

**Council of the District of Columbia, Committee on the Judiciary
Public Roundtable on B16-894, “Use of Closed Circuit Television to Combat Crime
Amendment Act of 2006”**

October 4, 2006

PREPARED STATEMENT OF THE CONSTITUTION PROJECT

I am Will DeVries, representing the Constitution Project—an independent think tank that promotes and defends constitutional safeguards by bringing together liberals and conservatives who share a common concern about preserving civil liberties. We at the Constitution Project thank the Council for inviting us to participate in this public roundtable on the proposed amendments to the District’s video surveillance camera regulations.

The proposed bill would extend the video surveillance provisions of the emergency crime control legislation passed this summer, and would make permanent the first major modification to the District’s video surveillance camera regulations since their 2002 approval. Through this legislation, the District would permanently add “combating crime” to the list of approved uses of the cameras and authorize their use in residential neighborhoods. The Constitution Project salutes the efforts of the District to include important safeguards in the proposed bill, but more work must still be done.

It is no mystery why fighting crime through video surveillance has generated so much interest in the District. Many see video surveillance as a cost-effective and unobtrusive means of combating a dangerous increase in crime. It is also clear why many others oppose such cameras. They believe that government surveillance, which will inevitably capture the activity of law-abiding people, is antithetical to the ideals of a city and society that values individual rights, autonomy, and freedom from government intrusion.

We believe it is possible to accomplish both—to be both safe and free—through unbiased and public consideration of the costs and benefits of surveillance cameras *before they go in*, as well as robust safeguards to ensure they work as planned once they are in place.

The Constitution Project’s Liberty and Security Initiative, launched in the aftermath of the September 11, 2001 terrorist attacks on the United States, is committed to developing and advancing proposals to protect civil liberties even as we work to enhance our nation’s security. The Initiative is composed of members of the law enforcement community, legal academics, former government officials, and advocates from across the political spectrum. Despite their varied professional and political backgrounds, the members of our committee share a commitment to preserving our individual rights.

The Initiative recently issued “*Guidelines for Public Video Surveillance: A Guide to Protecting Communities and Preserving Civil Liberties.*” These recommendations represent a considered, evenhanded approach, and the consensus opinion of experts from across the political spectrum.

The *Guidelines* present specific recommendations on how communities can establish surveillance systems that minimize intrusions on individual rights—and on how to balance law enforcement needs with the privacy rights of residents. And last week we published model legislation that can help jurisdictions to codify our *Guidelines*. We submit both of these documents for consideration as the Council considers the pending video surveillance legislation.

The Constitution Project's *Guidelines* make clear that—given the technological capabilities of modern video cameras—public video surveillance systems must be designed narrowly, used carefully, and examined thoroughly. It is not just criminals who should fear public surveillance; without proper safeguards, even surveillance of “public” places can imperil our core constitutional rights and values, including privacy and anonymity, free speech and association, government accountability, and equal protection. What if a camera could record every visitor to a psychiatrist's office? A fertility clinic? A controversial political or religious group? What if it could see into the windows of your house?

At the same time, effective public video surveillance systems need not be abandoned merely because they can be abused. We believe that constitutional rights and values can be reconciled with law-enforcement and anti-terrorism goals given careful thought and planning. We urge the Council, as it considers the expansion of the District's network of surveillance cameras, to:

- Compare the cost of increasing the number of video surveillance cameras—including the cost of manning and maintaining them—to alternative means of combating crime, such as increased community policing and improved street lighting
- If the Council concludes that expanding the District's surveillance program may be cost-effective, select camera locations carefully and conduct an open review process with public input, to ensure that each camera will be capable of actually achieving its purpose of reducing violent crime in the District
- Design the scope and capabilities of the surveillance system to minimize its potential for misuse and abuse and its negative impact on constitutional rights and values, for instance by preventing the cameras from being able to pan, tilt or zoom such that operators could view inside the windows of residences on the street
- Enact strict rules governing how the cameras can be used once in place, such as rules to govern and restrict the use of recorded footage

Our recommendations also include a streamlined *judicial* approval process for authorizing temporary video surveillance systems to address law enforcement or other emergencies requiring rapid deployment or secrecy. Where time is of the essence, this process allows for a more rapid approval process for situations without sacrificing oversight and accountability.

Our *Guidelines* and model legislation spell out in detail the reasons for these precautions and how they might be implemented. Far from being a burden on law enforcement and local governments, these rules are designed to assure both the public and the police that surveillance cameras will actually fight crime *and* be minimally invasive.

B16-894, like the 2002 municipal regulations section it amends, includes important procedures and safeguards that mirror the recommendations from the Constitution Project. We applaud the work done so far, but there remain several areas in which the pending bill should be revised to better balance the important security and civil liberties interests at stake.

