

# WHO'S WATCHING?

**VIDEO CAMERA SURVEILLANCE IN NEW YORK CITY  
AND THE NEED FOR PUBLIC OVERSIGHT**

A Special Report by the New York Civil Liberties Union

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# TABLE OF CONTENTS

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INTRODUCTION .....	1
Camera Count	
Ready, Fire, Aim!?	
DO VIDEO SURVEILLANCE CAMERAS MAKE US MORE SAFE? .....	5
WHAT'S THE HARM? .....	7
Vanishing Privacy Rights in a Technological Age	
Threats to Freedom of Speech and Association	
How Race and Gender Enter into the Picture	
CONCLUSION .....	12
RECOMMENDATIONS .....	13
Scope and Purpose	
Public Notice	
Training and Supervision of Personnel	
Storage and Retention	
Prohibitions and Penalties	
NOTES .....	17



# INTRODUCTION



## HAVE YOU EVER ATTENDED A POLITICAL EVENT?

Sought treatment from a psychiatrist? Had a drink at a gay bar? Visited a fertility clinic? Met a friend for a private conversation?

Might you have felt differently about engaging in such activities had you known that you could be videotaped in the act—and that there would be no rules governing the distribution of what had been recorded?

The fact is, conduct most of us think of as private and anonymous is increasingly taking place under the electronic gaze of video surveillance cameras. Since 9/11, the number of surveillance cameras in New York City has skyrocketed. And our lawmakers have failed to keep up: video surveillance cameras can be operated with almost no legal constraint or consequence.

Proponents of video surveillance cameras advocate that the city dedicate significant amounts of tax dollars to maintaining a video surveillance network. Cameras, they contend, enhance public safety by deterring crime. But while video images may assist in criminal investigations after the fact, there is a dearth of evidence that supports the contention that video surveillance cameras actually prevent or deter crime.<sup>1</sup>

There is, however, a growing body of evidence that indicates the prolifera-

tion of video surveillance technology is undermining fundamental rights of privacy, speech, expression and association. Troubling examples of that evidence come from the video archives of the New York Police Department.

This report seeks to generate a discussion about the critical questions that have yet to be asked by city officials regarding the rapidly growing number of surveillance cameras: What objectives are served by the use of video surveillance technology? What rules and guidelines are needed regarding the retention and transfer of video images? What constraints should be placed upon the government's access to video images produced by private entities? What remedies will be available to an injured party when prohibitions on the operation of video surveillance cameras are violated?

The report reviews research on the impact of video surveillance cameras on crime rates. It examines quality-of-life issues that rarely enter into deliberations about policing and security—namely, the ways in which surveillance cameras diminish the rights of privacy, speech and association. The report concludes with recommendations that will assist policy makers in protecting the public against the harms and abuses that will surely occur absent legislative action.

## CAMERA COUNT

A 1998 study conducted by the NYCLU identified 2,397 video surveillance cameras visible from street level in Manhattan.

Seven years later nearly that same number of surveillance cameras was counted in just one area of lower Manhattan that comprises Greenwich Village and SoHo. The 2005 survey found 4176 cameras below Fourteenth Street, more than five times the 769 cameras counted in that area in 1998. Two hundred and ninety-two surveillance cameras were spotted in central Harlem, where cameras literally line 125th Street.

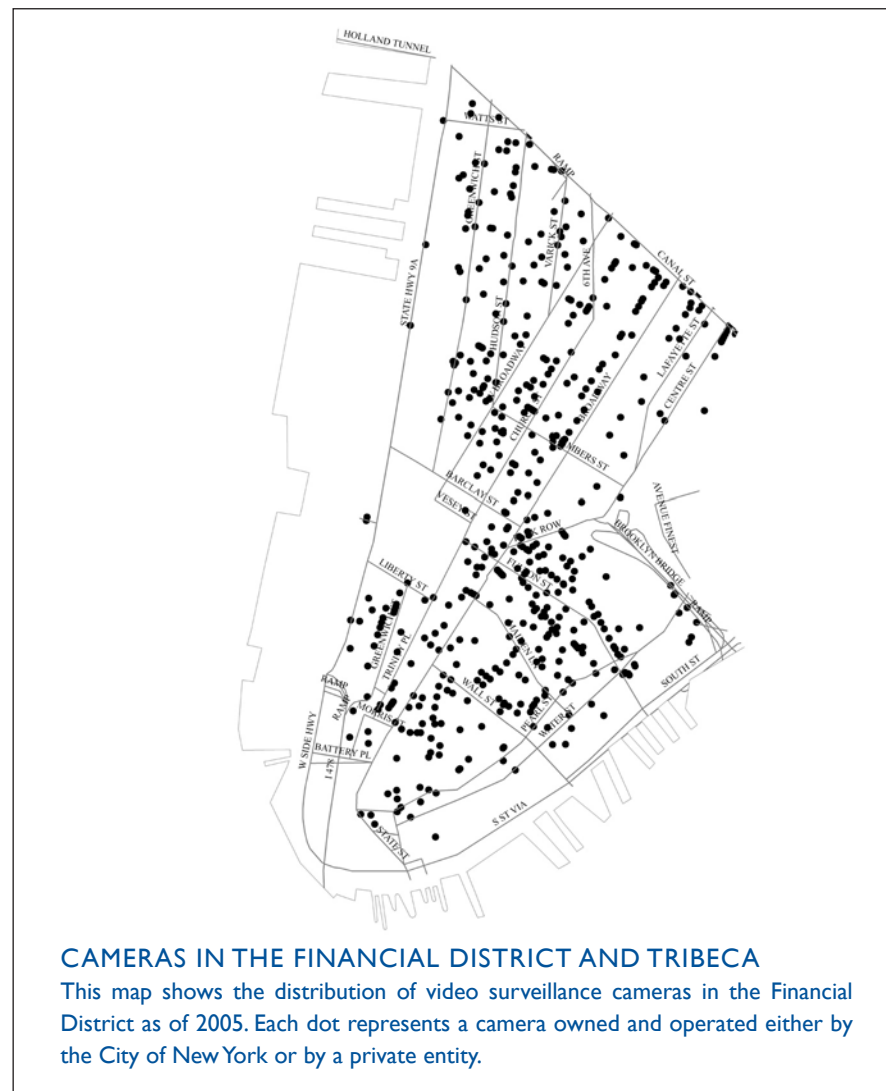
### NEIGHBORHOOD CAMERA COUNTS, 1998 AND 2005

