

**Council of the District of Columbia, Committee on Public Safety and the Judiciary
Public Oversight Hearing on the Homeland Security and Emergency Management
Agency**

February 25, 2009

**STATEMENT OF THE CONSTITUTION PROJECT REGARDING THE
HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY'S
RULES FOR THE USE OF CLOSED CIRCUIT TELEVISION**

The Constitution Project thanks the Council for the invitation to participate in this public oversight hearing on the Homeland Security and Emergency Management Agency (HSEMA) and its Video Interoperability for Public Safety program.

The Constitution Project is a nonprofit organization in Washington, DC that promotes and defends constitutional safeguards by bringing together liberals and conservatives who share a common concern about preserving civil liberties. The Project's Liberty and Security Committee, launched in the aftermath of September 11th, brings together members of the law enforcement community, legal academics, former government officials, and advocates from across the political spectrum who develop and advance proposals to protect civil liberties as well as our nation's security. As part of this work, the Constitution Project released a report, *Guidelines for Public Video Surveillance: A Guide to Protecting Communities and Preserving Civil Liberties*, which presents 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. The report includes model legislation that can help jurisdictions to codify our recommendations.

Last spring, the Mayor and the Director of HSEMA announced that they would be creating the new Video Interoperability for Public Safety (VIPS) program, and implementation began on May 1st. According to a letter of May 30, 2008 from Darrell Darnell to Chairman Mendelson, the VIPS program creates a network of 5,265 cameras from eight separate District agencies, with centralized monitoring overseen by HSEMA. The eight agencies include the D.C. Public Schools, the Metropolitan Police Department, the Department of Corrections, and the Department of Transportation. In response to a question from Chairman Mendelson about the specific law enforcement purpose for the new network, Director Darnell replied in this letter that the VIPS program “was not created as a law enforcement tool.”

Representatives of the Constitution Project have testified and filed comments before the DC City Council on several occasions regarding the Metropolitan Police Department's (MPD) video surveillance system, and concerning the new VIPS Program. The Project submits this present statement to commend certain parts of HSEMA's proposed rules for the VIPS program, to point out the significant regulatory gaps that

remain, and to express concern over the “cart before the horse” approach for adoption of the VIPS program.

The Failure to Demonstrate Need for a Vast Camera Network

On November 7, 2008, HSEMA published a Notice of Proposed Rulemaking outlining rules for the “use of closed circuit television” and the VIPS program. In the Notice, the stated purposes for the VIPS network include coordinating safety, providing a common framework for video surveillance across the District of Columbia, improving emergency response time, and providing the District with an advanced video monitoring capability. To the extent that the VIPS program and the proposed rules create operating guidelines and implement privacy protections where none previously existed, the Constitution Project fully supports that effort. *However, there is no need to create a vast network centralizing the monitoring of over 5,200 cameras in order to improve coordination and implement uniform operating guidelines.*

If any such network is to proceed, it is critical that additional regulations be adopted to address the particular issues created by linking together so many cameras and by networking cameras that were installed for very different purposes. We outline in more detail below both our support for certain provisions of the proposed rule, and the reasons why there is much more work to be done.

At the Committee on Public Safety and Judiciary Public Oversight Hearing on the VIPS program held on June 2, 2008, representatives of the Constitution Project and other groups voiced strong concerns regarding the proposed consolidation of monitoring for thousands of video cameras throughout the city. A critical concern remains whether the centralized surveillance network is needed at all, and one area in which the regulations fall short is in establishing the basic need for creation of a centralized network of cameras. Director Darnell’s letter of May 30, 2008 to Chairman Mendelson states that the purpose of VIPS is to “allow the city to better manage, coordinate, and oversee video monitoring that is already taking place.” But the city can improve management and coordination without joining thousands of cameras on a single centralized network. While a shared set of policies and uniform regulations is a worthy goal, HSEMA has not demonstrated, nor even attempted in its proposed rules to address, why the 5,265 cameras in the District must be connected to achieve such standardized rules.

The rationales provided by HSEMA might justify standardization of camera equipment and operational policies. However, the need for a system intended to centralize the monitoring of thousands of District security cameras, including images from cameras in schools, public housing complexes, government offices and DC jails has not been demonstrated.

The Failure to Develop Policies Before Implementing the VIPS Program

When the VIPS program was announced, the Mayor and HSEMA stated that they would create a vast network of cameras with some type of operational guidelines to

follow later. Under this “cart before the horse” approach, the press release announcing the VIPS program explained that *during* phase one of implementation, HSEMA would consolidate monitoring of cameras operated by four separate District agencies, and also work to develop standards and establish policies. Moreover, even though HSEMA has already begun implementation of VIPS, we are told that HSEMA has not yet even submitted its proposed rules to the City Council for the 45-day period of review promised in the November 7, 2008 Notice of Proposed Rulemaking.

