CLOSED CIRCUIT TELEVISION
vs.
PRIVACY

Presenter:

RICHARD CHACE
Director of Communications and Public Affairs
Security Industry Association
Alexandria, Virginia

Stetson University College of Law:

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CCTV vs. Privacy

By Richard Chace
Director of Communications and Public Affairs
Security Industry Association

Forward

When considering the use of surveillance cameras to monitor public safety, there are varied opinions as to how this could affect an individual’s right-to-privacy. Though polls demonstrate citizens believe their lives would be safer as a result of properly used surveillance cameras, their use inevitably raises right-to-privacy concerns.

Despite the increasing role of video technology in the U.S., there is no coherent public policy on the use of this important crime-fighting tool. Public debate, essential to defining public policy, is limited to individual police departments and city councils faced with the question, “Do we use it or not?”

Adding to the confusion of how to use CCTV appropriately in public safety applications, and in the absence of a clear federal guidelines, states have begun to draft legislation designed to target CCTV use. This legislation can be as simple as mandating CCTV use in the patrolling of public parks, to more complicated versions regulating use in convenience stores. The problem remains that legislation regarding CCTV technology is all over the board and will continue to be so until Congress steps in to regulate.

That day of reckoning is not far off. Currently, such debate is shaped by groups such as the American Civil Liberties Union (ACLU), and other similar groups, who oppose certain CCTV monitoring applications as an intrusion on the citizenry, both law abiding and criminal elements.

What is important to note are civil rights groups, like the ACLU, are also in favor of certain CCTV public safety applications, such as cameras that deter red light running and aggressive driving. The ACLU’s main argument against CCTV technology centers on the lack of standards and operating/training protocols employed by CCTV monitoring companies. The ACLU is seeking a moratorium on CCTV use until such standards and protocols are in place. Such a moratorium in the private sector is unlikely to happen, but one in the public sector is likely if Operation Protocols and Code of Ethics documents are not established by the industry.

The push for a moratorium in the public sector has been fueled by cases, such as in California where a video surveillance program that was considered by Oakland City Council’s Public Safety Committee. Here the deliberation became stalemated over logistical considerations and related privacy concerns. The police department had proposed the wrong camera for the job and was unable to answer some technology specific and operation oriented questions. Such a ‘Q&A’ stalemate only served to fuel suspicions of CCTV technology and failed to offer productive debate on privacy concerns that would help to establish realistic parameters to protect individual liberties.
In late 1997, the Oakland City Council temporarily delayed the Oakland Police Department, who had “hoped to be among the pioneers in the field of taped video camera surveillance,” from implementing its public safety surveillance program. This was due to the ACLU’s objection over the semantics of the public safety proposal document, lack of technology specific terminology, defined use guidelines and the ACLU’s interpretation of constitutional rights to privacy.

The ACLU argued that the types of cameras to be used were too powerful for the area that was to be video-patrolled. Their objections centered around the use of cameras that could zoom in and read the time on a person’s watch from on top of an office building. They argued, quite convincingly, that this use of the technology was an infringement of an individual’s personal privacy, even though they were in a public space. The courts have historically upheld that each person has a personal area of space that is protected from unwarranted scrutiny regardless of their relative geographical location. As a result the Oakland Police Department was sent back to the drawing board.

Across the country, the pervading results of such debates are that municipal governments find themselves ill-equipped to make informed decisions about complex privacy concerns and public safety officials are left without an effective tool in the war on crime. In order to build an effective CCTV for Public Safety Program, four important things need to happen first:

1. Perform a needs assessment to determine if the technology is needed;
2. Form a coalition or partnership with Law Enforcement, City Council, Citizens group and private sector;
3. Outline specific program and technology objectives; and
4. Designate a primary program oversight body.

All of the CCTV for public safety success stories in the US, have these four points in common. All of the failures have sought to implement this technology without proper forethought.

Some of the greatest success stories, such as Baltimore, Maryland’s *Video Patrols Downtown Streets* and Fairfax, Virginia’s Red Light Running CCTV Program have worked because they sought public support and/or they introduced the technology incrementally.

The Baltimore program is the result of a successful coalition between law enforcement, the private sector and the transit authority. The program was started with only 16 B/W fixed lens cameras and implemented in the tourism areas of Baltimore’s Harbor district. Slowly, as public approval of the cameras has increased so have the number of cameras and the scope of the program. Baltimore, through careful data collection, has also been able to draw the direct correlation between camera use and crime reduction.

In Fairfax, Virginia the program has mirrored the federal policy to reduce red light running and aggressive driving. The public demanded that cameras be placed at high-risk intersections where these issues have historically been a problem. Within the first few months over 10,000 citations for red light running were issued and the county has already noted a significant decrease in accidents caused by drivers running red lights.
Because of the involvement of the ACLU and other similar groups, the public debate over personal privacy and the intrusion of “Big Brother” on the daily lives of citizens is fractured and emotional. What has emerged, as a constant is the public debate over public safety and crime prevention as a right-to-privacy issue. Where the citizenry are willing to accept the inconvenience of police roadblocks when law enforcement officials are conducting a manhunt for a suspected killer, they become divided over the use of passive CCTV monitoring of high crime areas. Surely, poor press, court cases, and the spotlighting of CCTV as covert technology has done little to bolster public perception of the public safety benefits of CCTV use.

