

See Pratt's comments inserted throughout:

TO Robert Pratt, Pratt on Texas
FROM: W. P. Vann, listener club member
SUBJECT: Red light cameras
DATE: December 23, 2006

Regarding the red light camera issue, I have listened on several days to your comments and have read the remarks you made to one of the local service organizations. I just today read the remarks of my friend David Spears. I also read the remarks in the paper by the traffic supervisor, Mr. Hart, the other day.

I have to say that I agree with more of what David said than what you have said. As you stated, his comments were very well thought out and sensible, and I hope that they are taken into account by the city. I particularly liked his suggestion to first try two simpler methods for greater safety: longer yellow and full-red times, although I suspect that longer yellows will just be taken into account by the aggressive drivers who now are so prone to "beat the lights."

[This point demonstrates the fact that red light cameras will do little to nothing to stop those who intend to run the lights. They are already risking speeding tickets, expensive moving-violation light-running tickets, and being involved in a deadly accident and doing so willfully. Thus, the cameras have little safety value with the most dangerous element on the roads and the tickets they receive via this 'civil' citation system will not lead to a loss of license or increase in insurance. There is a difference in our arguments because the points are coming from different directions. David's points are made from a practical, how-to-do-it-best point of view. I can argue from there as well and have with my opposition to having contracts with infraction quotas. However, my main point of view is almost exclusively related to constitutional issues which are all inclusive and of paramount importance.]

I will ask him where he learned that these methods are proven to improve safety and ask him to communicate the same to the city.

I am also hopeful that some of the concerns that you have highlighted will be considered by the city and taken into account when final decisions and possible contract terms are made. You have objected mainly to the lack of "facing your accuser" as a constitutional issue and have expressed concern about the provisions in some of the camera contracts of other cities. You have also likened this issue to denying free speech to the Klan and searching an individual's home or office without probable cause (violation of privacy).

[I've not argued a right to privacy as such is not explicit in the Constitution but does exist circumstantially in being secure under the wording of the 4th Amendment, to be covered below.

I have not likened the situation to free speech but rather to a violation of our constitutional rights which are fundamental to all other laws and elements of our country. No law or ordinance is acceptable if it does not cleanly pass through the filter of the Bill of Rights and other constitutional restrictions upon government. The point being made by me is that you cannot pick and choose which rights you respect and which you can ignore. Just because most people are more familiar with, and more understanding of, the right to free speech than they are with due process and other more technical and legal protections, does not make it acceptable to take advantage of this lack of knowledge and infringe up those other rights. Yet this is frequently done by government, often with the support of the public seeking a sense of "security". However, the majority liking such actions does not them acceptable. In fact, the Bill of Rights is specifically there to protect the minority from the majority. It was demanded so that large majorities could not, through their votes, create a tyrannical government. Our founders were very much against direct-

democracy and fearful of its excesses. For this reason we are a Republic but most do not know what this means.]

Taking these in reverse order, I think it is way out of line to make the latter comparisons.

[See previous response plus this: I find it amazing that otherwise intelligent people seem to think that speaking of the constitution is somehow old-fashioned and instead want to take an "issue-by-issue" approach to government actions. That case-by-case approach, where one man is fined nearly nothing and another fined enough to ruin him for the same supposed crime, was a specific objection to British justice in the Colonies at the time leading up to revolution. Capriciousness is what it is called.]

The city streets are not one's personal property and drivers are obliged to obey the law when they operate a vehicle off their own property.

[This is an example of the lack of knowledge many have about the Constitution and the Bill of Rights. Our governing documents do not create a great divide of society between what happens in public versus what happens in private. Laws relate equally to actions in public or in private. It is still illegal to commit theft in private just as it is also illegal for a policeman to detain you for no reason, beat you, or otherwise violate your rights because you are both in a public space. Our rights have nothing to do with being in a public versus private space except those enumerated rights which specifically refer to a person's private property.

Additionally, and more contrary to your proposed position is the wording of the 4th Amendment which it is clear that those who talk about streets being public places, have not reviewed. Here it is:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Note that it says nothing to the effect of being secure only while in your home or other non-public space.

It says "secure in their persons, houses, papers, and effects" not persons, papers and effects held inside of a home or other private property. It means that your physical body is free of government search even when on a public street. Your papers and effects (belongings including your car) are not subject to search either. The only exception is with probable cause which is what makes a search reasonable.

An officer of the law cannot say you look generically like an embezzler and because of that judgment, demand to search your briefcase even if you are on the most public of space. He must have probable cause that is specific to you and to a specific crime. For example, if a bank was just robbed and the description relayed to him fit you, he would have the right to stop and investigate you. However, he cannot stop and investigate you because you are approaching a bank and look suspiciously as if you are going to commit a robbery.*

And here stands the problem with red light cameras as the point of the 4th Amendment and being secure in your person and effects. The video system observes and stores your behavior in a file for government use whether you run the red light or not. Such records are the opposite of being secure in your persons and effects. (More on this and the problems in using the video obtained prior to an infraction occurring below.)

