Chapter XII

Informed Consent and Electronic Monitoring in the Workplace

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Abstract

The use of electronic monitoring devices in the workplaces of the private sector of capitalist economies is considered from the vantage-point of the doctrine of informed consent, a doctrine that is understood, following Clarke (2001), to be the basis for a general analysis of consenting relations. It is argued that electronic monitoring in workplace situations where employee consent is possible is unacceptable without that consent. The consent-based argument developed is compared with arguments aimed at restricting the use of electronic monitoring in the workplace that are grounded in the values of privacy and autonomy. It is argued that, whereas a consent-based argument leads to the aforementioned decisive conclusion, arguments that are grounded in the values of privacy and autonomy do not lead to decisive conclusions that could be used to warrant restrictions on the use of contemporary electronic monitoring devices in the workplace.

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In recent years there has been a steady increase in the number of electronic devices available that employers can use to monitor the behaviour of their employees. Employers can, and do, use all-purpose security devices such as closed circuit television systems, audio monitors, and satellite tracking systems to monitor employees. They can also utilise sophisticated software systems that enable them to monitor their employees’ keyboard use, read their employees’ e-mails, and determine which Web sites their employees have visited. Telephone calls can be monitored, and information gleaned from these can be subject to sophisticated analysis. For example, a device called the “Truth Phone” can be used, which analyses voice stress during telephone calls in an effort to detect lying (Davies, 2003).

Perhaps the most unusual electronic surveillance system is the “Hygiene Guard,” which has been used on kitchen staff at the Tropicana Casino in Atlantic City and in a few other workplaces.¹ This is an electronic surveillance system that is designed to monitor hand washing in a workplace bathroom. Employees being monitored by the Hygiene Guard wear a “Smart Badge” on their shirt or blouse. The Smart Badge communicates with sensors in the bathroom to determine whether or not an employee has used a soap dispenser, and whether or not the employee has spent a required period of time standing in front of a sink with water running (O’Harrow, 1997).

A recent survey conducted by the American Management Association found that 73 percent of all American companies engaged in some form of electronic surveillance of their employees. This percentage was a significant increase from the 1997 rate of electronic surveillance amongst American companies, which was an already high 63 percent (Blackwell, 2003).² In many cases, employees who are now subject to electronic monitoring have been accustomed to being able to make phone calls without being monitored, send e-mails without them being read by their workplace supervisor, and use the workplace bathroom without their bathroom habits being known to their employers.³ If the rate of introduction of electronic surveillance into the workplace continues as it has over the last few years, then the few remaining workplaces that are not subject to electronic monitoring will come to be perceived as relics of a bygone era.

Academic commentators who have discussed ethical issues raised by workplace surveillance have tended to focus on the issue of privacy.⁴ In this chapter, I will take a different approach, concentrating on the issue of consent to electronic monitoring in the workplace. We return to consider the issue of workplace privacy, as well as the issue of workplace autonomy, having acquired a
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