**The British CCTV Program vs. European Privacy Legislation**

In the United Kingdom, where the British government to date spent over US$30+ million installing 4,300 surveillance cameras on street corners nationwide, plans to install an additional 5,700 cameras by 1999 are supported by a majority of Britons. This is due to the fact that since the cameras were installed in 1993, crime has decreased regionally by 13.4 to 20 percent. The reason: those accused and arrested tend to plead guilty when confronted by clear video evidence. This lowers court costs as well as serves to deter repeat offenders.

However, even with the correlation between CCTV usage and crime reduction statistics, Britain, as it positions itself for European Economic Unity, faces new hurdles with European legislation that will prohibit criminal convictions based on video evidence alone. This legislation is designed to pose Europe-wide limits on CCTV usage to protect privacy. The concern behind the legislation is that unregulated usage of a national CCTV surveillance system, by any government, is a direct violation of individual privacy rights. The caveat to banning the use of such systems is to regulate CCTV usage and only allow specially trained staff to view images and disseminate information through strictly monitored channels. Fail-safes must also be in place to erase captured images as soon as they are no longer needed and to restrict access to data to prevent images from being tampered with or digitally altered. The European legislation also states that all CCTV operators adopt a standard code of ethics to ensure that CCTV is used according to the legislation.

**Privacy Concern Trends**

In the United States, when municipalities and other government units consider CCTV or other video monitoring installations, resolutions to debates on privacy issues mirror those of the European CCTV legislation. However, the individual municipalities privacy concerns vary, as do their initiatives to address them. In this report you will note other examples of how municipalities are responding to privacy concerns, however here is a preliminary sampling:

- In Atlanta, Georgia, protecting the privacy of residents and guests is the top priority of the Atlanta Police Department. Standard Operating Procedures have been adopted to assure that citizen privacy will not be violated in the attempt to reduce crime. First, the videotape is viewed and used by authorized personnel in prosecuting cases. Second, any videotape, which is not used for conducting a criminal investigation, will be recorded over after 96 hours. Finally, the video cameras will not be used to record activities in privately owned buildings.
• In Cincinnati, Ohio, during a City Council debate on January 29, 1996, the city's solicitors office offered an opinion that the proposed CCTV program would not expose the city to any more liability than any other police services provided by the city, as long as the cameras were used in a manner that emulated the normal vision of the officer on patrol.

These are but a few of the typical examples of the actions being taken by municipalities around the country who use CCTV for public safety or have hybrid public safety CCTV programs. Rather than risk the potential lawsuit or individual rights violation, the trend is to self-police until regulation occurs.

As a result, a coalition of law enforcement, manufacturers, civil rights groups and legislators have constructed an operational protocol and code of ethics document that will assist in the positive and beneficial use of CCTV. This document, to be used as a guideline in constructing CCTV public safety programs, will be presented at a Spring 1999 CCTV Summit in Washington, DC, for debate, discussion and ratification. It is a document that those inside and outside the industry will find to be proactive and privacy friendly.

There is much to be emulated in the British CCTV Surveillance program; however, it is important to weigh the privacy rights of individuals and repercussions of the European legislation that seeks to regulate CCTV use. CCTV technology is a valuable tool in deterring and fighting crime, but it is a technology that will be sidelined if it becomes an abused right of governments to invade individual rights “in the name” of public safety. The manufacturers of CCTV systems understand this delicate balancing act and are working closely with local, state and federal governments to help ensure CCTV for public safety does exactly what it is intended to accomplish: promote the public’s safety.

Executive Summary

CCTV and Personal Privacy
Can We Have Both?

A man comes home after a long day at work and begins opening his mail. One envelope is from the police department. He opens the envelope and sees a picture of his car as it passes under a traffic signal, along with a citation for running a red light — busted! In Alexandria, Virginia, a small enclave in the greater Washington, D.C. area, local police were given approval to install three cameras, which they rotate among various busy intersections. In only six months, they issued 7,500 citations, of which 134 were challenged and subsequently dropped by police. In neighboring Fairfax City, police have been rotating two cameras at eight intersections for the past year and have recorded 17,497 violations. Fairfax City officials report a sharp decrease in violations, from 2.8 an hour at one intersection to 0.9. According to Richard A. Retting, senior transportation engineer with the Insurance Institute for Highway Safety in Arlington, Virginia, studies have shown that about 260,000 crashes and 850 fatalities a year nationwide can be blamed on red-light running. Some of those receiving citations cried foul, arguing that the use of cameras is an abuse of police authority. The innocent victims of crashes resulting from red-light runners would probably disagree.
Across the country, municipal governments are installing cameras and CCTV to aid police departments in their war on crime. For many communities, the decision whether to use CCTV or not, does not always come easily. Americans expect the police to protect them and keep their communities safe from violent criminals. And, the average citizen is prepared to endure some inconveniences, even surrender some of their freedoms, at least temporarily, to ensure their own safety. We willingly submit to searches at airports and courthouses; take a sobriety test at a police checkpoint; and smile for the ATM camera when we stop at our local bank for some spending money. But for some people, the idea of a CCTV camera mounted on a light pole, watching law-abiding citizens go about their daily business, is an invasion of their right to privacy. Police see it differently.