It is not the role of government to observe the actions of citizens other than in an incidental manner such as when a human officer observes his environment. Having those observations recorded for further law enforcement review, when there was no reasonable expectation that a crime had been committed the moment of recording, necessary to justify the recording to begin with, is a great extension of government invasiveness. It is much different than unintended recording of a crime through happenstance.

For example, an office has reasonable cause to pull over a vehicle, he then starts his video recording unit, all justified because there was a reasonable cause for the stop, and that video happens to catch another crime in the recorded frame. That would be incidental. The red light

cameras video the vehicle approaching the intersection before evidence develops that the driver ran the red light. That evidence is then used to determine whether a citation should be issued. And while that sounds reasonable, it does not meet the 4th Amendment test in the opinion of many legal scholars. The government did not have a right to specifically observe your behavior and record your actions prior to you committing an offence.**

Another danger is the following scenario. Suppose we pass a smoking-ban, as many have, that includes cars, the government would be able to watch a video and see drivers smoking then cite them based upon their license number being visible. The same could be done with with cell phone bans or seat belt laws. There is no end. Many citizens might support such actions but to do so is not American and does not in any way meet the spirit of the 4th Amendment of you being secure in your person and effects.

Review the Amendment's wording again while remembering that observation of action can be the same as retrieval of physical evidence. A search is to obtain evidence that a crime has been committed or that a person is culpable in a known crime. Wire-taps require a warrant because you have a reasonable expectation of being secure in your communication which is related to papers (letters when the constitution was written and it is still illegal to intercept and open other people's mail.)

Here is an example related to video recordings. If I own a store and video tape my parking lot including the public street adjacent, I do not have to turn that video over to police without a warrant even if a crime was believed to have happened within full view of my cameras. I likely would volunteer to turn it over, but I do have the right not to do so if for some reason I fear retribution or just want to be obstinate. Such a decision would force the investigating officer to establish that I had the cameras and that it was reasonable to believe that the cameras captured a specific crime. This would have to be established in front of a judge who would then decide whether an invasion into my private papers and effects is warranted.]

Second, I have heard Mayor Miller answer some questions about this issue, and he says that Lubbock's contract, if one comes about, will not allow any change in any light timing and will not even have the number of violations affect the income of the camera suppliers, except in the number of cameras purchased, installed, and maintained.

[This is tough statement with which to deal without sounding mean but not to admit the truth is folly. To accept this position requires one to believe, and have faith in someone, who has demonstrated strongly: 1) that he lies even when issuing prepared thought-out positions; 2) that he will study the issue and paperwork enough to know what is at stake when in a year long campaign for mayor he did not bother to study even the basic financial position of the city, and 3) that Miller takes these objections seriously enough to take action on them.

In the last Mayor's night in Miller told a citizen that he believed the cameras are successful at saving lives, not due to any peer-reviewed studies proving it, but because cameras had been successful in El Paso and Garland. Garland's data is spotty at best and represents about four intersections for less than a year. El Paso is even less worthy of citation as a source. El Paso just installed cameras this Fall and did not start issuing tickets until 31 October 2006. The Mayor saying that El Paso has been successful with just about a month of data available shows that he does not study his material and is quite loose with the facts! You'll find a story on my website from El Paso just this past week with the police saying that they are perplexed that people are still running the red lights by the hundreds even with the threat of the tickets.]

They will be paid a flat fee per camera. I cannot see why other worries that you and David and others have cannot be solved by the right kinds of contract provisions.

[The flat fee per camera deal is not how Lubbock has written its request for quotes, all is based on revenue sharing. To date, no red light camera contract in the country has been entered into that does not require quotas and other things the council thinks they may can get out of contract for Lubbock. Additionally, the Mayor has stated unequivocally that he is for the cameras to produce revenue. A flat fee paid to operate the cameras would take all of that revenue or more.]

Third, I see the “facing your accuser” constitutional issue with this modern technology (video recording) as little more than getting a parking ticket after a parking meter (old technology) runs out.

[Again, you fail to take a look at how parking tickets are issued. The parking patrol officer does not, and cannot, write you a parking ticket because he assumes or thinks you will stay overtime. Instead, he marks the car and returns in a length of time which exceeds the maximum allowed. That mark tells him that you have likely overstayed the limit. He then records your license number, car description, and issues a citation, only AFTER there is evidence that an infraction has occurred. The same with a meter, the officer sees the expired message and then issues the citation. Even with new camera meters this is the procedure. The meter does not take a photo of each car that parks, but only take a photo when the expiration point is reached. Thus the photo is taken only after a sensor determines that a car is still present but that paid time has run out.

There is a much bigger reason that this is not analogous to the red light cameras though. The red light cameras with civil fines create a situation where the same action, running a red light, has two different penalties. In the case of cameras it is not a crime and only a civil offence with a low fine. If an officer of the law had issued the citation it would be a moving violation and subject to a much higher fine. A basis of our legal system is that you cannot have selective, capricious punishment. The same crime must receive consistent and similar punishment given similar facts. This is the basis of a major class action lawsuit just being filed against the City of Davenport, Iowa. It will likely be successful but pertains to their state constitution and thus will initially apply only to Iowa.]

