

FORGET BIG BROTHER AND BIG CORPORATION: WHAT
ABOUT THE PERSONAL USES OF SURVEILLANCE
TECHNOLOGY AS SEEN IN CASES SUCH AS TOM I.
VOIRE?¹

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It's not spying if you love someone.

–Broadway Danny Rose

*Unveiled women who show their hands and feet excite feelings of onlookers
without giving them the means to calm the excitement.*

–Iranian cleric

Much of the attention to contemporary privacy invading technologies focuses on the actions of governments and large organizations. Yet the actions of big brother and big corporation must be seen alongside of those of little sister and brother, not to mention mom, dad, friends and strangers. Interpersonal uses of the technologies are a prominent and prominently neglected part of the issue.

In contrast to much legal analysis involving formal doctrine, the sociologist approaches the topic of privacy by asking about role relationships and structures and processes of interaction. Several types of social structures define

¹ This is a revision and expansion of Gary T. Marx, *Technology and Gender: Thomas I. Voire and the Case of the Peeping Tom*, 43 THE SOC. Q., 407-433, 461-478 (2002).

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³ I am indebted to the Woodrow Wilson International Center for Scholars for the supportive environment in which this case study was developed. Many colleagues graciously contributed to Tom's maturing or perhaps immaturing. For comments and ratification I am grateful to Janet Chafetz, William Darrough, Murray Davis, Mathieu Deflem, Pascal Gensous, Pat Gillham, Martha Gimenez, Cy Goode, Erich Goode, Val Jenness, Rosabeth Kanter, Ian Kerr, Peter Klerks, Don Haines, Peter Klerks, Rolf Kjolseth, Rob Kling, Jesse Larner, Kevin Leicht, Richard Leo, Kay Levine, Kristin Luker, Josh Meisel, Glenn Muschert, Joane Nagel, David Nasatir, Christena Nippert-Eng, Eve Passerini, Gerry Platt, Nicole Rafter, Pris Regan, Nancy Reichman, Norma Rodriguez, San Antonio Rose, Jackie Ross, Barry Schwartz, David Shulman, Susan Silbey, Mary Virnoche, Jay Wachtel, Ron Weitzer, Lenny Weitzman and Susan Wilson.

surveillance relationships. There is an important difference between organizational surveillance (whether by government or by the private sector) and the non-organizational surveillance performed by individuals.⁴

In this article I offer a case study of how surveillance is experienced and used by a fictional character named Tom I. Voire. This article illustrates the cultural ambiguity, contradiction and conflict that swirl around the topic of privacy, making it an important public issue.

I seek a way to describe the variety of new technologies for collecting personal information. Any one technology considered in isolation may not seem that striking, and comparisons to early technologies can be made (e.g., before tapping into computers there was phone tapping and before that mail was secretly read). But it is the totality and rapid speed of recent developments that is noteworthy.

Empirical discussions of Fourth Amendment infractions caused by any single technology or a group thereof are lifeless and unable to convey the sense that something striking is happening in our society as surveillance technology is encroaching upon the rights of the person. The ability to cross personal informational borders goes far beyond large organizations. It involves all of us in our daily interactions with each other, as well as with organizations.

One approach to enliven the subject matter is to offer a detailed case study. But then I would be bound by whatever elements happen to be present in the literal case. I decided that it would be more useful to have an account that represented the broad range of surveillance technologies available today. I also wanted to convey the subjective sense of being a watcher and of being watched, including the emotional wallop that is often felt when covert surveillance is discovered, as well as the powerful attraction exerted by secret knowledge. To do this, I turned to the ideal-typical case of a clinical interview with Mr. Voire. Like any ideal type, this is a fictional account--but it is fictional only in the sense that it didn't all happen this way, even though it could happen and is largely based on actual cases and a composite from interviews.

Among some of the questions Voire's case raises for me are:

1. Why is this account troubling, or perhaps better, what is troubling about the account? How can we explain the gender differences in cross sex observation and use of surveillance technologies?
2. How should the feelings of a target be balanced with the intentions of the observer? Where does the "real self" stop and a fictional self begin? Can an individual be hurt by the collection of personal

⁴ This is one of a number of distinctions necessary to go beyond bland general pronouncements about surveillance. Among other categories where distinctions need to be made are goals, the kinds of data collected and the characteristics of the technology and data collection process (Marx, forthcoming). Initial articles are at garymarx.net.

information intended only for the private use of the collector? What is the harm from secret surveillance if the surveilled never knows?

3. Given the ambiguity, elasticity, and frequently conflictual nature of values and norms, how is it that we have the degree of social order that we have? Why aren't there many more Toms?
4. What should be done? What are the major structures, processes, and consequences in the relationships among various types of new information technology and laws, policies and manners? Are there examples of laws that effectively anticipate the problems of new technologies without inhibiting invention, commerce, and freedom of expression?
5. Is there a role for more fiction in legal and sociological academic writing (holding apart that too many of our critics already think that what we do is fiction)?

I. CLINICAL REPORT

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Pat. name: Thomas I. Voire AKA: Ret Marut; Alexandra Zuk; Zeke Hawkins; Joe Soy.

Pat. acct. # 21-18-19-13-1-18-20

Birth date: 6/6/66

Reporting physician: A. Funt

Presenting complaints: Subject seeks greater self-understanding and feedback on beliefs that he is a victim of a conspiracy to deny him his rights

under the First, Fourth, and Fifth Amendments as these involve collecting and publishing information. Possible sexual dysfunction, inability to distinguish media depictions from reality, voyeurism, paranoid and sociopathic tendencies.

Date: 2/21/02

Insurance routing: Medical Insurance Bureau, Boston

WARNING: This medical report is CONFIDENTIAL and only to be seen by the more than seventy persons (or others in their agencies) who have a legitimate professional reason to see it. If the free and open communication between patient and professional is to be maintained, there must be a relationship of trust in an environment in which patient confidentiality is respected, and information is widely shared on behalf of our interlocking goals of quality treatment, efficiency, and profit-maximization. Remember: there is no such thing as non-sensitive personal information. On the other hand, as professionals we know that knowledge is good and sharing it is a fundamental value of our occupational culture.

A. CHILDHOOD

Whatever his deficiencies, lack of imagination was not among them. Unlike Peter Sellers in the film *Being There* or Jim Carrey in *The Truman Show*, he knew the difference between media fantasies and reality. He simply preferred the media. Thomas I. Voire might have grown up like any other typical American child raised in Hollywood on comic books and television, with an actress-mother and a science-fiction-writing-father, were it not for the fact that he spent the first seven years of his life in a full body cast. While other children played, he could only watch. He became an astute observer of the mass media and of other people. A school counselor even suggested that he become a sociologist. He loved comic books. Superman with his x-ray vision and Brenda Starr who could become invisible by pressing her wrist were his favorites. The Saint, a TV program with the same theme, was also a favorite, as was Candid Camera. In our therapy sessions he frequently referred to events from reality TV shows.

As a frail youngest child, Tom was carefully observed by his parents. From an early age he was accustomed to being watched and to inspections and examinations of all kinds. His earliest memory is of a bright yellow transmitter with a bear decal that was always clipped on his pants. A warning alarm sounded if he strayed too far from his adult monitor. As he grew older the range expanded from twenty to a hundred feet before the alarm went off. Until he was fifteen, his room had an electronic listening device and a video monitor that permitted his parents to supervise him during commercial breaks from their television set. As a

teenager he gladly submitted to home drug testing, thankful that he had the kind of parents who cared about his well-being.

The ethos of surveillance to which he was subjected was reproduced in his world of play. The watched became the watcher. He was a curious and enterprising child who had many "toys" for listening and communication. As a child he loved to play peek-a-boo and hide and seek. Another favorite pastime was hiding behind the sofa when his older sister was with her boyfriends. He recalls being punished for lying on the floor and looking up when his mother's friends came to visit.

Noting his interest in technology, his parents gave him a high-powered telescope and (as he recalls), "this really boring book about astronomy." It became his favorite toy. But he didn't look at the stars. From his high-rise apartment he aimed it at other apartments. It never occurred to him that this might be a questionable activity, since so many people left their shades up and also had telescopes pointing outwards. He had a "super-amplifier" listening device with a headset, a stethoscope-like device that permitted him to hear breathing through a concrete wall, and a tiny voice-activated tape recorder. Other favorite toys included the "visible woman" (a plastic anatomy kit), a great collection of Barbie dolls and clothes and a game called "I spy."

Voire served in the Navy in 1986-9 where he was assigned to the equipment and maintenance section of a signet (signals intelligence unit). He received a general, rather than an honorable, discharge. He did not wish to elaborate on this. But he acknowledges difficulties as a result of (1) exposing his unclothed posterior from a moving military vehicle and (2) listing "gay" as his marital status in his America On Line ("AOL") member profile.

He saw a double standard in the Navy's response to his behavior. At the same time as his exposure incident, a female sailor posed unclothed for Playboy magazine, without censure. His AOL profile was written off-duty as a joke. It had no impact on his performance in the Navy, and he was not gay, even though he knew gay sailors who were still on active duty.

On leaving military service he worked as a lifeguard, a job that fit his interests. However, when the winter came he took a job as a security guard at a women's clothing store. He joined an anticrime Neighborhood Watch group. But since he kept changing neighborhoods as a result of a part-time job, he did not stay with it. The job was with People Watchers, Inc., a marketing research company run by cultural anthropologists. The job required him to rent a room in a home and to report on the lifestyle and consumer behavior he observed. The only drawback was that he had to move every three months (and once after two weeks when the homeowners became suspicious).

Tom began studying communications and criminology. He became interested in the history of technology, particularly the cluster of nineteenth-century developments involving photography, x-rays, and the extension of the power of the microscope and telescope.

He sought to broaden himself culturally and spent many hours in the library and museums and in reading. His interests were quite focused. He loved to look at back issues of *National Geographic* containing pictures of native women. He regularly read the newspapers, but mostly for the lingerie ads. He also liked to look at nude women in art and photography books and in paintings and sculpture. He particularly liked Picasso's painting *Les Femmes d'Alger (O. J. R. Version O)* in which the female forms are simultaneously viewed from various angles. He liked Picasso's engravings that featured famous figures such as Michelangelo hiding under a bed watching an amorous couple and Degas visiting a brothel. He was also taken with the work of the Italian baroque painter Artemisia Gentileschi as expressed in her painting *Susannah and the Elders*, which conveyed her feelings about being spied upon. In contrast to the rare pictures of male nudes, he noted that the paintings almost always involved a frontal view of the nude female.

He became a regular in the Rodin room of the museum. He was never bored there. The statues were immobile but the human landscape was ever changing. Tom liked to watch women as they contemplated the figures. The security guards of course looked at the sculpture, Tom, and the women, while still another guard in a control room watched images from the rotating video camera capturing all four. This visual rondo could get pretty complex, depending on what was being looked at and who was looking at whom and the genders and sexual orientations of the actors.

Ever fascinated by technology and art, Tom was something of an innovator in his filming of private parts in public places. He was one of the first of his gender to capture images up the skirt and down the blouse in malls, subways, and parks by putting a hidden or disguised camera under or above a seated female. But he preferred using remote cameras because there was less chance of discovery or losing equipment. He was very proud of the tiny remote camera he attached to the lifeguard tower at a nude beach. He notes, "The camcorders and keyhole lenses make it a lot easier than standing under stairwells all day, using a telescope or looking for girls wearing shiny patent leather shoes." He made several trips to Mardi Gras to film topless celebrants.

He was an avid, if ambivalent, fan of Candid Camera. He thought it was wrong to create reality and then publicly reveal it,—better to just record things naturally as they occur in public and consume them in the privacy of your own home. He was even more incensed, as he put it, at "the amateurs, reprobates, perverts and degenerates who post on Web sites the poor quality images they secretly collect. This gives photography a bad name and will result in more vague laws, further restricting the First Amendment rights to know of legitimate voyeurs."

Most of his spare time was spent watching television or on the Internet (even on the subway or when waiting for a doctor's appointment, he was never without his palm computer and handheld TV). Growing up, his nickname was TV—in this case his initials were denotative. In Internet parlance he was a

“lurker” and enjoyed observing the communications of those in chat groups and postings on bulletin boards. He did not participate because he knew that old messages never die, they just rest in the ether waiting for someone to instantaneously retrieve them by doing a simple *deja-vu* search, or viewing the history file on an Internet browser.

He always wore reflector sunglasses and in the Navy was called “the man with no eyes.” Much of his watching had an invisible quality to it (at least to those being watched). His dark glasses were a metaphor for his way of being. He wanted to see but not be seen. He did not wish to trouble those he watched nor risk sanctioning should his behavior be misinterpreted. At one of our first meetings he insisted on playing a song called “The Invisible Man” by an English rock group named Queen. He named his cat Ellison. He held to a surveillance ethic of minimal, or better still, non-obtrusiveness, in observation.

Tom had only occasional success with women, and he had no male friends. While hardly a campus activist, Tom was interested in social issues and sometimes spoke (or acted) out. Both because of the principle and because he felt more comfortable around females, he applied to a women’s college and was rejected. On the coed campus he attended, he sought to join a sorority but had to settle for a coed fraternity. He was not allowed to even try out for (let alone be chosen to sing in) the women’s choir, nor could he play for the girl’s field hockey team. His documented arguments regarding the negative consequences of separation for stereotyping and the importance of diversity in social settings went unheeded, as did his claim that the quality of performance would improve if men were given an equal chance. He was banned from a bar near the campus for repeatedly complaining that if women didn’t have to pay for their drinks during happy hours, neither should he. Nor could he get a job as a waiter at a local topless bar.

To increase student awareness of gender equity questions, he arranged for a campus showing of several sexually explicit films including *The Full Monty*. This drew an enthusiastic overflow crowd, but to Tom’s dismay, no one was interested in signing his petition protesting the unfairness in paying female porn stars so much more than their male counterparts. Nor would anyone sign his letter of support for male gynecologists who increasingly were having difficulty gaining patients or for the male sportscasters who were banned from the dressing rooms of professional female athletes. Nor were contributions received for a fund promoting greater male involvement in cooking and cleaning.

Tom was confused and needed help. He saw an inviting photograph in an alternative newspaper advertising the services of “Cheri,” an applied therapist who specialized in helping men with less than satisfying social lives. The therapist, who believed (with Colette) that love depends on illusion, and ever aware of the role of fantasy and imagination in erotic consciousness, sought creative ways to help Tom. Cheri suggested the idea of videotaping their meetings. This served as a living tutorial that Tom periodically reviewed for help.

While he had to pay a lot more money for these recorded interactive sessions, he concluded that it was well worth it. The nurturing therapist had no qualms about this since she needed the funds to pay for her Ph.D. studies and to contribute to the First Amendment Foundation.

Cheri recommended that (with his partner's permission) he always tape his sexual activities so that, like a baseball player or golfer, he could work on improving his technique and also have a record of those truly great moments. An additional reason for taping was so that he could prove that the encounter was consensual and thus protect himself against any false accusations. Tom liked the idea of videotaping but did not follow her advice regarding asking permission, being too embarrassed and fearing his partners would say no. He also reasoned that since they were in his house and it was his camera it didn't matter.

The tapes of Tom's encounters with his sex therapist were consensual involving sound, as well as image. They contrast with the nonconsensual films Tom subsequently made using a camera hidden in an overhead light fixture with the sound recorder turned off. To capture sound non-consensually would violate state law (although that wasn't the case in many other states where as long as one person, the individual doing the taping, agreed, it was legal). But there were no laws against secret videotaping if one of the parties agreed to it.

Tom made a number of films but this was far more difficult than in his therapist's office in which there was a script and mutual awareness. With hidden cameras it was not easy to get the correct angle, there were power outages and equipment failures or he forgot to turn the camera on. His encounters were often in the dark (and an infrared camera was too expensive). Many of the images were fuzzy and shadowy. Reality is hardly the stuff of which fantasies are made.

Such videotaping was a lot of trouble and he gave it all up after one unpleasant episode when the camera fell from the ceiling onto his partner's head during a sexual encounter. Imagine her surprise. She demanded, "How could you do that?" Pleased that she was interested in technical matters he proudly said, "I used Sony state of the art Title III equipment." Before he could even tell her about his effective use of other kinds of cameras, such as the one he had hidden in the bathroom, she became even angrier.

