

TESTIMONY ON VIDEO SURVEILLANCE OF PHILADELPHIANS

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Good afternoon. My name is Bill Ewing and I am testifying on behalf of the American Civil Liberties Union of Pennsylvania, which I serve on the Board of Directors of the Greater Philadelphia Chapter. Thank you for allowing me to testify today about the issue of installing video surveillance cameras on Philadelphia streets. My testimony is substantially drawn from materials created by Larry Frankel, Legislative Director of the ACLU of Pennsylvania, who was assisted by Raphael Cunniff, a law student at the University of Pennsylvania Law School.

Like all residents of Philadelphia, the members of the ACLU are concerned about crime and are interested in seeing our government pursue meaningful actions that will make this city a safer place. However, we believe that there are many questions that have been left unanswered in the public discussion of video cameras. We think those questions should be addressed before any steps are taken to move forward with the widespread installation of video surveillance cameras in Philadelphia.

Among those questions are the following:

First, who will decide where those cameras will be placed?

Second, in what manner will the cameras be employed?

Third, is this the most cost-effective way to reduce crime in our city?

Fourth, what safeguards will be put in place to make sure that those cameras are not misused?

We do not believe it is appropriate to present the issue of video surveillance cameras to the people of Philadelphia without first answering those questions.

As a preliminary matter, I would like you to note that even now as we sit here today, the District Attorney can file a motion with the Court of Common Pleas seeking approval for the installation of a video camera at a specific location if she believes that there is a factual basis for installing a video camera. Of course, that means the District Attorney must demonstrate to a judge that there is a basis for suspecting that the camera

will record criminal activity and there are limitations on how long the camera may remain in place.

In other words, the proposal to install video cameras at selected locations around the city without a court warrant is similar to President Bush's decision to eavesdrop on telephone conversations of Americans without first obtaining court approval. This proposal would leave it to the good faith and judgment of those conducting the surveillance to make the decisions which presently require objective review by a judge.

With that basic understanding, let me address some of our concerns.

As I am sure all of you understand, not every law abiding Philadelphian is comfortable having the watchful eyes of the government on them while they walk on the street or enter their homes. For instance, I can imagine a surveillance camera being installed (purposefully or by coincidence) on the block where a psychiatrist or psychologist has an office, thus creating a record of the patients entering and leaving. Congress has created an elaborate system to protect the privacy of medical records, which could be undermined by video surveillance.

Do we want to run the risk that a video camera will be installed on the street outside a bar which caters to gay, lesbian or transgender customers? Is anyone here confident that won't happen? Or outside the offices of Planned Parenthood or an abortion clinic. Both patients of the clinic and peaceful protestors might have a good objection to video cameras making a record of their presence.

In all likelihood, some residents will want cameras on their blocks while others will strongly oppose them. Who then will make the decision to place cameras in certain locations and not in others? Will surveillance be imposed on all citizens equally or will some neighborhoods be more watched than others? Rather than feeling safer, the people in the most monitored communities may feel like they are being especially targeted. Cameras cannot serve their purpose if their presence is widely resented.

Therefore, consistent with the principles of the Fourth Amendment and Article 1, Section 8 of the Pennsylvania Constitution, the ACLU believes that there must be judicial review of any decision regarding the installation of a video camera. Our courts should be overseeing the decision-making of the Police Commissioner and District Attorney to make sure that cameras are being placed according to well-defined, objective criteria.

Most importantly, we believe that individuals with homes or workplaces near camera sites must have an opportunity to challenge them. For a citizen whose movements will be unavoidably and consistently monitored by the police, a public meeting to discuss cameras is insufficient redress. Only providing the right to a hearing before a judge, who reviews the application of the criteria and any objections from the resident(s), strikes the proper balance between public safety concerns and the individual's interest in preventing discriminatory or arbitrary surveillance.

The city must also determine what law enforcement objectives these cameras serve. Are they designed to prevent crimes or only record them for later review? If they

are designed primarily to deter, should we follow Arizona's lead and require all surveillance locations be prominently signed? Or, if they are meant to help solve past crimes, should their locations instead be concealed? Signed cameras would likely make people feel safer when walking near them and individuals can stay within their range if possible; but mobile criminal activities, such as illegal drug sales, could simply move around the corner. On the other hand, concealed cameras may soon be forgotten, providing little deterrence effect on those who would commit violent crimes. Though the victim of an assault may feel some comfort that their assailant can be identified, she would prefer that the assault had never occurred.