In both cases you simply get a notice (on your car or in the mail) that you violated a law and owe a fine. There is really no personal accuser in either case.

[I've answered this in one part above. There is another point to this of which you are obviously ignorant. With a parking ticket there is an accuser. If you contest and demand a hearing the parking attendant who issued the citation is the accuser and can be questioned in court.

You are likely not aware that a speeding ticket is not a charge. It is a notice of a charge to be filed if you choose not to pay it. You may request that a charge be issued and then you can contest the matter in court. And, you do have the right to face your accuser which is always a human being. If the charging officer does not then show up for court, you win no matter what his radar or car video equipment says. Even if the state were to provide more than the signed and sworn statement of the officer, such as a video from the patrol car, you would still have the charge dismissed because of your right to face your accuser codified in the 6th Amendment. (There are a few exceptions to this related to the death of a witness.)

The lack of understanding of the fundamentals of our legal system is dangerous and allows government power to expand at the expense of Liberty.]

A technological device has made the “accusation” and the city just processes the paperwork. Are you now going to campaign against parking meters?

[Again, you've failed to recognize how the process works. The meter does not make a charge, a parking officer does based upon the evidence at the scene. The red light review officer does indeed take a similar role to the parking officer and this is where much confusion exists. With the parking meter, even a camera meter, evidence is not gathered against the citizen until after a violation is committed. The red light camera system collects evidence, transmits it via wireless device, and records data on citizen behavior, with the intention of using the data for prosecution, BEFORE there is evidence that a violation has occurred.

The system videos traffic showing an approach to the intersection, again before an infraction has occurred, and then attaches that video as evidence to the still-photo taken when the sensor determines a red light was run. This means that the evidence that is used to determine intent of the driver was obtained through unwarranted spying. The still-photo was taken just as with a

parking meter that expired and is acceptable, within this limited argument only as other problems exist under other legal concepts, but the evidence used by the police (government) to determine intent and whether a citation is to be issued is evidence obtained through an unwarranted method. (If you say this is the only way it can work effectively then too bad, the system is not compatible with Liberty.) This is precisely why all across the USA these citations are being deemed civil. Even the supporters of these cameras know this argument to be true and the quickest way to stop the money-train from these cameras would be to issue a criminal citation with them. That would guarantee a rapid hearing in the courts and appellate systems which would undoubtedly find the cameras as incompatible with the 6th Amendment.]

I am not really for or against red light cameras. I do expect that the purpose must primarily be safety, and recommend that reliable data be found about accidents (by type, seriousness, and time since the cameras were installed) before they are adopted, at least on an extensive basis. Perhaps David's longer yellow and full-red times should be tried first.

[Certainly lengthening the yellow light times should be tried first. I've read all of the studies about this matter and none conclusively show that the cameras provide significant reduction of collisions. However the one study that Gere Hart of the City, the primary proponent of these cameras, could cite on my show does make one conclusive determination: that lengthening the yellow light time does significantly reduce collisions. Mr. Hart could not, or would not, answer why he has not attempted this first along with a solid measurement system to judge effectiveness.]

Maybe the only reliable data can come for Lubbock's own first trials. Mayor Miller said only a few cameras would be tried at first.

[So because we violate protected rights in only a few places as a test it makes it OK?

I've pressed Hart to explain why he did not propose the cameras be used at all major intersections in Lubbock if, as he insists, they are proven to save lives. He cannot explain this because the reason is counter to other claims and we know beyond any doubt that this is a fact: the vendors will only pay to place and operate the lights in very high traffic intersections. Not even high collision intersections, but high traffic intersections only. (Due to environmental conditions you can have a dangerous, high fatality intersection that has much lower traffic relative to many others.) The vendors are in this to make money, not to reduce red light running and thus they want the highest number of infractions per day. In El Paso it was admitted in the Times that the cameras were not installed at the highest fatality intersections in every case but that higher traffic intersections were used.

We also know that ACS has required cities to obtain a minimum of 10 infraction tickets per day (300 per month!) just to keep the cameras at intersections even if the vendor is getting all the infraction money. When splitting the fines with the municipalities as is proposed in Lubbock, the vendors require even higher minimums of red light running per day to keep the cameras. This requires a city to enter into an agreement to ensure that a high number of red lights will be run - how does this mesh with public safety? It does not and that is why we were able to get the council to say, non-binding though, that they would not support any contract with quotas of ANY type.]

I believe that the objections and concerns voiced by citizens like you and David will help provide the best possible resolution of this issue.

W. P., listener club member

***This is why highway stops for insurance or DWI, or airport security screening, etc. require that each citizen go through the same procedure. The government can in no way simply single out certain people to stop and search without a strong reason. In the case of security, the public good is deemed to justify the search but all must be treated equally.**

****This is why many have argued for decades that radar detection of speed is also a violation. The government has, to date, gotten away with it because a live officer is present and can testify that he pointed the gun at a specific vehicle because his observation was that it was traveling "too" fast, whatever that means. The speed cameras do not have this convenient loophole and are also being challenged nationwide in the courts. It will take a few years for appeals to begin making their way up the judicial ladder.**