She demanded the tape and any others he had made of her. He refused and said, "The tape and machinery are mine. I used them in my house. You have given implied consent by coming into my room and getting naked with me. I have a vivid image of you in my memory. It was Paul Gaughan who said, "I shut my eyes in order to see." What possible difference could it make that the image also exists on tape? The presence of the tape even offers evidence of verisimilitude. What's the big deal? These are not military secrets after all, they are just tapes. I promise that no one will ever see it but me. An image is just an image, regardless of where it originates or resides. Am I supposed to return the love letters you gave to me as freely as you gave your image? Should I cut you out of the pictures taken of us in that Las Vegas nightclub?"

However, within his limitations, he tried to be reasonable. He said he would be glad to edit the tape so her face was blocked. He said he would make a copy of the tape for her—and to sweeten the deal and as a way of saying he was sorry the camera fell on her—even throw in copies of other tapes she wasn't in and some commercially made family films with international stars of stage and screen. He said he would give her the first (or last) half of the present tape (since in fairness half of the tape perhaps did belong to her). He said it would be wasteful and environmentally harmful to follow her Solomonic solution and literally cut the tape cassette itself in half. It would also mean destroying their unique history and preclude him from learning from the experience. He thought that as an archaeology/history major she should have greater appreciation of the need to preserve the past. It was she after all who had told him about Andy Warhol's argument for the importance of fifteen minutes of fame and a French scholar Levi Bodifat who said that things are only real to Americans on the screen.⁵

The woman felt used and further ripped off after her attorney said that it was necessary for them to review the tape together and to question her about it. The attorney charged her thousands of dollars to research the case, only to conclude that Tom had broken no laws and that a victory in a civil suit was unlikely. She was further upset by the attorney's offer of a significant fee reduction (in fact the sum mentioned would even have created a positive cash flow for her), if she would make a film with him.

B. MEANWHILE, BACK AT THE JOB

Tom was a conscientious and highly motivated dress store employee. Some of his efforts were appreciated by security and marketing sections. For his marketing class he created a human-computer interaction (“hci”) program called “amiga” for female teen clothing shoppers. This involved a “digital buddy” or “bot” with whom the girls could interact while online.⁶ After offering some personal information about themselves, participants were matched with a buddy who spoke their language and shared their basic demographic characteristics (if older and wiser). The artificial friend could appear in a variety of colors as a seemingly real person, a cartoon figure or be unseen.

Tom thought this demonstrated the win/win potential of the technology for consumers and merchants. If we as a society are to move ahead, we need to integrate the technology into our lives and stop seeing it as cold, unfeeling and distant. He said, “face-to-face interaction is so 20th century. In today's world children need a personal, warm and trusting relationship with an intelligent

⁵ A confused mind is a wonderful thing to study. Here I believe he refers to Jean Baudrillard.

⁶ See e.g. the discussion in Kerr 2004.

electronic friend who really cares about them. As a side benefit my program improves communication skills in writing and typing and it means they are safe behind a desk, rather than endlessly wandering around in mega-malls or cruising around in environmentally destructive cars.”

Participants were offered free scientific information and advice, whether about rock stars, clothes or makeup, as well as product comparisons. They were encouraged to write about their feelings, attitudes and behavior on any topic they chose. Unlike some parents, the amiga was supportive and nonjudgmental. Member’s attitudes toward various products and potential products were solicited. While not quite the best example of participatory electronic democracy, they did have a vote.

Since participation was voluntary (they opted-in) and anonymity was assured, he saw none of the usual problems (although Tom acknowledged that most persons had no idea that everything they said was logged and analyzable. The store was pleased because this offered a useful tool for understanding an important market, identifying trends and learning about sensitive adolescent issues that the market might better serve. The store was interested in aggregate patterns, not individual identity.

Tom’s professor was more skeptical, being concerned about deception, manipulation, illusion, privacy and the diminution of social skills. Tom said of his professor, “if she’s so smart why isn’t she doing something in the real world, rather than just complaining about the falling sky and talking about stuff?”

But whatever his technical skills, his social skills were not well developed, and he sometimes showed doubtful judgment. For example, after his regular shift ended, he was caught off-limits (thanks to a recently installed hidden camera) in the video terminal room that was used to monitor the concealed cameras in the changing rooms. Only female employees were allowed in this room.

Straight arrow that he is, Voire readily confessed that he was in the video monitoring room (he could not tell a lie and believed *Veritas Vincit*, the motto of John Marshall High School where Leonard Dicaprio and Heidi Fleiss,⁷ among other famous people, had also gone). But in being in the monitoring room, Voir claimed that it was for research purposes –data collected for a paper on shoplifting for his criminal justice class. He thought his employer should be pleased that on his own time he was working to improve his detection skills, and he offered to share the results of his study.

In this case, as with some of the events described above, he sees himself as the victim while others view him as the offender. He feels he is often treated

⁷ He was unsure of her last name and said it might also be Haut or Hot. After conferring with neural specialist Dr. Osacks, we concluded he is probably referring to a Ms. Fleiss, a warrior for sexual equality known for her pioneering efforts as the progenitor of Heidi’s Stud Farm, a brothel in Nevada for female customers. *New York Times*, Jan. 8, 2006. Here and elsewhere throughout our sessions, his transformation and erroneous recall of names suggests premature cognitive decomposition and English language chauvinism.

unfairly because of his gender. He sees discrimination in the fact that only female employees could work in the video-monitoring room, even though he had more detection experience and seniority than most who worked there. He states, "It has been well established in the courts that gender is not a bona fide occupational qualification for security or prison guard work." When he asked why he could not work there, he was told, "It's not right to have men secretly watch women undress." To which he replied, "I am a professional and this is no different than a female doctor dealing with a male patient. My viewing is neither seamy nor steamy. They are just blobs of protoplasm to me. It's just a job. I have no personal feelings about any of this other than craftsmanship. If this were a men's store and I were a woman, I would be watching them just as carefully."

Introducing a hypothetical (the last resort of the imaginative unbounded by the empirical or the ethical) he asked, "Even if it's true that I obtain some gratification from this activity, so what?" He offers a reoccurring rationale—"They didn't even know I was watching, so no harm was done."

Tom said that he resented the implication that he was somehow "a cowardly and exploitative technologic free rider copping a symbolic feel while enshrouded in a prophylactic of invisibility and distance" (a phrase encountered in his women's studies class from a reading critical of pornography). He wasn't quite sure what that meant but it didn't sound good. He said, "If anyone was 'getting off' [i.e., obtaining inappropriate sexual gratification] on this stuff, it's not a trained professional like me. I just want to do my job. It's those unprofessional . . . [degrading explicatives banned by the clinic's manual on nonsexist report writing] female guards, most of whom have never even taken a criminal justice class or stolen anything themselves." He then cited an obscure study that found that police officers with records as juvenile delinquents did better on the job.

There were also problems with customers in the store. Several female customers complained that Tom seemed too friendly. But as always, as a paradigmatic sociopath, he had an explanation. A company directive issued a short time before required employees to "smile, greet, and make eye contact with the customer." Employees were told that "secret shoppers" would check to see if they followed this as well as other company policies. Tom claimed that in being friendly to the ladies, especially to those he called hot "ice queen machines," he was just doing his job and following orders, although he added, "Having to always put on a happy face makes me feel like a robot. I am a human being defined by my liberty to choose. I shouldn't be made to smile at men."

C. HOT LINES

The above incidents along with numerous complaints about him to the store's anonymous hot line, resulted in Voire's being asked to attend a meeting with Andrea Comstock, the store's newly hired gender relations facilitator. Tom

was not sure what her job was but he thought it sounded interesting. He was not told whether the meeting was mandatory. But it had to be better than working. He also felt it important to explain his concerns in the hope of contributing to a less hostile work environment. He knew that authority was just, even if sometimes it was a little misguided and too responsive to political concerns.

The facilitator began by explaining that the purpose of the meeting was to discuss the numerous complaints that had been received about his behavior. Tom was stunned. He assumed that the purpose of the meeting was to consider the signed complaints he had made about discrimination in the workplace. After listening to the range of nonspecific, anonymous complaints, Tom asked if it was true that the gender relations facilitator had recently immigrated from a country famous for its carpets, where she had worked for the Ministry for the Promotion of Virtue and the Prevention of Vice. She had no idea what he was talking about and moved on to the real issues.

One type of complaint dealt with unwanted computer communication sent to female employees. Several individuals thought that Tom, with his knowledge of computers and distinctive personality, might be responsible. There were hints and allegations but no solid evidence to support this.

All unmarried female employees under the age of forty had received warm, even syrupy, e-mails that flattered them and speculated on what it would be like to be their friend and to know them in a more personal way. There was nothing overtly threatening in the messages, but many found it ominous to receive such a personal message from an unknown person. Had it been signed by someone they knew and had not the same personal tone and content characterized all the messages, this might have been seen as just the initial foray of a shy, au courant nineties kind of electronic guy. However messages were signed L. B. "Jeff" Jeffries, the name of the photographer played by Jimmy Stewart in *Rear Window*. References were offered to anonymous communication as a central principle of a democratic society.

There were also complaints about a Web site that actually was run out of Finland. But borders being what they were (or rather what they weren't) with this new technology, it didn't matter where the data were located. The Web site contained the photo image, height, weight, age, marital status, salary, latest performance evaluation, social security number, address, and phone number of all female employees. These data could only have been taken from the store's personnel records. To make matters worse, the photos were rated on a scale from one to ten as to desirability. A disclaimer intended to soothe hurt feelings for those with low ratings did not have that effect. It read, "This is a purely personal rating. It reflects nothing more than my subjective sense of attractiveness. If you don't like your score, please take heart and note that in a society as diverse as ours there is no single correct standard." In some cases, however, suggestions were offered for how a rating might be improved.

He acknowledged familiarity with such programs as a result of an unfortunate college experience. For a computer science class he setup mlapwalk.com. This broadcast Internet images of everyone walking on the main campus path, regardless of gender, appearance or time of day. Viewers were invited to offer comments and to rate persons as “hot or not”; “hold or fold”; “plum or bum” and “bangin’ or hangin” along with other even more incomprehensible terms.⁸ To encourage honesty and to protect the privacy of those posting, only anonymous responses were permitted.

Tom’s professor was impressed with his programming skills, but not with his content. When told to shut down the site, Tom said, “No, I have a right to transmit images offered in a public place. Besides, I paid money for the class and there is an implied contract here. I was just meeting my obligation with respect to a required assignment to create a webcam page.”

He did offer to compromise. He said he would take the site down if the professor would consent to be interviewed on tape by a filmmaker with the unlikely name of Stepin Sodamountain. There would be a promise of absolute confidentiality. No one in South America or anywhere else would ever see or hear it. But when threatened with a failing grade and unspecified sanctions for violating the campus code of ethics, Tom closed it, but another lamination of victimization was laid down.

He vigorously denied responsibility for the other Web site mentioned above which asked for judgments of employees. He said, “Women should be treated in all their rich individuality and should not just be checked out like pieces of meat and given a grade.” He said he agreed with Jack Nicholson who, in his film *Something’s Gotta Give*, said that women must be seen as a whole.

However he added, “As a matter of principle I am not opposed to such Web pages. They are in the best American tradition of freedom of expression and self-help, while being responsive to the democratic feedback of others. If individuals aren’t interested in their rating they needn’t log on to the site. That’s what freedom of choice is all about and why America is a great country.”

Continuing on the theme of open communication, he volunteered that while he was not directly responsible, he *had* given some technical advice via e-mail to an anonymous individual. The individual subsequently posted information on executive salaries and compensation packages and “for your eyes only” memos on the company’s Web site. Tom said, “I did that because this is a publicly traded company and, as an employee and stockholder, I have a strong interest in seeing that the company is healthy. I know that openness is central and that dastardly deeds are more likely in the dark.”

There were other complaints about the pictures of women that Tom had posted inside his locker and about his sometimes wearing T-shirts with vulgar

⁸ As I (A.F.) get older, it becomes ever more difficult to understand and treat young clients so intent on degrading the language of Newton and Shakespeare.

language and images. Tom said the locker pictures had artistic value and he spoke proudly of his pinup collection. He said his parents and his art classes had taught him that the human body was beautiful. He felt hurt when his offer to share the pictures with his interlocutor was rejected.

He noted that the pictures were inside his locker and if the complainants didn't like them, they didn't have to peer into his locker as they walked by. He said there was confusion about what public and private meant and this might be a case of radical polysemicism. The counselor said she didn't see what prejudice had to do with it.

He could hardly be blamed because the physics of sight were such that visual stimuli were publicly broadcast in private places. But he said he was aware of the issue and did his best in public settings: "unlike some employees, I would never use a sexually suggestive computer screensaver because it indiscriminately transmits to anyone in the vicinity."

However, while the store was the private property of the owners, that didn't mean they could control what was in his wallet, or in his mind, when he was in the store. His locker too was his private space. He asked, "does your landlord tell you what pictures to hang on the wall?"

With respect to the T-shirts the issue was different. He said duty compelled him to wear them in order to blend in as an ordinary customer when he was on plainclothes duty looking for shoplifters.

Several complainants noted that Tom continued to invite them out after they had refused him. While noting that he was always a gentleman, he didn't deny his persistence. He believed they were just playing hard to get and thereby trying to increase their appeal to him (a ploy recommended by several "how to catch a guy" guidebooks he had strategically memorized in order to be prepared). Then, in a pattern that he frequently shows, he drew on a quote from a famous person to legitimize his actions. In this case, it was Winston Churchill who, according to Tom, was reputed to say, "Don't give up, never, never, never."

Tom acknowledged that his behavior might be misinterpreted. But he eschews any responsibility by saying, "My gender made me do it." More subtle than an argument about raging male hormones, he noted research reporting that men are not as good at reading nonverbal and verbal cues as women and hence it is harder for them to take a hint.

D. HERE'S LOOKING AT YOU, KID

Another type of complaint was more vague. Several women said they didn't like the way he spoke to and looked at them. They said it made them feel uncomfortable and objectified. But they could go no further in explaining the problem.

One employee was so upset that she secretly recorded Tom's conversation. Tom could not deny that he said, "you are a credit to homo-sapiens. With your

elocution and beauty you could make a great thespian. But you must give up your crapulous life style and please stop titivating yourself.” Tom was shocked that his magno-meter failed to identify the secret recording (most likely because her device was encased in lead). But he was even more surprised that his efforts to help had been misunderstood. His remarks were intended to bolster an individual with low self-esteem who partied too hardily and was continually spending money on expensive self-improvement treatments that didn’t work and weren’t needed. Should he be blamed because she misinterpreted and misunderstood his remarks? Would it be better if he agreed with her self-deprecatory comments? He said, “beauty may be in the eye of the beholder, but words speak for themselves, at least if you know what they are intended to mean.”

When told that the women didn’t like the way he looked, Voire’s response was seen as hostile and defensive, if predictable. He ranted about cultural disintegration and hypocrisy and resorted to name dropping: “that wise old guy with the best name ever for a poet –WD Audio --noted the illogic and unfairness in praising novelists and birdwatchers for the keenness of their observations, but not others.⁹

He began testily asserting, “Look, I’m sorry about the way I look. This is the face God gave me. If they don’t like the way I look, maybe they should wear those glasses that change reality or better still, just don’t look at me. I am proud of the way I look and carefully follow the dress code.”

The facilitator explained that it was not his appearance (his evaluations always noted that his uniform was proper and his shoes were shined), but the *way* he looked at women. Tom smiled at the misunderstanding, but he was just as well defended: “I’m really confused. As a child I was told to always look others in the eye. If you want to make someone you know feel bad, walk right by them without making eye contact.” He added, “From my reading of women’s magazines in supermarket checkout stands, I know that most women want very much to be noticed by men. The cosmetic and fashion industries do everything they can to make that happen. I see how women look at their reflection in mirrors and store and car windows and how they are always checking their lipstick. In my social psychology class I learned about Professor Cool’s ‘looking-glass self’ that says that our sense of self depends on how we perceive others seeing us.¹⁰ Men, after all, aren’t the ones who carry a little mirror in their pocket and use makeup to disguise their real appearance.

“The facts back this up. I read in *People* magazine about a study that found young women enjoy seeing and imagining themselves in enticing lingerie. They

⁹ I believe he refers to W.H. Auden’s (1991) poem, “The Cave of Nakedness” which asks, “why Peeping Toms are never praised, like novelists or bird-watchers, for their keenness of observation”?