Unmanned recording devices would do little to protect public safety. If cameras are to help save lives in a medical emergency or assist victims of crime they must be watched by human eyes at all times. No computer can be programmed to detect a heart attack or recognize a person who has been shot. Motion detectors cannot discriminate between innocent and criminal activity or interpret a plea for help. It will take many trained police officers, working twenty-four hours a day, to make surveillance cameras offer more than just a false sense of security.

The installation, maintenance and monitoring of a surveillance system will require the expenditure of city funds that could otherwise be spent improving emergency response services or putting more officers on the streets. Though police in some cities contend that cameras have caused crime rates to fall precipitously, these are anecdotal accounts by people who have an interest in portraying the programs they administer as successful. Thorough studies tell a different story. Researchers sponsored by the British Home Office in 2002 examined twenty-two scientific, controlled and peer-reviewed studies analyzing the effect of surveillance cameras in British and North-American cities. Overall, the researchers found cameras reduced crime in the areas under surveillance by four percent. Of the seven studies in American cities, *not one* found a reduction in crime attributable to video surveillance.¹

Several cities have abandoned their surveillance systems. Hoboken, New Jersey's cameras produced only two arrests during the five years they were in operation. A system in Miami Beach, Florida, was dismantled due to manpower shortages for monitoring the cameras and because criminals were moving out of the camera's range. And in 1994, Detroit city officials disbanded their surveillance program citing high maintenance and personnel costs and mixed results.² In this time of tight budgets, taxpayers should not be asked to invest in unproven technology, only to have the system be scrapped because it is ineffective.

Even worse than an ineffectual surveillance system would be one that is open to abuse. A prominent example comes from overseas. In 1996 British surveillance tapes were discovered on a video called "Caught in the Act." 80,000 copies of the \$15 video

¹ Brandon C. Welsh and David P. Farrington, Home Office Research Study 252, *Crime prevention effects of closed circuit television: a systematic review* (Home Office Research, Development and Statistics Directorate, August 2002).

² Marcus Nieto, *Public Video Surveillance: Is It An Effective Crime Prevention Tool?*, CRB-97-005 (California State Library, June 1997), available at <http://www.library.ca.gov/CRB/97/05/>.

were sold.³ If cameras were installed in Philadelphia, strong measures would be required to prevent a similar invasion of privacy from occurring here.

The ACLU thinks that access to cameras and the tapes they produce should be limited to police officers who are trained to use the equipment. First, controlling access reduces the risk of the cameras being used for personal reasons or tapes falling into the wrong hands. Second, officer training is necessary to prevent the misuse of cameras. Misuse could be anything from the unnecessary ogling of attractive women through the camera lens, to the following of a single individual for an excessive period based on his race or ethnicity. Harassment is no less reprehensible at a distance than it is in person.

The chance that recordings will be misused rises as they are accumulated and stored for longer periods. A library of all videotaped activities in the city would be a powerful tool and would be accompanied by great responsibility. It would be very tempting to check on the activities of criminal suspects or even witnesses through the previous weeks or months. Though this may be helpful for disproving testimony or alibis, monitoring a single person's past activities over a long period of time without a warrant rises above indiscriminate surveillance and risks trampling on the constitutional right to privacy. A very short storage period for videos that do not contain evidence of crimes would be sufficient to serve the legitimate deterrence and prosecution interests of the police.

Even the physical method of storing and transmitting videos has security implications. If videos are to be transmitted wirelessly, the public must be assured that the system is safe from infiltration by hackers. Computers connected to the system would need to be carefully guarded. If videos are stored on tape the contents of those tapes would need to be thoroughly and irretrievably deleted before they are disposed of.

In conclusion, the ACLU opposes any video surveillance plan that does not contain effective provisions for guaranteeing fairness, privacy and security. If the government is to be given the extraordinary power to observe and record our activities, it must be carefully circumscribed and its objectives clearly defined. In the end the police may find using surveillance cameras properly simply is not worth the trouble, and taxpayers may find the benefits do not justify the considerable costs.

We do not believe that the proposed referendum should be submitted to the people without answers to these questions up front. The proposed referendum asks the citizens to endorse use of warrantless video surveillance and to trust that civil liberties will be protected. That is contrary to the basic principle of the founders of this country, who were well aware that power corrupts and therefore created a government with limited powers and with checks and balances. They would be horrified by a proposition to authorize the exercise of power based only on a trust that those in power will use it without infringing on civil liberties.

³ Spenser S. Hsu, *D.C. Forms Network of Surveillance; Police Video Links Raise Rights Issues*, Wash. Post, Feb. 17, 2002, at C1.