



**Homeland
Security**

DEPARTMENT OF HOMELAND SECURITY

PRIVACY OFFICE

PUBLIC WORKSHOP CCTV: DEVELOPING PRIVACY BEST PRACTICES

MONDAY, DECEMBER 17, 2007

Hilton Arlington

Gallery Ballroom

950 North Stafford Street

Arlington, VA 22203

OPENING REMARKS

MS. LEVIN: Good morning. I know we're still seating people and doing a few minor adjustments on our screen here, but I want to start the clock rolling on time, because we have a very full agenda. Welcome. The Department of Homeland Security Privacy Office, in coordination with the Department's Office for Civil Rights and Civil Liberties, welcomes you to the workshop, CCTV: Developing Privacy Best Practices.

My boss, Hugo Teufel, Chief Privacy Officer, has decided that this is too early to start a meeting, but I assured him that it was necessary in order to make sure we were able to cover all the topics and include all of the experts that we've invited to participate. So, I hope you have your coffee and are ready to go. I think other people will be coming in. I understand there are a few accidents on the highway, despite the fact that Washington avoided the worst of the snowstorm. My name is Toby Levin, and I'm the senior advisor in the Privacy Office and coordinator of this workshop.

The objective of this workshop is to provide the Department and the public with a better understanding of the complex issues surrounding government's use of CCTV, and to provide additional resources for all of us to consider in our deliberations regarding its use. Before I introduce our opening speakers, I have a few housekeeping remarks. First, your packets include the agenda and the bios, which we will not go into during the panels, but it's there

for you to refer to throughout the workshop. We also have copies of a number of the presentations. We will be posting the materials on our DHS Privacy Web site for the workshop, at www.dhs.gov/privacy, along with a transcript of the program, probably in early- to mid-January.

We apologize greatly that we are not able to provide you with refreshments during the workshop. I want you to know, however, that it's because we cannot use your tax dollars -- not that we don't want you to be comfortable throughout the program, but we can't use your tax dollars for such amenities. So, the hotel has several places within easy reach downstairs, and so, please feel free to use those during the breaks, but please return promptly so that we can make sure that we keep on schedule.

We are awaiting our Canadian panelists, who had intended to come in yesterday, but the snowstorm prevented the travel. And if our one last panelist comes in on time, we will proceed with the agenda, as planned; otherwise, we will flip the law enforcement and the international panels, which will mean we'll run a little later before you get out for lunch, but the end of the day will remain 5 o'clock. So, bear with us as we make these last-minute decisions based on the weather patterns. We've set aside the last 15 minutes for your questions and -- for the panelists. There's a microphone in the middle of the room, where you can line up when the moderator signals it's your turn. We hope that to have a very engaging discussion as a result of questions that you pose.

I should also mention to please be sure to speak into the microphone. We have a transcriber, who is sitting in the back, and it will be very important, for our having an accurate transcript, for you to speak into the microphone. Please identify yourself and your affiliation, if you have one.

I want to thank your workshop team, especially Tamara Baker, who handled all of the logistics. You probably met her when you were coming into the hall, and as well as our moderators. The moderators for today's panels are -- for today and tomorrow's panels -- are Shannon Ballard, Ken Hunt, Tim Keefer, Jim McNeely, and Lawrence Saadat, and Peter Sand, who also wears the hat of helping us with the technology for this workshop, and I very much appreciate all of his extra hard work in making sure the presentations run well. Finally, I ask you to please silence your cell phones so that we won't have any unexpected interruption, and then, we'll be ready to begin.

It's my great pleasure to introduce our leadership: Hugo Teufel, who's Chief Privacy Officer for the Department of Homeland Security, who will be followed by Dan Sutherland, Officer for Civil Rights and Civil Liberties at the Department. I introduce you to Hugo.

MR. TEUFEL: Well, good morning to everyone. Good morning, panelists. I'm Hugo Teufel, the Chief Privacy Officer at the Department of Homeland Security. And if it had been up to me, we would have started at 9 o'clock, but it wasn't up to me –

[Laughter.]

MR. TEUFEL: -- so, here we are. Also, my apologies for, especially, our friends from outside of the United States, that we only have water here, but we are limited, by Federal appropriations laws, in what we can provide. And, given that, prior to this job, I supervised the appropriations lawyers at the Department, it would be particularly bad form of me to not comply strictly with appropriations laws and guidance. So, I'll have some of my green tea that was purchased with private funds.