¹⁰ Note that pop culture overwhelms his memory here. The correct name is Professor Horton Cooley.

like the idea of being appreciated by men for their appearance. Why do you think 90% of cosmetic surgery is performed on women?

I will not deny that I take maximum advantage of what the *situation* offers. But I use neither coercion nor deception in doing that. That is very different from taking advantage of another person. Sure I like to look, but I do that to honor them. Even though I failed my one philosophy class, I recall reading that some really smart French guy named Sordid said that to look is to empower the other.¹¹ The fact that they can make me look and keep looking is a sign of their success.

“My sense of masculinity comes from my adoration of women rather than from degrading, denigrating, debasing, defaming, disparaging, and dissing them the way some men do. My gaze is of wonderment and appreciation—just look at that Ginger Rogers movie where she did everything Fred Astaire did, only she did it backwards and in high heels. I want to be equal to and please women, rather than to dominate and anger them. Looks have to be separated from words and words from deeds. I never suggested anything indecorous like threading the needle, getting my ashes hauled, or rifling her thong.¹²

“I read Bruce Schneier (2000) on the technicalities of security and on what’s on the minds of hackers and, it ain’t me babe. I am not malicious. Quite the contrary I want to help. And don’t give me any of that cyberstalker stuff either. Unlike the stalker, I do not seek to harass or to harm, but to enrich, ennoble, improve and protect.

“Whoever complained about the way I look is not being honest. If they don’t want to be looked at, why do they dress that way? If it is a virtue not to look, their behavior prevents me from being virtuous. While I don’t think I have done anything wrong (quite the opposite), whatever you call my behavior—they made me do it and are cooperating coconspirators.

“If anything, I am the victim and am harassed by the tension their appearance arouses in me. I’d also like to accuse them of visual entrapment and conspiracy to hurt a fellow associate. Why do they wear those too-small t-shirts that say, “I want attention, just not yours.” How do I file a complaint? It’s like blaming the metal pieces drawn to a magnet because they can’t resist, rather than seeing the power of the magnet. If I am the one who gets in trouble here, it would be better to live in one of those societies where women were fully covered (or maybe absent altogether), offering nothing to look at and think about. This is a cruel game in which men can’t win—the temptation offers either the agony of denial or the apparent sin of looking and of imagination. “I am not the ‘flamboyant leerer’ rightly criticized by feminists who calls attention to himself and his object. I am a discrete and sensitive seer.

¹¹ Here he no doubt refers to Jean-Paul Sartre who borrowed these ideas from Hegel.

¹² Note to reader. When I interviewed the facilitator, she had no idea of what he is referring to here.

“There is something else here. This is like censors who get to watch the stuff people are not supposed to watch. It’s ironic that my accusers had to watch me, in order to complain about me watching them. He then ranted on about the behavior of Lot’s wife who lived in Sodom and the temptation that Eve offered. He said he thought the latter were not simply a function of the role of men in writing the Bible.

The facilitator asked him if he looked at men in the same way, and he said, “Of course not, what kind of a guy do you think I am?” Fortunately she didn’t have to answer that. He then launched into a long monologue about how as a child he had learned to survive in his tough school by avoiding eye contact with males. That pattern continued to the present. He said that some male violence, particularly that against gay men, was triggered by such eye contact. He ended his manic Lenny Bruce monologue wondering if gay persons got more pleasure out of looking at themselves than straight persons, since they were, in a sense, objects of their own desire.

Other anonymous hot line complaints said that Tom was often in the vicinity of the women’s restroom and that he even sometimes used the facilities (some employees thought he was the one responsible for the toilet seat sometimes being left up).

Tom was a strong supporter of gender equality and social justice. He was fascinated by the feminist movement (he said any woman’s movement was of interest to him). He named his parrot Godiva after the fabled equestrian who used her birthday garb as a means of negotiating lowered taxes.

One issue that particularly caught his eye (so to speak) was the case for unisex bathrooms. But in this case he was no Rosa Parks and had more mundane reasons for his behavior. He states, “I have nothing to hide and once I explain the situation I am sure you’ll understand. Yes, I do sometimes use the ladies’ room and for good reason. I have a stomach ailment, which causes nature to call suddenly and irregularly. The facility in the smaller men’s room is often occupied and farther away. There is sometimes no alternative but to go into the larger women’s room directly across from my office. I only went in when I was under extreme pressure and when no one else was there. Besides, the men’s room doesn’t have those nice chintz-covered lounge chairs, and the women’s room offers a greater level of privacy and cleanliness. The men’s room has vulgar graffiti and I feel harassed by the dope-smoking men hiding there. The women’s room feels like a safe place.

“In my sociology of law and gender class, I studied the law of ‘indecent exposure.’ Neither indecency nor exposure were present here, only need. I was in a stall with the door closed in a room with its outer door closed. Weren’t bathrooms designed for this purpose? In being denied the opportunity to use the women’s room when it was the most accessible, I feel the same way I did when I couldn’t join the gym across the street from my house because it was only for women. For reasons of women’s mental and physical well-being, I was told there

must be ‘man-free zones.’ I like being around women and can’t imagine wanting a ‘woman-free zone’. That would be discriminatory and cruel and unusual punishment. Like that song says, we need to all ‘come together right now.’”

Ever optimistic, the gender relations counselor saw this largely as a failure to communicate, not as a problem of structure, culture, or lunacy. Tom agreed with the counselor on at least one point: “There was indeed a failure to communicate, but it was on your part not mine. I explained my behavior and pointed out how I was victimized. Yet you refused to hear me or really listen to my words. I *did* no wrong, and I *intended* no wrong. I can’t be held responsible for other people’s misperceptions, for being socialized into this culture or for being born with a Johnson.¹³

“I am a very moral person and apply two well-established standards in judging conduct. The first from the Greek tradition stresses behavior. My behavior was beyond reproach. The second from the Christian tradition stresses motives and intentions. I certainly intended no harm and my motives—of showing appreciation for others and of wanting equal access—are hardly the stuff out of which gender wars ought to be fought. I am truly sorry if their perceptions of my behavior made some women *feel* badly. If that is the case, they need to deal with their feelings and not externalize the problem by making me a scapegoat. They need counseling, not me. In a democratic society you also might at least take a survey before reaching conclusions—what about the silent majority who felt good about what they perceived in my behavior? Don’t we need some balance here?”

“And one more thing, while we are talking about the Greeks, we are reminded to ask the question, ‘What’s the big deal about this privacy stuff anyway?’ For them, the greatest value was placed on public life. It was there that one’s sense of identity was to be found. Privacy, being the realm of slaves, women, and children who were restricted to the home, was not valued. To be private meant *deprivation*. Have you ever wondered where the word ‘privy,’ came from?” The counselor being a big city person thought that privy was an adjective and didn’t know it could also be a noun. “For the Greeks, the erotic was connected with self-knowledge. It was only those dirty-minded, copy-cat Romans who later claimed that there was something wrong with erotic gazes.”

In spite of her training, the gender relations specialist was flustered and didn’t know how to professionally deal with Tom. The role-playing sessions in graduate school were never like this. She tried to move on to the next issue. But not before Tom asked her if she felt uncomfortable talking about sexuality, either her own or in general. He noted that ambivalence was natural to the human condition. He asked if she had ever considered Freud’s suggestion that some women were angry because they were not men.

¹³ Here again he fails to communicate, I have no idea why he refers to sharing a birth date with someone named Johnson.

He pointed out that their meeting was very one-sided. She asked questions and he responded. Tom said he was interested in knowing her feelings, both as a professional and as a woman, about what he had said. He wanted a true dialogue. They were work colleagues after all. He volunteered to make his observations and references available to her and, in a supportive fashion, indicated that he would be glad to discuss her feelings or any problems. She gracefully demurred and resisted the impulse to press her personal panic button or the hidden alarm summoning a guard.

He asked her if she was aware of the irony and lack of equity in experts such as herself being licensed to pry into his life, while she refused to share her feelings and experiences with him. He asked if she had seen a recent issue of *Psychology Today* in which research showed the importance of reciprocity in relationships. He asked her whom she would share his information with. He then launched into another monologue about professionals and their inability to share power.

Secure that she was in the helping business and that whatever she did was for the client/employee/patient's good, Ms. Comstock responded by getting down to professional business. She gave Tom a series of tests and realized that he was the stuff out of which clinical articles and even careers are made. In one projective test, she showed him a card with a series of lines all leaning to the right. When asked what it was, he replied, "A man chasing a woman."

She showed him a card with all the lines leaning to the left and he replied, "That's a woman chasing a man." The facilitator said, "You seem to think an awful lot about sex." Tom looked surprised and replied, "Sex is not awful. It's wonderful. Guilt might be your chauffeur, lady, but it's not mine. And besides, Doctor, they're your dirty pictures." He didn't deny his interests and the fact that he liked to watch. But he said (in spite of having taken several sociology courses), "My genes made me do it." Neither he, nor any other male, could be blamed for the research finding that in matters of romance, men were more responsive to the visual and women to words.

He described himself as a "see-er" and a see-her and thought that the similarity in sound must reflect some smart design. He professed to see deep mythological and sacred meaning in the fact that these had the same roots and sound as "seer" and that life had begun in the sea. He said he was not a searer. In equating looking with life, he drew on the authority of (in his words) "academy award winner Robert De Niro" who was reputed to have said in *Scout of a Woman*, "the day we stop looking Charlie is the day we die."

In her report, the counselor said the company needed to better explain its expectations and rules. She recommended additional testing and then counseling for Tom and upgrading and better maintenance and security (including hidden

cameras) in the men's facilities. She thought some operant conditioning using penile plethysmography might also be appropriate.¹⁴

She found Tom creepy and didn't like the way he looked at her. She thought a male gender relations counselor might be more understanding and do a better job of explaining the company to Tom (and although she didn't put it in her report, of explaining Tom to the company). It all might have ended there but for one more little nest-fouling incident.

E. THIS COFFEE SURE IS STRONG!

Ever respectful of authority, Tom was nevertheless very upset after the meeting. He said, "Anonymous informers are the stuff of police states not democratic-capitalist states. I have a right to confront my accusers and to be given a detailed bill of particulars. This is no process, not due process."

He did not like confrontation and was a nonviolent person. He often contrasted himself with a distant cousin named Earl who had gone missing several years ago.¹⁵ Tom said men were too quick to resort to violence and he wished they could become more taunting, snide, and gossipy. With a richer interior life they would have less need to engage in overt conflict.

Tom could become passionate over issues of justice as he perceived them. The passive-aggressive personality that kept him out of big troubles continually got him into little troubles. The great voyeur was again lifted on the petard of the technology he favored. The day after the interview, a hidden camera caught him urinating into the executive office coffeepot.

When confronted about this, as always, he was well defended and up front. He didn't deny it or claim that the tape had been faked as some might have. He justified his behavior by principles of reciprocity, lesser evils, and the absence of harm: "The company treated me badly and I owed them one. They had it coming and this kind of fighting back is the only weapon a powerless worker like me has. Any company that treats employees this way should expect a response.

"After all, I hardly went postal on 'em. I just pissed for a second, I didn't empty my bladder. That coffee is so strong they'd never have known were it not for the camera. Lots of employees get away with far worse—beating up the boss, stealing, selling information, sabotaging production. What I did didn't hurt anybody. It's like those victimless crimes where if the 'victim' doesn't know about it, they can't be said to be hurt. I even read in *True Adventure* about a man dying

¹⁴ This is a technique she was familiar with as a result of a graduate school internship. See, e.g., G. Launay, *The Phallometric Assessment of Sex Offenders: Some Professional and Research Issues*, 4 CRIM. BEHAV. & MENTAL HEALTH, 48-70 (1994).

¹⁵ As a good ink-blotter clinician, I try to keep myself out of our therapeutic conversations. Yet I did admit (to Tom's great surprise) that I had never heard of his cousin Earl or a singing group called something like The Dipsy Sicks [Six?] or The Dixie Chicks who sang "Good-bye Earl."

of thirst in the desert who survived by drinking his own urine. What about all the good work I've done and all the times I followed the rules that you don't have on videotape? Surely that overwhelms one minor mistake.

"Watching potential shoplifters with a hidden camera is one thing. It would be unprofessional *not* to do that. But it is wrong to do that to trusted employees, especially without telling them. I see how some literal-minded persons unable to see the big picture and mitigating factors might think that what I did was wrong, but it is far worse to use the sneaky means you used.

"My actions pale in comparison to the deceit and gross invasion of privacy the company demonstrates in using a hidden camera against its own employees. What kind of a message does that send to people like me? How would you feel if you were secretly videotaped while urinating and that tape was then seen by others of both genders and various sexual persuasions?"

F. THE LAST LAUGH

Ogling female employees was one thing. Urinating in the boss's coffeepot was quite another. This led to an investigation and a high-level review resulting in a decision to terminate employment.

The company's media relations specialist said, "This guy's a public relations Chernobyl waiting to happen. Let the explosion occur in someone else's neighborhood." The company's consulting psychologist, losing his detached, clinical manner, said, "This clown isn't funny. He's a fruitcake, heavy on the nuts and likely contagious....He is either one of the world's dumbest or smartest people. Either way the subversive nature of his perceptions and claims are dangerous to the company's well established-routines. He sure as hell won't help us bring down those medical insurance premiums that my bonus depends on."

The company's legal counsel, aware of the recent trend toward million-dollar-plus settlements for fostering unwelcoming work environments, gender discrimination, and privacy invasions, was direct: "Terminate his employment--but not because he is a man. Let's also be sure the transcripts of the [illegal] wiretaps on his home phone and computer get shredded since we didn't find anything incriminating on them. I'd hate to have to explain those in court or to the public."

In what he later claimed was just a joke and an expression of his feelings, not a call for direct action, Rocky Bottoms, the company's national director of security, was even more blunt: "Terminate with extreme displeasure" (a euphemism for assassination from his earlier days as an intelligence operative).

Voire was called to a meeting intended to be an austere degradation and departure ceremony in the normally off-limits presidential suite. The director of personnel, the epitome of grease under pressure, wearing a bulletproof vest, said, in the best syrupy, somber pseudo-sincere tones of a funeral director expressing the same sympathetic concern fourteen times a day, "Son, the hardest part of my

job is making personnel decisions, but someone has got to do it. Whether it be hiring or firing, I always ask God for the strength to be fair, to get the facts correct, and to do what is best for the company and the individual. There is nothing personal here."

The director thanked Voire for his efforts on behalf of the company and praised him for his technical skills and ambition. He said he was sure these strengths would help Voire in his next job, and he was sure that if Voire received help, there would be a next job. There was a big demand in the security field, especially for those hard-to-fill minimum-wage jobs without benefits.

Voire listened patiently and with great dignity and composure, considering the fact that he had just been fired. He was never at a loss for a worldview that served his interests, however strange his views might seem to the more privileged and conventional people holding the reins of reality definition.

With all the stylish, macho chutzpa of a world-class sociopath about to prevail in a high-stakes poker game, he said (in the best of diplomatic and conflict resolution traditions), "Thank you, sir, for sharing your views. I have gotten a great deal out of working here and, while we may have had our differences, I am grateful to my fellow workers, my immediate and more distant supervisors, the janitors and kitchen crew, and even the stockholders and our customers whose efforts and belief in this company made it possible for me to do my job here.

"Yet you have erred badly in your analysis of these events and in the course of action you propose. You have obviously not considered the implications of the fact that I have a tape recording of the meeting at which my case was discussed.¹⁶

"Being in security work I have learned the importance of being discrete. I hold no grudges, although I have good reason to. There is nothing personal here. Jesus counsels me to have compassion and forgiveness. I don't wish to quibble about the past. It is best for all of us to look to the future.

"I am a reasonable person. I will give you the only copy of the tape and I will resign from my job (I would not want to work for an employer that discriminates against males, secretly videotapes employees and eavesdrops on their communications, destroying the trust and family feeling that I seek from my job). I will be pleased to accept a relocation stipend of \$25,000 in appreciation of my contributions to the company."

