

POINT

Three Myths of Public Video Surveillance

by Grayson Barber

Your cell phone transmits your location. Your E-ZPass tells the state where you drove and how fast. Cameras track your every move. Should we be grateful, or worried?

(Editor's Note: This commentary and the following article represent opposing views of the same practice—public video surveillance—which has been increasingly in the local and national news and will likely continue to be debated for years to come.)

On park benches, at busy intersections, even at home, New Jerseyans are being watched, recorded, and monitored by the government. Amazingly, we have been lulled into accepting this as an ordinary, even desirable, exercise of state power.

This commentary addresses why the author believes we should be skeptical of the claims made in favor of surveillance systems, and focuses on what the author views as three myths about cameras in particular.

Myth #1: Surveillance Cameras Make Us Safer

Camera surveillance networks are proliferating across the state, even though studies show that they have little effect on crime.¹ In 2006, for example, the city of Trenton positioned dozens of surveillance cameras throughout the capital, but declined to reveal where they were located.² In addition to working cameras, the police installed dummy models, so that 'decoy' camera bubbles would foster a feeling of police omnipresence.³ "They will create the feeling that the police are everywhere, even when we can't be," said Police Director Joseph Santiago.⁴

The cameras were purchased for hundreds of thousands of dollars "to improve the safety and security" of the city, according to Trenton's business administrator.⁵ Unfortunately, where studies have been done to evaluate the benefits of surveillance

cameras, the results have been disappointing. A 2005 research study by the British Home Office concluded that although the government spent millions of dollars on surveillance systems, the cameras had no significant impact on crime.⁶ A German study showed that surveillance cameras in the Berlin subway did not improve safety.⁷ Ubiquitous cameras in London have failed to produce an overall reduction in crime. Additional studies commissioned by the Home Office (the interior ministry responsible for policing) have concluded that the impact of surveillance cameras is marginal, at best.⁸

One possible explanation for the failure of the cameras is that surveillance is boring. It is hard for operators to watch monitors competently for long periods of time. Real-time monitoring of cameras leads to a rapid deterioration of operator concentration. According to the National Institute of Justice (part of the U.S. Department of Justice), after 20 minutes of monitoring, most operators dropped below acceptable standards.⁹

Additionally, cameras do not establish relationships with the community. Residents of a neighborhood cannot go to a camera for help. Cameras do not know their kids' names. We may reasonably ask if it is more cost-effective to spend limited law enforcement resources to add police officers and streetlights in high-crime areas, than to spend money on expensive technology.¹⁰

The social costs of surveillance must also be taken into account when performing a cost-benefit analysis. What is the cost to the community if surveillance makes individuals reluctant to exercise their civil rights? What if they fear repercussions for engaging in activities that are legal, such as demonstrating or standing on a street corner with friends? Given

that taxpayers are funding the installation of surveillance systems, their ability to deter crime must be demonstrated. It has not been.

If the very people being monitored are required to pay for their surveillance, they are entitled to know whether the cameras are serving their intended purpose.¹¹ They should know whether the cameras are working, whether anyone is watching, and how much it will cost to repair aging equipment. If the crime rate remains the same, for example, the money should be put to more effective use elsewhere.

Interestingly, the technology that does produce a measurable reduction in crime is street lighting. A review of 13 lighting studies in the United States and Great Britain revealed an overall 20 percent average decrease in crime, with reductions in every area of criminal activity, including violent crime.¹² In two areas, "financial savings from reduced crimes greatly exceeded the financial costs of the improved lighting."

The report concluded:

Street lighting benefits the whole neighborhood rather than particular individuals or households. It is not a physical barrier to crime, it has no adverse civil liberties implications, and it can increase public safety and effective use of neighborhood streets at night. In short, improved lighting seems to have no negative effects and demonstrated benefits for law-abiding citizens.

One of the most common arguments in favor of generalized passive surveillance is that we should be willing to give up a measure of privacy in order to gain security. The problem is that if surveillance cameras do not make us more secure, then we are giving up privacy and getting nothing in return.

