opponents who may not be members of terrorist, Islamist, or other opposing groups. In some cases “signature” strikes are unleashed at suspected opponents who fit a suspect profile by appearing to position a roadside bomb, for example. In at least one case the U.S. has acknowledged targeting a wedding party; local groups allege more civilian deaths than the U.S. military.⁸

At least in some cases, authorization for the killing of suspects comes from the president of the United States himself. While the use of drones had been an official secret up to May 23, 2013, it was made known that potential targets were presented to President Obama by top security officials. Although the killing or capture of Osama bin Laden was directed to be done by a special forces team, similar reviews of suspected targets are carried out on a regular basis to eliminate the leaders of Al Qaeda. The revelation of this “hands-on” role by the president has been affirmed by some and criticized by others as a diminishment of his office.⁹ Others maintain that presidential oversight reflects the moral seriousness with which the Executive Branch of government takes the use of drones.

B. New and Still Evolving Technologies and Applications

A major center for new drone development in the United States is Dayton, Ohio, partly due to the presence of the Wright-Patterson Air Force Base and the Air Force Institute of Technology.¹⁰ Some military drones are piloted from that base and many start-up companies are also located there, some receiving grants from DARPA, the Defense Advanced Research Projects Agency. One DARPA initiative is to support the development of drones that mimic birds and even insects and hence would be difficult to detect.¹¹ Researchers are concerned to build in mechanisms that will prevent drone crashes or the “hacking” or jamming of drone controls. These concerns are magnified when robot drones are contemplated that process their own photographic and other data, identify targets by use of preprogrammed pattern recognition, and “decide” to fire without human input. Beyond the Dayton area concentration of drone entrepreneurs, established military contractors such as Lockheed Martin and Boeing are also working on drones.

Robotic defenses that identify threats, target, and “decide” to fire are already part of the AEGIS system that defends American Naval ships. It is claimed that in November of 2012 the Department of Defense issued a ten-year moratorium on robotic drones, to analyze the ethics of “smart drones,” as there is concern about the moral implications of self-directed robot drones that remove human decision from the killing process.¹² Israel has developed a hovering drone called Harpy that can be programed

to attack any radar signal that its programming does not recognize, while other work on robotics is picking up steam.¹³

II. Key Ethical Issues

The military use of drones brings into play traditional “Just War” criteria as well as newer considerations related to the technology and the nature and even name of our current hostilities. Just War criteria include just cause (usually self-defense), last resort, legitimate authority, right intent (redressing a wrong), and likelihood of success, seen as a victory that is also a just peace, or at least an outcome better than would have obtained without war. There are also rules for the just conduct of war, proportionality of response to threat, protection of civilians, and avoidance of atrocities.¹⁴

The newer considerations have to do with the role of soldiers and targets on an uncertain battlefield with an indefinite timeline. At least in the current theatres of drone warfare, the soldiers controlling drones do not put themselves at risk while those being targeted may have no knowledge of their degree of risk. The first group is comprised of professional soldiers, but may include contractors and personnel from the Central Intelligence Agency (CIA). The second group may see themselves as local patriots defending their homeland or devout Muslims protecting Islam from contamination. When killed, members of the second group are often seen as martyrs, which underlines the religious dimension to warfare in the greater Middle East.

A. Just Cause

Speaking to a new approach to drone warfare on May 23, 2013, President Obama referred to the post-9/11 Authorization for Use of Military Force as the basis for ongoing military operations against Al Qaeda, including the use of drones.¹⁵ That legislation, adopted 9/18/01, authorized force against any groups or nations responsible for the terrorist attack on the United States and since has been extended to cover military operations in Iraq, Somalia, Yemen, and elsewhere, even against groups that did not exist in 2001. Yet one of the implications of the president’s speech was that the scale of the war on terror was to be reduced, suggesting that the threat level from overseas terrorists had declined and hence the argument for warfare based on self-defense is weakened. One main alternative to a war model for pursuing purported terrorists is a policing model that would treat them as criminals to be brought to justice, but this would also call into question the need for summary execution by drone-fired missile or other means.

B. Last Resort

This criterion would support the use of drones in cases where neither the U.S. military nor that of the host country could capture and detain suspects posing an imminent danger to the United States or its allies. A “white paper” leaked in February 2013 used the concept of “imminent” threat to assert the potential danger from active terror suspects at any time or place, widening the battlefield, extending the potential duration of military action, and justifying the drone killing of U.S. citizens, such as Anwar al-Alwaki in Yemen in September 2011.¹⁶ Also called a “drone memo,” this sixteen-page document figured in the confirmation hearings for John Brennan, new CIA director, with the senators largely agreeing that necessity required some use of drones, with the notable exception of Senator Rand Paul, who filibustered to receive assurance that no U.S. citizen would ever again be targeted.¹⁷ (Mr. Paul’s filibuster revealed bipartisan discomfort with drones, but he did not receive an unequivocal assurance about potential U.S. targets.) In terms of overseas strategy, an alternative here might be to consider negotiation and other political/cultural/communal ways to end a thirteen-year war, but this would require redefining the goals of the conflict and perhaps the nature of the enemy.

Perhaps ironically, some military and CIA officials want to keep troops in Afghanistan partly to protect drone bases there.