[Laughter.]

MR. TEUFEL: So, thank you. I know that we'll have more people here as the day goes on, and I'm very grateful to see all of you who are here. The issues that we will discuss at this workshop, and that we have discussed at other meetings that the Privacy Office has held in our Data Privacy and Integrity Advisory Committee, it sometimes concerns me, because they are significant issues of great importance to the United States and others, and I'm often surprised by the small attendance, but I'm very grateful for all of you who are here. And, recognizing many of your faces, I know that we'll have a very good and productive 2 days.

My exposure to the legal and policy issues of CCTV did not begin with my coming to the Department, it was actually prior to my coming to the Department, post-9/11, when I was at Department of the Interior in the solicitor's office, and, while there, I worked with Randy Myers, who is the Park Police lawyer, and Kim Fonderin, who was -- is/was the lawyer for the Fish and Wildlife Service, in post-9/11. There was, and there continues to be a lot of interest on critical infrastructure and icons, and Randy Myers did some significant work, on behalf of the Park Police, with respect to CCTV. Looking over the materials that Randy had put together, and the guidance that Randy provided to the Park Police, I really gained an appreciation of the complex nature of the issues.

So, two questions for you that I want to pose at the outset. First, are there legitimate uses of closed-circuit television cameras that enhance security? And the answer is yes. Second, are there legitimate privacy and civil liberties concerns about the use of closed-circuit television cameras that enhance security? And, again, the answer is yes.

Given these questions and these answers, what we seek to do in the next day and a half, 2 days, is to come up with, or discuss, what the best practices are for the appropriate use of this technology. This workshop provides an opportunity to share experiences and expertise regarding one of the leading technology issues of our day, the use of CCTV; to identify the policy issues with the deployment of CCTV; and to identify the appropriate decision-making process and the sets of questions that should be asked, and to share lessons learned.

The DHS Privacy Office, along with the Office of Civil Rights and Civil Liberties, plays a leading role in developing guidance for the Department on how CCTV can be used in a manner that respects privacy and civil rights and civil liberties. The Privacy Office has found that public workshops, such as this one, provide a critical means by which we can educate our office, the Department, and the public on leading issues affecting privacy.

For today's workshop, we have gathered together leading academics, researchers, law enforcement representatives, technologists, community leaders, and policy experts to assist government agencies in policymaking regarding the use of CCTV for law enforcement and counterterrorism purposes. This workshop will be the beginning, however, not the end, of our work. As you know, the Federal Register notice announcing this workshop also invited public comments on a series of questions. We will keep the record open until January 15th, 2008, so that you and others can file comments in light of the presentations made at this workshop.

The workshop will explore -- I'll just very briefly go into what the workshop will explore -- CCTV through a variety of perspectives -- technology, international, law enforcement community, and policy -- and then conclude with a discussion of best practices. Among the topics that we will hear discussed today are, What are the capabilities and impact of CCTV on privacy and civil liberties? Are there existing local or international programs that have developed privacy and civil liberties guidelines for CCTV that can serve as resources for the development of best practices? How can CCTV systems be designed in a manner that respects privacy and civil liberties? What are the privacy and civil liberties best practices government agencies should consider when using CCTV?

We'll invite your participation at the end of each panel, as we have set aside approximately 15 minutes for your questions for the panel. Please wait for the moderator to tell you when to line up at the microphone.

I want to thank all of you for coming to this very important program. We hope your perspective will be enhanced by the perspectives presented today and tomorrow morning, and that you will leave much better informed and better able to engage in the critical policy discussions that will take place here in Washington, your local communities, and throughout the Nation and the world. And, with that, I will stop, and Dan Sutherland, our officer for civil rights and civil liberties, will follow me.

[Applause.]

MR. SUTHERLAND: Good morning. I just wanted to start by thanking Hugo for inviting us. I think we're piggybacking on their hard work a bit here by being involved, so we appreciate it. We're -- what's the economic word? We're freeloading, or something. That's what it is.

[Laughter.]

MR. SUTHERLAND: We're –

VOICE: We're coordinating.

MR. SUTHERLAND: -- coordinating. This is our statute -- or, we're required by statute to coordinate in our two offices, and you're witnessing a statute coming to life. So, I do want to thank Toby, Ken Hunt, Peter, all the others who have been working on this. Our staff has also been involved on these issues. Jim McNeely's going to be on a panel a little bit later. Tim Keefer, our deputy, is here somewhere, as well, and he's going to be involved. I just wanted to acknowledge them and hope you'll get a lot out of what they have to share later on.