	1998	2005
District 1* (Financial District, Tribeca)	446	1306
District 2 (Greenwich Village, SoHo)	142	2227
District 3 (Lower East Side, Chinatown)	181	643
Central Harlem	N/A	292
<b>TOTAL</b>	<b>769</b>	<b>4468</b>

\*NYC Community Board District

The maps on the following pages pinpoint the locations of the cameras identified by NYCLU surveyors in the organization’s 2005 street survey. The maps show that cameras lined nearly every block in the neighborhoods surveyed, including the Financial District, Tribeca, SoHo, Greenwich Village, the Lower East Side, Chinatown, and Central Harlem.<sup>2</sup>

Both private and public cameras have proliferated. Private entities—corporate headquarters as well as corner delis—now operate cameras that remain hidden to the untrained eye. The New York City Police Department, spurred by the promise of \$9 million in Federal Homeland Security grants and up to \$81.5 million in federal counter-terrorism funding, announced this year that it plans to create “a citywide system



of closed-circuit televisions” operated from a single control center.<sup>3</sup>

And in 2006 the City Council for the first time will consider mandating that private entities install video surveillance cameras.<sup>4</sup> The proposed law would require that each of the 250 private night clubs in Manhattan install video cameras at its entrances and exits.



CAMERAS IN GREENWICH VILLAGE AND SOHO



CAMERAS IN THE EAST VILLAGE, THE LOWER EAST SIDE AND CHINATOWN

These maps show the distribution of video surveillance cameras in Greenwich Village and SoHo, left, and the East Village, the Lower East Side and Chinatown, right, as of 2005. Each dot represents a camera owned and operated by the City of New York or by a private entity.

### CAMERAS IN CENTRAL HARLEM

This map shows the distribution of video surveillance cameras in Central Harlem as of 2005. Each dot represents a camera owned and operated either by the City of New York or by a private entity. Virtually every step taken on 125th Street in Central Harlem is captured on a video surveillance camera, as are many activities at several large public housing projects in the area.



### READY. FIRE. AIM!?

We are witnessing in New York City the creation of a massive video surveillance infrastructure. This surveillance capability is being developed with virtually no oversight or accountability. The City Council has given little consideration to the potential negative impact of video surveillance cameras on individual rights and liberties; nor for that matter have city officials publicly debated the relative costs and benefits of allocating tax dollars for surveillance cameras as opposed to law enforcement personnel.

The findings presented in this report raise important questions of public policy regarding various public safety initiatives. Do video surveillance cameras provide greater public safety protection than the deployment of police or private security professionals? What are the relative costs and benefits of deploying trained security professionals as compared with video technology? Absent answers to these questions, there is simply no way to determine whether video surveillance cameras will enhance the public safety.

Whatever the public safety rationale for mandating the use of video surveillance cameras, there is an equally compelling interest that the City Council must take into account: the civil liberties of New Yorkers. This government interest involves the protection of personal privacy, freedom of speech and association, as well as due process of law.

Perhaps the clandestine nature of video surveillance cameras has obscured the implications of their widespread proliferation. These cameras not only monitor the conduct of people in the city's parks, streets and sidewalks; they can also store and archive video images – and then transfer, upload and disseminate digital images at warp speed to the farthest reaches of the Internet. And yet local law makers have yet even to consider that legislation may be required to protect against the inappropriate use of video surveillance technology.

The NYPD, the city's single largest operator of video surveillance cameras, has been notably reluctant to make public its operating guide-



lines. In seeking to obtain this documentation, even a well-placed member of the police community came up empty handed. In 2005, Thomas J. Nestel, the Philadelphia Police Staff Inspector, surveyed police departments in the fifty largest U.S. cities, requesting from each its policy and practice guidelines for video surveillance cameras.<sup>5</sup> Nestel writes the following about the NYPD's use of closed-circuit television ("CCTV") technology for carrying out surveillance:

The department has been utilizing CCTV surveillance systems for five years and the operation includes more than one hundred cameras. The cameras were installed at locations based on crime data and input from the Housing Authority. The system is actively monitored and operates on a 24/7 basis. A written policy for operations does exist but was unavailable for review. The community was not involved in the initial or subsequent implementation process. CCTV operators do not receive special training. Constant supervision does not exist for CCTV operations.<sup>6</sup>

The proliferation of video surveillance technology implicates personal freedom in the most intimate, and most public, sense. If in the implementation of a video surveillance law-enforcement strategy the city abandons its duty to protect the rights and liberties of its residents, then that strategy has failed.

## DO VIDEO SURVEILLANCE CAMERAS MAKE US MORE SAFE?

In testimony before the New York City Council in 2006, the commanding officer of the police department's Technical Assistance Response Unit claimed that the department's Video Interactive Patrol Enhancement Response (VIPER) program offered proof that cameras deter crime.

The numbers the officer cited look very convincing. The VIPER pro-

gram, a collaboration between the NYPD and the New York City Housing Authority, operates 3,100 monitored cameras in fifteen public housing buildings. The cameras were installed in 1997; during the following year, the officer asserted, the monitored buildings experienced 36 percent less crime on average than in the year before installation.<sup>7</sup>

But close examination shows that these numbers do not prove what the NYPD would like them to prove. In fact, crime decreased steadily throughout the city during the decade of the '90s, when these cameras were installed. The expansion of the police force and the NYPD's introduction of Compstat, a computer system that facilitated more effective allocation of police resources, are widely credited with contributing to a decline in the city's crime rate—from approximately 5,000 crimes per 100,000 residents in 1994 to approximately 3,000 per 100,000 residents in 2000.<sup>8</sup> Thus the decrease in crime in the VIPER buildings, social scientists say, was to be expected—cameras or no cameras.

In fact, no researcher has produced conclusive evidence that cameras deter crime.

It isn't for lack of trying. During the 1990s, after a member of Congress demanded a comprehensive investigation into the surveillance of federal property in Washington D.C., the federal government initiated a study that sought to evaluate the efficacy of video surveillance.<sup>9</sup> Researchers from the government's General Accounting Office interviewed public officials, analyzed documents from four American cities that used video surveillance,<sup>10</sup> and toured CCTV control rooms and law enforcement offices in England.

The final report of the General Accounting Office, published in June 2003, concluded that there was simply not enough evidence to determine whether cameras were preventing crime.