C. *Legitimate Authority*

Allies in NATO, the North Atlantic Treaty Organization, had more than nominal commitments of troops in Afghanistan for varying periods, and a smaller number sent troops to Iraq. This article cannot examine the origins of either primary war, nor the role of the U.S. in Somalia and Yemen, but in no case was war formally declared against another state, nor was war authorized by the United Nations Security Council. Al Qaeda and related groups continue as targeted non-state actors, more in the Arabian Peninsula and the Horn of Africa than in Afghanistan and Pakistan, where the Taliban are the primary U.S. opponents, waiting for the bulk of U.S. troops to leave in 2014. The G.W. Bush Administration described the overall U.S. effort as a “War on Terror,” its opponents “an axis of evil.” The question with the use of drones in this context, however, is whether they make it easier and less public to spread hostilities across national boundaries. Even if it is allowed that under U.S. law, the president as commander-in-chief can initiate irregular warfare without a declaration of war, and can keep a CIA-run drone war unacknowledged for six years, this does not answer whether the U.S. and its allies were initiating wars of choice without satisfying criteria of international legitimacy.¹⁸

D. *Intent and Likelihood of Success*

The stated purpose of current drone use, as of May 2013, is to “dismantle terrorist networks,” when there is no possibility of capturing, detaining, and trying alleged terrorists. It has been necessary to disavow vengeance and any intent to fight Islam, although many U.S. citizens and public figures consider Islamic fundamentalists to be our enemies. Again, without tracing the shifting rationales and strategies behind our military engagements in the larger Middle East, the question is whether drone warfare carries a likelihood of success. Here it has the decimation of Al Qaeda’s older leadership to claim as victory, yet revenge-seeking militants, including suicide bombers, appear frequently in Afghanistan, Pakistan, and other countries (not to mention Iraq). One scholar has argued that drone warfare has not only produced a hatred of the United States and its drone pilots, sitting far away in dishonorable safety, but that the clear (if denied) approval of drone use by Pakistani and Afghan governments has led to their de-legitimation. Further, Taliban and other groups have gone after the compromised pillars of traditional society, tribal elders and religious leaders, leaving profound disorder and reigniting historic tensions.¹⁹ A counter-argument here would be that weakened societies and failed states need outside support and drones are the most efficient way to provide it.

E. *Conduct of War Regarding Drone Strikes*

In terms of the conduct of war, President Obama has maintained that drone strikes are more proportionate and spare many more civilian lives than conventional missiles or occupations. They also put fewer U.S. troops in harm’s way than insurgency campaigns. These contentions seem accurate, even if the long-range stated objectives of stable, prosperous, and democratic societies seem quite distant. As one Yemeni witness told a congressional panel, “Now, however, when they think of America, they think of the fear they feel at the drones over their heads. What the violent militants had failed to achieve, one drone strike accomplished in an instant.”²⁰

The newer considerations of inadvertent destabilization and target-creep on a shifting battlefield have already been suggested: drone warfare, in legal scholar David Cole’s word, may be too “easy.”²¹ Cole points to the clear drop off in numbers of captured Taliban and Al Qaeda as deaths by drone have risen, wondering if the desire to protect U.S. personnel from the risks involved in capture missions has

changed the equation for drone use: “In short, drones radically reduce the disincentives to killing. And that may well make a nation prone to use military force before it is truly a last resort. That certainly seems to be what has happened here.”²²

F. *Protection of Civilians*

Just War Theory mandates that combatants and noncombatants be distinguished in order to protect noncombatants’ lives. The ability of drones to linger undetected over their targets for long hours gives them the ability of identify and isolate targets, choose a blast trajectory, and use lower yield munitions, lowers the possibility of collateral damage as compared with alternative means of target acquisition (for example, sending in special operations forces, or calling in an airstrike). Granting that drone kills may be generally “cleaner” than conventional missiles, there have been some reports that the automatic targeting of cell phone signals (SIM cards) without other confirmation has led to deaths of civilians near those carrying the phones.

G. *Moral Harm to Soldiers*

Because Drones linger over targets for a long time, drone operators get to know their targets. Because drone operators are familiar with their targets, they also do their own damage assessment. They see the results of their actions: civilian deaths, the grief of loved ones, the slow deaths and suffering of their targets.²³ This contributes to a form of PTSD that psychologists call “moral harm,” a sense, now well-documented among drone operators, that they have done something immoral and violated something sacred. The asymmetrical dimension of drone warfare, the fact that they do this from the safety of well-protected communities within the U.S. and leave the military base to, say, pick up their kids after school, heightens this sense of moral discontinuity.

III. Legal Questions

The use of remotely piloted aircraft to target suspects raises basic questions of due process under both U.S. and international law. Beyond the Fifth Amendment’s basic concerns for a fair trial, perhaps the most applicable U.S. law is contained in Executive Order 11905, Section 5 (g), signed by President Ford in 1976 after Senator Frank Church’s Select Committee on Intelligence had examined a range of CIA assassination efforts (targets included Patrice Lumumba of Congo, Fidel Castro of Cuba, Ngo Dinh Diem of S. Vietnam). That section reads “no employee of the U.S. Government shall engage in, or conspire to engage in, political assassination.”²⁴ In 1981, President Reagan issued Executive Order 12333, which in Section 2.11 reads, “No person employed by or acting on behalf of the U.S. Government shall engage in, or conspire to engage in, assassination.” This removes the modifier, “political,” from assassination. Does drone warfare, largely carried out by the CIA as part of its shift to covert military action since 9/11, constitute summary execution or assassination?²⁵

International law is closer to the U.S. Bill of Rights. The UN International Covenant on Civil and Political Rights (ratified by the U.S.) reads: “Every human being has the inherent right to life. . . . No one shall be arbitrarily deprived of his (her) life.”²⁶ To justify targeted killings by drones, one needs to maintain that they fall within the laws of war.