These plans raise two fundamental concerns that this Council should examine and resolve. First, HSEMA should think through and demonstrate to the Council whether such a centralized surveillance network is needed at all, and if so, to what extent. Second, if the Council approves HSEMA’s plans to proceed with some type of centralized network, HSEMA should be required to develop complete guidelines for operation of the system, including a robust privacy policy and rules that address the specific challenges posed by a vast camera network, and have those guidelines approved by the Council *before* any further implementation of the VIPS program.

If the linking of cameras under the VIPS program is to proceed, guidelines for the new network must include limitations to ensure the camera system is only used for its intended purposes, protection for First Amendment rights, anti-discrimination rules, limits on access to network data, data safeguards and retention policies, stringent training of operators, public notification and comment obligations, and periodic audits to assess effectiveness and compliance with governing rules. These rules should be submitted to the City Council for review and approval or modification.

Certain Provisions of the Proposed Rule Would Provide Important Safeguards

The rules proposed by HSEMA do include some important protections for the privacy and individual rights of District residents. The policy section specifies that video surveillance may not be used to infringe First Amendment rights, and also provides that the system’s operators may never target individuals for observation based on classifications protected by law such as race, gender, or sexual orientation. Additionally, the proposed rules contain a requirement for annual audits to ensure compliance with the regulations, and a data retention policy which limits retention of recordings to 10 business days, with an exception for footage that contains evidence of criminal activity or of an occurrence that may subject HSEMA to civil liability. The proposed rules also include provisions requiring public notification of camera locations, the opportunity for public comment on proposed new camera installations, and sanctions for operators who misuse camera systems. Significantly, as requested in comments the Constitution Project filed last July in response to the June 20, 2008 Notice of Emergency and Proposed Rulemaking, the rules proposed in November now include a specific requirement for training of all operators regarding privacy issues.

All of these requirements would provide critical safeguards for residents’ civil liberties, and they should be retained as part of any final rulemaking. Many of these provisions were modeled on the rules already governing the MPD’s video surveillance

system. District representatives have stated that several of the agencies to be included in the VIPS program had no rules or guidelines governing operation of their video surveillance cameras. To the extent that these proposed rules would provide some privacy protections where none existed previously, these safeguards should be adopted and made permanent.

Remaining Gaps

Unfortunately, however, the proposed rules to govern the VIPS program are woefully inadequate, and the gaps remaining are vast. If HSEMA is able to justify its networking plans to the City Council, it should adopt comprehensive guidelines that fill these gaps before proceeding to implement the network.

First and foremost, the proposed rules fail to address the issues raised by the very fact of creating such a vast network of cameras. These rules were largely modeled on those governing the MPD camera system. *While the MPD rules include many important safeguards and constitute one of the best sets of guidelines in the nation, they were developed to govern a camera system of fewer than one-hundred cameras, not a network of over 5,200 cameras.*

The gaps in the proposed HSEMA rules include:

- There are no articulated limits on who can access network data, and there are no limitations on which cameras each monitor may access;
- There are no specified limits on the purposes for and conditions under which agencies should have access to each other's cameras;
- The rules lack any safeguards for the rights of juveniles and the special needs of children whose images will be captured on cameras in public schools;
- The rules fail to provide a training program to educate operators about the very different purposes and uses of the cameras previously operated by separate agencies. The purpose and nature of an elementary school camera is vastly different from a Department of Transportation camera, which in turn is vastly different from a Department of Corrections camera. The guidelines must include specific operator training that acknowledges the differences in purpose of cameras for each agency, and the special issues which may arise within these specific areas.
- Such an extensive network of cameras dramatically increases the risk of breaches of data security by hackers or even inadvertent disclosures. It is critical that the rules governing any such camera network include robust protections for data security, including technological safeguards

against the risks of loss or unauthorized access, destruction or disclosure of video surveillance data.

Accordingly, the current proposed rules should be considered as merely a starting point. While they should be implemented as an important first step to govern operation of those cameras that previously had no rules in place, HSEMA should not proceed with the networking aspect of the VIPS program without further justification of the need for such a network and further development of appropriate safeguards. Even if the networking is permitted to proceed, a thorough set of guidelines for the VIPS program's operation must be put in place *before* further implementation of the network's linkage of the 5,265 District cameras. We urge that HSEMA submit additional proposed rules with full and appropriate safeguards, including a privacy policy, to govern operation of the VIPS program. These rules should be approved and modified if necessary by the Council before HSEMA should be permitted to proceed with implementation of the VIPS network.

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Electronic copies of the *Guidelines* and accompanying model legislation can be found on the Constitution Project's website, at
http://www.constitutionproject.org/pdf/Video_Surveillance_Guidelines_Report_w_Model_Legislation4.pdf