Police point out that they cannot be everywhere, nor do they know in advance when a crime will be committed, or by whom. The military use a term called "force multiplier." Quite simply, it is a military capability that greatly enhances a military advantage without committing large resources or spending a lot of money. An example would be radar, which can scan the skies over a large distance, and therefore eliminate the need to position many ships, airplanes and people to physically monitor the same area. CCTV does the same thing, except that it watches the general public, and that worries some people.

As early as 1956, police have been using video surveillance technology to assist in reducing crime on public streets. Since then, the technology has improved almost exponentially and communities all over the country have either embraced its use, or are considering the technology as another weapon police can use against an increasingly more sophisticated criminal element. So, what's the problem? To varying degrees, it's the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution. More to the point, it is a persons right to privacy, and that is what has some people concerned. The American Civil Liberties Union and other civil libertarians see the technology as a form of "Big Brother." From the perspective of the court, it has been held that people do not have a reasonable expectation that they will be free of observation, when they leave the privacy of their home and walk along a public street. Most of us agree to be "watched" when we enter a casino or department store, so why not on a public street?

The history of video surveillance has reaffirmed the common sense notions that all law-abiding citizens are vitally interested in efforts to reduce street crime, crimes in places of public accommodations and other vulnerable places, but that these same citizens are worried about the unethical use of surveillance video by police and private security, its inherently indiscriminate and invasive character, and whether the cost of broad-scale video surveillance projects will be justified by meaningful increases in arrests and convictions, and a generally significant decrease in criminal activity.\(^1\)

Despite measurable and sometimes dramatic successes in such places as Washington, D.C, Anchorage, Portland, Boston, Harlem, New York City, and countless other communities across the country, where CCTV technology was used to catch criminals in the act, the use of CCTV surveillance continues to be eyed with skepticism by some quarters. In England, the government has helped local communities install 4,300 cameras and says it will help them install another 5,700 by 1999. The British

\(^1\) Robert D. Bickel, "Legal Issues Related to Video Surveillance", CCTV Sub-Committee, Private Sector Liaison Committee.
government claims that CCTV has "proved enormously successful in increasing public safety", and cites as examples a 13.4 percent drop in crime in Cardiff city center and a high rate of successful prosecutions in Newcastle. Of 1,800 people arrested in Newcastle after being caught on CCTV, 1,000 went to trial. Of those, 993 pleaded guilty, and the remainder were convicted. A police spokesman said the video evidence was "a prime factor" in obtaining both the confessions and the convictions.

In the U.S., a Gallup poll done in 1978 showed only 10 percent of the population was comfortable with cameras. In 1997, that number jumped to 52 percent and it's still going up. Dr. Joe Miller, Professor of Social Psychology at the New School for Social Research says, "People are okay with it in a way that they would not have been. The best explanation is the shift from a -- sort of a principled point of view where you think civil liberties are primary, to a pragmatic point of view, where you think your safety and the safety of your family is more important."

Admittedly, the subject of personal privacy versus surveillance video is replete with grey, often thorny issues. Most people would applaud police if they captured a rapist on CCTV, during the commission of his crime, and then were able to apprehend, prosecute and incarcerate the suspect. Those same people would be less supportive if the camera caught someone in an embarrassing situation and then released it to the local TV station. What seems to be missing is clear-cut guidelines, rules if you please, about how CCTV will be used; the qualifications required of camera operators; how CCTV tapes will be handled and safeguarded; how long tapes will be stored before being reused; and what sort of crimes will elicit a police response. For example, will police, monitoring a CCTV camera, who observe a person littering the street, dispatch an officer and issue that person a citation for littering? Or, will the cameras be used only for serious crimes, such as drug-dealing, armed robbery, car-jacking or assault?

The ACLU and other civil libertarians often cite the potential for abuse and unauthorized disclosure of police CCTV tapes. Cameras that can see inside peoples homes, photograph who goes in and out of a place of business (adult and otherwise), or read and record the print on political flyers being distributed on public sidewalks, are examples often cited as potential abuses of CCTV. These groups are also concerned about public access to police tapes. For example, could a person suspected of committing a crime in an area not covered by a CCTV camera, compel the police to release tapes that might prove he was in an area covered by a CCTV camera at the time the crime was committed? Would TV stations be able to gain access to tapes, to support a news story?

In February 1998, during a National Public Radio talk show (The Diane Rhem Show), that featured Security Industry Association (SIA) representative, Richard Chace; Frank Russo, Director of Public Safety for the City of Baltimore; Evan Hendricks, editor of The Privacy Times Newsletter; and John Crew, an American Civil Liberties Union (ACLU) attorney, the panelists rapidly found themselves in agreement over several issues. Among the most significant was the collective idea that CCTV technology was a valuable tool in promoting public safety as long as equipment operation was regulated by operational protocol guidelines. It was noted that these guidelines should have teeth and be adopted into federal legislation if possible. This discussion was the germ of an idea that is now rapidly coming to fruition: a CCTV Summit.
The idea of establishing a set of Operational Protocols for CCTV use in the public sector is already widely held. The courts have found that there are no clear guidelines on how CCTV should be used in law enforcement applications and current state legislation runs the regulatory gamut. The Security and Law Enforcement sectors have recognized the need to take proactive leadership roles in establishing these protocols before the courts and/or Congress mandates regulation.