IV. Possible Christian Responses

Because the impact of drones is related to both military policy and cultural awareness, Christian responses need to include application of ethical principles and analysis of growing trends in popular culture.²⁷ The former considerations of justice toward combatant and civilian targets are crucial, but the latter trends

may support what becomes a normalized acceptance of constant surveillance and possible militarized response to civilian demonstrations for social change. As Mike Bridle of *Dronestagram* states, “It’s important to distinguish between military and civilian drones, between many types of drones, while understanding the way technologies flow between violent and nominally peaceful uses and the results of this flow, such as heightened fear, surveillance culture, and lowered empathy.”²⁸

There has been some address by churches to the challenge of drone warfare and the use of autonomous robot warplanes. In Britain, an ecumenical group that included pacifist Catholics convened a conference in July of 2012.²⁹ In the United States, an ecumenical letter coordinated by the Friends (Quakers) was addressed to President Obama in 2013, questioning the use of drones.³⁰ The Society of Christian Ethics held a roundtable at its 2012 annual meeting that included a formal discussion of drone warfare among scholars Michael Walzer, Stephen Carter, and Andrew Bacevich, with Carter and Walzer defending their use within limits and Bacevich—a former Army Colonel—generally opposing.³¹ The Presbyterian Church (U.S.A.) General Assembly has addressed drones in a limited way, also in 2012:

The practices of undeclared war, including cyber attack, targeted killing by drone aircraft and other means, covert infiltration and “false flag” operations (that set up others for blame), expand government power, and threaten civil liberties as well as the national sovereignty of other nations.³²

So far, few denominational bodies have addressed the moral challenges raised by drone warfare at any length, although this is likely to change as “Just Peacemaking” criteria are increasingly applied to analyze the overall effectiveness of this strategy. Inevitably, there is the logical question of what the dominant nations will allow to be done under United Nations auspices to regulate the use of drones by convention and eventual treaty. This seems far away, and the subsidized growth of the drone industry will make such regulation both more difficult and more needed as drones become part of the international arms trade. At the same time, drone use is expanding on the borders and increasingly inside the United States, meshing with questions of domestic civil liberties raised by other forms of surveillance.

One summary question is whether the new kind of war described by President Obama is still actually defined by George W. Bush and the one-sided projection of force worldwide, justified as protection of “the homeland.” Does the more “comprehensive” counterterrorism strategy still define the United States’ role in the world in primarily military terms, controlled by the commander-in-chief’s definition of what constitutes an emergency? Has President Obama, in fact, made somewhat principled improvements to a tactic, while letting that tactic still dictate too much of our nation’s strategy or approach to the world? If this is seen to be the case, then the U.S. will continue to suffer from vision-deficit disorder and what we call “terrorism” will only be the shadow of what others call “empire,” all of which will be potential battlefield. If, however, the use of drones is seen as an effective form of policing terrorism, and terrorism is seen as the inevitable response of some of the dispossessed, then their use may be accepted conditionally as part of national security operations alongside policies to reduce the causes of terrorism and increase collective security.

V. Cyber Surveillance and Other Electronic Data Collection

In July of 2010, *The Washington Post* ran a series of stories on the scope of secret government agencies, including those created since the tragic events of 9/11/2001. At that time, they identified 1,271 government organizations and 1,931 companies working in the areas of counterterrorism, homeland security, and intelligence, in approximately 10,000 locations across the United States, and estimated that 854,000 people held top-secret security clearances.³³ In June of 2013, *The Guardian* newspaper began to publish documents collected by one of those people holding a top-security clearance, a private contractor

named Edward Snowden. Aware of the fate of Corporal Bradley (now Chelsea) Manning (more below) and other whistleblowers, Mr. Snowden chose overseas asylum (currently in Russia) before the publication of his unauthorized disclosures began. The chief reporter who handled the enormous cache of secret electronic files, Glenn Greenwald, Esq., prudently remains based in Brazil. The debate continues to rage over Snowden's actions and those of the National Security Agency, whose files were released, raising hard questions about the freedom and privacy of all citizens, and perhaps their security as well.