Some security experts question the real purpose of surveillance camera systems. They are not designed to catch

miscreants; they monitor everyone, "the kind of stuff Stalin only dreamed of."¹³ More than one wag has called this the Hoover approach—referring not to J. Edgar Hoover, but a vacuum cleaner theory of "total information awareness."

This approach, when analyzed, has been found to have little effect on crime rates.¹⁴ This being so, it appears that from a law enforcement and public safety perspective the dedication of scarce resources to surveillance systems may actually be counterproductive, as well as an inefficient use of tax dollars.

Myth #2: There is No Reasonable Expectation of Privacy in Public Places

Another common argument in favor of surveillance cameras is the proposition that we should not care because there is "no reasonable expectation of privacy in public." But as the United States Supreme Court has said, "[p]eople are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalks."¹⁵

The police cannot stop a person on the street and demand identification.¹⁶ A public telephone cannot be tapped without a warrant.¹⁷ People cannot be forced to give their names before they distribute leaflets.¹⁸

The federal Video Voyeurism Act¹⁹ makes it clear that people do have an expectation of privacy in public places. The statute prohibits "knowingly videotaping, photographing, filming, recording by any means, or broadcasting an image of a private area of an individual, without that individual's consent, under circumstances in which that individual has a reasonable expectation of privacy." Although the statute focuses on voyeuristic photographs of an individual's "private area," it assumes the existence of privacy even in a public space.

It is a mistake to bootstrap a justification for surveillance by arguing that the "reasonable expectation of privacy" shrinks when there are other people pres-

ent in one's physical vicinity.²⁰ The expectation of privacy when there are other humans around is very different from what we expect from high-powered surveillance equipment that covertly observes, monitors, and records, cannot be seen and is not known to the subject.²¹

If a man follows his target surreptitiously whenever she leaves the house, for months on end, we would call that stalking or a search.²² When the FBI monitored gatherings of the American Friends Service Committee, it appeared to be treating protest activity as criminal.²³

Camera systems are not neutral; they are deployed according to the biases of the operators who are conducting surveillance. Docility and conformity do not invite attention, as compared to innovation and, especially, disfavored status. Studies show that surveillance cameras are disproportionately aimed at minorities, the young and the poor.²⁴

As noted, surveillance is boring. Even the best-trained watchers can drift after 20 minutes; hence, the normal biases of mere mortals inevitably come into play. At the 2004 Republican National Convention in New York City, for example, a police helicopter equipped with an infrared camera was deployed to monitor protestors, but instead filmed a couple's intimate romantic activity on their terrace.²⁵ In 2005, a police officer used surveillance cameras to gaze at women's breasts and buttocks at the San Francisco International Airport.²⁶

Plus, people may prefer to lie low, curtailing legal activities for fear of being watched. The FBI monitored pro-life demonstrations, and the Washington D.C. Metropolitan Police Department used aerial surveillance to monitor demonstration activity on Inauguration Day in 2001. This places a chilling effect on constitutionally protected First Amendment activities, not to mention abusive intrusions abetted by the imbalance of power between the watcher and the watched.

Myth #3: The Law Cannot Keep Up With Technology

Just because technology makes it possible to conduct generalized passive surveillance, it does not follow that we should unthinkingly submit to unlimited government power. To the contrary, we must ask who will watch the watchers.

Technology should serve the law, not the other way around. It is wrong to throw up our hands as if we were powerless to insist that cameras should be used only for legal purposes.

If the goals of a surveillance program have not first been clearly articulated, then there is no way to conduct a periodic review to determine whether the program is achieving its goals.²⁷ To strengthen the political legitimacy of government control, there must be transparency and accountability.²⁸ Authorities who spend enormous sums on cameras must demonstrate that the cameras' limited benefits outweigh their monetary and social costs.

Along with the lack of transparency and government accountability, there are serious concerns relating to data consolidation and data sharing with third parties. To minimize the risk of abuse or misuse of data collected and stored under surveillance systems, the government should specify how much information is gathered and stored, and how long it is stored. The data should only be kept for as long as it is required to achieve the stated purpose of the surveillance system, and then destroyed.