The SIA has taken the lead and is organizing a CCTV Summit, to be held in Washington, D.C. in early 1999, to address the Operational Protocol and Operator's Code of Ethics. A tentative list of Summit participants has been drafted. Representatives from Law Enforcement, security product manufacturers, the private sector, tort lawyers, federal and state legislators, security consultants and civil rights groups will be asked to participate in the consensus seeking Summit.

The two-day Summit will be organized to foster debate and discussion, for the purpose of developing a consensus CCTV for Public Safety Operational Protocols and Code of Ethics document. The draft document will be posted on the SIA web site (www.siaonline.org), which is designed to accommodate comments from a broad spectrum of commentators. These comments will then be compiled and presented to a second meeting of the Summit in the Fall of 1999 for inclusion or exclusion.

The idea is to create a document that meaningfully tackles the privacy and legal issues associated with the public safety application of CCTV technology, and do it in such a way that the courts and Congress will view the document as a de facto standard. Equally important, it will provide communities who are considering CCTV technology, with a consensus standard they can use to explain to voters how they intend to use CCTV, operational protocols, and the Operators Code of Ethics to ensure personal privacy safeguards.

CCTV Vs. Privacy

Introduction

Closed Circuit Television (CCTV) has been around longer than most people think. As early as 1956, police have been using video surveillance technology to assist in reducing crime on public streets. Since this early beginning, vast improvements in micro-processing, miniaturization, chip design, camera lenses, fiber optics, plus many other space-age inventions have revolutionized the CCTV industry. Today, highly sophisticated surveillance technology can be found in virtually every venue imaginable. Its proliferation has been hastened by its affordability.

In the government sector, CCTV cameras guard military bases, government buildings, court houses, control access to restricted areas; they monitor traffic, provide police officers with a record of traffic stops, record confessions of suspected criminals, capture illegal activity on public streets, record drug deals, and monitor inmates at places of incarceration. Infrared cameras make dark, dangerous areas visible. Digital technology allows faces captured on film to
be analyzed by Computerized Face Recognition systems to identify criminals, and the Gang Reporting, Evaluations and Tracking database to identify gang members involved in illegal activity. New lens technology allows police CCTV monitors to zoom in on suspected criminal activity hundreds of yards away, with startling clarity.

In the private sector, CCTV cameras are everywhere. Department stores, banks, home security, airports, elevators, apartment buildings, factories, casinos; the list is endless. Today, parents can drop their child off at the childcare center, and then look in on them throughout the day, using the Internet. Concerned about your babysitter? Buy a "baby-cam" and film what happens when you are away. Too much merchandise going out the back door? Miniature covert cameras can be installed anywhere to watch employees who choose to take the ultimate discount.

CCTV cameras, whether used by the government, private citizens or businesses, have come under close scrutiny by the American Civil Liberties Union (ACLU) and other civil libertarian groups. There is increasing concern that CCTV technology has abridged that most fundamental of American rights, the right to privacy.

What follows is a compilation of articles, opinions and statements from around the world, on the subject of privacy, as it relates to the use of CCTV technology. The reader will note that overall, a significant majority of citizens support the use of CCTV cameras as a law enforcement tool. Those expressing concern tend to offer vague criticism that the technology is Orwellian or "Big Brotherish", and that "something" should be done to control its use, rules established and laws enacted, to protect individual privacy. Little is offered in the form of solid recommendations, but some people just feel uneasy about CCTV.

On closer examination, the criticism seems to have less to do with the actual camera, and more to do with the qualifications of camera operators to conduct the surveillance in a legal and orthodox manner, protection of the tapes to preclude unauthorized disclosure, the potential for abuse, controlled disposal or reuse of tapes, and whether the police will use the technology to fight serious crime, or will it be used to police social behavior, such as littering, loitering or panhandling.

Privacy Versus Government Use of CCTV Technology

New York City

New York City police have begun using cameras in public parks to monitor criminal behavior, according to Laura Sydell of National Public Radio (NPR). Usage of the cameras has raised concern among civil libertarians who worry that surveillance cameras can infringe on a person's right to privacy in a public place. Police have installed cameras in Washington Square Park, in the heart of Greenwich Village, a historic center of radical activism. Some New Yorkers are disturbed by this use of cameras, but many others are more relieved than alarmed. Of the dozen people who spoke with NPR, only one objected to the cameras.
Three weeks earlier, the New York Times reported that more than 200 New York City residents rallied in Washington Square Park against the city's use of surveillance cameras to fight crime, calling it an invasion of privacy. The protest came a month after the police installed two cameras in the park to discourage drug dealing. The protesters argued that surveillance cameras in public places smacked of a police state.

