

THE IMPACT OF VIDEO MONITORING TECHNOLOGY
ON POLICE FIELD OPERATIONS

Article

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Sacramento, California

November 2002

INTRODUCTION

“In the not too distant future you may be able to buy an inexpensive camera with the size and aerodynamic characteristics of a mosquito. Even earlier, we will see—are already seeing—the proliferation of cameras on lamp posts designed to deter crime.”¹

David D. Friedman, *Future Imperfect*

For many years now video monitoring systems have been used by the private sector to enhance security operations in banks, casinos, convenience stores, offices, private residences and many other commercial and retail establishments. Inexpensive cameras with the size and aerodynamic characteristics of a mosquito are a ways off, and may not become a reality, but the proliferation of video cameras has been real and its continuation is almost certain. One need only look around while driving a vehicle to spot video cameras monitoring activity in various locations of America’s towns, cities, and highways.² The number of privately owned video cameras monitoring activity in the United States is unknown but their popularity as a crime prevention tool has attracted the attention of law enforcement agencies, and many are jumping on the video monitoring technology train.

In Britain, the use of Closed Circuit Television (CCTV) cameras has become an integral part of that government’s crime control policy, social control theory and community consciousness. British police and politicians promote video monitoring as the primary solution for urban dysfunction and credit video monitoring technology for having had more impact in the evolution of law enforcement policy than any other technology in the past two decades.³

In a work titled “The Transparent Society” David Brin wrote:

The trend began in Britain a decade ago, in the city of King’s Lynn, where sixty remote controlled video cameras were installed to scan known

“trouble spots,” reporting directly to police headquarters. The resulting reduction in street crime exceeded all predictions; in or near zones covered by surveillance, it dropped to one seventieth of the former amount. The savings in patrol costs alone paid for the equipment in a few months. Dozens of cities and towns soon followed the example of King’s Lynn. Glasgow, Scotland reported a 68% drop in citywide crime, while police in Newcastle fingered over 1500 perpetrators with taped evidence. (All but seven pleaded guilty, and those seven were later convicted.) In May 1997, a thousand Newcastle soccer fans rampaged through downtown streets. Detectives studying the video reels picked out 152 faces and published eighty photos in local newspapers. In days all were identified.⁴

Support for police use of video monitoring technology in the United States has not reached the same level as in Britain, considered the leader in the use of CCTV, but there are indications that support is growing. Even before the terrorist attacks of September 11, 2001, police cameras monitored public areas in a number of U.S. cities. In-Car Mobile Video cameras, Red Light Photo Enforcement cameras, portable Cams, and CCTV cameras have in fact become common and are widely accepted. The private use of video monitoring systems is even more pervasive. By some estimates, in 2001, over 200,000 video lookouts were in place and monitoring in and around private homes.⁵ One such camera helped catch a suspected killer and rapist in Sacramento, California.⁶ The camera, which cost \$2,400, was purchased by 10 neighbors and was installed by one of them to monitor their court.⁷

Although hotly debated, there appears to be a general perception that video monitoring technology helps to deter crime. Critics contend that there is no evidence to support such a claim and that video monitoring by police brings communities closer to George Orwell’s nightmare of Big Brother. Proponents argue that the vast majority of video monitoring systems are privately owned and not government controlled and that even those that are government owned and operated, do not appear to be used for the repressive purposes Orwell warned about. Even some opponents have found that there is general public acceptance to the use of video monitoring

technology by law enforcement for purposes of crime prevention. In “A Cautionary Tale for a New Age of Surveillance”, Jeffery Rosen wrote:

Instead of being perceived as an Orwellian intrusion, the cameras in Britain proved to be extremely popular. They were hailed as the people’s technology, a friendly eye in the sky, not Big Brother at all but a kindly and watchful uncle or aunt. Local governments could not get enough of them; each hamlet and fen in the British countryside wanted its own CCTV surveillance system, even when the most serious threat to public safety was coming from mad cows. In 1994, 79 city centers had surveillance networks; by 1998, 440 city centers were wired. By the late 1990’s, as part of its Clintonian, center-left campaign to be tough on crime, Tony Blair’s New Labor government decided to support the cameras with a vengeance. There are now so many cameras attached to so many different surveillance systems in the U.K. that people have stopped counting. According to some estimates there are 2.5 million surveillance cameras in Britain, and in fact there may be far more.⁸