Steps must be taken to secure the data so it is not stolen or used for reasons that depart from the system's intended purpose. Strict guidelines should limit the number of people with access to information, limit improper use of stored data, and reduce the legal liability local governments might incur if the surveillance systems are ever used improperly to harass individuals or discriminate against certain sections of the population.

Ideally, an independent oversight body should audit surveillance systems, to ensure they are serving their intended purpose without misuse, abuse, or discrimination. Ultimately, a private right of action for individuals should be recognized, so government authorities who misuse the system can be held legally responsible.

A Government of Limited Powers

Technology makes surveillance easier, but it does not alter the principle that ours is supposed to be a government of limited powers. The very nature of video surveillance creates a significant power imbalance. The individual cannot see the watcher. The watched do not know who is watching; what they are watching for; or how data is being recorded, stored, or used. Camera operators, on the other hand, are anonymous and may find they are in a position of power where no one monitors their use of the powerful technology at their disposal.

In a *New York Times Magazine* article shortly after Sept. 11, George Washington University Law School professor Jeffrey Rosen made the following observation about generalized passive surveillance in England, and the relationship of cameras to terrorism:

Although the cameras in Britain were initially justified as a way of combating terrorism, they soon came to serve a very different function. The cameras are designed not to produce arrests, but to make people feel that they are being watched at all times....And rather than thwarting serious crime, the cameras are being used to enforce social conformity in ways that Americans may prefer to avoid.²⁹

Members of these communities should know when they are monitored, who is watching, and who has responsibility for gathering and storing the data. The government agents who purchase the cam-

eras must make this information publicly available, so that individuals can learn if their privacy rights or civil liberties have been affected. Individuals must also have an opportunity to correct misinformation and hold authorities accountable if they have been inappropriately or illegally targeted for surveillance.

Surveillance always affects privacy, because strangers can use equipment to record and store incidents that would not normally attract attention. Just as the colonists despised writs of assistance because they authorized sweeping searches, we should not tolerate unchecked police surveillance of legal activities. As the U.S. Supreme Court observed long ago, "[t]he needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards."³⁰

The constitutional safeguards that apply to surveillance cameras include a fundamental philosophy of limitations on government power. Alluring as modern technology may be, we must remember that its proper use is to serve, not bypass, American law. ☞

Endnotes

1. Brandon C. Welsh and David P. Farrington, Home Office Research, Dev. & Statistics Directorate, Crime Prevention Effects of Closed Circuit Television: A Systematic Review, Research Study 252 (Aug. 2002), available at www.homeoffice.gov.uk/rds/pdfs2/hors252.pdf.
2. Joyce J. Persico, Trenton Police Keep Electronic Eyes Peeled, *The Times of Trenton*, April 27, 2006.
3. A police officer was suspended for revealing that several decoy cameras were not functional. Rose Y. Colon, City Police Department Suspends Critic, *The Times of Trenton*, April 26, 2006.
4. Darryl R. Isherwood, Santiago

