

Professionals and the Ethics of Workplace Surveillance

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Introduction

- **Bossware**

- Digital technology intended to enable employers to monitor worker productivity
- Allows firms to count employees' keystrokes, observe workers' web browsing, monitor workers' email conversations, calculate metrics for things such as workers' email response time and network connectivity, tap into workers' mobile calls, and monitor workers' attention during meetings. (Bailey, 2022, p.534)

Introduction

- Pre pandemic only 10% of surveyed businesses used bossware.
- 30% did so by 2021 (Klosowski, 2021).
- 2022 survey of 1,250 employers found that “60% of companies with employees who work remotely use monitoring software to track employee activity and productivity” (Digital.com, 2022).
- 2021 study of 2000 employers (ExpressVPN, 2021) put this number at 78%.

Introduction

- **Standing concerns about workplace surveillance:**
 - Employee privacy (Indiparambil 2019; Miller and Weckert 2000; Palm 2009)
 - Employee autonomy (Brey 1999)
 - Health and safety in the workplace (Scherer 2021)

Introduction

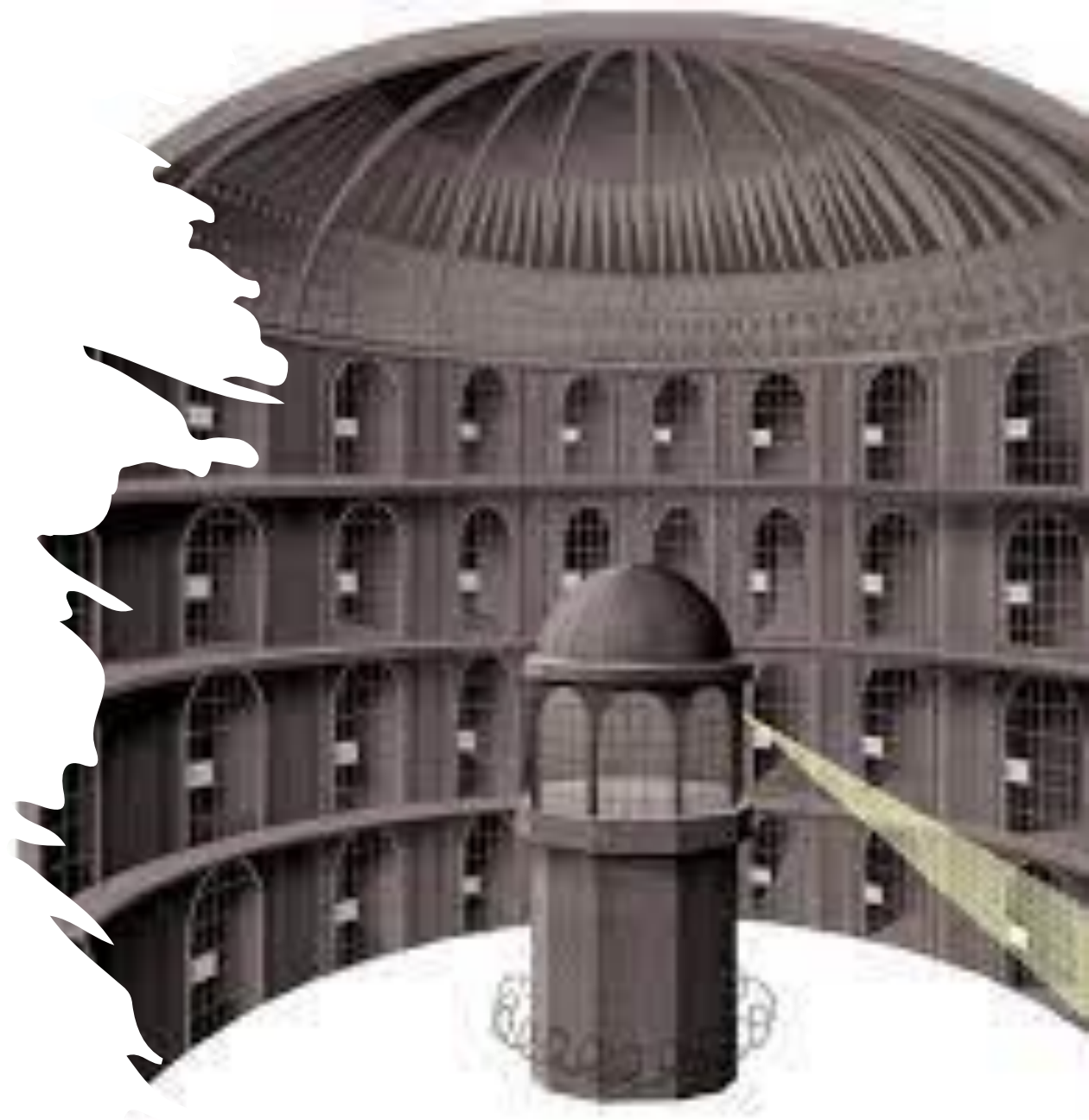
- Traditionally only low skilled workers were surveilled at work:
 - Factory labourers
 - Workers in Amazon distribution centres
- Recently skilled professionals have been subjected to workplace surveillance
 - Hospital chaplains
 - Social workers