"There has been a significant shift in American attitudes about surveillance over the last 20 years," says Joe Miller, a professor of social psychology at the New School for Social Research. Miller says a Gallup poll done in 1978 showed only 10 percent of the population was comfortable with cameras. In 1997, that number jumped to 52 percent and it's still going up. Miller explains, "People are okay with it in a way that they would not have been. The best explanation is the shift from a principled point of view where you think civil liberties are primary, to a pragmatic point of view, where you think your safety and the safety of your family is more important."

Marie Rosen, the publisher of Law Enforcement News at John Jay College of Criminal Justice says police all over the country are using cameras, and for the most part there’s been little resistance. Says Rosen, "The public's been primed. We've had cameras in banks, in parking lots, in malls, in our apartment buildings. So I think the public was very ripe for this kind of method of law enforcement."

Irwin Chimorinsky, Professor, University of Southern California Law School says, "The law right now provides almost no expectation of privacy when a person is in a public place. When a person drives down a public street, their license plate is there for all to see. When they enter a building from a public sidewalk, it's permissible for all to see them. In fact, there were challenges during the Vietnam War to Army spying on civilian groups. And the Supreme Court essentially said that when you're dealing with public behavior, then it's there for all to see."

In a February 22, 1998 New York Times article, Evan Hendricks, the publisher of Privacy Times, said, "Someone's sitting behind these cameras, and they can use those cameras to put people under surveillance. Private detectives and information brokers make their livings by knowing the existing systems. All they need to do is develop a source behind that camera. You've got the tint, you've got the zoom and you can start using it for purposes totally unrelated to what it was installed for. And, there's no law saying that if a video surveillance system was created for traffic or security, it can only be used for that purpose."

**Washington, D.C. Metropolitan Area**

In a Washington Post article published on August 28, 1997, Donald Haines, a specialist on privacy issues for the American Civil Liberties Union (ACLU) said, "We are on the precipice of developing a Big Brother society. That's not a metaphor but a reality. It's a quintessential American right to move around with privacy. The rise of surveillance cameras in public places significantly interferes with our enjoyment of that right."
Keshia White, a Howard University law student helping to put together a surveillance program along U Street NW in Washington, D.C. to help stop break-ins, sees it differently. Said White, "Our freedom is taken more from us now by our fear of crime. Cameras are not a restriction on freedom unless you intend to do something wrong."

A January 27, 1998 Washington Times article highlighted efforts by local residents along Pennsylvania Avenue Southeast, to convince area police to install CCTV cameras to deal with a rash of robberies coupled drunkards and drug dealers who have seized street corners. "It's just one more tool in the police arsenal. The camera doesn't lie," says Deborah Bandzerewicz, an advisory neighborhood commissioner on Capitol Hill and CCTV and Personal Privacy leader of the effort to convince business owners that the cameras would end some of the neighborhood's problems. "Police officers can't be on the same corner 24 hours a day," she said. "Our part of Pennsylvania Avenue is dead. The only places we have been able to attract are fast-food restaurants and liquor stores. Those aren't the kinds of neighbors we want," said Bandzerewicz.

One city leader already has voiced opposition to the idea. "I am in favor of more foot patrols and bike patrols," said D.C. Council member Carol Schwarttz, at-large Republican. "I really want to see the presence of officers, not the presence of cameras. It's too Big Brotherish. Even if they capture something on film, it's after the fact. It's not prevention," she said.

Washington, D.C.-area schools are also looking at CCTV technology. In neighboring Fairfax County, Virginia, County School Board members say they are willing to consider funding a pilot program that would install closed-circuit security cameras at Robinson Secondary School—provided that student privacy and rights are addressed. In a April 23, 1998 Washington Post article, Board members said that before approving the proposal, they would want to establish a policy spelling out details such as how tapes from the cameras would be used and who would have access to them. They also asked for more solid evidence that teachers support the plan.

According to the Post article, interior cameras would be in common areas only, such as hallways, stairwells, locker bays and cafeterias. Outdoor cameras would be used to monitor entrances and parking lots.

Some Board members opposed the idea because the proposal smacked of "Big Brother," saying that it's hard to go into any public place these days and not be subjected to cameras. They said extending that phenomenon to the schools would send the wrong message to students. "Just because you're in a public place shouldn't mean you're fair game for cameras," said board member Stuart D. Gibson.

But other board members and Superintendent Daniel A. Domenich said the school could provide a good test model for the system. "I think it's an important deterrent. I know some of the schools in my district would love to have cameras," said board member Jane Strauss. "It's a worthy project, it's affordable, and I think we should try it."
San Francisco/Oakland

A San Francisco Chronicle article, published on May 3, 1997, "High-Tech Policing Worries Libertarians," profiled plans by the City of Oakland to install CCTV cameras on city streets. The Oakland City Council engaged in a protracted debate about the use of CCTV cameras, as a law enforcement tool. Citing the much-publicized success of a similar program in Baltimore, Maryland, the City Council sought to be the first major California city to approve a video surveillance program for its community. The deliberation became stalemated over logistical considerations and related privacy concerns. The police department had proposed the wrong camera for the job, and was unable to answer some technology-specific and operation oriented questions. The 'Q&A' stalemate only served to fuel suspicions of CCTV technology and failed to offer productive debate on privacy concerns that would help to establish realistic parameters to protect individual liberties.