Researchers and others stress the importance of measuring the effectiveness of CCTV systems in order to justify costs and the potential impact on individuals' civil liberties. There is general consensus among CCTV users, privacy advocates, researchers, and CCTV industry groups that there are

few evaluations of the effectiveness of CCTV in reducing crime, and few jurisdictions are keeping data to demonstrate that their CCTV systems are effective.<sup>11</sup>

Studies in England have been similarly inconclusive. The Home Office’s most recent survey evaluated thirteen local surveillance programs, comparing crime rates in areas under surveillance to crime rates in control areas without surveillance.<sup>12</sup> The study found a statistically significant reduction in crime in only one of the thirteen areas that had been under surveillance. (Seven of the thirteen areas had actually seen *increases* in crime rates.)

There is also a dearth of empirical evidence to support the proposition that surveillance cameras deter acts of terrorism. Video cameras recorded some of the movements of the September 11 hijackers, but—as one observer put it—“those images chiefly served, in the aftermath of the attacks, as a kind of eerie visual diary.”<sup>13</sup> Even the omnipresence of CCTV in the London public transport system did not prevent the deaths of fifty-six people in the terrorist attacks of July 2005. *Business Week* stated the problem succinctly in a cover story entitled “The State of Surveillance”:

Lost in the recent London bombings, along with innocent lives, was any illusion that today’s surveillance technology can save us from evildoers. Britain has 4 million video cameras monitoring streets, parks, and government buildings, more than any other country. London alone has 500,000 cameras watching for signs of illicit activity. ... Fanatics bent on suicide aren’t fazed by cameras. And even if they are known terrorists, most video surveillance software won’t pick them out anyway.<sup>14</sup>

Surveillance cameras can capture images of events, and in some instances those images can help investigators identify people carrying out criminal acts. But video camera surveillance is not a magic bullet.

Cameras cannot prevent bad things from happening—and the money spent on them may, in fact, divert resources from more effective crime prevention strategies and tactics.



To the untrained eye video surveillance cameras may not be apparent. Dome cameras (pictured above and below) can be spotted with increasing frequency on building facades, store fronts and light poles.



## WHAT'S THE HARM?

Industry representatives and government officials who support increased video surveillance argue that video cameras are no different from a pair of eyes. According to this reasoning, upon entering a public space we forfeit our right to privacy.<sup>15</sup> But this argument fails to account for the remarkable capabilities of today's—and tomorrow's—video technology.

### VANISHING PRIVACY RIGHTS IN A TECHNOLOGICAL AGE

Today's surveillance camera is not merely the equivalent of a pair of eyes. It has super-human vision. It has the capability to zoom in and “read” the pages of the book you have opened while waiting for a train in the subway. What's more, this camera can tilt, pan, and rotate—making it increasingly easy to track you as you move through your day. Facial recognition software, while still imperfect, will someday be able to capture your image from the faces in a crowd, and then compare the image of your face against the facial images stored in a law-enforcement database.

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### HOW POWERFUL ARE THEY?

“Whenever you go into a store or an office building and you see those little black bubbles built into the ceiling, those are usually pan-tilt-and-zoom cameras. The pan-tilts are just one type, and they are a little more visible. Some you'll never see, but they're there. And the technology is so good now that you can read a license plate from a mile away. They even record in near total darkness.” —David Jefferson, consultant with Pittsburgh-based surveillance company Tyte Securities

“He zooms in on three young men wearing baseball caps. He gets so close to them that I can read the brand of their mobile phone. ‘Theoretically,’ explained the operator, ‘I could read a text message from here.’” —Sarah Duguid, Financial Times reporter, describing an experience with a London police camera operator

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And cameras are ubiquitous. A *New York Post* reporter once gathered images from the 200-plus security cameras (both private and government) he passed on a normal Tuesday on the job.<sup>16</sup> At 9:51 a.m. he was caught on film buying coffee at a deli near his Brooklyn apartment. About an hour later, he was captured driving on the Brooklyn Queens Expressway by a Department of Transportation traffic camera. From there he was spotted entering the *Post's* offices on Sixth Avenue and Forty-eighth Street, and riding the elevator to his office. Later that day he was filmed talking to a source while eating lunch in Times Square; taking the subway; having a drink with a friend at a café in Greenwich Village; and renting a DVD on Court Street back in Brooklyn.

Moreover, rapid advances in technology have made the broad dissemination of video images a simple matter. In other words, the recording of a single videotaped incident may well involve more than a single observation of your conduct and whereabouts. Once the recorded image exists, whether in digital or videotape format, it can be scrutinized over and over again by anyone to whom access is made possible.

Cumbersome video tapes have morphed into digital images that can be inexpensively stored *en masse* on computers indefinitely. Massive amounts of information in computer memory banks can be searched and shared with the click of a mouse. Universal access to stored video images can occur in a matter of seconds.

Some security advocates see every advance in video surveillance technology as an enhancement of public safety. But even with clear rules and procedures in place, horrendous privacy violations can and do occur.<sup>17</sup> It was revealed several years ago that the State of Florida had been selling photographic images and other personal information stored on driver's licenses to commercial marketers.<sup>18</sup> The state and its private-sector partners undertook this venture without notice to the public.

Mission creep—the expansion of a project or mission beyond its original goals—is well-documented in the government's handling of sensitive personal information. History has shown that databases created for one purpose are almost inevitably used for other, not always legitimate,

purposes. In the absence of legal constraints, the illicit purposes for which video images may be used are limited only by the imagination. Police officials could create a video archive of anti-war protestors. An NYPD video unit might target black or Latino youth who enter a majority-white neighborhood. A security professional could use video records to stalk someone. As one Fourth Amendment scholar has pointed out:

A detective or spy wishing to build a dossier on an individual's life and personality would probably learn more from examining a searchable database of such images than he would by rummaging through a purse, wallet, or suitcase, especially if he could link from the images to other information about the individual's identity and background.<sup>19</sup>

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The New York Police Department has adopted a practice of videotaping individuals engaged in lawful public demonstrations. The NYCLU has brought a legal challenge to the police department's authority to retain these video images.



## THREATS TO FREEDOM OF SPEECH AND ASSOCIATION

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### “IT SENDS A CHILL DOWN A POLICE OFFICER’S BACK”

Video surveillance can have an intimidating effect on political expression, as off-duty police discovered when they protested the slow pace of labor contract negotiations early in 2006. A special NYPD unit was assigned to film the police officers as they demonstrated. “That’s Big Brother watching you,” said one police demonstrator outside Gracie Mansion. Said another: “It sends a chill down a police officer’s back to think that Internal Affairs would be taping something.”<sup>20</sup>

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In recent years the NYPD has been arming special police units with state-of-the-art video surveillance cameras. This innovation in police tactics represents another setback for the First Amendment.