Plan

- 1) Introducing surveillance
- 2) Introducing professionals
- 3) How surveillance compromises professional obligations
- 4) The principle of *unhindered professionalism*
- 5) What unhindered professionalism means for workplace surveillance
- 6) Conclusion

1. What is surveillance?

- Surveillance: the act of paying close and sustained attention to some entity, individual or group, for some particular reason (Macnish 2020).
- Examples:
 - Bentham's panopticon
 - CCTV
 - Covid track and trace systems



1. What is surveillance?

- Clearly justified
 - CCTV in retail stores to deter and punish stealing
 - Supermarket collecting information about their own customers' spending patterns in that supermarket, to get a clear sense of customer preferences that they then go on to satisfy.
- Clearly unjustified
 - a business paying a hacker to surveil the confidential data of their rivals
 - 'peeping Tom'

2. Who are professionals?

- Loose sense: Anyone who works in an office – a ‘white collar’, rather than a ‘blue collar’ employee.
- **Specific sense:** recognized professions
 - For example: medicine, law, psychotherapy
- Specialist training
- Being a professional requires:
 - Specialist training
 - Maintain professional association membership
 - Meeting professional obligations
 - Upholding a professional code of ethics
 - Meeting expected professional standards



2. Who are professionals?

- Professional associations have monopoly control over the provision of particular services on the understanding that they provide the services to a high standard (Cholbi 2018).
- Hard limits on what employers can ask a professional employee to do at work.
 - An employer cannot instruct a doctor or a nurse to directly and deliberately harm a patient.
 - An employer cannot instruct a lawyer to cease representing a client.

3.1. Surveillance can undermine confidentiality

- Psychotherapists routinely assure their clients that any information that they disclose about themselves will be treated confidentially.
- Employer surveillance violates client confidentiality.
- Psychotherapists could ask for consent to surveillance but even if it were granted it would damage the therapeutic relationship with their client.
- Surreptitious surveillance raises problems of informed consent.

3.1. Surveillance can undermine confidentiality

- Confidentiality a concern in other professions
- Patient confidentiality in healthcare
- Client legal privilege in law

3.2. Surveillance can undermine intellectual privacy

- Lawyers considering how best to defend a client accused of a crime need to be able to consider a range of possible lines of defence before determining which is likeliest to succeed.
- Doctors considering how best to treat a patient may need to consider a range of different possible treatments or procedures before determining which to recommend to a patient.
- Process of idea generation involves trial and error. Very often, what seems like a good idea at the time turns out to be a terrible one after testing or further reflection. But to test or examine ideas, we again turn to other people — our friends and confidants, our family and colleagues. We rely on these people for their frank and confidential assessments of whether we're on to something, or whether we're crazy. (Richards 2015, pp. 98-9).

3.2. Surveillance can undermine intellectual privacy

- An employer without suitable professional expertise may misunderstand the ideas under discussion and react inappropriately.
- Recordings of discussions between professionals at work may leak to outsiders who may misunderstand and misinterpret the ideas under discussion.

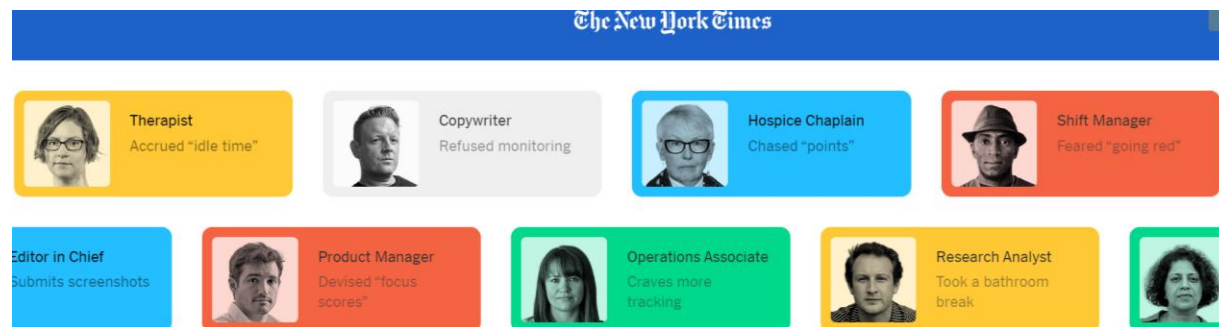
3.3. Surveillance can incentivize violation of professional obligations



The Rev. Margo Richardson
Hospice chaplain

Each morning, Ms. Richardson and her colleagues **had to project how many “productivity points” they would accumulate** during the day’s work. **But death defied planning.**

Tamir Kalifa for The New York Times



The Rise of the Worker Productivity Score

Across industries and incomes, more employees are being tracked, recorded and ranked. What is gained, companies say, is efficiency and accountability. What is lost?