A recent *Washington Post* commentary quotes cyber security expert Peter Singer who put the disclosed documents into three categories:

- (a) leaks revealing espionage against U.S. adversaries and rivals;
- (b) legally questionable activities targeting U.S. citizens thru backdoors, fudging of policy/law, etc.
- (c) un-strategic actions targeting American allies that has led to huge blowback on U.S. standing and U.S. business”³⁴

Both Singer and foreign affairs blogger, Max Fisher, then suggest that how one feels about Snowden reflects on which of his leak areas is of greatest concern. For the intelligence agencies, the disclosures regarding U.S. spying seem treasonable, regardless of whether individuals are harmed directly. Terrorists and other enemies now know better how to evade our various surveillance vehicles. For citizens worried about civil liberties, the domestic spying makes everyone a suspect and violates our privacy. It also makes private companies complicit in allowing the government at the very least to data-mine our meta-data, and raises questions about access to content of our phone calls in at least 30 percent of cases (presumably including all overseas phone calls). For our allies and people with a sense of humor, listening in on the German chancellor and violating the privacy of our allies and their companies is embarrassing and trust-damaging. The mention of “backdoors” refers to exploiting defects or built-in access points in encrypted software, dedicated and/or proprietary computer programs, and cable and cellular networks. Snowden has been threatened, denigrated, and accused (so far without proof) of collusion with other nations, but was apparently able to collect unknown quantities of documents on his own with relatively simple equipment from within a spy agency itself.

The recommendations for surveillance proposed in the resolution for the General Assembly address mainly the first two categories of concern, the responsible defense and security of the United States and others (which ideally involves nonmilitary means in most cases), and the protection of the rights of citizens (without denying these protections to foreign nationals). Much has been written on the topics and the advisory committee has a selection of studies and reports beyond those cited in the endnotes. We proceed here to provide some background on civil liberties that introduces themes identified by past General Assemblies of the Presbyterian Church (U.S.A.) and then comment on the most recent (as of this writing) address by President Obama on surveillance, that of January 17, 2014.

A. Recent Background on the Post 9/11 Growth of Surveillance, Including the Roles of Whistleblowers and the Press

According to Human Rights law professor, William Quigley:

On May 27, 2011, President Obama, over widespread bipartisan objections, approved a Congressional four-year extension of controversial parts of the Patriot Act that were set to expire. ... These provisions allow the government, with permission from a special secret court, to seize

records without the owner's knowledge, conduct secret surveillance of suspicious people who have no known ties to terrorist groups and to obtain secret roving wiretaps on people.³⁵

A particular Patriot Act provision, on "material support," refers to assistance given to terrorist organizations that may be taken to include communications, "expert advice and assistance," with such organizations, broadly defined. Under expansive definitions, some reporting on organizations may be restricted and "Friend of Court" briefs by third parties prevented. The Obama Administration's Justice Department was challenged on this, but upheld 5-4 by the Supreme Court in *Holder v. Humanitarian Law Project*.³⁶ One purpose for surveillance on U.S. citizens in the United States is to uncover all contacts with potentially terrorist groups, including funding as well as physical threats. Watch lists are part this and there are a host of tracking devices and electronic sources of information that the government may access beyond actual phone calls. We lead with reference to 9/11 and the Patriot Act because that fear of terrorism continues to be the justification for much of the growth of surveillance organizations.

While all nations have some kind of intelligence service, the United States preserves its democratic character by constitutional checks and balances, including the Bill of Rights and public accountability, for example, the free press. The reach of national security can thus be seen in the obstacles, good and bad, placed in front of the disclosure of government "secrets." Most Presbyterians would acknowledge some role for government secrecy, and though it tends to augment governmental power, such secrecy cannot become a basis for reflexive distrust. Matters of legality and morality are and should always be matters of open debate, with faith groups bringing their traditions and intuitions to the discussion.

Before the extensive (and continuing) disclosure of NSA files, WikiLeaks, a self-styled cyber-accountability group, was well-known for its release of thousands of classified documents from U.S. embassies—including confirmation of official corruption in Tunisia, Libya, and other countries that aided the "Arab Spring." Thousands of field reports from Afghanistan described lack of progress in that war and noted many civilian deaths not reported elsewhere, arguably making for a more truthful public debate.³⁷ Defenders of government secrecy pointed to the diplomatic damage done by disclosing confidential reports and the danger to the trust and security among those who cooperate with U.S. officials, while critics pointed out that few specific negative effects were ever presented, even for later documents not "scrubbed" with the assistance of *The New York Times* and *Guardian* (Britain) newspapers.³⁸ The treatment of Corporal Bradley (now Chelsea) Manning, convicted of being the source of the documents, included prolonged forced nudity and solitary confinement in a remote prison, raising questions about due process and whistleblower treatment.³⁹

The *Washington Post* 2010 investigative report on intelligence claimed that the culture of secrecy was self-perpetuating and hard to monitor. Another test case for the treatment of whistleblowers occurred in a case carried over from the Bush to the Obama Administration, that of senior National Security Agency (and former military officer) Thomas Drake. Prosecuted under the Espionage Act, Drake was accused of being a primary source for reporter Siobhan Gorman of the *Baltimore Sun*. Gorman "wrote a prize-winning series of articles for the *Sun* about financial waste, bureaucratic dysfunction, and dubious legal practices in NSA counterterrorism programs."⁴⁰ Jane Mayer provided a lengthy analysis of the case,⁴¹ which William Quigley summarized:

They charged a National Security Agency adviser with ten felonies under the Espionage Act for telling the press that government eavesdroppers were wasting hundreds of millions of dollars on misguided and failed projects. After their case collapsed, the government, which was chastised by the federal judge as engaging in unconscionable conduct, allowed him to plead to a misdemeanor and walk.⁴²

Other reasonably well-known censorship cases include the memoir by former CIA agents; Ali Soufan's *The Black Banners*,⁴³ and Glenn Carle's *The Interrogator*.⁴⁴

Any particular case can be debated, of course; concerned citizens have to assess broader patterns. In the Drake case and those two books, long-time U.S. agents involved in the "war on terror" claim that they crossed moral lines that became hard for them to justify in terms of the values and purposes of their country. To make sense of testimonies like theirs, Mark Danner speaks of the United States after 9/11 entering a "state of exception," when traditional moral restraints were and remain suspended.⁴⁵ Our recommendations suggest the need to distinguish clearly between whistleblowing and espionage, as these cases illustrate.