New York City has a long and troubled history of police surveillance of individuals and groups engaged in lawful political protest and dissent. Between 1904 and 1985 the NYPD compiled some one million intelligence files on more than 200,000 individuals and groups—suspected communists, Vietnam War protesters, health and housing advocates, education reform groups, and civil rights activists.<sup>21</sup>

It wasn’t until 1985, after more than a decade of litigation, that the New York Police Department’s Security and Investigation Section (otherwise known as the Red Squad) was finally reined in by a federal judge. That class-action lawsuit led to the Handschu Agreement, which prohibited the police department from “commencing an investigation” into the political, ideological or religious activities of an individual or group unless the department had “specific information . . . that a person or group engaged in political activity is engaged in, about to engage in or has threatened to engage in conduct which constitutes a crime . . . .”<sup>22</sup>

But in 2003 the court significantly modified the Handschu Agreement, providing the police with far greater latitude to undertake surveillance of individuals involved in political activity. The latitude afforded by this



new standard is required, the NYPD argued, in light of the heightened threat of terrorism. Under the new guidelines the police can undertake a preliminary inquiry based upon “information indicating the possibility of criminal activity.”<sup>23</sup>

The court’s relaxation of the Handschu Agreement makes far more vulnerable the First Amendment rights of speech, expression and association. This became obvious during the 2004 Republican National Convention in New York City, when the NYPD placed demonstrators under an electronic dragnet. Hundreds of thousands of people participated in protests, including a huge anti-war demonstration on the day before the Convention began. Despite predictions from law enforcement authorities that the Convention might be the target of violence or even terrorism, the demonstrations were nonviolent except for several isolated incidents.

The NYPD, however, gave no notice that police would engage in the blanket videotaping of tens of thousands of peaceful demonstrators. The video surveillance campaign, which was massive in scope, employed state-of-the-art technology that was touted in a promotional brochure published by one of the private security companies hired by the city:

Teamed with local dealer/installer, Total Recall Corporation (TRC), Pelco helped TRC blanket the city with video. The convention was held at Madison Square Garden, but there were many venues around the city to secure ... The high zoom capabilities of the Spectra and Esprit camera positioning units were also used very efficiently at the convention. Cameras mounted to blimps and helicopters fed live video back to the command center, via wireless technologies [providing] a true eagle-eye view of the city. From above the city’s tallest buildings the cameras could be zoomed to identify the smallest detail.<sup>24</sup>

The NYPD retained hundreds if not thousands of hours of surveillance images captured during the policing of the RNC, some of which were published by the *New York Times* as “an unofficial archive of police

videotapes” four months after the convention.<sup>25</sup> The archives clearly include conduct that has nothing to do with a crime. And some of that conduct is of a personal and highly sensitive nature. One of the police department images published by the *Times*, for example, showed a couple in an intimate embrace on a rooftop terrace.<sup>26</sup>

Why did the police videotape this couple? Why was the image retained? How many images of this nature are stored in the police department’s archives? There are no reliable answers to these questions. The lack of answers indicates that serious invasions of personal privacy are inevitable because of the city’s failure to regulate video surveillance technology.

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#### A PRIVATE MOMENT, WATCHED FROM ABOVE

A man and woman who shared an intimate moment on a dark and secluded rooftop in August 2004 learned later that they had been secretly watched by police officers charged with conducting surveillance of nearby protest rallies.

From a custom-built \$9.8 million helicopter equipped with optical equipment capable of displaying a license plate 1,000 feet away, police officers tracked bicycle riders moving through the streets of the Lower East Side. Then, using the camera’s night vision capability, one officer shifted the focus away from the protestors and recorded nearly four minutes of the couple’s activities on the terrace of their Second Avenue apartment.

“When you watch the tape, it makes you feel kind of ill,” said Jeffrey Rosner, 51, one of the two who were taped. “I had no idea they were filming me. Who would ever have an idea like that?”

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The NYCLU is back in court, challenging the NYPD’s practice of collecting and archiving video images of people engaged in constitutionally protected speech and expression. However the court may rule, it can be expected that the police will continue to push the envelope in an effort to monitor political dissent. Thousands of video cameras now stationed throughout the city record the activities of political protest-

ers who happen to be within camera range. Police armed with hand-held cameras capture thousands of video “close-ups” in the streets. If the NYPD retains these digital images, they will serve as a permanent, “searchable” archive—in essence, visual dossiers on dissenters.

#### HOW RACE AND GENDER ENTER INTO THE PICTURE

Many of the stationary cameras now watching us are simply whirring away, 24/7, without being monitored. These cameras presumably do not act on their own to target particular types of people. Other cameras, however, can be manipulated to view an individual in close up, to track his movements, or to scan the faces in a crowd. Police can operate these surveillance cameras in “real time” from remote locations, such as surveillance vans and monitoring stations.

The rules and protocols governing the NYPD’s video surveillance of civilians are not well defined, which makes the use of surveillance cameras highly susceptible to abuse. Certain individuals are more susceptible than others to these abuses. New York City officials have yet to recognize that video surveillance cameras can be, and are, used in a manner that targets people based upon race, ethnicity or gender without apparent reason or justification.

There are documented incidents of police officers engaging in the unwarranted videotaping of persons in the city’s black and Latino communities. This is not the first time that criticism of this nature has been directed at the NYPD. In 1999, New York Attorney General Eliot Spitzer the state’s attorney general issued a report that found that York City police officers disproportionately stopped and frisked blacks and Latinos as compared with whites.<sup>27</sup> This disparity existed even when statistics were adjusted to reflect race-specific crime rates and the racial make-up of communities.

Although there are no published studies about this problem in the United States, research by two criminologists in England revealed a clear racial bias in police officers’ video monitoring of civilian populations.<sup>28</sup>



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The New York Police Department placed public demonstrations under an electronic dragnet during the 2004 Republican National Convention. Employing video cameras affixed to helicopters and an NYPD blimp (above) and police units armed with hand-held cameras (below), police officers videotaped tens of thousands of demonstrators engaged in lawful protest activity.