The original regulations, passed in 2002, included important provisions aimed at narrowing the impact of surveillance cameras on civil liberties, including:

- Strong protection for First Amendment rights, such as prohibitions on audio recording
- Anti-discrimination principles
- Extension of safeguards to surveillance footage obtained from private parties or other law enforcement agencies
- Public notification and comment obligations, such as requiring consideration of public comment on planned deployment of surveillance cameras and use of local signage to alert passersby
- Public review and audit provisions
- Certification obligations for operators and punishment for misuse of the system
- Sharp limits on use of recorded footage, such as extensive documentation and a two-week limit on retained surveillance footage barring special circumstances

The proposed bill adds or strengthens many of these safeguards, including

- A required audit of the cameras' anti-crime effectiveness after one year
- Refinement of the term "exigent circumstances" to narrow the occasions when it can be invoked

The Constitution Project applauds the inclusion of all these safeguards, but the proposed legislation still lacks a few fundamental protections recommended in our *Guidelines*. We urge the Council to go a few steps further with this bill, and make it a *complete* model for other cities and states to follow.

Civil Liberties Impact Assessment and Cost/benefit Analysis

Before installing any additional surveillance cameras, the MPD should be required to conduct a civil liberties impact assessment and cost/benefit analysis of the proposed deployment of new surveillance cameras or technology. Section 2508.1 of the proposed legislation states that MPD may now install cameras "for the purpose of preventing, detecting, deterring, and investigating crime." The MPD should therefore determine that further deployment will, in fact, be a cost-effective and minimally invasive means of accomplishing these goals. We also remind the Council that, although we are aware of some evidence that cameras may aid in the *investigation*

of crime, the evidence we have seen is at best mixed as the effectiveness of cameras in *preventing* crime.

The MPD should be required to report to the Council and Mayor on the results of this assessment, and subsequent reviews and audits of the system should also include these assessments. The Constitution Project's *Guidelines* and model legislation contain detailed information on how to design these assessments, at pages 21-23 of the blue booklet we have provided.

At a minimum, we recommend that the Council direct the MPD to conduct such assessments before the deployment of any additional anti-crime cameras and as part of the one-year review of existing anti-crime cameras under Section 2508.6.

Remedies for Those Harmed by Misuse or Abuse

While existing regulations provide for discipline for operators who violate regulations regarding video surveillance, the District should also provide for remedies for individuals harmed through misuse or abuse of the cameras or stored footage. Evidence from other jurisdictions reveals that cameras can be used to harass, discriminate, or blackmail individuals. Our *Guidelines* outline several remedies that could help compensate victims.

Procedure for Court-Sanctioned Use of Video Surveillance

The District's regulations and the proposed amendments permit a judge's order to supplant the public notification and other procedural steps required prior to implementation and use of new video surveillance cameras. The Council should amend these provisions to require that any judicial order authorizing use of closed circuit surveillance systems include a finding that the scope and capabilities of the video surveillance be no greater than reasonably necessary to achieve a legitimate law enforcement purpose.

This language is included in the proposed definition of "Exigent Circumstances," but should apply more broadly to all cases in which circumstances prevent implementation of full procedures and safeguards.

Specific Additional Amendments

- Section 2502.4. This provision should make clear that the Chief of Police is required to explain his justification for deployment of *each* camera.
- Section 2505.4. The District's existing regulations create administrative safeguards against misuse of recorded data, but should be amended to include technological safeguards as well. We recommend that Section 2505.4 be amended to require that all stored footage be secured through use of technological protections, including encryption of stored data.
- Section 2505.8. Footage used for training should avoid, the extent possible, use of footage of identifiable private individuals.

- Section 2508.6. This section should make clear that, if the one-year review cannot affirmatively demonstrate the effectiveness of anti-crime surveillance cameras at achieving their stated purposes, the camera system should be restructured or dismantled.

Lastly, the most important check on the danger of surveillance cameras can be contained in no legal provision. The most important check is our obligation as District residents and your obligation as elected representatives to hold law enforcement officials to *their* obligations as embodied in these regulations. In particular, once the MPD has finalized its plans for any expansion of the crime camera system, the Council should hold the MPD to its existing obligations, under Section 2502, to notify and consider comments from the public regarding each new camera deployment, its duration, planned use, and system capabilities. The greatest danger to privacy, to freedom of expression, and to government accountability is our own complacency.

In 2002, at the urging of the Constitution Project and members of this Council, the District became a national and global leader by adopting video surveillance rules aimed at protecting both civil liberties and public safety. It has the chance now to affirm its leadership role—securing its position as a model of the delicate balance between civil liberties and public safety.

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Electronic copies of the *Guidelines* and accompanying model legislation can be found on the Constitution Project's Liberty and Security Initiative website, at <http://www.constitutionproject.org/libertyandsecurity/index.cfm?categoryId=3>.