In his forward to a publication of the Constitution of the United States, Warren Burger, Chief Justice of the United States, wrote, “Ever since people began living in tribes and villages, they have had to balance order with liberty. Individual freedom had to be weighed against the need for security of all”.⁹ The challenge to find the right balance has today perhaps been made more difficult by technologies like video monitoring. Yet, no one more than government, and law enforcement in particular, has the duty and responsibility to achieve that balance. The power of video monitoring technology is great and therefore the potential for abusing it is great. While the courts will ultimately decide which law enforcement uses of video monitoring technology are acceptable and which are not, as the public servants tasked with maintaining order, law enforcement must guard against being overzealous in the use of video monitoring technology and tipping the scale completely against individual freedom.

LEGAL CONSIDERATIONS

Most legal analysts have concluded that the use of video technology to monitor public places is permitted and does not present significant legal obstacles. Although the courts have not addressed the issue directly, there is significant case law on closely related issues to support this position.¹⁰ In a Public Law Research Institute study that considered the impact of the First and Fourth Amendments of the United States Constitution, federal statutory law, specifically the Electronics Communications Privacy Act, and California tort law on the legality of continuous video surveillance, Scott Sher concluded:

Continuous video surveillance does not implicate First Amendment, Fourth Amendment, or tort law concerns. Even though courts have not addressed the precise question as to whether or not continuous video surveillance would survive legal scrutiny, past Supreme Court and lower court decisions strongly suggest that this type of police monitoring is a valid exercise of a state's police powers.¹¹

While the monitoring of public places using video technology has been determined to be legal, it is not totally without restrictions. In *Katz v. United States*, the Supreme Court declared that, “the Fourth Amendment protects people not places.”¹² The court further added, “What a person knowingly exposes to the public, even in his own home or office is not subject to Fourth Amendment protection,” but, “what he (that person) seeks to preserve as private, even in an area accessible to the public may be constitutionally protected.”¹³ In an effort to balance the privacy interests of individuals and society's desire to maintain effective law enforcement, the court adopted a two-part test. Known as the Katz test, it asks the following two questions, “(1) Has the individual manifested a subjective expectation of privacy? and, (2) Is society prepared to recognize that expectation as reasonable and legitimate?”¹⁴ Based on this test, the prevailing opinion is that individuals have no reasonable expectation of privacy on public streets from visual observation, including video monitoring cameras. However, the use of cameras that rotate

and have superior visual enhancing capabilities able to capture activity in private property from afar do not always satisfy the Katz test and may violate Fourth Amendment protections.¹⁵ In

“Future Imperfect”, Dr. David D. Friedman observed:

Few would consider it objectionable to have a police officer wandering a park or standing on a street corner keeping an eye out for purse snatchers and the like. Video cameras on poles are simply a more convenient way of doing the same thing—comfortably and out of the wet. Cameras at red lights, or photometric monitoring of a cars exhaust plume, are merely cheaper and more effective substitutes for traffic cops and emission inspectors.¹⁶

The problem comes when this video monitoring technology is combined with other technologies, such as biometric facial recognition, thermal sensing, infrared, and others that greatly enhance human visual capabilities. As Dr. Friedman added, “Some technologies make the job of law enforcement harder. Others make it easier—even too easy.”¹⁷

The use of cameras with audio recording capabilities that capture sound may also violate Title 1 of the Electronic Communications Privacy Act. Title 1 prohibits the intentional interception or attempted interception of any wire, oral, or electronic communication without a warrant. Title 1 does not restrict the use of silent video monitoring cameras that do not capture audio signals.¹⁸