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The journal *Surveillance and Society* summarized their findings as follows:

Forty percent of people were targeted for no obvious reason, mainly on the basis of belonging to a particular or subcultural group. Black people were between one-and-a-half and two-and-a-half times more likely to be surveilled than one would expect from their presence in the population. Thirty percent of targeted surveillances on black people were protracted, lasting nine minutes or more, compared with just 10 percent on white people. People were selected primarily on the basis of the operators' negative attitudes towards male youth in general and black male youth in particular.<sup>29</sup>

In New York City today, the 3,100 surveillance cameras operated by the police department's VIPER unit are focused on people in communities of color. The VIPER program was little known, except perhaps to residents of public housing, until the spring of 2004, when the videotaped suicide of twenty-two-year-old Paris Lane in the lobby of the Morris Houses in the Bronx found its way onto Consumption Junction, an Internet site devoted to pornography and violence.<sup>30</sup> The video of Lane's death was labeled "Introducing: The Self-Cleansing Housing Project." News of the video's presence on the Internet site reached Lane's foster mother, Martha Williams, just after she had returned to work following Lane's death. "I started healing, and this kicked me backwards," Williams said. "My whole body was shaking."<sup>31</sup>

Ms. Williams complained to Manhattan Borough President Virginia Fields, who held a hearing on the use of surveillance cameras in public housing. Based on the hearing testimony, the Borough President sent a letter to Police Commissioner Kelly. The letter posed a series of questions about what rules were in place to regulate and monitor VIPER officers.<sup>32</sup> In his written response Commissioner Kelly assured Fields that regulations to protect tenants' privacy were in place, that officers assigned to VIPER Units were trained and supervised, and that videotaped recordings were stored in secure locations and destroyed or erased after fourteen days unless needed for a criminal investigation.<sup>33</sup>

But on April 22, 2004, WABC's Eyewitness News aired an exposé

of the VIPER program by investigative reporter Sarah Wallace.<sup>34</sup> Her investigation featured interviews with a former internal affairs investigator, who had also been a VIPER supervisor, and a former VIPER officer. Their statements flatly contradicted Commissioner Kelly's claims. Transcripts of Wallace's interviews also revealed the contempt some of the VIPER police officers have for the privacy rights of public housing tenants, most of whom are black or Latino:

**FORMER IAD INVESTIGATOR:** Mostly in VIPER they have their modified police officers that have been jammed up, some arrested. It's a dumping ground.

**WALLACE:** That's well known?

**FORMER IAD INVESTIGATOR:** Oh, absolutely. I think I share the sentiment of others. If this was the Upper East Side it wouldn't be happening. No one would have cameras on. But because it's the so-called projects, no one really cares and it doesn't matter. We can film you, and have entertainment, and do what we want and no one cares.

...

**WALLACE:** Sergeant Marchisotto (former VIPER Supervisor) claims he personally saw another supervisor use tenants for entertainment.

**SGT. JOHN MARCHISOTTO:** He was showing a couple of cops that were working for him a video of two people having sex in the stairwell... Getting kicks out of watching residents of the housing development having sex.<sup>35</sup>

Commissioner Kelly has recently announced a plan to add more than 500 state-of-the-art cameras to the police department's arsenal. These cameras will monitor 253 "high crime" areas. This initiative will focus the police department's video surveillance cameras principally on the city's black and brown residents.<sup>36</sup>

Women's privacy rights are particularly vulnerable to video surveillance technology. "Up-skirting" and "down-blousing"—using camera cell phones to surreptitiously take pictures up women's skirts or down

their blouses—has become something of a trend on college campuses and city streets.<sup>37</sup> Police officers have used video surveillance cameras to engage in such conduct. An Associated Press article described the following scenario:

The remote-control camera, located at an intersection near a row of nightclubs, usually shows traffic. But officials said someone in a state trooper office diverted the camera to focus on pedestrians in the pre-dawn hours last Friday. Footage broadcast citywide on a cable TV channel showed several people, and the camera zoomed in on the breasts and buttocks of several young women walking past.<sup>38</sup>

In the WABC Eyewitness News segment on the VIPER program, City Councilman Hiram Monserrate, a retired police officer, recalled the behavior he observed while assigned to a Queens VIPER unit. “Some of the stuff I witnessed was what I would term as clearly inappropriate use of the cameras in their surveillance—whether they are looking into people’s windows or some of the male police officers looking at women,” Monserrate said.<sup>39</sup>

## CONCLUSION

There is only limited recognition in the law that there are some places into which a surveillance camera is not allowed to intrude. And there are virtually no rules that prohibit police or private entities from archiving, selling or freely transmitting images captured by a video surveillance camera. The courts have yet to address the fundamental privacy and associational rights implicated by the phenomenon of widespread video surveillance. Philadelphia Police Inspector Thomas Nestel, author of a widely cited study on video surveillance, has warned that “[f]orging ahead with reckless abandon by providing no written direction, no supervision, no training and no regulating legislation creates

a recipe for disaster.”<sup>40</sup>

The findings documented in this report indicate the nature and magnitude of the harm posed by the unregulated proliferation of video surveillance cameras. It is now incumbent upon the City Council and Mayor Michael Bloomberg to address this issue with the seriousness it requires. New York City must enact comprehensive, well-crafted legislation that recognizes video surveillance technology affects fundamental rights and liberties, and that the use of such technology must reasonably balance the city’s interest in protecting public safety with the individual’s interest in enjoying personal privacy.



# RECOMMENDATIONS

**I. SCOPE AND PURPOSE.** The city must establish specific and justifiable objectives for its video surveillance programs. In order to identify and meet these objectives, the city must also undertake a needs-assessment audit prior to installing video surveillance cameras. Following their installation, there must be periodic audits to evaluate the effectiveness of surveillance cameras, as well as compliance with laws and regulations governing operating procedures.

What objectives does the city seek to achieve with video surveillance cameras? And how will the city determine whether those objectives are being met? Is the allocation of tax dollars for video surveillance cameras the most effective way to enhance public safety? How does the use of surveillance cameras affect the use of other law-enforcement measures, such as the deployment of street cops? How does the city decide where to train its video cameras? Have residents and other representatives of the affected communities been consulted?

Until they address these questions, city officials have no empirical basis for determining whether and how to use video surveillance technology. Before proceeding further with the installation of video surveillance cameras, the city must adopt legislation that mandates procedures for determining whether surveillance cameras will accomplish public safety objectives.

Once objectives are established, there must be guidelines to ensure that video surveillance technology is installed and operated in a manner that is consistent with these objectives and in compliance with the law. Legislation must provide for regular audits that ensure compliance with rules and guidelines governing the operation of video surveillance technology—including the retention and destruction of video images, as well as access to and use of video images obtained by surveillance cameras. These guidelines, applicable to both public-sector and private-

sector entities, should include prohibitions that protect the public against the inappropriate and wrongful use of video surveillance technology.