In assessing the policies and practices of the United States, the once covert use of drone aircraft in Pakistan provides an example of the limits of secrecy. Admiral Denis Blair, former director of National Intelligence for the Obama Administration, publicly argued that this program should be run by the military rather than the CIA, as "Covert action that goes on for years doesn't generally stay covert."⁴⁶ The use of drones in Pakistan as well as Afghanistan raised two sets of questions for U.S. citizens, one related to the morality of targeting individuals outside an established battlefield setting,⁴⁷ and one related to foreign relations (both of which are treated earlier in this background paper).⁴⁸ Our recommendation for ending CIA involvement is guided by Blair's assessment and that of many other military and foreign policy analysts. It should be noted that the trend toward using covert operatives for reconnaissance, counterterrorism, and training indigenous groups has paralleled the growth of the drone program. As of 2012, the U.S. Special Operations Command (USSOCOM) budget had quadrupled from 2001 and its ranks had doubled to an estimated 66,000 uniformed and civilian personnel, reportedly operating in as many as 120 countries.⁴⁹

The range of government data collection that concerned the 217th General Assembly (2006) related to the disclosure of large-scale warrantless wiretapping that appeared to violate provisions of the Foreign Intelligence Surveillance Act (FISA) of 1978.⁵⁰ That act established a secret intelligence court and the use of "national security letters." Other information disclosed the use of electronic "data mining" among all the international e-mail and phone transmissions harvested by the government's listening posts. Subsequent legislation has updated FISA with some restrictions on the roles of internet service providers subject to government access and other forms of warrantless information gathering now deemed not to violate the Fourth Amendment against unreasonable search and seizure.⁵¹ We address this further below, but it is important to note that the struggle for accountability is ongoing.

Technological advances in data-gathering can appear benign or worrisome, depending partly on how aware citizens are of the limits to their privacy.⁵² Some recent concern has focused on the amount of personal information disclosed for commercial purposes by such companies as Facebook and Google, whose value is partly constituted by once-private data provided by users that is linked to advertising. Most users of those services willingly trade privacy for connection and convenience. Another source of data are Global Positioning System (GPS) applications in mobile phones; such devices can also be put on vehicles without a warrant for ease in tracking suspects. Potentially more worrisome are patterns lifted up by William Quigley two years ago, drawing on studies by the American Civil Liberties Union (ACLU) and Center for Constitutional Rights:

- Wiretaps for oral, electronic or wire communications, approved by federal and state courts, are at an all-time high. Wiretaps in year 2010 were up 34 percent from 2009, according to the Administrative Office of the U.S. Courts.

- The Electronic Frontier Foundation documented thousands of violations of the law by FBI intelligence operations from 2001 to 2008 and estimate that there are over 4,000 such violations each year. President Obama issued an executive order to strengthen the Intelligence Oversight Board, an agency that is supposed to make sure the FBI, the CIA, and other spy agencies are following the law.
- Western companies sell email surveillance software to repressive regimes in China, Libya and Syria to use against protestors and human rights activists. Surveillance cameras monitor residents in high-crime areas, street corners, and other governmental buildings. Police department computers ask for and receive daily lists from utility companies with addresses and names of every home address in their area. Computers in police cars scan every license plate of every car they drive by.
- There are at least 72 fusion centers across the U.S., which collect local domestic police information and merge it into multijurisdictional intelligence centers, according to recent report by the ACLU. These centers share information from federal, state and local law enforcement and some private companies to secretly spy on Americans.⁵³

Space does not permit a longer discussion of the role of major internet and financial companies in relation to government National Security Letters, which enjoin cooperation in providing data and trump consumer privacy considerations. Like the government, the companies face skilled hackers and have their own data security concerns. An interesting illustration of interlocking considerations (and media concentration) concerns Amazon, which as a contractor provides Cloud computing services to the CIA, clearly collects vast amounts of consumer data itself, and whose chairman, Jeff Bezos, owns the *Washington Post*, which is expected to report objectively on government data collection.⁵⁴

B. *Constitutional Protections and the Church's Concerns for Human Rights and "Free Exercise" of Religious Freedom*

In the 2006 "Resolution on Human Rights in Time of Terrorism and Torture," the General Assembly called for

the humane treatment with due process for all combatants held by U.S. forces anywhere in the world, and support[ed] the provisions of the Bill of Rights and the principles of judicial review and congressional oversight over Executive Branch operations, now including counterterrorism, Homeland Security, and domestic surveillance programs, both classified and publicly acknowledged. (*Minutes*, 2006, Part I, p. 867)

That resolution also called for "the protection of the right of privacy for U.S. citizens against intrusion by government or private entities" (*Ibid.*).