In late 1997, the Oakland City Council temporarily delayed the Oakland Police Department from implementing its public safety surveillance program. This was due to the ACLU's objection over the semantics of the public safety proposal document, lack of technology-specific terminology, defined use guidelines and the ACLU's interpretation of constitutional rights to privacy.

San Bernardino County

According to an article published in The Press-Enterprise (Riverside, CA) on May 8, 1998, Rialto school officials are considering using CCTV cameras to deter delinquent behavior among students and keep watch on the campus when school is not in session. "Cameras could guard against theft, trespassing and vandalism, said Jerry Vincent, director of facilities for the Rialto Unified School District. Voters expect us to be good stewards of their money, and if something like computers are stolen that's a sticky issue. Our job, rightfully so, is to protect the kids and to protect the property. The cameras could help us do that," said Vincent. The recommendation was made after several months of meetings among 60 local residents and district staff.

Vincent said surveillance cameras are becoming commonplace at new schools. Redlands East Valley High School opened this fall with 12 cameras camouflaged beneath elevated light coverings. Principal Tom Davis said students are aware of their presence. "At first the kids' perception was that the cameras were there just to watch them," said Davis. "They thought it was kind of like Big Brother watching, and they didn't like that. But eventually the students appreciated their usefulness in recording parking lot fender-benders and identifying a man stealing money from the school soda machine when school was out," he said.

Sophomore Lena Tejeda said it violates her privacy. "I had a security officer come get me in class and tell me I was seen on the video camera violating the school dress code," she said.
"It seems like they should only use the cameras for things more like fighting and vandalism." "I don't even think about them," said junior Rosalie Duncan. "They're mostly hidden up in the lights, so you hardly know they're there. If people complain about them, it's mostly the ones who were caught doing something."

**Pittsburgh**

An article appearing in the Pittsburgh Post-Gazette on January 15, 1998, "Tiny Eyes Tracking Our Lives," reported that a sixth-grade science teacher was accused of assaulting a 12-year-old boy in his classroom on December 13, an incident that Ohio Township police said was captured by a hidden camera. Eric Noonan, assistant executive deputy attorney general in charge of the organized crime and narcotics unit, said using video surveillance was legal as long as:

- The video camera is in an area where the person controlling the camera legitimately has access.

- The area under surveillance is an area over which he has control.

- There is no expectation of privacy on the part of the people in that area, such as there would be in a restroom.

**Baltimore**

In *Ricks v. Maryland*, the Baltimore police department employed surreptitious, nonconsensual video surveillance, pursuant to court order, as part of an extensive narcotics investigation of premises allegedly being used by defendants as a "processing house" or "cut house" where controlled dangerous substances were diluted and packaged for street sale. Following the arrest of defendants based upon a search warrant, the appellate court upheld the court-ordered surveillance. As to defendants' Fourth Amendment argument, the court reasoned that the proponent of a motion to suppress has the burden of proving that the video surveillance in question violates a legitimate expectation of privacy in the invaded place.

Citing *Smith v. Maryland*, the court held that defendant must demonstrate, by his conduct, that he has exhibited a subjective expectation of privacy (that he seeks to preserve something as private), and that his expectation is one that society is prepared to recognize as reasonable (that is, whether the defendant's expectation, viewed objectively, is justifiable under the circumstances).

**Atlanta**

In Atlanta, Georgia, protecting the privacy of residents and guests is the top priority of the Atlanta Police Department. Standard Operating Procedures have been adopted to assure that citizen privacy will not be violated in the attempt to reduce crime. First, the videotape is viewed and used by authorized personnel in prosecuting cases. Second, any videotape, which is not used
for conducting a criminal investigation, will be recorded over after 96 hours. Finally, the video
_cameras will not be used to record activities in privately owned buildings.

**Privacy Versus Private Sector Use of CCTV Technology**

**Nebraska**

From "Ask Sam," a monthly feature of the Nebraska Employment Law Letter, the
question was asked:

**Q.** "Recently, our company installed some TV surveillance cameras because of some
theft problems. Of the four cameras, only one really looks out at our production area. However,
employees have commented that their "privacy" is being invaded."

**A.** "In a place of business, as long as the television cameras are easily recognized, no
employee has any particular right to complain about his or her privacy being invaded. ....there is
a substantial difference between the right to privacy in the workplace and in a person's home.
For the most part, there isn't any right to privacy in the workplace other than that which may
exist in restrooms. If the intent of the television monitoring procedure is other than security,
however, employees should be advised of that additional purpose."

**California (Costa Mesa)**

Orange County care-facility operators have decided to not use CCTV cameras in
bedrooms to monitor resident care. The Orange County Register reported in a March 12, 1998
article that 50-some board-and-care-home operators and administrators agreed that CCTV
cameras in bedrooms, violate patient privacy rights. Most residents agreed, "the bedroom is the
only place where they have privacy," said Linda Dean, operator of three homes in Fountain
Valley and Costa Mesa. Some residents have requested intercom-type monitoring, however.
Other home operators said they use baby monitors and similar devices in patient rooms.