The Security Industry Association and the International Association of Chiefs of Police have endorsed this approach to providing oversight of video surveillance technology.

A system review or audit should be undertaken periodically by accredited and/or qualified personnel, and measured against the specifications developed by each CCTV program's respective operational requirements. Any such audit must include an assessment of the CCTV program's compliance with this guideline, including an ongoing assessment of the involvement and support of the community.<sup>41</sup>

Washington, D.C., has adopted this recommendation. The city's local law requires that the Metropolitan Police Department conduct quarterly audits to ensure compliance with policies and procedures.<sup>42</sup> New York City should also adopt privacy protections similar to those enacted by the government of Alberta, Canada, which require the filing of a Privacy Impact Assessment (PIA) before video surveillance cameras are installed.<sup>43</sup> This assessment must address the effects of video surveillance on personal privacy, and must also explore ways to mitigate adverse effects.

**2. PUBLIC NOTICE.** The city should provide the residents of neighborhoods and communities in which the city intends to install video surveillance cameras the opportunity to participate meaningfully in decisions regarding the location and operation of the cameras.

National associations representing police chiefs and security industry professionals have issued model guidelines that call for "consultation and input from [the] community prior to implementing any CCTV program or undertaking any significant expansion or alteration of such a program."<sup>44</sup>

New York should create its own guidelines, modeled on the Washington, D.C., Video Surveillance Regulations Emergency Act,<sup>45</sup> which require that:

- Public notice shall be given when CCTV systems are deployed in residential and commercial areas, except under exigent circumstances and when the CCTV systems are deployed pursuant to a court order.
- The public shall have thirty days to submit comments regarding a proposed deployment. The public may submit comments at any time regarding a particular camera deployment or the CCTV system in general.
- The city shall have a reasonable period of time in which to respond to the comments submitted by the public in determining whether to go forward with the deployment of surveillance cameras. There shall be public notice and explanations regarding any decision related to the installation or operation of video surveillance cameras.
- On a semi-annual basis the city shall provide updates on the CCTV system at community meetings, which shall be announced in advance to the public.
- The city shall seek public comment on any proposed expansion of the video surveillance camera network.<sup>46</sup>

The New York City Council, the NYPD and other city agencies have failed to provide meaningful notice to or to consult with members of the communities most affected by increased video surveillance.<sup>47</sup> In her letter to Commissioner Kelly concerning the Internet posting of the video that depicted the suicide of Paris Lane, Manhattan Borough President

Virginia Fields wrote:

It appears that video surveillance has been installed in a great number of the city's public housing developments and whatever protocols may now be in place were not developed with public comment. Residents are extremely concerned about the invasion of privacy . . . .<sup>48</sup>

The city continues to exclude important voices from discussions about proposed surveillance. On September 29, 2006, the City Council held a “Nightlife Safety Summit” to discuss recently proposed legislation that would require Manhattan’s private night clubs to conduct video surveillance. While the forum featured a panel of designated speakers from the nightlife and security industries, it provided limited opportunities for others to address any of the proposed safety measures.

**3. TRAINING AND SUPERVISION OF PERSONNEL.** Personnel charged with operating video surveillance cameras or controlling access to such cameras or to video footage must be properly trained and closely supervised.

The Security Industry Association and the International Association of the Chiefs of Police recommend the following training protocol for the operation of video surveillance cameras.

- Personnel involved in CCTV use should be appropriately trained and closely supervised in the responsible use of this technology.
- Each law enforcement agency implementing or using a CCTV program should designate a responsible individual(s) for the implementation and oversight of the program.
- All local law enforcement personnel involved in the application, use or monitoring of CCTV installations, collection of video or digital data, or other aspects of CCTV use shall receive

appropriate training, including but not limited to training on ethical limits of CCTV use and instruction in applicable civil and criminal law.<sup>49</sup>

Philadelphia Police Inspector Thomas Nestel, author of a national study of police policies on video surveillance, recommends that training must be “an integral segment” of a video surveillance plan.<sup>50</sup> Nestel recommends that the training should include the following provisions.

- Operators should receive training on the technical application of the system so that they understand its capabilities and limitations.
- Employees and supervisors should be trained in the ethical issues involved in surveillance activities so that the implications of wrongdoing are clear. The definitions of improper behavior should be outlined and understood.
- The training should be reinforced with a testing element that can indicate the need for further instruction.

Nestel’s study concludes that the New York Police Department does not provide special training for CCTV operators, and that in the NYPD “constant supervision does not exist for CCTV operations.”<sup>51</sup> City Council Member Hiram Monserrate, who was assigned to a VIPER unit when he was an NYPD officer, told Sarah Wallace of WABC Eyewitness News: “No one trains you. I learned from the cops that were working there that actually learned how to use it by being there.”<sup>52</sup>

**4. STORAGE AND RETENTION.** The city must establish clear rules and procedures for retention, storage and destruction of video surveillance images, and for access to and dissemination of such video images.

Without clear and enforceable rules and procedures limiting retention and disclosure of video surveillance images, abuse is inevitable. The police will be free to create searchable video dossiers on political dissenters and others deemed suspicious. Unscrupulous individuals in the employ of organizations that operate surveillance cameras will have access to video archives that may contain information that is highly personal and sensitive. The city must adopt legislation that protects against such abuses.

The District of Columbia has adopted a strong rule regarding storage and retention:

Video recordings shall be indexed, stored and maintained for 10 business days after which time they will be recorded over or destroyed. Retention of any recording beyond that time limit must receive written approval by the Chief of Police.<sup>53</sup>

It appears that the NYPD has no rules regarding the retention of video surveillance recordings. The *New York Times* has documented that video footage of protest activity at the Republican National Convention was retained by the NYPD in “an unofficial archive of police videotapes.”<sup>54</sup> And City Council Member Hiram Monserrate revealed to WABC reporter Sarah Wallace that in some police-department VIPER units surveillance videotapes are handled in a manner that invites misappropriation:<sup>55</sup>

**WALLACE:** What is most disturbing perhaps is the issue of securing the tapes. The department is still investigating who leaked that horrific tape of the suicide in a Bronx lobby. But none of the insiders we spoke with is surprised that happened.

**MONTSERRATE:** The tapes are very accessible.

**WALLACE:** They’re not safeguarded?

**MONTSERRATE:** They’re not safeguarded. They’re basically laying on a bookcase.

**5. PROHIBITIONS AND PENALTIES.** The city must explicitly prohibit unlawful video surveillance camera practices, and prescribe penalties for violators.