In California the courts have recognized privacy under tort law. But most legal scholars have concluded that video cameras in public places do not physically intrude into a person’s sphere of privacy, and any invasion of privacy caused by them is minimal. Thus the use of video cameras to monitor public places has been considered permissible and not liable under California tort law.¹⁹

In short, most legal scholars agree that past court decisions suggest the use of video monitoring technology is allowed, within certain limitations, as a valid exercise of a state’s police powers to provide for the safety of a community.²⁰

SOCIAL IMPLICATIONS

The use of video technology by law enforcement, even if determined to be legal, carries some far-reaching social implications. Americans pride themselves in having the world's most free society and have come to expect both security and liberty, not one over the other. Advances in video technology as well as in other technologies has made it possible for law enforcement to constantly monitor people and places. Some feel that law enforcement use of video monitoring technologies undermines American values and compromises the American way of life. For law enforcement executives the question regarding the use of video monitoring technology today is not, can we? The question is, should we?

There is significant anecdotal data suggesting video monitoring technology can in fact help law enforcement keep communities safe.²¹ Few would argue that law enforcement's use of video technology to keep communities safe is not well intentioned, but some contend that history has shown good intentions often lead to undesirable outcomes. For many, the use of video monitoring technology by law enforcement implies Big Brother and government repression. Some see its use as the prelude to complete loss of privacy and a society where video cameras will demand compliance in an implicit way.²² Even those who acknowledge that the use of video monitoring technology may contribute to more efficient police field operations wonder about the social cost. Will the use of this technology make officers and citizens feel safer and more secure? Or will it only make them distrusting and induce them to social conformity only because they can't be sure when they are being watched?

David Brin argues that the effectiveness of modern video monitoring technology as a crime prevention and investigative tool makes privacy no longer an option. He proposes as an alternative to privacy universal lack of privacy—the transparent society.²³ In Brin's transparent

society not only would the community be safer and more secure from criminals they would also be safer and more secure from police misconduct, like the Rodney King incident. Professor Steve Mann, who has worn a computer with video capabilities for over 20 years, seems to agree. He wrote, "Surveillance is actually desirable when aimed at Big Brother (and possibly also Big Business). It would seem logical that organizations capable of wrongdoing should be placed under a degree of surveillance proportional to their capacity to inflict damage to society."²⁴

In his book, "World without secrets: Business, Crime and Privacy in the Age of Ubiquitous computing," Richard Hunter states that technology has not halted a march towards a time when people are surrounded by computers, sensors, transmitters, and cameras linked to extensive networks and databases. He argues that if Americans aren't involved in resolving these issues, the issues will be resolved for them.²⁵

In the United States, the decision to use video monitoring technology to support law enforcement field operations will likely be made at the community level by local government officials and local law enforcement agencies. University of Kansas Professor John Nalbandian tells us, "The primary political value in our culture is responsiveness of governmental officials to public wants and needs. The value of responsiveness is reflected in demands for representation, efficiency, individual rights and social equity."²⁶

In making the decision to implement video monitoring technology in police field operations, it would be wise for an agency considering its use to keep in mind the political values of American culture mentioned by Professor Nalbandian.

RECOMMENDATIONS AND CONCLUSIONS

The successful implementation of a video monitoring technology program for patrol operations will require open lines of communication with as many stakeholders as possible early in the process, to determine levels of acceptance. Stakeholders are those individuals or groups impacted by the plan and individuals or groups who can impact the plan. Stakeholders can help make the program be successful or can derail it. Careful consideration should be given to ensure the identification of all stakeholders.

Law enforcement agencies considering implementation of video monitoring technology for purposes of law enforcement and public safety must balance the benefits of video monitoring of the public with individual rights against unwarranted intrusions. An agency pursuing implementation of a video monitoring technology program should do the following:

- Determine what legal restrictions are in place.
- Identify situations, problems, and areas that can best be served with video technology.
- Consult with the community, including local businesses, specific groups, and other stakeholders.
- Develop a Crime Prevention or Community Safety Plan that includes video monitoring technology systems.
- Present Crime Prevention or Community Safety Plan to elected city/county officials and staff.
- Develop and implement policies and procedures.
- Obtain the necessary funding.

