



CCTV and Privacy

Technology and Policy Workshop

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Outline

- States of Privacy
- Constitutional Protections
- Data Considerations
- Uses in Surveillance
- Other Uses
- Policy Considerations
- Legal Issues Outside Agency Control
- Resources



Defining Privacy

Westin's Four States of Privacy

- Solitude
- Intimacy
- Anonymity
- Reserve



Constitutional Protections

SOLITUDE

- In the Home- *Kyllo v. United States*, 533 U.S. 27 (2001).
- Integrity of the Person-*Terry v. Ohio*, 392 U.S. 1 (1968).
- Limited Expectations in Public Places-*Katz v. United States*, 389 U.S. 347 (1967).



Constitutional Protections

INTIMACY

- "Zones of Privacy" - *Griswold v. Connecticut*, 381 U.S. 479 (1965).
- Protections Extended Over Time- *Roe v. Wade*, 410 U.S. 113 (1973).
- Relationship Based- *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *Roberts v. United States Jaycees*, 468 U.S. 609 (1984).



Constitutional Protections

ANONYMITY

- First Amendment-*NAACP v. Alabama*, 357 U.S. 449 (1957).
- No Fourth or Fifth Amendment Protections-*Hiibel v. Sixth Judicial Circuit Court, Humboldt County*, 542 U.S. 177 (2004).



Constitutional Protections

RESERVE

- No Specific Protection in Data (but)- *Whelan v. Roe*, 429 U.S. 589 (1977).
- No Specific Protection in Data (but)- *Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).



Data Considerations

A final word about issues we have not decided. We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files.

Whelan v. Roe, 429 U.S. 589, 605 (1977)

Data Considerations

In sum, the fact that "an event is not wholly `private' does not mean that an individual has no interests in limiting disclosure or dissemination of the information."
... The privacy interest in a rap sheet is substantial. The substantial character of that interest is affected by the fact that in today's society the computer can accumulate and store information that would otherwise have surely been forgotten long before a person attains age 80, when the FBI's rap sheets are discarded.

Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749, 770-1 (1989)

Uses in Surveillance

- Identifying Contraband or Wanted Persons
 - *Illinois v. Caballes*, 543 U.S. 405 (2005) (canine sniff).
- Area Observation
 - Special Circumstances- *City of Indianapolis v. Edmonds*, 531 U.S. 32 (1990) (use of roadblocks).
- Tracking Individuals
 - *United States v. Knotts*, 460 U.S. 276 (1983) (tracking of vehicles in public with beepers).



Other Uses

- Directing Immediate Response (response to a range of incidents).
- Command and Control (for large scale events and incidents).
- Traffic Management (signal timing/congestion management).
- Traffic Enforcement (red light/speed enforcement/parking enforcement).



Policy Considerations

- Privacy is Not a Monolithic Concept and is Constitutionally Protected.
- Fourth Amendment Concerns in Public Surveillance Must be Addressed.
- Technology Design Should Seek to Mitigate Privacy Impacts.
- Developing Computer Technology Presents Challenges for Data Management.

Policy Considerations

- Organizations Need to Develop Written Policies.
- Employees Need to be Trained and, When Failing to Adhere to Policies, Disciplined.
- Audits (Internal and External) Should be Conducted Regularly.
- Policies should be Reviewed and Updated on a Continuing Basis to Adjust to New Technology and Findings of Deficiency.



Legal Issues Outside Agency Control

- Data Retention Issues.
- Freedom of Information Act Requirements.
- Subpoenas and Court Orders.
- *Brady* Requirements, Evidence and Due Process Issues.



Resources

- United States Federal Trade Commission, Fair Information Practice Principles, (cited at)
<http://www.ftc.gov/reports/privacy3/fairinfo.shtm>
- American Bar Association, Criminal Justice Section Standards for Technology-Assisted Physical Surveillance, (cited at)
http://www.abanet.org/crimjust/standards/taps_blk.html
- The Constitution Project, Guidelines for Public Video Surveillance, (Washington D.C.: The Constitution Project, 2007) (cited at)
http://www.constitutionproject.org/pdf/Video_Surveillance_Guidelines_Report_w_Model_Legislation4.pdf

Resources

- Richard Thomas, CCTV Code of Practice, (London, U.K. Government 2008) (cited at)
http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/ico_cctvfinal_2301.pdf
- Donald Zoufal, *"Someone to Watch Over Me?" Privacy and Governance Strategies for CCTV and Emerging Surveillance Technologies*, (cited at)
https://www.hsdl.org/homesec/docs/theses/08Mar_Zoufal.pdf



Thank you.

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