¹⁶ There was disagreement about how Voire came to possess the tape and he did not want to discuss this. Some said it came from a laser device aimed from across the street at the unprotected windows (i.e., no blinds or pulled drapes); some said it had been secretly recorded and given to him by the director's own secretary, a talented older woman with warm maternal feelings for Tom and many reasons to resent her boss; some said it came from another executive and was to be part of a power play that he intended to use at the right time as a propellant in his corporate climb and that his briefcase containing the tape had been stolen. As is often the case with conspiracy theories, there is likely a simpler explanation. The meeting held just prior to the one on Voire had been openly taped. The responsible technician was called away just before that meeting ended and he simply left the equipment on.

True to his word, in their second meeting, Voire handed over the “only copy of the tape” (although he kept the original) and received his check. The personnel director apologized profusely and said, “Son, we are all deeply sorry about this misunderstanding. The company very much appreciates your understanding and sensible solution.”

Things Are Not What They Seem
*I'm gonna put a false charge again ya
That'll be the very thing that'll send ya.*

- Chuck Berry

After his last day at work and receiving his severance pay, Tom was feeling dejected and lonely. He drove to the entertainment district and was arrested for “loitering for the purpose of soliciting a prostitute,” even though there was no mention of a sex act in exchange for money. The attractive “prostitute”, dressed in high heels, hot pants, and a revealing halter was an undercover policewoman. Voire claimed that he simply wanted someone to talk to. She was wired for sound, but unfortunately much of the tape is garbled and static-filled, and even some of the clearly discernible conversation is subject to different interpretations. For example, when she runs her tongue across her lips while lasciviously staring at him and initiates conversation by saying, “Hi, honey, you look like you need a friend and could use a good time,” and he says, “I just got paid, do you want to go on a date?” do we have entrapment, misdemeanor solicitation, or neither?

But the vagaries of justice apart, he had the misfortune to have this incident occur during a heated local election in which law and order was the central issue. Rival candidates argued about who could crack down most severely on crime, and they engaged in purity contests, challenging each other to provide tax forms, drug and sexually transmitted disease tests, and affidavits attesting to their marital fidelity and to the fact that they had never had psychological counseling. Some even went so far as to report their cholesterol levels and church attendance records. Voire was sentenced to six months in jail after a five-minute trial.

Even before being found guilty, he saw himself on the six o'clock news. A “ride-along” television crew had captured his encounter. His image and his license plate (with the last numeral omitted) were also recorded by a local self-help group and posted on a “videovigilante” community Web page. Since all of this happened on a “public” street his permission was not required. He felt terribly invaded by such behavior. He strongly believed that there should be privacy in public, but that the private didn't have to be public.

Yet fortune smiled on him. His jail was more enlightened than many and had a nationally recognized training program. Contracts with major health insurers gave prisoners on-the-job training in using computers to process medical reports. The program paid for itself (and even made a profit that was

used to expand the jail system which then permitted putting even more inmates to work in a constantly expanding program).

Voire excelled at this, working many extra hours and showing interest in understanding the commercial, as well as the personal, side of personal data. Prison officials were very pleased with his progress. He was featured in a newspaper story that ran nationally about the prison's successful rehabilitation program. The program received an award from an industry group whose goal was the advancement of such public-private partnerships and the breaking down of barriers. Their motto was "the prison in public and the public in the prison."

Yet Voire rapidly fell out of favor. He refused a generous offer to provide information to authorities on his cell mates. His filing of a freedom of information request to learn about possible food additives such as sodium nitrate (AKA NaNO₃ or Salt Peter) and aromatic engineering additives to the heat and air conditioning systems was not appreciated. He further angered prison officials when they discovered that he had created his own private database of young unmarried women who had recently seen an ob/gyn. This contained extensive personal information culled by characteristics of interest to Tom. This included digital photos (taken as a security measure to counter insurance fraud), addresses, and listed and unlisted phone numbers. He combined this information with other readily available computer information, including census track data, and sold it to pharmaceutical companies, sex therapists, and dating services. As a matter of principle, he refused to sell to individuals or to code ethnicity.

Once the yoke breaks it spills all over. Authorities were even more upset to learn on the TV program *30/30* that Voire had sent anonymous e-mails (using a forwarding service that strips the sender's address) to many of these women. The letters were plaintive, friendly, and adroitly quasi-personal. As with some mass marketing material that addresses the individual by first name and offers some other specific biographical facts, the recipient could not be sure just what the sender really knew, but there was the distinct possibility that she was personally known, or known about, by the sender.

In his letter Voire described himself as a lonely, gentle, caring, and misunderstood person who had had a hard life and was seeking true companionship from another person in a similar situation. He wrote in general and tasteful terms about his problems with sex. He wondered if women had similar concerns and indicated a desire to better understand their problems and needs. Without getting specific, he indirectly communicated (or at least left it open to interpretation) that he knew and understood why the recipient had seen the doctor (whether for abusive, indifferent, or impotent partners, sexually transmitted diseases, birth control, infertility, body-image concerns, ambivalence about sexual orientation or PMS, HRT and SDT). Voire said his purpose here was only to help and he added an attachment listing various Web sites offering advice on these matters. He said there was nothing in this for him, and he didn't even include a return address.

He claimed his efforts were consistent with the prison's cyberspace program that sought to find pen pals for inmates as a way of connecting them to the community.

Voire thought he might balance some of the anger that prison officials (and many recipients of his letter) expressed by volunteering information about an altruistic act involving the database. He proudly acknowledged that he was the one responsible for faxing the complete medical history of a politician who was a candidate for the U.S. Congress to all of the state's newspapers. Among other things, the history revealed problems with drug and alcohol abuse and treatment for pathological lying (some constituents were reassured by the report's conclusion that this was more an occupational, than a characterological, attribute).

Newspaper editorials praised this as a patriotic act involving the public's right to know that aided the democratic process. Voire was a bit surprised, however, when the candidate easily won the election--perhaps this was sympathy for an underdog or the public's distrust of her opponent, a sanctimonious politician suspected of telling the truth and known for purity-proving challenges to his opponents.

The furor eventually calmed. Voire was forbidden to be in the same room with a computer and he was reassigned to work in the video-monitored kitchen. He was warned against any unauthorized additions to the soup.

Tom further angered prison officials by challenging personnel practices. He became a leader in a conflict over whether or not there should be female prison guards in the male prison and male guards in the female prison. As a committed egalitarian, he argued strenuously for both. He did not like being "scoped out" by the male guards and said that female guards had a calming effect just like pastel colors. Since more than half the population was female, while nationally only about 20 percent of correctional officers were, there was a problem.

Tom strongly disagreed with another inmate who filed a federal lawsuit claiming that the presence of female guards was "embarrassing, humiliating, and offensive to my religious beliefs. My right to practice Christian modesty is denied when women watch me every day as I dress, shower, use the bathroom, and give a urine sample." The brief argued that this was a form of cruel and unusual psychological punishment that the Eighth Amendment was designed to protect against.

In contrast, Tom filed a brief claiming that to deny women the chance for such work was discriminatory and that to deny men the opportunity to be supervised by them was cruel and unusual punishment. Consistent with modern jurisprudential trends that rely on social science evidence to document impacts, he cited a survey that found that 86.2 percent of male prisoners did not feel invaded by the presence of female guards. These figures actually increased to 88.7 and 91.2 percent when it came to being monitored while taking showers and

for strip searches conducted by females. By overwhelming majorities, the prisoners said they actually preferred to be watched by females. Symmetrically, almost all of the female guards reported satisfaction in their surveillance roles as "Big Sister" and that they were not disturbed by male nudity. Tom felt that his case also received support from a survey of female prisoners that found that they, too, overwhelmingly preferred to be watched by women.

On leaving prison, Voire was strongly encouraged to move to another state. If he remained and was arrested again he might be subject to electronic location monitoring and have his whereabouts tracked by global positioning satellite. When not at work he would be required to be at home. He would receive random calls requiring him to breath into a remote breathalyzer and appear in front of a video camera. The parole officer, unlike a police officer, could search his home or person at any time without cause. If a subsequent arrest involved a sexual violation, on release from prison he would be required to send (at his expense) a postcard with his picture, name, address, age, and status as an offender on parole for a sex violation to everyone living in his zip code area. Neighbors might be contacted by his parole officer and asked to keep an eye on him.

Dejected, but spurred to carry on by Frank Lloyd Wright's family motto ("truth against the world") he persevered despite the odds and the high cost of home heating oil. He chose to leave the state. His Muddy Waters recording with the lines, "If I feel tomorrow the way I feel today, I'm gonna pack my bags and make my getaway," gave out from repetitive playing on the drive to his new home.

G. NEW BEGINNINGS

Given his avocational and vocational interests, he next sought private security work at a women's hospital. He reported his prior job at the department store but withheld certain crucial details. He said he left because of gender discrimination and a lack of professionalism by the security department in tolerating shoplifting and employee theft that could have been prevented by making more extensive use of available technology. On the advice of their legal counsel (fearing a lawsuit for defamation and the invasion of privacy and seeking to avoid scandal over the illegal taping), his former department store employer simply validated the dates of his employment and his salary, but said nothing of the conditions under which he ceased to be an employee.

Because he was imprisoned for a misdemeanor he did not have to report that. The hospital was forbidden by a 1988 federal law from applying a polygraph. Instead it gave him a battery of paper and pencil (actually computer keyboard) tests that were designed to ascertain his personality characteristics, honesty, and suitability for security work. Having taken a psychology course in personnel selection and occasionally helping the personnel director administer such tests in

his previous job, Tom was ready with the right answers (he even gave a few answers that he knew were wrong, just so his test wouldn't be suspicious by looking too good). The personnel director, a person of stunning sensitivity to the ways that human bias can condition perception, placed great reliance on machine-scored "objective" tests in her hiring decisions. Tom was hired. But alas even machines can make mistakes.

Tom got off to rocky start. He of course claimed that this was not his fault and in this case appeared to be correct. Even a broken clock is right twice a day. The hospital was concerned about the theft of drugs and suspected several nurses. Tom was instructed to hide a camera in the ceiling of the nurse's dressing room. He correctly followed the wiring document he was given in which the locker room feed was to go directly to a camera in a secure area (which was to be viewed by a female guard). Unfortunately the wiring document was in error and instead the images were broadcast through the cable of the hospital's main CCTV channel. Vasectomy patients in a recovery room cheered when they saw nurses taking off their clothes and thought this might even be part of their postoperative care. Some elderly patients mistakenly thought they were watching *General Hospital* and even rang for the nurse when the image seemed frozen. Rumors that Tom had been compromised by one of the nurses and had done this on purpose or that the operation had been sabotaged by a fellow employee involved in drug theft could not be proven.

Tom proposed that he probe the hospital's patient records security system for weak spots. His supervisor was appreciative and Tom did discover a few weaknesses. For fun he also did a computer match running "his" prison database against names in the hospital's system. He discovered that an Eve Spectre, from his prison database, had also relocated to his new city.

H. EVERY MOVE YOU MAKE AND THEN SOME: "ENGAGED THROUGH SURVEILLANCE"

After his prison experience, Tom vowed to avoid entanglements with real women and all the dangers they present. Even dating services were out because most now required credit and criminal records searches.

Tom was eager to learn all about Eve. Since he had her photo and knew where she lived and worked, identification was elementary. He found her to be exceptionally attractive and was immediately curious about all aspects of her life (beyond what he already knew from her health records). From that moment on, he reports that his private life, or rather his life away from work (being a loner, he did not have a private life in the communal sense that term usually implies), was exciting as never before. He suddenly knew what the poets and balladeers of love were about and he felt a sublime inner peace.

His psychological problems prevented him from trying to arrange even a contrived meeting with Eve. He followed (in both senses) the new laws on electronic stalking and knew how broadly they could be applied. Given his fear of rejection, or if successful, of sexually transmitted disease, unwanted offspring, his knowledge of the frequency and pain of divorce and his uncertainty about how men should behave in an age of acute sensitivity to sexual harassment, where telling an off-color joke, complimenting a woman on her appearance, offering a supportive touch, or even looking could get you in trouble, he preferred to be on the sidelines.

Nor within his restricted understanding and sensibility did he want to cause her any fear or discomfort. He had learned something about the importance of women's feelings from his previous job. It seemed rational to opt for a well-developed fantasy life where he was in full control. This arrangement also prevented him from ever having to lie to his beloved about having an affair, nor did he have to ever worry again about rejection or disappointing his beloved. No need to even try to cauterize the indelible memories of lost or unrequited love. Combining his modest understanding of Buddhism (with its emphasis on desire as the source of human unhappiness) with a Harley Davidson advertisement, he organized his social [*sic*] life around the motto "the eagle rides alone."

His passive voyeurism received an enormous boost from recent developments in technology. New means of communication were appearing almost daily: cell phones, scanners, digital retouching machines, Web video and soon "smart dust", "smart rooms", "smart roads", "smart clothes" and mechanical telepathy. For Tom, these were turbocharged adrenaline machines speeding up and expanding opportunities for him to satisfy his needs.

The chemistry, timing, and technology were right. Tom was happy as never before. The object of his fascination did not know that she had become the secret actress in a technologically enhanced fantasy. Eve never learned and so was in no way hurt by it (at least that is how Tom feels). The technology precluded the need for them to meet. Given his personality problems, she was probably much better off that way, even with her loneliness.

Tom is at pains to stress that his behavior is within the letter of the law. To insure this he even consulted an attorney and he audited a law class given by Droit Markenber, a famous privacy advocate who had helped draft federal legislation regarding electronic privacy.

A full list of his activities would be tiresome and serve no useful clinical purpose (whatever its prurient value or anthropological interest to future generations). Let me, however, offer a sample of what he calls his "research techniques" in creating "a safe imaginary friend."

After a few months of waiting he was able to rent an apartment directly across the street from hers. He set up a continuously recording video camera with a telephoto lens directed at her window. By never closing the blinds she unwittingly cooperated. Another camera disguised as an alarm on his outside

wall was aimed at her apartment's front door. He could have directly planted a tiny video lens in various rooms in her apartment. But to do that would require trespassing, or entering her apartment on a pretext such as by claiming to be a building inspector. The first was illegal and the second required lying, something he did not do. For several of her rooms this wasn't even necessary as she unwittingly invited him (and who knows who else) into her home when she installed wireless video security cameras. These send an unprotected video signal back to a nearby computer or TV base station (and to anyone with a receiver up to one-quarter of a mile away). Tom spent hours gazing at her furniture. He appreciated her thoughtfulness (or better thoughtlessness –A. F.) but worried that other less responsible observers would also take advantage of her gracious unencrypted offer. Since this was only in some rooms and even then there were blind spots, he closely followed developments in unmanned remote controlled photographic drone technology. However, the smallest commercially available drones were still too large for surreptitious entry, even if sending a fly-sized eavesdropping device through the screen was still legal. Such miniaturized devices were in the planning stages and not yet available.

A parabolic microphone disguised as a satellite dish was also pointed at the window but only worked when the window was open. (He did not use a laser listening device that would have picked up sound vibrations through a closed window because that was illegal.) He attached a specially wired cell phone under her car's rear fender (he was careful to do this when the car was on a public street so as not to trespass). This continuously sent signals via global positioning satellite to his receiver, so he always knew where her car was, even when it was stolen.

He generated a "sociometric" diagram locating her within a context of family and friends. He did genealogical research tracing her family history. He developed dossiers on her friends, initially identifying many of them from their license plate numbers when they parked in the visitors' space at her apartment. For a modest fee the Department of Motor Vehicles made additional information available to anyone. (The money from this was used to finance a program putting video cameras at major intersections.) His network analysis was aided by the fact that he could legally purchase her cell phone records. These dribbled or flooded (depending on who one believes) out, regardless of company policies against this.

He wanted Eve's vicarious company, but he also felt a manly need to protect her. Eve had someone to watch over her even if she didn't know it. Beyond satisfying his own needs, with this oversight Tom saw himself as a good Samaritan, unselfishly providing a service in a dangerous and indifferent world. He believed that it was in her interest, as well as his, to have her under surveillance. For proof he referred to the time he called 911 when a gentlemen caller in her apartment became too aggressive. Another time when he knew she was at work and her apartment was vacant, the thermal-imaging device he also kept pointed at her apartment showed heat radiation from a living being. He

called 911 from a pay phone and reported a possible burglary in progress. It turned out to be a neighbor's St. Bernard that she was temporarily caring for.