But representatives of the Alzheimer's Association want to see the cameras tested. "We
need to measure--in a scientific way--whether cameras protect patients against abuse, theft and
falls," said Kim Robinson, program director of the local Alzheimer's chapter.

Although video cameras in private areas violate state-licensing regulations, the
Governor's Advisory Task Force on Alzheimer's disease is calling for a pilot video-surveillance
program at the urging of Jacque DuPont, a gerontologist who operates three Irvine homes.
Aileen Sherman, whose parent lives in one of DuPont's homes, said the cameras give her peace
of mind. "If you don't want to put them in your homes, then don't," she said. "But don't say
someone else can't do it. We have rights, too."
Colorado

From the Colorado Employment Law Letter, improper surveillance can lead to civil lawsuits and, possibly, criminal violations. For example, employees may file a civil cause of action against employers who violate the Electronic Communications Privacy Act by intercepting wire, oral, or electronic communications. But a recent case held that silent video surveillance is not prohibited by the Act.

Security officers sued their employer, a community college, claiming the use of video surveillance violated the Act. The college provided a locker area for officers to dress and change for work and store rain gear, radios, and other personal items. The locker area was not locked because it was located in a storage room that housed heating and air conditioning units and other personnel needed access. After the officers reported thefts from their lockers and expressed concerns about night-shift personnel bringing illegal weapons to work, the employer installed video only surveillance equipment for approximately one month.

The court dismissed the officers' claim under the Act because video only surveillance is not within the scope of the Act's prohibitions. Video surveillance, with no audio capability, is not "wire, oral or electronic communications." The Act therefore does not prohibit silent video surveillance by employers.

Connecticut

The Connecticut General Assembly was asked to consider a bill concerning employee privacy. The bill stipulated that:

"No employer or agent or representative of an employer shall operate any electronic surveillance device or system, including but not limited to the recording of sound or voice or a closed circuit television system, or any combination thereof, for the purpose of recording or monitoring the activities of his employees in areas designed for the health or personal comfort of the employees or for safeguarding of their possessions, such as rest rooms, locker rooms or lounges."

While several committees considered the proposal, the General Assembly failed to enact the legislation and it died at the end of the legislative session.

Privacy Versus CCTV In Other Countries

New Zealand

From the Waikato Times, a November 20, 1997 article reported that Health Waikato has developed a policy for the secret filming of staff and the public. The Crown Health Enterprise (CHE) said the Covert Video Surveillance policy set out rules for the use of video cameras to
investigate criminal activity such as theft and graffiti. The author of the policy, Health Waikato privacy officer Simon Robb, said secret filming would happen only in "extraordinary circumstances" as a last resort.

Mr. Robb said the idea for the policy had emerged in February when staff reported the alleged theft of property. In that case, the CHE had increased security to solve the problem rather than use video surveillance. "We believe we're acting in good faith by looking at the issue. The technology is out there and we felt we had to have a policy to control it and say these are the rules. Mr. Robb and Health Waikato support services general manager Tony Palmer would make the decision to film people.

But some Health Waikato nurses are unhappy with the new policy. New Zealand Nurse's Organization chair James Ritchie said nurses had not been consulted and the policy was full of holes. "It doesn't restrict what they could use the policy for. It could be used to monitor anything including political or social meetings. Any surveillance should be done under police control. It's not up to Health Waikato to decide when people should be video-taped," said Ritchie.

Mr. Robb said nurses had approached management about their concerns and an appendix was being added to the policy to address those concerns and talks were continuing. Company director Tony Barrow said the Privacy Act and the protection of human rights meant companies could not go on a "fishing trip".

**Great Britain**

There are moves in Brussels to restrict the use of CCTV. A European Union (EU) directive, which must become law in members states by October '98, will prohibit criminal convictions based on video evidence alone.

The EU directive could undermine the use of CCTV by British police to secure convictions. In Newcastle, 1,000 of 1,800 people arrested after being caught on CCTV went to trial. Of those, 993 pleaded guilty, and the remainder were convicted. A spokesman for the Northumbrian police says the video evidence was "a prime factor" in obtaining both the confessions and the convictions.

The report for the European Parliament--carried out by the parliament's technology assessment office--says the use of CCTV should be addressed by the MEPs' Committee on Civil Liberties and Internal Affairs, because the technology "facilitates mass and routine surveillance of large segments of the population." The unregulated use of such a system would amount to an invasion of privacy, says the report. It recommends that operators should be forced to let only trained staff view images, to erase video tapes as soon as they are no longer strictly needed and to restrict access to the data to prevent digital tampering.
The report also urges the European Commission to make it mandatory for all operators of CCTV to adopt a standard code of practice. Such a code might ensure that images are used only for their stated purpose—to monitor shoplifting in a store, for example, but not to check whether employees are working hard.

From London, Simon Davies, Director General of Privacy International is calling on the UK government to prohibit or restrict the use of three categories of CCTV equipment, and to institute a range of protection's and legislation to cover all systems.

