

I Think We're Being Watched

Growing use of video surveillance demands better rules to protect people's privacy.

**BY DAVID COLE
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"You're being watched." This message, a daily reality in London, where video cameras catch the average citizen approximately 300 times a day, is increasingly a reality here in the United States. Cities are turning to video surveillance in response to threats of crime and terrorism. While we agree that video surveillance has its place, Americans should welcome this new technology with eyes open, creating laws and practices that fairly balance privacy and liberty concerns with public safety.

London's surveillance program is the largest network of security cameras in the world and a significant portion of the United Kingdom total of 4.2 million surveillance cameras, roughly one for every 14 inhabitants. Across the Atlantic, some New Yorkers—never at ease being second-best—have launched a plan to put their city in the running for most-watched. The plan, known as the Lower Manhattan Security Initiative, would supplement the existing 4,200 public and private security cameras with a \$90 million system that would add another 3,000-plus cameras. Though New York's proposed system would be one of the largest and costliest in the United States, American cities large and small are turning to video surveillance in an effort to meet the public's demand for safer communities.

In many respects, the law in this area has lagged behind the technology. Although the U.S. Supreme Court has long held that "people are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalks" (as it said in the 1979 case *Delaware v. Prouse*), courts have not yet recognized that a pervasive system of public cameras infringes upon Fourth Amendment rights. Similarly, although the Supreme Court has recognized a right to remain anonymous while engaging in protected First Amendment activities (see the 1995 case *McIntyre v. Ohio Elections Commission*), courts have not yet found that modern video surveillance unconstitutionally chills such

activities. Nor do existing federal statutes provide much protection in this context.

The state of the law likely reflects the fact that, until recently, public video surveillance was not capable of eliminating the relative privacy of an isolated public space or the anonymity of a crowded street. Now that the technology available to law enforcement has advanced, it is time to implement legal guidelines to preserve our constitutional values of privacy and free expression.

READY TO BE WATCHED?

Expecting privacy in public places may seem like an exercise in cognitive dissonance, but most law-abiding people actually do expect a certain level of anonymity outside their homes. We do not expect to be followed when we pick up prescriptions from the drugstore or have an intimate conversation in the park. We expect that people can remain anonymous when they enter a fertility clinic, psychiatrist's office, or Alcoholics Anonymous meeting.

Any expectation of privacy in public evaporates, however, when modern surveillance cameras can magnify images up to 400 times, follow moving objects, and even automatically identify specific faces. When local governments have the ability to track the time, date, and location of each individual's movement (and then create a digital dossier), this may have a substantial chilling effect on our cherished First Amendment rights. People may feel the need to watch what they say and with whom they associate. They may be so intimidated by the omnipresent cameras that they choose not to express an unpopular opinion or meet with a controversial group.

That is why any video surveillance system should be designed to minimize the intrusion into private lives. The Constitution Project's Guidelines for Public Video Surveillance, which we endorse, provide specific recommendations for cities installing, or deciding whether to install, such systems. Issued by the project's bipartisan Liberty and Security Committee, which is composed of political leaders, policy experts, and legal scholars from

across the political spectrum, these practical guidelines demonstrate that liberty and security need not be competing interests.

GOOD FOR WHAT?

Before installing cameras, cities must first consider the efficacy of public video surveillance. Proponents claim there are lessons to be learned from London's recent encounters with domestic terrorism. While we agree, those experiences also demonstrate the real limits of the technology.

Anecdotal evidence suggests that video surveillance may be helpful in investigating criminal activity that has already occurred; similar evidence suggests that it may deter minor property crimes. However, we need to be realistic about what such cameras promise. The United Kingdom's surveillance cameras did not stop the July 2005 London subway bombings. The failed car bombings in London and the airport attack in Glasgow this summer also weren't thwarted by cameras. Sorting through hundreds of thousands of hours of footage, consuming the energies of countless law enforcement agents, proved useless in preventing such attacks.

A recent study by the Home Office in London—the British equivalent of our Department of Homeland Security—found that even though video surveillance accounts for nearly three-quarters of the office's crime prevention spending, the cameras have “no effect on violent crimes.” In our own cities, history has taught that there is no substitute for good community policing, dogged investigations based upon probable cause and reasonable suspicion, and the cooperation of an informed populace.

CLEAR GUIDELINES

If cities determine nonetheless that public video surveillance will support their goals, then the system should be regulated to protect individual privacy. The Constitution

Project guidelines recommend that permanent systems only be adopted through an open, transparent, and publicly accountable process. Elected officials should be involved in designing and approving the system. It should not be developed behind closed doors by the police department.

Law enforcement officers should be given clear written guidelines, codified in the law, directing how and when it is appropriate to watch community residents with the cameras and how video footage may be reviewed and retained. Cities should minimize the likelihood of abuse by limiting access to the footage. Detailed records and periodic audits of those records would ensure that stored footage is being used properly.

Protecting the identities of individuals incidentally captured on camera is another way to decrease unwarranted intrusions into private lives. In stored footage, law enforcement agencies can use digital masking to remove identifying features of those who are not relevant to any criminal or terrorist investigation. Photo-enforced traffic systems already use similar technology to blur faces of passengers in connection with issued citations.

Responsible, limited use of video surveillance can supplement traditional law enforcement practices. Today's security cameras can see into the darkest corners on the darkest nights, and they don't need sleep or overtime pay. But if we don't set rules now, while the systems are still being established, we may unwittingly pay too high a price in lost privacy and liberty for too small a gain in security.

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