He next did a full search of a great many databases. Some of these he accessed directly (e.g., public records files), but for most he relied upon commercial services found on-line. He was not alone. He read in *People* magazine that one expert reported that more than 73.81% of internet users had secretly googled "a person of interest" (whatever that means). New search services were regularly offered. For a search, all he had to do was supply the name and birth date, address, or social security number.

He noted two items of particular interest. A newspaper search revealed that her father disappeared in 1980 after being released on bail from an arrest on charges of child abuse. Combining a public records search of legal documents with medical records, he noted that within a six-month period in 1990 she underwent an abortion, a tubal ligation, and a divorce.

It would have been easy for him to gain access to everything on her computers at work and at home because both were tied into a network (at home this was a high-speed connection through her satellite television). Eve used her birth date as a password and since she had nothing to hide took no computer security precautions. But Tom resisted the invitation to spy here because to do so would violate the 1986 Electronic Privacy Protection Act, not to mention the fact that it was unsporting and almost beneath his dignity, given the absence of any technical challenge.

He even resisted the harmless act of watching her dog at a doggy day care center (the center offered real time images to pet owners via web cams). He was a little confused about cultural standards regarding the privacy of animals (he recalls his and other's discomfort in watching sea lions mate on a beach in California). While animals did not have the constitutional rights of humans, for some legislation content –whether rocks or animals or humans was irrelevant. The conduits of intercepted electronic communication were protected, not their substance and so he stayed away.

From the video cameras (including one built into his sunglasses that he used to analyze her pupil dilation for possible drug use), his own still photography using a cigarette lighter camera, and images copied from her high school and college yearbooks (obtained from a company whose advertisement he saw on the Web), he developed a photographic portfolio. He scanned his favorite pictures into his state of the art computer. He digitally edited these so that he had only facial images of her. He then made modest changes to her facial appearance (lightening her hair color, changing her eyes to blue, raising her cheekbones, and making her ears flatter and a tad smaller).

Most persons seeing Eve and the new image would assume it was the same person (or perhaps her sister), even though the resemblance was not perfect. These minor editions meant that he could now claim that this was a work of art and not an exact photograph of a known person. This was also true of the images

he created of her as a very young and much older woman described below. There simply was no analogue in "reality." If he was ever questioned, he could truthfully say, "I don't know her from a coat hanger."

Using a program that generated images of persons at various life stages he also created an age portfolio taking her from age fifteen up to seventy-five. He then did the same for himself. He digitally joined their images to create a photographic history of their "relationship" from the teenage years on up. In some cases (as with his high school prom picture), he used a "real" picture and simply placed her face over that of the girl he had actually taken to the prom.

He then digitally edited the videos of his previous sexual exploits adding the retouched head of his obsession onto the bodies of the real women he had known. He also engaged in minor retouching of their bodies (covering a birthmark here, enlarging breasts, or adding a tattoo there), believing that they would never sue him for putting them in false light or defamation. He thought they actually looked a little better and that they would be pleased with his handiwork if they could see it. As a final leitmotif, inspired by the knowledge that in his paintings Degas had his benefactors watching the dancers from the wings, Tom created a window into the room and had several real and imagined former lovers looking through it.

He was surprised to see that with his digital editing it was possible to write on the body more clearly and at greater length than was possible with actual tattoos (and unlike them it didn't hurt and wasn't indelible). At first he just wrote "Tom's Property," "I [heart] Tom," and "touch here." Later he added a line from Thomas Edison: "What the hand of man creates the head of man can control." Another inscription read "Rosebud" and even more enigmatically, "Hey, hon, don't forget the coffee." These appear to have something to do with Hollywood movies.¹⁷

The sexual (and of course other) activities of participants, their appearance, and places that might be visually created here were literally only inhibited by deficiencies of imagination and technical and artistic skills. For example, he reduced and duplicated some of his favorite images so that they could be seen on the same frame--it was as if she had been cloned and become a triplet and each of her sisters was engaged in a different sexual activity with him at the same time. He used jump cuts to increase the realism, and there were also hints of cubist influence in his simultaneously presenting the subject from a variety of perspectives.

He further enhanced his creations with simulated conversations between Eve and himself. Using a speech synthesizer he was able to fairly accurately reproduce the sound and timing of her voice. Tom legally heard some of her phone conversations (until she obtained a more sophisticated cordless phone)

¹⁷ Respectively, *Citizen Kane* and *Good Will Hunting*.

through the UHF frequency of his old television set. Even if this had been discovered (which was highly unlikely), it is pretty hard to imagine him being found guilty for just having his television set on. If he wanted to, he could also have used a radio wave scanner purchased in 1984 before possession of this type was restricted. Cellular interceptors could still be purchased by those in law enforcement and for export. Nor did he want to risk trespass and possibly other charges in attaching a transmitter directly to her telephone or hiding a transmitter elsewhere in her apartment. He also obtained a voice sample from her answering machine. Through a trial and error process he determined the two-digit security access code for her answering machine and voice messaging system at work (although he could have also purchased a machine for doing this). He kept current of her messages by remotely accessing her answering machine. He subjected her messages to voice stress analysis so he could determine who might be lying. He also obtained some live speech data (always using a pay phone to avoid caller-ID) by calling her at work and at home using a variety of subterfuges (wrong number, newspaper sales, charitable solicitations, public opinion polls). He took an average of his (her?) (his possession of her?) voice samples and generated the appropriate logarithms for voice simulation.

With that data he could program her to say anything and could actually create conversations in which they "interacted" and discussed everything. These were a far cry from the mournful nineteenth-century soliloquies of undying and unrequited love delivered in front of the mirror or scrawled in a diary or a never-to-be-mailed letter. In being interactive, this technique went beyond one of Tom's favorite cinema scenes--the opening to the *Conversation* in which the watcher, inside a surveillance van fitted with one-way mirrors, has a one-way conversation with a young woman looking in the mirror as she puts lipstick on. Were someone to overhear the conversations, they'd be convinced that Eve was in the room with Tom (although hearing the same exact conversations over and over would have aroused suspicion and gotten boring). This might be seen as the ultimate in narcissism or as an ideal merging (as the guidebooks and poets counsel) of the selves of lovers. They certainly never had any fights, and it was clear who was in control. For a different perspective, he converted her sound waves into light patterns and was able to observe her in a different fashion.

As noted, Tom was very up at this point and wanted to share the good news about being in love. After all, what was the point of being a voyeur if you couldn't advertise your triumphs? Unshared secrets were only half the fun, especially with the safety of cyberspace. He said his sociology class defined this as a chameleon insight.¹⁸

He did all the work needed to create a Web site with a full account of his feelings for the woman, the sexual activities they engaged in, her past social and

¹⁸ I believe he refers to Simmelian insight here.

medical history, credit ratings, and consumption habits. He wrote about how angry he would become if she ever betrayed him (this was obviously academic since they had never met). He glossed over my suggestion that perhaps he was a bit like his cousin Earl after all. Tom said he was dealing in fictional hypotheticals. He programmed a Web cam so that anyone going to the site could see the street in front of her house and her front door in real time.

His entrepreneurial imagination ran wild. He thought of offering a service to help others like himself create such partners. His own Web site would be proof of what could be done. For a modest fee, he would provide T and A (technology and assistance). For an even larger fee, he would offer a complete package. He even thought that with his knowledge of databases he could serve as a sort of matchmaker in the ether. He would of course open the site by announcing, "Warning: This site does not condone or recommend participating in any illegal or questionable activities. This site is meant for entertainment purposes only." But for reasons that we are still exploring in therapy, he could not bring himself to activate the Web site.

He was able to find other more confined ways of communicating and sharing the joy. For example, he converted some of the images to postcards (although these only of her face) and he had others blown up to poster size to adorn his walls. In his photo class he offered some of the stills (with face disguised) as homework. Opinion was divided and the teacher even called in colleagues for their opinion. They concluded that while a few of the images showed considerable artistic merit, most were just plain smut.

Tom wasn't content with two dimensional representations. He purchased five mannequin replicas of her. From Eve's photo, the fabricator was able to recreate her facial appearance. These he placed with appropriate dress around his apartment (on the sofa, sitting at the kitchen table, etc.). From working at the dress store, watching the fashion ads, and years of observation, Tom was very knowledgeable about women's clothes. He found it easy to reproduce Eve's type of wardrobe and even improve on it, using more expensive clothes and colors that better suited her complexion.

A final example of his bizarre fixation can be seen in the rag kept in a small jar prominently displayed on his mantle, right alongside of his bowling trophy and his autographed pictures of Frances Ford Coppola and G. Gordon Liddy. In a criminalistics class, he had read of the high art form to which the East Germans had taken scent as a means of identification. Stasi offices were overflowing with neatly stacked sealed jars with little rags in them, each representing a suspected enemy of the people. Humans unknowingly constantly mark their territory. After suspects left an interrogation, police would wipe something they had touched or their chair with a cloth to get the smell and then label and bottle it. When graffiti or vandalism occurred, police would rub the site for scents and then use a specially trained dog to see if a match could be made. On balmy summer weekends, Eve often read on a bench in a nearby park. It was easy enough for him

to rub the bench after she left in order to collect her (or rather his?—who does a smell, sound or image belong to after freely leaving its creator?) scent.

Of course Tom didn't need this to identify her since he already knew who she was (and where she was). But it gave him pleasure to think of Eve's presence always there on the mantle in the same room with him, much as those who keep the ashes of a loved one close at hand in an urn, or a lock of childhood hair in a necklace, must feel. True, he couldn't use the secret possession of her territorial markings the way he could the photographs or the conversations or the letters. The distinctive smell was too weak for the human nose. Nor could he even test the ability of a dog to identify it since his apartment prohibited animals. But as the secret colonizer of her scent, he possessed her in a truly original way denied to her other lovers. The fact that a part of her was always there, for better or for worse and in good times and bad, filled him with awe about the universe. It was uplifting and wondrous to be reminded that there were many things under the sun that mere humans could not perceive. He had the same feelings in his moonstruck gazing at her DNA patterns described below.

I. YOUR TRASH AIN'T NOTHING BUT TRASH

Voire at first was very excited by the thought of the riches the trash might provide. He knew that the U.S. Supreme Court (although not the city of Beverly Hills, even if contents had been shredded) had concluded that it was okay to dumpster dive, so there was no risk there. True, he did learn a considerable amount about Eve's finances and her heating bills (her dwelling was overheated according to EPA standards), who she made long distance calls to (her mother, grandmother, a college roommate, and a famous psychic seen on national TV), and about her rhythms. He knew about her consumption habits from itemized credit card bills and barcode-generated receipts from grocery, liquor, drug, book, and video stores. In spite of his allergies, he occasionally sprayed her favorite perfume on the mannequins.

Eve's diet left much to be desired. It was high in polyunsaturated fats and she did not consume the FDA-recommended minimum daily amounts of riboflavin, molybdenum, boron, or tin. Nor as far as he could tell did she take a calcium supplement. Her taste in videos included *Cooking with Moldy Cheeses* and *Perry Como Does Denver* and in books, *Walking Tours of the Sahara Desert* and the *Autobiography of Lawrence Welk*.

So compelled was he to know everything about her that he spent thousands of dollars having her DNA analyzed (the DNA sample came from cell tissue on her discarded depilatory wax). Ever the visual person, he enlarged the image showing her unique DNA sequences. It looked like some kind of 1950s modern art, what with the lines of varying width and length, to which he added colors of the rainbow. He did the same for himself and joined them in a large red heart shaped frame hung over his bed—a bit idiosyncratic but very personal and

original. This wall hanging stood right next to the homey touch he added with pictures of all her previous residences. He obtained the addresses from a data warehouse. He then obtained high resolution satellite photos of these locations, reduced them, and created a collage.

The DNA medical report was fascinating. He noted with pride that she would make a wonderful biological mother. Yet one thing was troubling. She had a genetic potential for an incurable disease. He thought for a long time about whether he should inform her of this. After posing this as a hypothetical on countless computer bulletin boards, he decided not to inform her. First, because he couldn't think of an effective ruse to explain how he came to know about her DNA (although there is no law against this). After all, it's not like finding someone's wallet on the street or getting a letter for them addressed to the wrong address. But mainly his reason was that she could do nothing about it.

The DNA offered still other distant possibilities. Ever mindful of not wanting to intrude into Eve's life or in any way bother her, but very driven to want more of/from her, he became very interested in the idea of cloning. While he realized it was probably too late for him to clone her (unless a way could be found to vastly accelerate the growth process so he wouldn't have to wait twenty years), he thought how wonderful it might be for others (regardless of gender) if this could be done. It seemed like a win/win situation. It offered the protective distance of voyeurism with the addition of physicality. The cloned version would be his property after all. Or would it? The strength of his desire precluded him from considering any of the ethical, legal, or social implications.

In spite of small gains, there was not much fantasy food in the garbage. Going through the trash was dirty work in more ways than one. He did not enjoy getting up at 4 a.m. to make his garbage runs. It was cold in the winter and smelly in the summer. He had to go through a number of trash bags to get to hers, and the bags sometimes broke. The world's insect overpopulation problem seemed to be centered in this row of trash. He had to compete with roving dogs and rats with rival interests in the garbage. Sometimes, homeless persons got to the trash first, and several times he saw a better-dressed person, who he assumed to be a private detective, take a bag and leave an identical one in its place. He was amazed at what could grow on take-out Chinese food in only a few days. With so much rotting fruit, kitty litter, used tissue, and broken glass, the ratio of good stuff to garbage hardly made the search worthwhile.

There were occasionally some revealing personal passages in draft copies of letters to a girlfriend. One involved a description of a dream in which she is a biologist who specializes in the sex life of marsupials and receives international acclaim for discovering the source of an infertility crisis among kangaroos. But this ends sadly as U.S. customs refuses her request to import a special kangaroo who was central to her work. Mostly the letters expressed concerns about a boring job, cellulite, shopping, and a baseball team that always seemed to lose. Among the pharmaceutical remnants there were no packages for birth control

pills or aphrodisiacs but many for constipation, diarrhea, acne, and the removal of unwanted facial hair. In his words, "This stuff was a real turn off."

At that point, a book he found at the Laundromat by Professor Erving Goffman, The Presentation of Self in Everyday Life, led Voire to reassess his behavior. The book argued for the importance, and even sanctity, of back-stage regions and personal borders. It claimed that these make it possible for us to cooperatively sustain appreciative illusions in our own eyes and in the eyes of others and are central to human dignity. It was then that he came to me for therapy.

II. ANALYSIS: REFLECTIVE EYES AND MOODS APART

*For any eye is an evil eye
That looks in onto a mood apart.*

-R. Frost, "A Mood Apart"

In one sense this story speaks for itself and the reader's possible indignation, provocation or identification is the point. In the above I have tried to show rather than to tell. While the meaning of fiction rests with the reader, the social scientist can take this a step further and analyze.

How should Tom be viewed and by what standards and points of view? Is he a villain or hero, victim or victimizer? Does his behavior as a reflection of his upbringing, socialization, culture, gender or genes absolve him of responsibility? Or is he better seen as an unrighteous, duplicitous and inconsistent sociopath who has made terrible choices? Is he a pioneer or an outlaw? Or all of the above? Many of Tom's actions are indefensible, even as they may be irresistible to the voyeuristic inclinations of the reader encountering them from the safety of imagination and distance.

The multiplicity of social contexts and consequences makes it difficult to reach an overall conclusion. Tom victimizes others, if softly. He also uses surveillance to act heroically, or at least in a socially responsible fashion (e.g., alerting police when Eve had a disorderly visitor, working as a lifeguard and store detective, and volunteering as a neighborhood watcher). He is also victimized by the Navy's snooping into his email account, by anonymous denouncers, by hidden cameras, by telephone and computer taps, and perhaps by undercover police. He is also the beneficiary of positive surveillance—from his parents who successfully helped him become an adult, the doctors, who after extensive testing, evaluation, and monitoring, diagnosed and treated his childhood illness. He is also served by a vast array of unseen food, air quality, transportation, product, and work safety inspectors.

Tom's story is accessible and resonates with most readers because we all are agents and subjects of appropriate and inappropriate surveillance. More indirectly we are also beneficiaries and consumers of surveillance done by others—whether by unseen inspectors or through the mass media.

In analyzing this case I first note why it is troubling. I then consider Tom's rationalizations as indicative of cultural tensions and ironies. The latter go beyond the rapidity of change to some enduring characteristics of and conflicts in values. I then discuss some links between sex, gender and surveillance. I conclude with a framework for evaluating surveillance behavior.