Security cameras and government surveillance were one of the issues that we looked at when our office first started. We're up to almost 5 years now, when our office and the Privacy Office both started. So, over the past few years, we have looked at, or advised our colleagues about, a number of pilot projects in this area. We have tested the feasibility of CCTV as a means of protecting critical infrastructure, such as in the railroad context or secured areas within airports, some of the pilot projects that we've been looking at. And we've been advising our colleagues on how to proceed in a way that achieves the purposes, but is also mindful of some of the civil liberties issues, and then our colleagues in the Privacy Office looking at the privacy issues.

So, let me at the very beginning, lay out two myths -- two myths that I just wanted to debunk very quickly, and hopefully it will fit into the themes that you'll be hearing about over the next day and a half, and hopefully having some discussion about.

Myth number one is that civil liberties and security are in competition with one another. We hear this all the time, there's an implicit understanding or feeling that if you increase security, naturally our rights decrease. The other thing that I think that we experience is the argument that if we have more of the civil liberties and the privacy lawyers working on things, it's going to compromise our security. And the fact of the matter is that we find that, many times as we go about our work in the Department, that we can achieve our security purposes while also being respectful of people's civil rights and civil liberties and privacy. The key really is to bring people with this specialty of understanding the privacy issues, the civil liberties issues, into a project early. And if we're able to come in early, we're usually able to help shape a program in ways that meet both goals. We've seen that in a lot of areas recently, in terms of satellite technology. You've probably been reading some of the papers about that, the work that we've been doing there, some areas in cybersecurity, even in -- an area we're working on is detention standards. We keep about 30,000 people under detention every day in our Department, and as we help ICE figure out their detention standards as we're called in early, and help create good standards on medical care, access to lawyers, and other things, we're able to really meet both purposes, having a good, solid, sound detention system, as well as respecting people's civil rights and civil liberties.

So, over these last few years, I think we've learned a lot about CCTV as a tool to improve security, and we've learned some ways that we can help improve the best practices, in terms of protecting civil liberties and privacy as we go about this. But it is a work in progress, as I think Hugo said, and so, I think this workshop will be a really neat opportunity to develop more thoughts along this line. And, as Hugo said, it's really at the beginning stages, and not the end stages, that we find ourselves in. So, the first myth I wanted to debunk is that civil liberties and security are in competition with each other; they don't need to be.

The second is this. If this is the myth –if there is no prohibition of the government acting in a certain area, then government can go right ahead. In Federalist number 48, Alexander Hamilton explained the danger in having the Bill of Rights. One of the dangers that he saw was that if there an enumerated list of rights, that we may become conditioned to think of the individual rights protected by the Bill of Rights as the boundaries of the government's power. In other words, he feared that we would come to presume that the government could, and should, do everything, up to the limits of our individual rights as we went about our business.

It would be too easy for the analysis of CCTV to start and end with a Fourth Amendment analysis. So, we've been conditioned to relying on that touchstone of individual rights. We just look there; if it's not a problem, off we go. But a relevant question we ask, and which this workshop should ask, is whether the government should be exercising all of the rights, all the powers that it can exercise, whether the government should be exercising all the powers that it can exercise. I think that's a question to, sort of, leave hanging out there, something for us to be looking at and thinking about.

One of the areas that we deal with that, or operationalize that, in the privacy area is the minimization principle. And I think that'll be discussed as we go along. We're also trying to borrow that concept in a new area. We've been required by statute to come up with something called a Civil Liberties Impact Assessment. We know what a Privacy Impact Assessment is, but, under statute now, we're required to come up with a rubric, a template, to evaluate programs, that is a Civil Liberties Impact Assessment. One of the key concepts that we're trying to incorporate in there is, are you using the least-restrictive alternative to approaching this issue? In other words, can you achieve your same purpose by using a less-restrictive method of impacting people's civil rights and civil liberties?

Again, it gets back to the same question of minimization and the concept, I think, that Hamilton was introducing in the Federalist papers. The question, again, is whether the government should exercise everything that it can exercise, all the powers that it can exercise. So, I'm looking forward to hearing quite a bit of good feedback coming out of this. Thank you, to the Privacy Office, for driving this and being the catalyst for getting this going. With that, I will stop talking and turn it over to Peter to run the first panel. Good luck.

[Applause.]