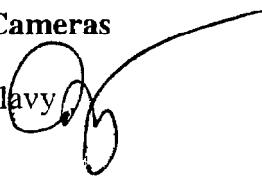


MEMORANDUM

TO: Ad Hoc Committee on Security Cameras

FROM: Assistant City Attorney Jennifer Zilavy 

DATE: February 2, 2003

Video Surveillance

Currently, there are no federal laws that specifically regulate the use of public video surveillance. The lower court decisions on the use of video surveillance have relied upon Supreme Court rulings regarding audio surveillance cases.

The Wisconsin Constitution, Article 1, Section 11¹, contains language similar to the Fourth Amendment of the United States Constitution. Whether video surveillance is an appropriate tool to use and whether it would withstand constitutional muster is largely based upon the principles surrounding the concept of whether an individual has a reasonable expectation of privacy.

Reasonable expectation of privacy has been discussed in numerous cases. In *Katz v. United States*, the U.S. Supreme Court held that the 4th amendment affords constitutional protection to those areas, both private and public, in which a person reasonably expects privacy. The reasonable expectation of privacy is basically a two-prong test as follows: (1) A subjective expectation of privacy must be held by the individual; and (2) this privacy interest must be objectively recognized by society.

Courts that have looked at video surveillance have used this 2-prong test in determining whether there was a reasonable expectation of privacy. Courts have upheld video surveillance in places where individuals do not have a reasonable expectation of privacy, such as public streets and sidewalks, employee work areas (open areas in the workplace) and public school classrooms.

There is also a concept in law enforcement known as the "plain view doctrine." Basically, when an item is in the plain view of an officer who has the right to be in the position to have the view, the object is subject to seizure and may be introduced into evidence. Video surveillance in most public areas equates with the plain view doctrine.

It should be noted that the concept of video surveillance that this memo refers to is strictly limited to video surveillance without an oral communication.

¹ The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; ...