A. WHAT'S WRONG WITH HIS BEHAVIOR?

Tom's activities are troubling, but it is not so easy to indicate why. For the criminal or civil law to apply it must be shown that harm occurs, whether to the individual target or to the community. The kinds of harm that may occur from the conventional invasions of privacy are well established, yet they do not fit Tom's case very well. We lack an adequate vocabulary for dealing with much of Tom's behavior. Nor do we have adequate concepts or theories for analyzing the social setting in which such behavior appears and can be evaluated.

Society cuts the Toms of the world a lot of slack—given our freedoms as citizens and the subtleties and complexities in our freely, broadcasting vast amounts of personal data.

Our society values due process and emphasizes the formal control of behavior rather than the control of thoughts, looks, facial expressions and body language. It is not that these are beyond control, but that they are the subject of more informal controls such as socialization and manners.

In Tom's story, sex and gender are used to highlight surveillance questions. Yet the case would be problematic, although perhaps not to the same degree or form, if it involved a woman watching a man, same-sex watching and watching for nonsexual purposes.

Apart from the specifics of any given case, individuals are likely to feel personal borders have been crossed when any of several conditions are present. (Marx 1998) These involve breaching of a "natural," social, temporal, or spatial border protective of information or violation of the assumption that interaction and communication are ephemeral and transitory like a river, and are not to be captured through hidden video or audio means without the subject's awareness.

Tom can be faulted for breaching some natural and spatial (especially with respect to the disaggregation of data) borders protective of information and for his secretive and deceptive behavior. But the grounds for this must be violations of cultural expectations. He skirts but does not really violate the criminal law. He has not engaged in trespassing, breaking and entering, or theft as these are legally defined.

Some privacy invasions involve a betrayal of trust whether based on friendship, or a professional relationship involving confidentiality. Yet Tom is betraying neither a personal nor a professional relationship. His behavior contrasts with the breaking of confidentiality as when a psychiatrist talks to the media or writes a book about a high-profile client or when an ex-boyfriend sells

pictures of his girlfriend who becomes a celebrity. The tacit assumption that shared behavior, particularly of an intimate “restricted” nature, will not be recorded or revealed to others without consent is violated in such cases. But Tom’s is not betraying a personal relationship, indeed Eve doesn’t even know he exists. All of his information is legally and publicly (note those are not necessarily equivalent) available.

The individuals who were watched by Tom might sue him in civil court for any of the established privacy torts such as being put in a false light, public revelation of personal facts, commercial use of an image, or intrusion into solitude. But they would be unlikely to prevail. The burden of proof is upon the party that feels aggrieved. This requires discovering the behavior and establishing that it is unreasonable. Given its’ covert nature, it is likely that only a tiny fraction of inappropriate behavior is ever discovered.

Even if all of Tom’s behavior was discovered, he could argue that privacy torts do not apply. Thus since the information he gathered or created was just for his own use, he cannot be said to have put anyone publicly in a false light nor to have revealed any personal facts, nor did he receive any commercial gain from it (with the exception of his medical database sales which the state garnished to pay for his imprisonment).

Tom could claim that his surveillance actions are their own end –a kind of play or recreation and, unlike most surveillance behavior, not goal oriented. He is not involved in a zero-sum game in which one side’s victory need not imply the other side’s loss, especially if she never learns of his actions. Since such information can be taken while remaining with its’ possessor, its’ discovery is less likely. If all goes according to plan, he can meet his goals without disadvantaging his subject.¹⁹

If his goals were to change and he sought to profit financially from his products, he could claim that because “his” images and stories are imaginary there is no real world person entitled to compensation. When he alters her image is it still “her”, or has he created a new image over which he should have full control? He could claim that his video creations were simply artistic and fictional altered composites of original photographs. He could claim he enhanced rather than defamed. Perhaps with the retouching and combining of video images he did put “her” in a false light, but this was in “private” not in public. His reworking and combining “real” data involves issues of intellectual property and the potential transmission of electronic communications across juridical borders.

Eve’s strongest claim might be intrusion into her solitude. This does not depend upon the information becoming public, being sold or being false, rather it only requires Eve to become aware of it. She could claim emotional harm from the knowledge of his actions (although probably not harassment or stalking

¹⁹ Of course its value may be reduced by being shared, as with knowledge of a secret manufacturing process, but that is a separate issue from it no longer being possessed by its’ original owner.

because there has been no interaction). This involves a more subjective standard and the “my feelings” issue.

In response Tom might claim that he broke no criminal law. To exist in the world involves certain risks. Solitude is not an absolute value and the standard that should apply is not whether her feelings had been invaded, but rather whether his legally permitted actions unreasonably violated her realistic expectations of privacy. His behavior, not her feelings about it, is likely to be decisive in court.

The strongest case against Tom rests on his violations of cultural expectations. However he could argue that the ubiquity and acknowledged capabilities of new forms of surveillance are altering expectations, particularly in public settings. If data are “publicly available” (whether appearance, images, motions, sounds, radio waves, scents, heat, records or garbage), how can it be “reasonable” to expect this to be ignored? If anything is unreasonable, it should be an expectation that this can, or should be ignored. He might claim that with contemporary extractive technologies and ways of living, what is unrealistic is to expect the kind of privacy one had in the 19th century. In the land of liberty, let the conveyor and purveyor of personal data beware. Let electronic consumers reap their bountiful harvest.

Without denying the emotional harm she claims to have experienced, he could say that it was certainly not his intention to cause her harm. However he is not responsible for her mental fragility. Another person might have found it all irrelevant, or comical and an off-the-charts exhibitionist might easily tolerate or welcome it. Within what the law permits, he simply put the available technologies to use. Tom might even prevail in counter suits claiming his rights to freedom of speech and information were being violated and that the lawsuits against him were a form of harassment.

B. KINDS OF HARM

What kind of harm occurs from a privacy invasion that the individual does not learn about and that results in no direct detrimental action? If neither Eve nor anyone else ever finds out about Tom and his data, is harm done? Can an individual be hurt by secret surveillance intended to be consumed only by the collector? Yes! What you don’t know *can* hurt you and, even if it doesn’t, there is a sense in which such behavior offends the broader society. Morality can hardly be said to take a holiday when infractions go undiscovered.

As Durkheim noted under modern conceptions of criminal law, offenses are viewed as an attack on the community at large, not just on the wronged party (whether he or she knows or cares about the violation). Pris Regan (1995) effectively analyzes the social values of privacy, apart from the individual as such.

The kinds of secret surveillance Tom represents can be seen to debase our common civic culture through its violation of the taken for granted world and the

failure to appreciate the borders of the self. His behavior is consistent with the analysis of Rochelle Gurstein (1996) on the decline of 19th century reticence. As with a steady drip of water eroding granite, separate drops don't matter, but over time they cause the rock to turn to sand. Modesty and efforts to counter its fruits are clearly not what they used to be.

There is the risk of revelation, even with the best of intentions. Here a distinction needs to be drawn between momentary consumption of the data by the surveillor's senses versus the creation of a reproducible record. Empirical artifacts reflecting the surveillance such as photos, video and audio recordings, and photocopies have a very different moral status than mere imagination. The risk of leakage or accidental exposure with a permanent record takes the surveillance down several moral notches relative to overhearing or watching without recording.

In Tom's case, for example, he could change his mind or undergo a psychological change that could lead him to want share his work. Even if he remains steadfast, what if a cleaning service, landlord, or fire or ambulance personnel come upon it? What if there was a police search or burglary of his home and his materials became public, whether because of failed blackmail, a news story, or a trial? One of the cruelest ironies of all is that the invaded person may then doubly suffer from the shock of discovery of the surveillance and from having their information disseminated beyond their control.

Even given legal rights to easily available information, the would-be secret surveillor needs to ask questions such as: If the subject suspected that she was under such surveillance, would she alter her behavior in any way to block or deflect it? What would the likely psychological impact on Eve be if she were to learn of Tom's behavior? Does Tom want to be responsible for that? Would he be embarrassed, humiliated, or ashamed at having his kamikaze surveillance behavior become known? How would he feel if someone treated him or his mother or sister this way.

C. BASIC ASSUMPTIONS

We assume that those with whom we have only impersonal or no relationships will not come to know (let alone accumulate) details that we have not ourselves revealed. Under such conditions, it is unseemly for an individual to make inferences about another's health, happiness, beliefs, behavior, life chances, and so on, and to create representations in the way and to the degree that Tom does.

Hidden observation threatens the trust which is so central to social organization. Tom can also be faulted for behaving deceptively. While he prides himself on being open, he hides many of his data collection activities (cameras in dark glasses and a cigarette lighter, a parabolic mike disguised as a satellite dish, and the use of pseudonyms and pretenses in purchasing data about her). Tom is

clever in arguing that he takes advantage of situations not people, but his use of ruses and sophisticated technology to extract, record, and combine information means that he is hardly the passive agent he claims to be. That he might rationalize his behavior out of a desire not to upset those he is interested in is beside the point. Such behavior violates trust. We assume that, under normal circumstances, both people and objects are as they appear to be. Expectations of trust are not restricted just to personal relationships, although they are strongest there.

While your physical property can be protected by borders of concrete and steel, your image, much of your personal information, and what someone does with you in their imaginary world is protected by nothing more than manners and their sense of decency. The fact that appearance is in one sense a free good for the sighted, like air or the water of a rushing river, adds to the confusion in assessing Tom's behavior. However, if we regard a seemingly free good (such as the appearance others offer for us to look at) not only as one that can simply be taken in the world without physical resistance or technologies, but as one that the individual must be entitled to take (in anything beyond the most innocent regard), then the look or photograph are not free goods. They are surrounded by rules, levels of access, and a sense of propriety, and when these are violated the social order is undermined.

Looking may be free in one sense, but it is not necessarily cheap. Mythology suggests that those who violate rules about looking suffer. Lot's wife was turned to salt after violating the command not to look.²⁰ In Greek mythology those looking at the female monster Medusa were turned to stone (except for Perseus who was able to kill Medusa by wearing a cap that made him invisible). (Gimbutas 1982) According to the seventeenth-century legend, when Lady Godiva made her naked ride, citizens were required to remain indoors. Peeping Tom, who looked out of the window, was struck blind and dead (presumably in that order). (The New Encyclopedia 1990) Note also the many cultures in which lower status persons were to avert their eyes in the presence of higher status persons and there were prohibitions on looking at the ruler, as well as prohibitions on photographing or being in the area of military installations.

²⁰ "Escape for thy life; look not behind thee, neither stay thou in all the plain; escape to the mountain, lest thou be consumed." Genesis 19:17.



Lady Godiva by John Collier (circa 1898)²¹

There can be harm in violating the spirit, if not the letter, of laws protecting property, contracts, and legitimate access. In “copping a symbolic feel” there is a questionable cheap thrill element in which voyeurs take something they are not entitled to. A trespass may occur in the ether and within the imagination, if not in physical space. What is taken has either not been paid for, or access to it has not been granted.

There is a kind of rip-off here in which Tom appropriates her personal data with such intentionality that he colonizes her representations. One aspect involves the qualitative difference between the sum total as against individual parts. While any single strand of information may be relatively harmless, multiple strands offer a fuller picture of the individual, revealing things that the person may not even know about him or herself. There is a threshold point in the aggregation of information that Tom has crossed. The creation of a “mosaic” in which, through a “value-added model,” combining information (regardless of whether it is public or private or available to the unaided senses or requires extractive technologies) fundamentally alters its character.

In the totality of his behavior, Tom violates tacit assumptions that we make about how others will respond to our personal information. We assume that the kinds of information Tom gathers will not be much noted by others (absent a warrant to do so) and, if noted, will not be collected and aggregated, nor long remembered.

²¹ *Lady Godiva* by John Collier (circa 1898), available at <http://itsa.ucsf.edu/~snlrc/britannia/flowers/godgifu.html> (last visited May 10, 2006).

The erotic looks that lovers may grant each other in public are usually not acceptable when offered by others. Tom makes the logical error of thinking that because he can with ease look lasciviously, or gather massive amounts of public data on an individual, that he is entitled to do so. Yet just because there is a legal right, or no legal restriction on doing something does not make it right.

For most people these opportunities are used with discretion as a result of manners and/or a desire not to be thought of as a boor, lech, or slut, or to invite unwanted reciprocal attention or sanctioning. We learn to avert our eyes even as we could look. This is often the case with a dead body or when someone does something embarrassing, what Goffman (1963) refers to as disattending. Children are taught that it is bad manners to stare. It can also be dangerous. We offer respect for the other by not watching too attentively or by recording and, in so doing, we also affirm something about the kind of person we are.

It is not that women or men do not want to be looked at and noticed, but that they have a proprietary interest in controlling who looks at them and in what ways. A part of their personhood is defined by the autonomy and ownership and a degree of control over their data and image, whether in face-to-face interaction or beyond. It is interesting that a visual honor system works so often in public. One can marvel that men and women are so relatively (if not equally) inhibited in their looking.

Unknown (as against suspected or identified) secret watching has an additional element of unfairness. It permits the agent to evade the natural moderating effects of reciprocity and counter-control which are possible when the subject is aware.

When individuals have reason to suspect that they are under such surveillance, they may take steps to prevent it (e.g., closing blinds, using a shredder, not using a cordless phone, debugging rooms, unlisting a phone number, encrypting computer and phone communications including answering machines and, when there is interaction, perhaps even obtaining a restraining order or getting a guard dog). Most people do none of the above because they assume there are no Toms seeking to be a vicarious part of their life. This leads to the issue of the harm that can come from discovery.

The pain, poignancy and consistency in the voices of those who speak out about their discovery of voyeuristic behavior and related forms of the inappropriate crossing of personal borders is striking. These involve a sense of betrayal, uncertainty and paranoia, embarrassment, and shame, not to mention the possibility of strategic disadvantage.

1. *BETRAYAL*

Secret watching and recording often involves the breaking of trust by persons, in places presumed to be safe. The sense of safety means that individuals reveal what is usually concealed. The very trust the subject grants may offer

temptation and an opportunity structure for violations. This varies from close relationships –lovers, family members, and friends to those known as a result of contractual relationships such as a landlord, to organizations to which a generalized trust is imputed. The closer the relationship and the more protected the place, the greater the sense of betrayal. For example the discovery of a person on a street corner peering into an open window, however discomforting, is unlikely to be as harshly judged as when a hidden camera is discovered in a hotel room, locker room, tanning salon or bathroom. The person in a restaurant at an adjacent table listening to a conversation does not arouse the same feelings as a telephone technician selling unlisted phone numbers or recording intimate conversations. The law tries to conceptualize this in terms of whether, in a given situation, there is a reasonable expectation of privacy.

2. UNCERTAINTY AND PARANOIA

Beyond the momentary shock of learning that personal borders have been crossed, there can be a more enduring effect in changing one's view of the world. There is a loss of innocence associated with the violation of trust and the appearance of new uncertainties. Since this has happened, it is natural to wonder if it will happen again. There may be a lessening of one's confidence or faith in the world as to whether persons, places and material objects are what they appear to be and can be trusted. For example a sampling of commercially available places for hiding a camera includes in a bottle, ceiling speaker, clock, emergency light, exit sign, jacket, lamp, mirror, mug, pager, phone, picture, plant, smoke alarm, computer speaker, book, tie, watch, sun glasses and cigarette pack (and that's only a sample).

Anyone who has had their assumptions of normalcy violated may never be able to look at the world the same way again. The urban angst Erving Goffman (1971) describes in writing about "normal appearances" beautifully applies. The individual may respond with an immobilizing paranoia, vast energy put into defensive measures (showering in clothes or in the dark, frequent room sweeps for bugs, changes of phone number, use of mail drops, formal contractualizing of personal relationships) and a constriction in activities.

Once secret surveillance has been discovered, there is the worry about dissemination. Who else has the results or could have? Are others looking at the individual in a new way as a result of their knowledge? Is the individual being treated differently as a result? With a permanent record of the personal information that can be easily circulated to others, the victim may relive the memory and imagines it being seen or heard over and over, whether by new persons or the initial recorder. This seems particularly characteristic of smaller communities where knowledge and gossip spread widely and where anonymity is less likely.