- Defends Policing Changes, *The Times of Trenton*, April 26, 2006.
5. Joyce J. Persico, Trenton Police Keep Electronic Eyes Peeled, *The Times of Trenton*, April 27, 2006.
 6. Martin Gill and Angela Spriggs, Assessing the Impact of CCTV, Home Office Research Study 292, February 2005 at 58, available at www.homeoffice.gov.uk/rds/pdfs05/hors292.pdf.
 7. Heise online report, Study Shows Video Surveillance on the Berlin Underground Has Not Improved Safety, Oct. 10, 2007, available at www.heise.de/english/newsticker/news/97168.
 8. National CCTV Strategy, ACPO and the Home Office, October 2007, available at www.crimereduction.homeoffice.gov.uk/cctv/cctv048.pdf.
 9. National Institute of Justice Research Report: Chapter 2 – Video Surveillance, available at www.ncjrs.gov/school/ch2a_5.html.
 10. Melissa Ngo, You Are Being Watched But Not Protected: The Myth of Security Under Camera Surveillance, *Intersection: Sidewalks and Public Space* (Chainlinks, 2008).
 11. In Washington DC, surveillance cameras have been used successfully for allocating police resources during major public events, to facilitate crowd management, and to coordinate traffic. U.S. General Accounting Office, Video Surveillance: Information on Law Enforcement's Use of Closed-Circuit Television to Monitor Selected Federal Property in Washington DC, GAO-03-748, June 2003, available at www.gao.gov/new.items/d03748.pdf.
 12. David P. Farrington and Brandon C. Welsh, Effects of Improved Street Lighting on Crime: A Systematic Review, Home Office Research Study 251, August 2002, at 42, available at www.homeoffice.gov.uk/rds/pdfs2/hors251.pdf.
 13. Noah Shachtman, The New Security: Cameras That Never Forget Your Face, *New York Times*, Jan. 25, 2006.
 14. See generally, EPIC and Privacy International, Privacy and Human Rights at 85-98 (EPIC 2006); Brandon C. Welsh and David P. Farrington, Home Office Research, Dev. & Statistics Directorate, Crime Prevention Effects of Closed Circuit Television: A Systematic Review, Research Study 252 (August 2002), available at www.homeoffice.gov.uk/rds/pdfs2/hors252.pdf.
 15. *Delaware v. Prouse*, 440 U.S. 648 (1979).
 16. *Kollender v. Lawson*, 461 U.S. 352 (1983). But see *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177 (2004) (upholding a "stop-and-identify" statute that permits an officer to detain any person he encounters "under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.").
 17. *Katz v. United States*, 389 U.S. 347 (1967).
 18. *Talley v. California*, 362 U.S. 60 (1960); *Schneider v. State of New Jersey*, 308 U.S. 147 (1939).
 19. Video Voyeurism Act, 18 U.S.C. §1801 (2006).
 20. See Comments of the Electronic Privacy Information Center to Department of Homeland Security on Docket No. DHS-2007-0076, Notice of Privacy Workshop and Request for Comments, Jan. 15, 2008.
 21. See Joint Public Oversight: Hearing Before Comm. on the Judiciary on Public Works and the Env't, Council of the Dist. of Columbia (June 13, 2002) (statement of Marc Rotenberg, executive director, Electronic Privacy Information Center), available at www.epic.org/privacy/surveillance/testimony_061302.html.
 22. Akhil Reed Amar and Vikram David Amar, I Always Feel Like Somebody's Watching Me: A Fourth Amendment Analysis of the FBI's New Surveillance Policy, *FindLaw's Writ*, June 14, 2002, available at <http://writ.news.findlaw.com/amar/20020614.html>.
 23. Chip Berlet and Abby Scher, Political Profiling, *Amnesty Now*, Spring 2003.
 24. Clive Norris and Gary Armstrong, Ctr. For Criminology & Criminal Justice, Univ. of Hull (UK), *The Unforgiving Eye: CCTV [Closed Circuit Television] Surveillance in Public Space* (1997).
 25. Mike Dorning, U.S. Cities Focus on Spy Cameras, *Chicago Tribune*, Aug. 8, 2005.
 26. Matthew Cella, Spy Cameras Fail to Focus on Street Crime, *Washington Times*, August 13, 2006.
 27. If a national terrorist-tracking system has even a one percent error rate, it will produce millions of false alarms, creating a spectacular waste of scarce law enforcement resources. Dan Farmer and Charles Mann, Surveillance Nation, *Technology Review*, 43, April 2003.
 28. This is a major conclusion of the U.S. General Accounting Office in Video Surveillance: Information on Law Enforcement's Use of Closed-Circuit Television to Monitor Selected Federal Property in Washington DC, GAO-03-748, June 2003, available at www.gao.gov/new.items/d03748.pdf.
 29. Jeffrey Rosen, A Watchful State, *New York Times Magazine*, Oct. 7, 2001.
 30. *Almeida-Sanchez v. United States*, 413 U.S. 266, 273 (1973).

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