The unauthorized use of video surveillance technology by city agencies or private corporations can result in serious harm to individuals engaged in conduct that is entirely lawful. The effects of such harm extend broadly, undermining fundamental rights of privacy, speech and association. The city must clearly define unlawful use of video surveillance technology and provide for legal sanctions against persons who are responsible for such unlawful conduct. Such a law should include the following provisions.

- Operators shall not target or observe individuals based upon race, gender, ethnicity, sexual orientation, disability or other classifications protected by law.
- CCTV systems shall be used to observe locations that are in public view and where there is no reasonable expectation of privacy.
- CCTV will not focus on hand bills, fliers, etc., being distributed or carried pursuant to First Amendment rights.
- CCTV cameras shall not be equipped with audio overhear capabilities, and shall not use any type of audio system in conjunction with the CCTV network unless appropriate court orders are obtained.
- Unauthorized use or misuse of the CCTV system will result in disciplinary action and may subject the wrongdoer to criminal or civil liability.<sup>56</sup>

In order to enforce these provisions and to ensure accountability for the operation of video surveillance cameras, the city should establish and publicize procedures for collecting, handling and redressing complaints of abuse by members of the public.

## NOTES



1. U.S. General Accounting Office, "Report to the Chairman, Committee on Government Reform, House of Representatives: Video Surveillance: Information on Law Enforcement's Use of Closed-Circuit Television to Monitor Selected Federal Property in Washington, D.C.," GAO-03-748, June 2001, at 29 ("There is general consensus among CCTV users, privacy advocates, researchers, and CCTV industry groups that there are few evaluations of the effectiveness of CCTV in reducing crime...") (hereafter cited as U.S. General Accounting Office, "Report to the Chairman, Committee on Government Reform").

2. See pp. 2 - 4 for maps illustrating the locations of the cameras in these areas. Due to the proximity of addresses at which cameras are located, a single dot may represent more than one camera. The NYCLU's 1998 map of surveillance cameras broken out by Community Board Districts in Manhattan is available at <http://www.mediaeater.com/cameras/maps/nyc.pdf>. The report accompanying the surveillance study, "New York City: A Surveillance Camera Town," is available at [http://www.nyclu.org/pdfs/surveillance\\_camera\\_1998\\_report.pdf](http://www.nyclu.org/pdfs/surveillance_camera_1998_report.pdf)

3. Testimony of NYPD Commissioner Raymond Kelly, Preliminary Budget Hearing, New York City Council, March 21, 2006,

4. New York City Council, Int. No. 442, September 27, 2006,

5. Thomas J. Nestel, "Using Surveillance Camera Systems to Monitor Public Domains: Can Abuse be Prevented?," Masters Thesis, March 2006, [www.chds.us/?research/thesis&cohort=0403\\_0404&title=March%202006](http://www.chds.us/?research/thesis&cohort=0403_0404&title=March%202006) (hereafter cited as Nestel, "Using Surveillance Camera Systems").

6. Nestel, "Using Surveillance Camera Systems," p. 39.

7. Testimony of NYPD Deputy Inspector Delayne Hurley, Committee on Public Safety, New York City Council, April 11, 2006, [webdocs.nycouncil.info/attachments/72140.htm?CFID=1296318&CFTOKEN=67453676](http://webdocs.nycouncil.info/attachments/72140.htm?CFID=1296318&CFTOKEN=67453676).

8. New York State Division of Criminal Justice Services, "FBI Report Shows Continued Drop in Crime in New York State," September 18, 2006.

9. U.S. General Accounting Office, "Report to the Chairman, Committee on Government Reform."

10. Those cities are Baltimore, MD; Tampa, FL; Columbia, SC; and Virginia Beach, VA.

11. U.S. General Accounting Office, "Report to the Chairman, Committee on Government Reform," p. 29.

12. Martin Gill and Angela Spriggs, "Home Office Research Study 292: Assessing the Impact of CCTV," February 2005, [www.homeoffice.gov.uk/rds/pdfs05/hors292.pdf#search=%22%E2%80%9CAssessing%20the%20Impact%20of%20CCTV%2C%E2%80%9D%22](http://www.homeoffice.gov.uk/rds/pdfs05/hors292.pdf#search=%22%E2%80%9CAssessing%20the%20Impact%20of%20CCTV%2C%E2%80%9D%22).

13. Sewell Chan, "U.S. Transit Agencies Turn to Cameras in Terror Fight, but Systems Vary in Effectiveness," *New York Times*, July 14, 2005.

14. Catherine Yang, "The State of Surveillance," *Business Week*, August 8, 2005.

15. See, e.g., "Police Seek to Increase Surveillance: Want 400 Cameras for Public Areas," *New York Times*, May 31, 2005. ("There is no privacy issue here at all," said NYPD spokesperson Paul J. Browne. "[Cameras] would only be placed in areas where there is absolutely no expectation of privacy.")

16. Brad Hamilton, "Hidden Eyes of Our Apple—No Escaping City Security Cameras," *New York Post*, May 2, 2004.

17. Consider that anyone who has access to electronic video archives can download images (with or without authorization) to a laptop and walk out the door. In May 2006 the theft of a laptop computer from the home of a Veterans Administration analyst made front-page news. In violation of policy, the analyst had taken home electronic files containing personal information -- including name, date of birth, social security number -- of an estimated 17.5 million veterans and soldiers on active duty. As a result of a single security breach, each one of those millions became the potential victim of identity theft. The laptop was eventually recovered. John Files, "V.A. Laptop Is Recovered, Its Data Intact," *New York Times*, June 30, 2006.

18. Jonathan Mandell, "Proof of Your Existence, Complete with Bad Photo," *New York Times*, October 20, 1999.

19. Marc Jonathan Blitz, "Video Surveillance and the Constitution of Public Space: Fitting the Fourth Amendment to a World that Tracks Image and Identity," 82 *Tex. L. Rev.* 1349, 1359 (May 2004).

20. Jim Dwyer, "Surveillance Prompts a Suit: Police v. Police," *New York Times*, February 3, 2006.

21. Chisun Lee, "The NYPD Wants to Watch You," *Village Voice*, December 18, 2002.

22. *Handschu v. Special Services Div.*, 605 F.Supp. 1384, 1421 (S.D.N.Y. 1985), *aff'd*, 787 F.2d 828 (2d Cir. 1986).