The categories that Privacy International proposes to restrict are:

- Computerized Face Recognition systems that have the capacity to automatically compare faces captured on CCTV, with a database of facial images.

- Infrared, high sensitivity equipment, and systems operating outside the visible light spectrum. These include Forward Looking Infrared Radar systems able to detect activity behind walls, and infrared systems able to detect activities in darkness.

- Miniature and micro-engineered devices designed for covert surveillance.

The Northampton Borough Council has established a network of CCTV cameras to focus on areas vulnerable to crime. Neighboring towns have followed suit. In an article written by Dr. Stephenie Slahor, a lawyer and writer specializing in law enforcement and security, who teaches criminal justice at California State University, recently wrote about residents of Northampton who have shed their "Big Brother" fears over CCTV in exchange for enthusiastic support.

Steve Priddis is Northampton’s town center manager, a post akin to a city manager in the United States. He says the CCTV project has reduced vehicle offenses (car thefts and thefts from cars) and offenses against persons and property by 27 percent. Priddis points out that monitoring and recording have brought up concerns about evidence. If it is anticipated that a tape will be used as evidence, it is removed, sealed and logged, and an official statement is filed, which helps establish the continuity of evidence.

Public reaction continues to be very supportive, even impatient, in establishing the central system and expanding it further. This support has been reflected in Parliament. Former Prime Minister John Major supported the project saying, "I...reject outright the views of those people who claim that is in some way 'Big Brother.' The public rightly wants less crime, and closed-circuit television has an important part to play in achieving that." The Prime Minister says there is strong support in the Parliament and the community for anti-crime measures.


Japan

A Christian Science Monitor report, "Police Know Where They Are, But the Japanese Don't Mind," published on April 8, 1997, examined Japan's N System. At about 400 sites on Japanese roads and highways, computerized monitors operated by the country's National Police Agency (NPA) record the license numbers of every passing vehicle, 24 hours a day. The agency says its N System--N stands for number--eliminates the need for roadblocks in certain areas and speeds the apprehension of stolen cars and missing suspects.

To some Japanese concerned with protecting individual privacy, this explanation offers fleeting comfort. They say the N System is just one example of an emerging kanshi shakai--or surveillance society--where the cameras and computers of the government, observe too much. But aside from these worriers, most Japanese are unaware of the N System, even though it is 11 years old and cost more than $25 million in the last fiscal year alone. Once informed, they are not terribly concerned.

Take Ichita Yamamoto, a member of Japan's ruling Liberal Democratic Party who sits in the upper house of parliament. He raised his eyebrows when he learned about the N System, particularly because he belongs to a committee that in part oversees police affairs. After making a few inquiries, Mr. Yamamoto's initial concerns were eased.

"This is a Japanese way of thinking," he explains, "but I guess public opinion is not really against this type of system... People tend to see security as most important."

Australia

From The Canberra Times, a February 16, 1998 article reports that residents' right to privacy in Civic, was endangered by "ineffective and haphazard" privacy rules, according to Independent Member of the Legislative Assembly, Michael Moore, who is calling for the introduction of a privacy charter. Privacy rules were needed to govern the use of surveillance cameras, Internet-based medical records and other medical records, Mr. Moore said. A government proposal for surveillance cameras in Civic, defeated in the Assembly last year, was a serious threat to civil liberties without privacy rules, he said. Mr. Moore is pushing for the adoption of a charter written by the Australian Privacy Charter Council.

A visiting fellow at the Australian National University, Dr. Roger Clarke, is one of the architects of the charter. He said that although a federal Act regulated the use of information in the federal and ACT Public Services, there was no overriding legislation governing the private sector.

In general, there was "precious little" a person could do if they felt aggrieved, he said. The proposed privacy charter sets out principles, including people's right to be free of surveillance, to have private space (in the workplace and public places as well as in the home), and to have access to information held about them.
Canada

Downtown Sudbury (Ontario) business owners, concerned that residents were avoiding downtown Sudbury because of a fear of crime, pressed for CCTV cameras. Initially, city officials wanted to move slowly due to fears that the public might not like being monitored by the police.

"There had been some talk about 'Big Brother' watching over the city," said police chief Alex McCauley. "Some of the local media picked up on this and made a story of it. But as it turned out, the negative reaction was very, very minimal compared with the vast support for the system." "Overall, we have noticed a reduction in crime in the downtown area since the system was completed in late fall of 1997," he said. "We have been able to respond more quickly to disturbances. And, in some cases, we have even been able to intercede with crimes still in progress."

In Toronto, the use of CCTV in public places in helping to keep traffic flowing has its critics—if police are involved. There is a controversy over the cameras being used by police to monitor traffic on arterial routes.

At issue is whether the police can use the tapes without a warrant. Critics charge such police access would violate an Ontario law. Emergency situations are exempt, however. Police can get images immediately, but cannot ask that the camera zero in on suspects, unless there is a public safety issue. Toronto does have cameras in other public places.

A poll in March 1998 asked the question, "Do you approve of surveillance cameras at busy intersections?" Respondents voted overwhelmingly in favor of CCTV cameras, by a margin of 88 in favor and 12 opposed.