By [Jodi Kantor](#) and [Arya Sundaram](#)
Produced by [Aliza Aufrichtig](#) and [Rumsey Taylor](#)
Aug. 14, 2022

3.3. Surveillance can incentivize violation of professional obligations

Sometimes the chaplains sacrificed points, risking reprimand or trying to make them up later. But their jobs depended on meeting productivity point requirements. So they shifted whom they saw when, the time they spent and the depth of their relationships with the dying, some said. Group settings like nursing homes were rich sources of points. Single patients in homes dotting the greater Minneapolis-St. Paul area were not.

“This is going to sound terrible,” Mx. Thonvold said, “but every now and again I would do what I thought of as ‘spiritual care drive-bys’” to rack up points. If a patient was sleeping, “I could just talk to the nurse and say, ‘Are there any concerns?’ It counted as a visit because I laid eyes.” (Kantor & Sundaram, 2022)

3.4. Surveillance can upset the balance of power



4. The principle of unhindered professionalism

- **Unhindered professionalism:** Employers ought not to significantly hinder the ability of their professional employees to meet their professional obligations.
- **General duty:** A ought not to prevent or make it significantly harder for B to discharge B's moral duties (Goodin 2020).

4. The agency-based argument

- **For the general duty:** letting someone else do their duty is good for that person's moral agency, and we ought not to stand in the way of what's good for others' moral agency.
- **For unhindered professionalism:** letting a professional do their professional duty is good for their moral agency, **violations of UP involve substantial interferences with the moral agency of professional employees, and so employers ought to uphold UP.**

4. The outcomes-based argument

- **For the general duty:** we ought to allow others to do their duties b/c the fulfilment of moral duties tends to lead to good outcomes.
- **For unhindered professionalism:** employers should not hinder professional employees' abilities to uphold their professional obligations b/c upholding such obligations has good overall outcomes, **for employees, for clients, and for professional organisations.**

4. Further questions

- Is the duty to obey unhindered professionalism pro tanto or an all-things-considered?
- To whom is the duty of unhindered professionalism owed?

5. Implications of unhindered professionalism for workplace surveillance

- Surveillance should be limited to 'open activities'
- Performance monitoring should employ evaluative standards that are sensitive to the point and purpose of the job
- Performance monitoring metrics should be a reliable proxies what's being measured

6. Conclusion

- Workplace surveillance can be used in ways that compromise professional obligations
- When workplace surveillance compromises professional obligations, the principle of unhindered professionalism is violated
- Unhindered professionalism restricts permissible uses of workplace surveillance

References

- Bailey, D. E. (2022). Emerging Technologies at Work: Policy Ideas to Address Negative Consequences for Work, Workers, and Society. *ILR Review*, 75(3), 527-551.
- Brey, P. (1999). 'Worker Autonomy and the Drama of Digital Networks in Organizations', *Journal of Business Ethics*, 22, 15-25.
- Cholbi, Michael. (2018). 'Public Cartels, Private Conscience', *Politics, Philosophy and Economics*, 17, 4, 356-377.
- Digital.com. (2022, January 31). 6 in 10 employers require monitoring software for remote workers. Digital.com. Retrieved October 28, 2022, from <https://digital.com/6-in-10-employers-require-monitoring-software-for-remote-workers/>
- ExpressVPN. (2021, June 16) ExpressVPN survey reveals the extent of surveillance on the remote workforce, ExpressVPN. Retrieved October 28, 2022, from <https://www.expressvpn.com/blog/expressvpn-survey-surveillance-on-the-remote-workforce/>
- Goodin, Robert. (2020). 'The Duty to Let Others Do Their Duty', *The Journal of Ethics*, 24 (1): 1 – 10.
- Kantor, J., & Sundaram, A. (2022). Workplace Productivity: Are You Being Tracked? The New York Times. <https://www.nytimes.com/interactive/2022/08/14/business/worker-productivity-tracking.html>
- Indiparambil, J. J. (2019). 'Privacy and Beyond: Socio-ethical Concerns of 'on-the-job' surveillance', *Asian Journal of Business Ethics*, 8, 73-105.
- Klosowski, T. (2021, February 10). How Your Boss Can Use Your Remote-Work Tools to Spy on You. *The New York Times*. <https://www.nytimes.com/wirecutter/blog/how-your-boss-can-spy-on-you>
- Macnish, Kevin. (2020). 'Surveillance Ethics', *Internet Encyclopedia of Philosophy*. <https://iep.utm.edu/surv-eth/>
- Miller, Seumas and Weckert, John (2000). 'Privacy, the Workplace and the Internet', *Journal of Business Ethics*, 28, 255-265.
- Palm, Elin. (2009). 'Privacy Expectations at Work - What is Reasonable and Why?', *Ethical Theory and Moral Practice*, 12: 201 - 215.
- Scherer, M. (2021). CDT Report – Warning: Bossware May Be Hazardous To Your Health. Center for Democracy and Technology. Retrieved November 7, 2022, from <https://cdt.org/wp-content/uploads/2021/07/2021-07-29-Warning-Bossware-May-Be-Hazardous-To-Your-Health-Final.pdf>