Traditionally, the focus of Presbyterian and other religious engagement with civil liberties is the First Amendment's first phrase, the "Establishment clause," which guides the separation of church and state. Yet the founders wisely saw the freedoms of worship, speech and press, assembly, and "to petition for redress of grievances," connected with each other, and combined them all in the First Amendment. Particular Christian concerns for freedom, justice, and peace are addressed in various later amendments (now totaling twenty-seven), but the First Amendment itself ensures the capacity of individuals and groups to address any of those and other topics. A notable example of the Presbyterian church's use of its voice on behalf of civil liberties in general was the eloquent 1953 *Letter to*

Presbyterians of the General Assembly Council that challenged McCarthyism and its distortion of national security fears.⁵⁵

The General Assembly's most extensive treatment of religious and civil liberties, *God Alone Is Lord of the Conscience* (1988), is named for the key Presbyterian belief in God's direct address to the individual conscience. That thorough statement considered civil disobedience, aid to religious schools, prayer in public schools, Sabbath observance, tax exemption, and other questions, including government intervention in religious affairs.⁵⁶ This last matter has direct bearing on the possibility of government surveillance of worship activities.

In 1984 and possibly before, the U.S. government sent covert agents into several congregations of the Presbyterian and American Lutheran churches in order to investigate the "Sanctuary Movement," which protected persons fleeing from government-sponsored violence in El Salvador, Guatemala, Honduras, and other countries. In January 1986, the Presbyterian Church (U.S.A.), the American Lutheran Church, and four of their congregations, filed suit alleging that the undercover operation (later acknowledged) violated the free exercise of religion. Freedom of the pulpit and of parishioners to speak truth was clearly connected to freedom of speech.

That lawsuit, described in the booklet, "Why Churches Fight Government Infiltration," bears some analogy to efforts by Muslim congregations in the U.S. to address more recent government surveillance and use of informers, intended to track down terrorism.⁵⁷ Though the issues are different, the First Amendment principle of noninterference and the need for warrants for entry, search, and seizure stipulated by the Fourth Amendment, have clear bearing. Government surveillance and pressure under an expanded understanding of the "material aid" statute has severely limited Muslim charities that give funds overseas for any purpose, and thus jeopardizes any religious giving across borders that the government may wish to discourage. The Associated Press uncovered a specific program of the New York City Police Department, done in cooperation with the CIA, that involved "mosque crawlers" who investigated worship services based on the ethnic profile and reputation of the mosques.⁵⁸

In the current context, all PC(USA) funds sent overseas must comply with the Treasury Department's Office of Foreign Asset Control, which means assuring that each grant or disbursement to recipient or intermediary does not go to someone on a published list of proscribed persons and entities (that listing is available on line: www.treasury.gov/ofac/downloads/t11sdn.pdf). *Other watch-lists and security reviews have made it more difficult for nationals from many countries to receive visas, reducing numbers of international students, tourists, mission partners, "International Peacemakers" of the Peacemaking Program, and participants in church gatherings such as the Uniting General Assembly of the World Communion of Reformed Churches (June 2010, Grand Rapids, Michigan).*

To recognize the context of fear of Muslim and other terrorism is not to enter into a full analysis of its scope and of the status of allegations and arrests made over the years since 9/11. Nor does this report to address specifically the use of torture, which the assembly strongly condemned in 2006 when it also called for the closing of extraterritorial prisons (such as Guantanamo).⁵⁹ Yet the "mission creep" of police power, in a country already characterized by the highest level of incarceration in the world, raises concern for overreaction and the weakening of legal safeguards. Before 9/11, church concern about torture (the Eighth Amendment's "cruel and unusual punishment") had to do with the U.S. criminal justice system, including the effects of prolonged solitary confinement on the mental health of inmates.⁶⁰

C. *The Current State of Surveillance and Question of the Surveillance State*

On January 17, 2014, President Obama addressed the nation on the matter of NSA bulk phone data collection and other programs, such as PRISM, which pull in vast amounts of cyber data and digitized information.⁶¹ He was prompted by the continuing leaks from Edward Snowden and by the report of an advisory committee that he had appointed. The appointment of that advisory task force, the Review Group on Intelligence and Communications Technologies, was itself prompted partly by congressional displeasure at limits on their own oversight. Those limits were displayed when Snowden's proof of widespread domestic surveillance forced the director of national intelligence, James Clapper, to retract sworn testimony of March 2013. In that testimony, Clapper denied that citizen data was collected. Because their own oversight is secret, legislators who knew Clapper spoke falsely could not challenge him.

The Review Group, chaired by Richard Clarke (author of *Against All Enemies*, a book on the security failures of the George W. Bush Administration), recommended that the government leave all the bulk phone data with the telecommunications companies.⁶² The NSA could request to access it when needed, but in that way would not continue to amass that citizen data. While accepting a few of the Review Group's forty-six recommendations, the president continues the policy of NSA collection as he and his national security team weigh alternatives.