3. EMBARRASSMENT

This involves the sense of unease that accompanies being involuntarily naked (whether literally or metaphorically with respect to personal information). The individual is not strategically disadvantaged, nor revealed in a negative light, rather there is a transgression against one's modesty and reticence. This is the nakedness of Eve and Adam. We feel uncomfortable revealing aspects of ourselves to strangers, absent reasons for doing so, such as seeing a doctor and even then there may be some unease. The secret filming of sexual encounters is an example. In our non-Victorian age the occurrence of routine sexual encounters is hardly news, nor discrediting. The issue here is their unauthorized exposure to others.

A scene in Steven Soderberg's film *Sex, Lies and Videotapes* in which the character acknowledges talking about her sex life on camera for a male friend illustrates this. On discovering this, her straight-laced sister is shocked and says, "how could you do that? He has probably already beamed it on satellite to some dirty old man in South America." Her imagined horror involves the possibility of having intimate details revealed to some anonymous, far away men who would not know her name and who she would never meet.²²

4. SHAME

A related element is the sense of shame and humiliation if what the surveillance reveals is discrediting, or at odds with the image the individual publicly projects. A hidden camera in a bedroom or bathroom might reveal a wig, prosthetic device, birth mark, scar or surgery, as well as things that may be hidden such as an extra-marital affair or homosexuality.²³ Inappropriately accessing a database may reveal equivalent information regarding criminal records, bankruptcies, bad credit or mental and physical illness that the individual wishes to withhold. The individual may feel disgraced and stigmatized as a result of the unauthorized knowledge access.

²² But not to worry, the participating sister responds, "that won't happen because he promised me confidentiality" With her more relaxed style she probably would not have been deeply upset if he broke his word. Yet as long as he keeps his word (or his promise is kept which isn't quite the same thing), her privacy cannot be said to be invaded because she willingly talked in front of the camera, just as those in pornographic films agree to perform, although in return for compensation. The issues of consent and the promise of confidentiality set this apart from settings where one or both are absent.

²³ As always there are exceptions. Consider the case of the intelligence agency that secretly filmed some compromising positions of an individual it was hoping to compromise. When confronted with what the agency assumed was an embarrassing image, the subject was unwilling to cooperate, but was pleased with the picture and asked if he could have a copy.

D. CONFLICTS, BORDERS AND HAZE

In Tom's story we see the tensions, ambiguity, ambivalence, lack of clarity and contradictions that make the topic of technology and surveillance so compelling and so in need of social research and appropriate standards –whether involving manners, policies or laws.

Tom represents much that is good about American society: self-improvement, honesty, patriotism, respect for the law and concern for equality and justice (Willis and Silbey 2002). He is also mannerly, compassionate, forgiving, loyal and protective of those he cares about. He submerges his own strongly felt needs in order not to inflict harm or embarrassment on others. Yet as critics Joane Nagel and Bill Staples (2002) claim, he can be seen as “way high on the ‘creepy’ meter” and “a hapless stalker.”

Is Tom then, like the society he reflects, just a giant Rorschach in which observers offer their vantage point as the only truth? With respect to where the truth lies (or does it? How's that for a postmodern pun?), can we do no better than the congressman who, in responding to testimony he did not agree with, politely said, “Well, I guess everyone is entitled to their own statistics.”

We can do better by identifying values and norms in conflict, disagreement over what the values and norms mean, and by noting the absence of rules and the limits of existing rules under conditions of rapid change. While there is much room for reasonable persons to disagree about aspects of Tom's behavior and experiences, there are some broad ideas that are relevant to explaining and evaluating these.

In Tom's case we see the blurred “boundaries of the self,” “inconsistent standards,” and “contradictions in our collective life” (Manning 2002) and “the fuzziness of borders” (Nippert-Eng 2002). Nagel and Staples (2002) suggest that Tom crosses an “ill-defined line into the realm of THE creepy” and that there is no bright line separating “notice” and NOTICE”. The lines dividing unwanted and threatening sexual attention from harmless flirting are unclear (Willis and Silbey 2002).

Concepts such as fuzziness, blurring, ill-defined or absent lines, and contradictions call attention to “ambivalence” as a central theme in analyzing and judging Tom and, more broadly, surveillance in society.²⁴ Responsibly used surveillance is an essential feature of social life; irresponsibly used it destroys trust and impinges on the social values we hold so dear.²⁵ From the latter perspective a “surveillance society” is a contradiction in terms.

²⁴ Neil Smelser (1998) shows how useful ambivalence is as a category for social analysis. There may also be ambivalence within the individual beyond culture and groups, as raw self-interest, whether socially or biologically driven, struggles with learned rules that define the desired behavior as wrong.

²⁵ Taken to extremes it makes the notion of a “surveillance society” a contradiction in terms.

The ambivalence has several sources. One involves the conflict *between* competing values such as freedom of inquiry and communication versus the penumbra of privacy-supporting values in the Bill of Rights and in our culture more broadly.

There are laws which protect some of the surveillor's behavior. The ability to control one's information and to be protected from intrusions into one's solitude are important values. But they generally do not take primacy over other important values. Freedom of speech and inquiry in a public place, or with respect to public documents will usually take precedence over a person's right to be unobserved by others, absent some form of trespass or harassment. When the latter are present, then it is not the observation *per se* that is central, rather the violation lies in the conditions under which the behavior occurs.

Conflicts *within* given a given value can also be noted. Thus a value such as individual liberty can be emphasized with respect to the right to treat personal data as one's property, the right to be let alone and solitude. Or the value may be seen to involve the right to access what is publicly offered or available (whether voluntarily or involuntarily).

Our society emphasizes freedom of thought and expression and focuses on controlling behavior. Yet we also value proper motives and thoughts, and much social energy goes into trying to create these, whether from education, religion, or psychotherapy. Manners are an opaque mechanism or compromise for permitting right behavior, while leaving out inner beliefs and feelings. (Marx 1994).

There is no easy resolution to conflicts involving rights and expectations other than acknowledging and analyzing them and being clear about how and under what conditions we prioritize values.

The frequent absence of a bright line separating appropriate from inappropriate behavior must also be considered. Thus, the difference between subtle friendly glances on the cusp of flirtation and unwanted leering involves a continuum and is clearest as we move toward the extremes. It is the vast middle area that can be problematic and lacks clear demarcation. There is ample room for subjects of surveillance to misinterpret as harmful, looks and behavior not so intended. Yet there is also room, as in Tom's case, for a perpetrator with questionable motives to claim that he meant no harm and that he is misunderstood.

Another source of tension here is between what is legally permissible (partly because the law has not yet caught up) and what seems wrong. Tom's behavior stays within the law, yet it is troubling. In his case legal and social standards are weakly integrated and even at odds.

Ambivalence and hazy boundaries reside in the social context, the setting much more than the literal qualities of the technology or the behavior determines evaluation. It is not so much what one does, but where, in what way and under what conditions. To look can be to honor and not to look can be taken as hurtful.

Yet to look can also be intimidating and frightening and the failure to look can be a sign of respect for the other. The meaning of the look, like most duo-use tools (e.g., a screw driver can be used to build or to spread peanut butter) lies in the context, not in the tool considered in isolation.

E. THE TREADMILL OF CULTURE LAG

Yet another source of ambivalence lies in the area W. F. Ogburn (1952) referred to as cultural lag. There is a frequent gap between new technology and effective means of dealing with its consequences. Such means can include laws, policies, manners and other technologies. Ogburn noted that new technologies led to the gradual appearance of an “adaptive” culture regarding use. This involves “how-to-do-it” lore, organizational accommodations and the appearance of new organizations, as well as the development of clearer expectations and often formal rules specifying appropriate and inappropriate uses.

Some of the confusion in Tom’s case results from the fact that the technology is so new and expectations, manners, policies and laws to define and regulate it are inadequate or absent. Over time, greater consensus tends to emerge with respect to what behavior means and how it should be treated.

Consider, for example, the gradual emergence at the end of the 19th century of standards over whether and when it was proper to telephone others at home (Marvin 1990, Fischer 1994); the arrival decades later of strong restrictions on wiretapping and more recent legal moves from the acceptability to the unacceptability of intercepting others’ e-mails, sending junk faxes or revealing what videos an individual rents.

The approach in the U.S. of regulating technologies on a case by case basis, depending on the technology (e.g., video, computers) rather than as in Europe, on the basis of a broad inclusive principle such as the protection of human dignity, also makes protection more difficult. (Whitman 2004) This is particularly the case for new forms, which if they are to be controlled at all, tend to be dependent on legislation specifically crafted for the technique. This in turn is often dependent on some indignation-raising misuse becoming public and a drawn-out political process.

In general there is also greater control on what government can do to citizens and lesser control on the surveillance behavior of the private sector and individuals. Relative to Europe, individuals in the U.S. are expected to protect themselves and lesser emphasis is put on controlling those with the search tools. The European approach calls attention to the consequences of the actions of the search agent, rather than to the risks and rewards the subject is willing to accept. With respect to surveillance questions, market mechanisms involving choice, whatever their instrumental advantages, are less relied upon in much of Europe.

Partly because of cases like Tom's new laws appear. As noted, Tom is a composite based on real incidents. The "horror stories", "precipitating incidents", and "red flags" contained in the actual cases may raise awareness of the need for laws. For example this was the case with the 1988 Video Privacy Protection Act making it a felony to release records of video rentals after a reporter sought the records of Judge Bork.²⁶ In 1999 a California legislator was shocked when her local supermarket as part of its frequent-shopper discount program asked for driver's license and social security numbers, as well as family income and the number of persons in her family. She then introduced legislation requiring grocery stores to issue cards anonymously.²⁷ The increased prevalence of behavior such as Tom's is leading to new electronic stalking and anti-video voyeurism statutes at the local level.

Tom and those like him had the good fortune to use their invasive technologies before specific regulation. But looked at over time, one might optimistically conclude that people like Tom will gradually find their claims of "there's no law against this" to be untrue. But until then there is the tension between feeling that something is wrong even though there is no legal wrong.

If this were written in 1966 for example, Voire (if in law enforcement) could have gotten away with tapping Eve's use of a pay telephone.²⁸ In 1985 he could have legally eavesdropped on phone conversations sent in digital form and not over a wire (e.g., cordless and other remote forms of communication). He could have intercepted any of her computer communications until 1986. Depending on the state, until recently he could also have obtained public records including driver's licenses, health information, and much other information.²⁹

In 2006 in most jurisdictions there were still no legal restrictions on videotaping with single party consent (and even secret taping in many places) in either a public or private area. This will no doubt change as the law attempts to catch up. However the constant appearance of new and still unregulated technologies prevents the law from ever catching up.

Given the seemingly limitless, expanding power of new technologies to give meaning to previously meaningless personal emanations such as the

²⁶ See 18 U.S.C. § 2710 (2002).

²⁷ See Supermarket Club Card Act, CAL. CIV. CODE § 1749.60 (West 2000). This law prohibits supermarket club card issuers (1) from requesting driver's license numbers or Social Security numbers, *Id.* at §1749.64, and (2) from selling or sharing personal customer information; subject to a limited exemption for membership card stores. *Id.* at § 1749.65.

²⁸ See Pub. L. No. 99-508, 100 Stat. 1848 (1986) (codified at 18 U.S.C. §§ 2510-2521, 2701-2710, 3117, 3121-3126). The 1986 Electronic Communications Privacy Act extended this protection to information sent in digital form. See 18 U.S.C. § 2511(1).

²⁹ Two very useful sources for privacy legislation are <http://www.privacyrights.org> and <http://www.epic.org>. See also, Smith (2005).

question of when the person ends and something beyond begins is contestable.³⁰ The traditional self within a body has a series of shadow selves as companions whose meaning and appropriate use is gradually being redefined and subject to regulation. But these will likely be shaken up by future changes that are now unimaginable.

F. ADDITIONAL SUPPORTIVE FACTORS

The magisterial universalism of the law which of necessity is divorced from social context fuels Tom's self-righteousness and feelings of victimization. (Marx forthcoming c, Willis and Silbey 2002) For example his rigid take on equality as a principle fails to acknowledge that the social conditions to which the principle is applied are often unequal. This ignores stratification as a central feature of society. Individuals who are to be treated equally by the law are subject to unequal social pressures pushing them to deviate and conform. They also face unequal risks and have unequal social resources to protect themselves.

Tom claims justification under the flag (and broom) of egalitarianism and individualism. He sweeps away the different meanings and risks to men and women of being watched, particularly when there are power differences. When individual liberties are disconnected from social interaction and responsibilities, there is ample room for the good faith holding of righteously sociopathic constructions of reality.

We can also observe contrary pulls in explaining and judging Tom's behavior. The tension between social and cultural determinism as against individual responsibility and choice is another source of ambivalence.

Tom lives in a complex society whose social organization and messages are often contradictory or unclear. Given the vagaries and conflicts in culture and social structure, he can in good conscience rationalize his behavior and behave badly on the edge of the law, while not acknowledging violations.

Tom may even warrant a degree of sympathy for the messy muddles that society thrusts upon him. He can't be faulted for having the bad luck to land in a dynamic and less than perfectly integrated society whose universal rules ignore social contexts and offer legitimations for questionable behavior. However structural pressures and cultural opaqueness are hardly the entire story. Most others in similar social settings don't behave the way he does.

Yet if there are valid grounds for questioning some of the surveillance Tom was subjected to, as well as for justifying –or better to help us understand how he justifies his behavior, they are not strong enough for his clever but self-serving sophistry to prevail.

³⁰ On the problem more broadly see Marx (forthcoming b) and on the fascinating issue of DNA traces see Joh, (forthcoming).

A brief note on his misuse of language and logic is needed, apart from content. His glib, pop culture responses are reminiscent of the most plebian and mindless talk shows. He demonstrates a number of more general, dogmatic shoot-from-the-lip fallacies of folk reasoning and unbecoming political rhetoric. These include:

- (1) the fallacy of literalism in which a normative principle is rigidly asserted, making no allowances for shades of grey, contingencies, or discretion,
- (2) the fallacy of assumed representativeness in which a single (often personal) example is believed to apply universally,
- (3) the fallacy of reductionism in which a given cause or level of analysis is assumed to explain everything,
- (4) the fallacy of value primacy in which a given value is asserted to always overrule other values,
- (5) the fallacy of the final authority or transference in which a quote from a famous person is offered as sufficient justification for a position taken,
- (6) the fallacy that because behavior is not as bad as it might be negative moral evaluation should be softened or withheld, and
- (7) the fallacy of the double standard in which when his personal informational borders are invaded he is angry, yet he feels no remorse about behaving this way toward others. Survey research suggests very strong support for protections from the privacy invasions of others but much less support with respect to what the individual feels entitled to do to others.

A related way to consider the case is to note the veritable feast of ironies it offers.

G. IRONIES

There is irony in the fact that in logically following one set of values, such as freedom of inquiry and of expression, Tom runs afoul of others, such as the invasion of privacy. We see Tom prying into other's lives, even as we pry into his, in spite of the opening warning about confidentiality. Professionals, shocked at

his behavior, behave in some similar ways and are occupationally rewarded for doing so.

We also see irony in the tension between separating prisoners and seeking to integrate them into the community. In Tom's case his prison job training which involved women's medical records, also gave him the opportunity to misbehave.

It is ironic that the surveillance that Tom uses is in turn used against him. Jeremy Bentham's *Panopticon*, although never literally built, was a place where the guards and supervisors were to be watched, as well as the inmates (Boyne 2000). This petard hoisting potential exists with many contemporary means of data gathering. Hidden bugs, taps or video cameras are indiscriminate and egalitarian in catching all who urinate in the coffeepot or sleep under bridges, regardless of their organizational station.

Given the large interpretive, discretionary and grey area with respect to many of these issues, it is ironic that taking a given line of expected behavior to an extreme or misreading the context can have negative effects not intended by the actor. Thus as noted, not making eye contact with another person can be seen as arrogant, unfriendly and disrespectful. Yet too much (or the wrong kind of) eye contact can be seen as invasive, threatening or hostile. As with some medicines there is an optimal point. Too much or too little (or the wrong combinations) does harm.