- Form a committee or task force group of department personnel to evaluate and select the necessary equipment.
- Develop and implement a community information program.
- Insure proper installation of equipment.
- Develop monitoring and auditing mechanisms for the program.

The above guidelines do not apply to surveillance in case-specific investigations that are permissible based on case law or under authority of a search warrant. They are also not meant to be complete or all-inclusive. They are a rough set of guidelines designed to give agencies a starting point when looking to implement a video monitoring technology program for patrol field operations. Individual agencies are likely to find that additional steps will need to be taken as implementation plan strategies develop.

The decision to use video monitoring technology will have to be made by each agency based on need and the level of acceptance in their community. There is no one perfect formula to suit all agencies only common variables every agency needs to consider. Given the important role crime prevention plays in a law enforcement agency's community policing efforts, agencies need to seriously evaluate the role video monitoring technology will play in their policing operations. Whether agencies choose to use video monitoring technology in field operations or not, line officers need to be prepared to function in an environment increasingly filled with video cameras. Video monitoring is here, is continuing its advance, and will continue to proliferate. Taking advantage of what this technology has to offer is not only prudent, it is becoming necessary. Ignoring

video monitoring technology is no longer an option. Finding appropriate applications and preparing law enforcement officers to deal with it is a wise thing to do.

NOTES

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- ¹ Friedman, David D., "Future Imperfect", a draft, April 13, 2002, p.2. www.daviddfriedman.com/future_imperfect.html. Internet accessed 13 May 2002.
- ² "Neighborhood spycam helps catch murder suspect", CNN.com, February 9, 1999. www.cnn.com/US/9902/09big.brother/. Internet accessed 15 January 2002, p.1.
- ³ "Video Surveillance", Privacy International. www.privacy.org/pi/issues/cctv/. Internet accessed 15 January 2002, p.1.
- ⁴ Brin, David, "The Transparent Society", Perseus Press, May 1998, p.5.
- ⁵ "Neighborhood spycam helps catch murder suspect", p.1.
- ⁶ Ibid.
- ⁷ Ibid.
- ⁸ Rosen, Jeffery, "A Cautionary Tale for a New Age of Surveillance", Surveillance Camera News, October 2001, p.4. www.mediaeater.com/cameras/news/10-2001.html. Internet accessed 14 January 2002.
- ⁹ "The Constitution of the United States", Commission on the Bicentennial of the United States Constitution, Thirteenth Edition 1991.
- ¹⁰ Nieto, Marcus, "Public Video Surveillance: Is It An Effective Crime Prevention Tool?" California Research Bureau, June 1997, p.4.
- ¹¹ Sher, Scott, "Continuous Video Surveillance and its Legal Consequences", Public Law Research Institute, Hastings College of Law, 1993-2001, p.9. www.uchastings.edu/plri/96-97/tex/video.htm. Internet accessed 15 January 2002.
- ¹² Ibid. p.3.
- ¹³ Ibid.
- ¹⁴ Ibid.
- ¹⁵ Ibid. p.4.
- ¹⁶ Friedman, David D. 2002, p.37
- ¹⁷ Ibid. p.3.
- ¹⁸ Sher. p.3.
- ¹⁹ Ibid. p. 8.
- ²⁰ Nieto, Marcus, p.6.
- ²¹ Ibid. p.3
- ²² Friedman, David D. p.38.

²³ Ibid. p.37.

²⁴ Mann, Steve, “Privacy Issues of Wearable Cameras Versus Surveillance Cameras”, February 24, 1995, p.1. www.wearcam.org/netcam_privacy_issues.html. Internet accessed 15 January 2002.

²⁵ Hunter, Richard, “World Without Secrets: Business, Crime and Privacy in the Age of Ubiquitous Computing”, John Wiley & Sons, April 2002.

²⁶ Nalbandian, John, “Political Values”, a paper provided to the Fremont Association of Management Employees at their quarterly management meeting, May 2002.

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