A more critical report on the phone data collection operation (first authorized secretly in 2006) was released on January 23, 2014, by the Privacy and Civil Liberties Oversight Board, a "watchdog" body authorized by Congress. This report did not address as wide a range of surveillance activities as the President's Review Group, but the privacy board analyzed the legal justifications given by the FISA court for the specific program authorized to collect all U.S. citizen phone records, and the actual results of that program. The FISA court and NSA claimed support from section 215 of the Patriot Act, but that section only authorizes the FBI (not NSA) to collect business records relevant to specific terror investigations. Despite its enormously overstepping limits on citizen privacy, the privacy board found "no instance in which the program directly contributed to the discovery of a previously unknown terrorist plot or the disruption of a terrorist attack." Thus the privacy board recommended that the program be ended.⁶³

On the basic question of whether the government can conduct warrantless or secret surveillance on its citizens, two court cases also addressed the situation: on December 16, 2013, Justice Richard Leon ruled that the NSA data vacuuming violates the Fourth Amendment's protection against unreasonable search and seizure;⁶⁴ and on December 27, 2013, Justice William H. Pauley III ruled that the data collection was permissible, based on a reading of the 9/11 Commission Report and subsequent disclosures.⁶⁵ It is hoped that the president's expected March 28, 2014, deadline for a decision on bulk data collection and storage will take these contrasting decisions and reports into account. To summarize the president's current position from his January 17 statement:

... in terms of our bulk collection of signals intelligence, U.S. intelligence agencies will only use such data to meet specific security requirements: counterintelligence; counterterrorism; counterproliferation; cybersecurity; force protection for our troops and our allies; and combating transnational crime, including sanctions evasion. In this directive, I have taken the unprecedented step of extending certain protections that we have for the American people to people overseas. I've directed the DNI, in consultation with the attorney general, to develop these safeguards, which will limit the duration that we can hold personal information while also restricting the use of this information. The bottom line is that people around the world, regardless of their nationality, should know

that the United States is not spying on ordinary people who don't threaten our national security and that we take their privacy concerns into account in our policies and procedures. This applies to foreign leaders as well.⁶⁶

The recommendations made by the General Assembly address a range of the president's, and the nation's, concerns:

1. The fairness of the Foreign Intelligence Surveillance Court, whose establishment in the 1970s was noted above. This FISA court approves virtually all NSA, CIA, and other requests for data gathering. Its members are appointed by Chief Justice of the Supreme Court John Roberts, and it turned out all but one on the bench in 2013 were Republican appointees. The president has recommended that Congress amend the FISA law so that in some circumstances the court hears testimony from other parties than the NSA in order to represent potential targets or the public interest. The president has declassified decisions of the court that give the public more knowledge, but thirty-five of forty decisions uphold meta-data collection and—while sometimes pressing the NSA for more focused surveillance requests—the court consistently grants those requests.⁶⁷
2. The status of whistleblowers. The president has issued a presidential directive to prevent retaliation against government employees, but this does not address the case of Snowden, who was a contractor.⁶⁸
3. The matter of secrecy and public trust. Are the provision of review by a secret court and a congressional panel sworn to secrecy enough protection for civil liberties? The president may sound admirably self-critical in terms of what the NSA has done as part of his administration, but Congress and the U.S. public need to be stronger parties in the conversation and decision-making.

On the final recommendation, the General Assembly's concern is not only ethical but religious. What is the quality of prayer and spiritual life when the "eye in the sky" is not a metaphor for God's providential care, but a constant, secret monitoring drone? Is worship a form of data that can be collected? And what if the church or any of its members or ministers were to criticize the government—a consistent practice in Reformed history? The short answer to these questions is that faith is about trust, and surveillance erodes trust. Faith is also about our freedom to love God and, in a subtle way, surveillance may erode our inner freedom.⁶⁹ Thus, the resolution's final recommendation, Statement D, maintains that there should be a zone from which both government and market are excluded; in fact, a sanctuary where we nurture faith and communicate with prayer, beyond all electronic devices.

Endnotes

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[1]² Bill Keller, “Smart Drones,” *The New York Times* (March 17, 2013), 7.

[1]³ Ibid. A book-length analysis of new trends is P.W. Singer, *Wired for War: The Robotics Revolution and Conflict in the 21st Century* (2009).

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[1]⁶ http://openchannel.nbcnews.com/_news/2013/02/04/16843014-justice-department-memo-reveals-legal-case-for-drone-strikes-on-americans?lite.

[1]⁷ <http://www.intelligence.senate.gov/130207/transcript.pdf>.

[1]⁸ An April 11, 2013, open letter by eight human rights groups calls for public disclosure of the standards for the drone warfare, suggesting that the classified criteria are unlikely to satisfy humanitarian law:

<http://www.hrw.org/news/2013/04/11/joint-letter-president-obama-us-drone-strikes-and-targeted-killings>.

[1]⁹ Akbar Ahmed, “The Drone War Is Far From Over,” *The New York Times* (May 31, 2013), A19.

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²⁶ Kenneth Roth, “What Rules Should Govern U.S. Drone Attacks?,” *New York Review of Books* (April 4, 2013), 16.

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²⁸ Ibid.

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³⁹ http://thecable.foreignpolicy.com/posts/2011/03/11/state_department_spokesman_calls_treatment_of_bradley_manning_ridiculous_and_counte. See also <http://www.politico.com/news/stories/0711/58991.html>.