23. *Handschu v. Special Services Div.*, 288 F.Supp.2d 411, 422 (S.D.N.Y. 2003) (Emphasis added) ("Second Revised Order and Judgment"). For a history of this case prior to entry of the modified consent decree, see *Handschu v. Special Services Div.*, 273 F.Supp.2d 327 (S.D.N.Y. 2003).

24. "Securing the Republican National Convention," Brochure, Pelco Press, Fall 2004, <http://www.totalrecallcorp.com/Pelco%20Recognizes%20Total%20Recall%20Corporation.pdf>.

25. Jim Dwyer, "New York Police Covertly Join In at Protest Rallies," *New York Times*, December 22, 2005. Ironically, the video material exposed undercover police officers fomenting conflict as *agents provocateurs*. Those activities are now the subject of litigation.

26. Jim Dwyer, "Police Video Caught a Couple's Intimate Moment on a Manhattan Rooftop," *New York Times*, December 22, 2005.

27. Office of the New York State Attorney General Eliot Spitzer, "The New York City Police Department's 'Stop-and-Frisk' Practices: A Report to the People of the State of New York," December 1, 1999.

28. Clive Norris and Gary Armstrong, *The Unforgiving Eye: CCTV Surveillance in Public Space*, Centre for Criminology and Criminal Justice, Hull University, 1997.

29. Gavin Smith, J.D., "Behind the Screens: Examining Constructions of Deviance and Informal Practices among CCTV Control Room Operators in the UK," *Surveillance & Society* 2(2/3): 377-396. 2004. [http://www.surveillance-and-society.org/articles2\(2\)/screens.pdf](http://www.surveillance-and-society.org/articles2(2)/screens.pdf).

30. Shaila K. Dewan, "Video of Bronx Man's Suicide Appears on Shock Web Site," *New York Times*, April 1, 2004.

31. *Ibid.*

32. C. Virginia Fields to Raymond W. Kelly, April 8, 2004, on file with the New York Civil Liberties Union.

33. Raymond W. Kelly to C. Virginia Fields, April 27, 2004, on file with the New York Civil Liberties Union.

34. Sarah Wallace, "Exclusive: NYPD Housing Surveillance Staffed by Cops Under Investigation," WABC New York, April 22, 2004 (hereafter cited as Wallace, "Exclusive"), [abclocal.go.com/wabc/news/investigators](http://abclocal.go.com/wabc/news/investigators).

35. Wallace, "Exclusive."

36. New York City Council, "The Use of Surveillance Cameras to Fight Crime and Prevent Terrorism," Briefing Paper and Report of the Governmental Affairs Division, Committee on Public Safety; Peter Vallone, Jr., Chair. April 11, 2006 ("At the March 21, 2006 Preliminary Budget Hearing, Police Commissioner Raymond Kelly testified that the NYPD is currently in the process of instituting a citywide system of closed-circuit televisions--technology that allows for a linked system of cameras to be viewed and operated from a control center. The plan calls for a two-phase installment of 505 cameras in 253 locations--first in Brook-

lyn and then in the remaining boroughs. Federal Homeland Security Grants totaling \$9.1 million will fund the system. Additionally, the NYPD plans to implement the Lower Manhattan Security Initiative to further protect the Financial District and civic center.” See, also, Larry Celona, “505 New Cameras to Keep an Eye on Bad Guys,” *New York Post*, March 22, 2006 (“Police Commissioner Ray Kelly yesterday unveiled an expanded, \$9 million-plus plan to focus 505 state-of-the-art video cameras on 253 crime and tourist hot spots in a bid to catch crooks in the act. . . . Kelly said the cameras will now cover a whopping 253 locations, starting in Brooklyn.”)

37. L.A. Johnson, “Growing Use of Camera Cell Phones Shows How New Technology Can Bring Out the Best and the Worst,” *Pittsburgh Post-Gazette*, October 27, 2004.

38. “Three Arrested After Traffic Camera Aimed at Passersby,” Associated Press, September 15, 2003.

39. Wallace, “Exclusive.”

40. Lisa Hoffman, “Under Surveillance: Government Spy Cameras Proliferate,” Scripps Howard News Service, June 22, 2006 (see, supra, Nestel, “Using Surveillance Camera Systems”).

41. Security Industries Association and International Association of Chiefs of Police, “Guideline: Closed Circuit Television for Public Safety and Community Policing,” 2000, Technical Procedural Guidance: B (hereafter cited as SIA and IACP; “Guideline”).

42. Metropolitan Police Dep’t., Washington, D.C., General Order: CCTV – Policies and Procedures, [http://mpdc.dc.gov/mpdc/cwp/view,a,%201238,%20q,541586,mpdcnav\\_gid,1545,mpdcnav,31748,asp](http://mpdc.dc.gov/mpdc/cwp/view,a,%201238,%20q,541586,mpdcnav_gid,1545,mpdcnav,31748,asp)

43. Freedom of Information and Protection of Privacy, Guide to Using Surveillance Cameras in Public Areas, Revised June 2004, Government of Alberta, Canada, <http://foip.gov.ab.ca/resources/publications/SurveillanceGuide.cfm>.

44. SIA and IACP, “Guideline,” General Principles: H.

45. D.C. Mun. Regs. tit. 24, 2507(1) - (10) (2002).

46. See Metropolitan Police Dep’t., Washington, D.C., General Order: CCTV – Policies and Procedures, [http://mpdc.dc.gov/mpdc/cwp/view,a,%201238,%20q,541586,mpdcnav\\_gid,1545,mpdcnav,31748,asp](http://mpdc.dc.gov/mpdc/cwp/view,a,%201238,%20q,541586,mpdcnav_gid,1545,mpdcnav,31748,asp).

47. Nestel, “Using Surveillance Camera Systems,” p. 39 (With respect to the New York Police Department’s VIPER program, “[t]he community was not involved in the initial or subsequent implementation process.”)

48. Fields to Kelly, April 8, 2004, Archives of New York Civil Liberties Union (Emphasis added).

49. SIA and IACP, “Guideline,” General Principles: E; Responsibilities: B, E.

50. Nestel, “Using Surveillance,” pp. 67-68.

51. Nestel, “Using Surveillance,” p. 39.

52. Wallace, “Exclusive.”

53. D.C. Mun. Regs. tit. 24, 2507(1) - (10) (2002).

54. Jim Dwyer, “New York Police Covertly Join In at Protest Rallies,” *New York Times*, December 22, 2005.

55. Wallace, “Exclusive.”

56. D.C. Mun. Regs. tit. 24, 2507(1) - (10) (2002).

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