- ⁴⁰ http://www.newyorker.com/reporting/2011/05/23/110523fa_fact_mayer#ixzz1lbzFqIOw_
- ⁴¹ *Ibid.*
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- ⁴³ <http://www.nytimes.com/2011/08/26/us/26agent.html?pagewanted=all>.
- ⁴⁴ http://www.nationinstitute.org/featuredwork/fellows/2360/the_cia's_censorship_machine/. See also <http://www.publishersweekly.com/978-1-56858-673-1>. A further recent case is that of John Kiriakou, a former CIA officer also “accused of giving classified information to the news media.” See Charlie Savage “Ex-CIA Officer’s Path from Terrorist Hunter to Federal Defendant.” *New York Times* (1/25/12), A20.
- ⁴⁵ <http://www.nybooks.com/articles/archives/2011/oct/13/after-september-11-our-state-exception/?pagination=false>.
- ⁴⁶ <http://www.harpers.org/archive/2011/12/hbc-90008329>.
- ⁴⁷ See Stephen Carter’s overview of the debate over the morality of drone use: <http://www.law.yale.edu/news/14817.htm>.
- ⁴⁸ <http://www.bbc.co.uk/news/world-us-canada-16804247>.
- ⁴⁹ Andrew J. Bacevich, “The Golden Age of Special Operations,” (May 29, 2012), http://www.truthdig.com/report/item/the_golden_age_of_special_operations_20120529/.
- ⁵⁰ http://www.indiana.edu/~globalm/pdf/isa08_datamining.pdf. This summary paper by Prof. Jeffrey Hart of Indiana University describes the technologies and companies as well as government programs involved in this still growing area: “The Controversies over Data Mining and Warrantless Searches in the Wake of September 11.”
- ⁵¹ <http://www.fas.org/sgp/crs/intel/R40138.pdf>.
- ⁵² Jonathan Turley of Georgetown Law Center is among those concerned: http://www.washingtonpost.com/opinions/is-the-united-states-still-the-land-of-the-free/2012/01/04/gIQAvCD1wP_story.html.
- ⁵³ Quigley, *op. cit.* Quigley also notes the influence on civilian policing of military approaches. Protest police ... uniformed like soldiers with SWAT shields, shin guards, heavy vests, military helmets, visors and vastly increased firepower ... are accompanied by helicopters, special tanks, and even sound-blasting vehicles first used in Iraq. Wireless fingerprint scanners first used by troops in Iraq are now being utilized by local police departments to check motorists. Facial recognition software introduced in war zones is now being used in Arizona and other jurisdictions.
- ⁵⁴ <http://www.truth-out.org/news/item/21820-if-obama-orders-the-cia-to-kill-a-us-citizen-amazon-will-be-a-partner-in-assassination>.
- ⁵⁵ See *Minutes*, PCUSA, 1953, Part I, pp. 180–81 (also see <http://www.pcusa.org/resource/letter-presbyterians-mccarthyism-1953/>).
- ⁵⁶ See *Minutes*, PC(USA), 1988, Part I, pp. 549–99. This study was printed and is available from the Advisory Committee on Social Witness Policy (ACSWP) or online at <http://www.pcusa.org/media/uploads/acswp/pdf/god-alone-is-lord.pdf> It updates several prior assembly policy statements including Relations of Church and State (1963), and draws on three long articles in the May/June 1986 *Church & Society* magazine, “Reformed Faith and Religious Liberty.”
- ⁵⁷ Numerous articles have been written on this; an early one describing a legal challenge to the treatment of Muslims and a particular mosque: <http://www.nytimes.com/2003/07/31/us/threats-responses-civil-liberties-suit-challenges-constitutionality-powers.html>.
- ⁵⁸ <http://newsone.com/nation/associatedpress3/nypd-and-cia-had-secret-mosque-crawlers-operation/>.
- ⁵⁹ See *Minutes* of the 217th General Assembly (2006), Resolution Against Torture (<http://www.pcusa.org/resource/resolution-against-torture-human-rights-time-terro/>).
- ⁶⁰ <http://www.pressdisplay.com/pressdisplay/viewer.aspx> “Virginia Prisons become focus of anti-isolation campaign,” *Washington Post*, 1.8.12.
- ⁶¹ <http://www.nationaljournal.com/white-house/full-text-of-obama-s-speech-on-nsa-surveillance-20140117>.
- ⁶² http://www.whitehouse.gov/sites/default/files/docs/2013-12-12_rg_final_report.pdf.
- ⁶³ <http://www.pclob.gov/SiteAssets/Pages/default/PCLOB-Report-on-the-Telephone-Records-Program.pdf>.
- ⁶⁴ <http://legaltimes.typepad.com/files/obamansa.pdf>.
- ⁶⁵ <http://online.wsj.com/public/resources/documents/clapper.pdf>.
- ⁶⁶ *Op. Cit.* 4.
- ⁶⁷ A somewhat typical critique of the president’s position comes from the former chief of the Center on Constitutional Rights, Michael Ratner: <http://www.truth-out.org/opinion/item/21461-obamas-nsa-speech-makes-orwellian-surveillance-patriotic>.
- ⁶⁸ <http://www.propublica.org/article/four-questionable-claims-obama-has-made-on-nsa-surveillance>.
- ⁶⁹ See this article in *Unbound* for additional references: <http://justiceunbound.org/carousel/first-they-came-for-the-whistleblowers/>.



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PDS # 24-052-15-001