There are existential ironies rooted in the perception of secret or hidden things. To hide or mask an identifiable object, or to withhold information known to exist can serve as a challenge to those not in the know. The withholding or shielding may pique curiosity and intensify interest. The informationally excluded wonder what the secret is, or how the object appears when unwrapped or decoded. Seeing a person of sexual interest fully clothed may provoke the observer to fantasize about the person unclothed (although it is interesting that being partially unclothed is generally more alluring than the full monty). However on any quantitative basis, the strategic reasons for seeking secrets far outweigh the prurient or mere curiosity.

Sexual material has an ironic or paradoxical quality that makes it difficult to avoid suspicions of prurience, whatever the intentions of the consumer. As the feminist and religious critics of pornography who must engage the materials they find distasteful have discovered, an ironic contamination effect may be perceived—like trying to clean up a paint spot with a rag that has paint on it. In dealing with sexual materials, the critics are subject to complaints about their prurient interests or at least the prurient impact of their work. Freud said in the beginning there is the body—no amount of detached analysis or moral high ground can quite overcome that. There are some literal and metaphorical links between sex and surveillance.

H. SEX AND SURVEILLANCE: UNVEILING SECRETS

In beginning this research I did not intend to say anything about sex, let alone devote attention to it with a fictional case study. Yet it soon became apparent that sexual themes often hover over the topic or lurk in the background, particularly when surveillance is covert. Sexual images and metaphors (whether conscious or latent) surround the subject.

Covert surveillance especially offers a “safe” passage to excluded, but presumably attractive or desirable territory and to things that are not “public” in the sense of being available to anyone. A market principle in which scarcity serves to increase value may apply. Surveillance and sex share the increased excitement that can accompany activities that are forbidden, illicit, or risky. Secret surveillance represents a form of power over the other and can stimulate the imagination. Voyeurism feeds consciousness, and sex is as much in the head as anywhere else.

There are general features of sex that relate it to surveillance apart from gender. Both sex and surveillance involve crossing exclusionary borders. The allure of sexual secrets (whether the existence of a relationship or its details) is well known.³¹ Consensual sexual encounters consist of seeking barriers against the surveillance of others (e.g., the privacy offered by darkness, empty houses, closed doors, basements, barns, the woods, cars, covers, and secret getaways). Yet they also do the opposite in overcoming barriers to mutual surveillance and direct contact.

Involved here are a series of parallel and progressive unveilings, revelations, and entrances—from the outer walls of a structure, to the doors of a bedroom, to the shedding of clothes, to the contact of separated bodies, to the revelation of inner thoughts and feelings that are masked in public presentations of the self. Here we see the cooperative elimination of anti-surveillance measures in order to facilitate surveillance of, and by, the partner. The hidden observer of such activity vicariously participates in this unveiling, transcending the group privacy the couple presumably intended to create.

Beyond these parallels, surveillance and sex may be explicitly joined as new technologies offer opportunities for the consensual videotaping of sexual encounters. Whether covert or overt, watching and filming in some form is a frequent theme of conventional and pornographic films. This may serve as a stimulant to the hidden watcher, to those being watched if they know, or imagine they are being watched, and to the doubly voyeuristic viewing audience.

³¹ For example, Wenger, Lane and Dimitri (1994) find that shared secret romantic relationships have greater resonance than do open relationships. What is true for the social secret may also be true for the individual with a secret obsession such as Tom. The risks and uncertainty over potential discovery may heighten the thrill, not unlike the rush from high risk sports and other related activities –what Lyng (1990) refers to as “crowding the edge”.

It is important to observe factors such as the above which transcend gender. Yet neither broad scientific generalization, nor laws intended to be universal in their application should lead us to deny the likelihood of some gender differences.

I. GENDER DIFFERENCES: THE MALE GAZE

*Standing on the corner
watching all the girls go by,
Buddy if you've got a rich imagination,
matter of fact, so do I.*

-The Four Lads (1956)

Research on the social correlates of privacy related attitudes and behaviors does not suggest many striking findings. This contrasts with other well-trod survey research topics such as attitudes toward politics or religion. But one area where there are differences is with respect to gender. Men tend to be more fascinated by technology than women and less concerned with its misuses. Women are more concerned over privacy issues, more apprehensive about technology and more likely to use surveillance technology in a defensive way as protection, while men are more likely to use it to discover information.

On the average, men and women differ in their response to the Tom story. Women are more likely to find it creepy and even upsetting, while men tend to find it humorous and unrealistic. For some it may even speak directly to their experience, or at least imagination.

There is a pronounced male gender theme to much voyeuristic personal surveillance activity. Our culture eroticizes women's appearance much more than men's. Tom's blaming women for his behavior is indefensible. Yet we can note some feminine connivance thanks to the male gaze's saturation in the culture. In their presentation of self many women "...do to themselves what men do to them. They survey, like men, their own femininity." Here the mirror and of course the mass media function "...to make the woman connive in treating herself as, first and foremost a sight." (Berger, 1972, p. 63, p. 51)

Given our culture, it is not surprising that the female form draws greater sexual attention than does the male. Advertisements for surveillance devices often show young women as the subjects. The purchasers and users of surveillance technology are disproportionately men, as are the consumers of pornography. Contrast the circulation of *Playboy* and its imitators with that of *Playgirl*.³² In the traditional striptease women reveal and men observe, rather

³² See Magazine Publishers of America Average Circulation for the Top 100 ABC Magazines. (May 10, 2006), available at http://www.magazine.org/circulation/circulation_trends_and_magazine_handbook/16117.cfm.

than the reverse, which is why the film *The Full Monty* was funny. We do not find many songs written by girls about “standing on the corner watching all the boys go by” (although there are more now than previously).³³

Men do not usually complain about being yelled at or observed by female construction workers (and only partly because there are so few). Nor are there complaints about female landlords hiding cameras in the bath and bedrooms of their tenants, nor do men frequent shopping malls with hidden video cameras.³⁴

J. MIXING IT UP

What happens to the story if we shift genders and sexual orientations? Tom’s story fails miserably if *he* becomes Tomasina, a *she* who engages in the same behavior. It is just too far-fetched, even in our more sexually liberated age, to have women behave toward men the way Tom behaves toward women.³⁵

It is also interesting to speculate on how the reader’s response might change if it turned out that the story ended not with Erving Goffman’s powerful insights, but with Tom giving it all up when his probing surveillance reveals that Eve was really Evan, a man who presented himself as a woman ala Madame Butterfly.

With the genders or biology switched, we are unlikely to feel the same degree of indignation and shock over her behavior, or sympathy and concern for the object of her surveillance, as we do over Tom’s.

What accounts for this variation? Differences in power, risk (women’s greater vulnerability to assault) and the nature of sexual roles and expression as shaped by culture (and maybe more) help explain responses to the story of Tom as a male watching a female.

In considering power and desire we can imagine four types of situations. In the first men and women are exactly equal in power and in the intensity of their desire or willingness to express sexuality (*equality*). In the second women have more power and less intense desire or willingness (*amazonia*). In the third women have less power and a greater desire (*the male fantasy*). In the fourth

Playboy had a circulation of 3,060,376 in 2005 and was ranked 17th overall in terms of total circulation. Playgirl was not even ranked on the top 100 list which ended with Forbes, which had a 2005 circulation of 926,581.

³³ This song was done by the Four Ladds. Among songs with female watchers noted in Marx (forthcoming d) are “Whatta Man” by Salt N Pepper, Natalie Imbruglia’s “I’ve Been Watching” and Melissa Etheridge’s “Watching You”.

³⁴ Perhaps women are just more interesting to watch than men, that could help account for what is looked at, although not the gender differences in the act of looking.

³⁵ There are occasional cases of the jealous and perhaps revenge-seeking female stalking the male. Also note the contrast in attitudes toward male teachers involved with underage females, as against female teachers involved with underage males.

women have both less power and less willingness to express their sexuality (*American reality*).

In the first situation of equality, gender would be irrelevant. The story of Tom would not have the same impact, no matter whom it involved. One analog would be the more frequent couplings said to be characteristic (on the average) of male homosexuals—where drive and power may be assumed to be more equivalent.

In the second type (*Amazonia*) Tom's story would not be compelling because his actions would not be bolstered by the power our culture gives to males. It would be much riskier for him to behave that way and the greater power of women would not engender the sympathy we now feel for the object of Tom's attention.

The third type in which women have less power and greater sexual interest, would work better, but still not as well, because the greater sexual desire and availability of females would lessen our understanding of Tom's behavior.

The story of Tom however does work in a society such as ours where there is a pronounced power imbalance and in which the culturally conditioned need to express one's sexuality is generally greater, or at least more immediate, for men than for women.

Of course we must also guard against overemphasizing the gender differences. The issue may be one of form and content more than greater or lesser interest or desire to know.³⁶ With respect to content, men appear to find entangled bodies and the female form of sufficient interest, while women are more likely to want a fuller context and story. Are women really less interested in observation of the opposite sex or just more effected by social customs? Relative to men, when surveillance is used this is more likely to be for protective, rather than for prurient reasons. Women may be better at watching than men; watching for different things and more subtly. They are better at interpreting nonverbal meanings. That women are more likely to engage in "relationship" talk, to discuss the personal and share confidences, and perhaps to gossip more than men does not suggest any lesser curiosity. As mothers watching their infants and children, they may, on the average, be more attentive than men. They also, particularly when alone, are more attentive to threats posed by their environment.

That surveillance technology lends itself to disembodied, acontextual information may mean that men find it more attractive. On the other hand, its very distancing quality makes it safe in a way that direct observation is not. Anonymous surveillance mediated by distance does not run the immediate risk of

³⁶ Ease with using technology and opportunity may also be factors. Note the enthusiasm with which Sharon Stone in the film *Sliver* becomes intrigued and a regular in watching her wired high-rise building, after an initial culturally expected obeisance to the shock and insult of video invasion. The film *Kika* chronicles a female voyeur. While more muted, Grace Kelley in *Rear Window* also becomes an interested observer. Of course we must be careful not to too unreflectively leap from movies to generalizations about other kinds of human behavior.

retaliation, invitation, or showing bad manners from staring or other direct interaction. Thus, one might expect that over time, as women become more familiar with the various technologies, they would make greater use of them. Caller-ID, for example, has been marketed more for women than for men. In a related example, women may be as, or more, likely than men to silently record phone conversations with the potential now offered by answering machines.

K. ORGANIZATIONS

Where monitoring involves sensitive gender questions organizations tend to respond to the cheap-thrill-to-avoid-the-inappropriate-look/touch issues by adopting policies of sex segregation and gender equivalence in agent and subject roles. To the extent that surveillance involves nudity, direct searching via touching or asking questions of a sexual nature, the general policy is to have this done by a person of the same sex. Examples include the monitoring of video cameras in changing rooms or bathrooms, monitors of new super x-ray machines at airports that can reveal bodily contours hidden by clothes, observation of urine collection for drug testing, and pat downs and body cavity searches.³⁷ Built into such policies are several assumptions:

First is that gender and sexual preference are the same. In denying males the chance to observe females the women are protected from unwanted feelings of being seen as sex objects and the men are denied the chance for inappropriate behavior (as well as protected from false accusations). The case of prohibiting females as monitors of males is related, but not quite the same. Here the goal may be to additionally protect the female watcher from embarrassment, more than to guard against any inappropriate gratification, although that would not necessarily hold for the heterosexual male who is watched.

However, when we separate gender from sexual preference, those assumptions breakdown. Thus if the goals are to avoid any (even imaginary) inappropriate sexual gratification on the part of the watcher and any embarrassment on the part of the watched, the situation is greatly complicated.

Considering both the watched and the watcher and assuming either/or categories for gender and sexual preference (omitting bisexuals and hermaphrodites),³⁸ there are at least 16 possible combinations varying in their desirability as public policy. To more accurately conform to the contours of the

³⁷ A related issue not seen in Europe to the same degree as in the U.S. is in situations that call for revelation and touching involving a male doctor and a female patient with a female nurse present.

³⁸ There are actually 5 physiological types, at least by birth. One of my students, employed as a collector of urine samples, reports the case of a hermaphrodite who when asked, said it didn't matter if a male or a female observed the sample collection.

empirical world and to accommodate individual rights and meet these goals, at a minimum there would have to be a number of separate rooms for changing and drug testing and lines at the airport x-ray monitors, clearly marked with signs such as “heterosexual: male monitors and surveilled”, “homosexual female monitors and male homosexual surveilled” etc.

To prevent exploitation there would have to be additional surveillance systems involving the development of failsafe tools to measure all of this and databases to register results. This could insure the accuracy of gender and sexual preference for both those watching and the watched—e.g., no cross dressers or dishonesty in sexual preferences for those trying to beat the system in search of a cheap exhibitionist or voyeuristic thrill.

On some broad statistical basis these assumptions are supported, but it all gets rather silly when you get down to individual cases. This suggests that many of our assumptions about watching are not well thought out. Extreme and probably equally unworkable solutions would be to have machines replace people as watchers or to cease being concerned over gender and sexuality issues in legitimate surveillance.

L. ART IS LIKE LIFE

Yet in spite of Tom’s sophistry and the cultural haze and conflicts engulfing the area, conclusions are possible. C.K. Chesterton said something like, “Art is like life. You have to draw the line somewhere.” The same can be said of surveillance. We seek the luminous straight line separating the good from the bad. The resolution to much of the ambivalence over unclear or absent lines is ideally to clarify or to draw them. As noted the eternal time lag between technology and the law makes that hard to do. With experience and through trial and error, many troubling aspects of new technologies become bound in by manners, policies and laws.

But unchanging bright lines will forever be unavailable given the continual appearance of new means and the complexity and situational variation in surveillance settings. If such lines were suddenly to be imposed, they would be highly dysfunctional. As noted, we are dealing with value conflicts and multi-dimensional continua that, in the language of the mathematician, may not be isomorphic.

How should surveillance be judged? When is secret surveillance wrong, neutral or right and even necessary? The first question is of course what kind of surveillance, where and under what conditions. In considering this the following distinctions may be helpful. Analysis requires differentiating between thoughts and overt behavior, real and simulated information, awareness or lack of awareness of the subject/object (overt/covert data collection), and then the consensual and nonconsensual collection of information, whether the information is available to the unaided senses or requires a technology to extract,

assessing the characteristics of the technology and assessing the types of role relationships (e.g., whether personal or impersonal), the conditions and place (e.g., a park vs. a home) of the collection including data security, whether there is surveillance reciprocity, and uses and goals.

The topic raises questions about imagination and what self-imposed limits there are, or should be (at least until brain-wave reading technology goes much further) with respect to thoughts about others. One of the arguments against pornography can be applied. It could be argued that Tom's private fantasy world is dangerous. A vulgar imagination and passive voyeurism are undesirable because they will embolden him and lead him to destructive actions. The elaboration of his "relationship" might only serve to intensify his desire and perhaps increase his jealousy and, in the words of a police officer, "he will progress [sic] to more serious offenses." From this perspective, coercive intervention and prohibitions would be justified in the name of prevention, even though no law may yet have been broken.³⁹

While there are still loyalty oath residuals scattered throughout society, and jealous organizations and lovers look carefully for behavioral signs reflecting inner commitment, thoughts are not criminalized in our culture and the technologies for determining them are still primitive. Control of overt behavior is difficult enough in a complex society without the added burden of trying to control thoughts. That right thinking is a central principle for science fiction dystopias as well as for totalitarian societies must make us wary.

Motive, while hardly fully exculpatory, is also a factor in judging surveillance. A desire to intentionally do harm is distinct from actions that unintentionally cause harm. However actual behavior (and the structure of the situation) may be more important and easier to empirically determine and analyze. Thus, information overtly collected with the subject's knowledge and consent without a technology, in an impersonal and/or public setting clearly has a different moral status from that secretly collected without awareness or consent, using a technology in a private setting involving a personal relationship.

An actual record may have a different moral status from a composite or simulated record. The former can draw on a morality of authenticity and perhaps a higher truth value, at least with respect to an actual case. On the other hand the latter may be justified precisely because it isn't "real" as that term is usually understood. Regardless of the kind of record, those that protect the anonymity of subjects are different from those in which subjects can be clearly identified.

An additional factor of major significance is how the information is used and who consumes it. Private information used for private purposes has a very

³⁹ A counter argument also applied to pornography is that such fantasies can be a relatively safe outlet for a troubled person. They may prevent him from actually acting out in the real world. To deny him his fantasy behavior might increase the likelihood that he will behave criminally. From this perspective, rather than being controlled, such fantasies should be tolerated and even encouraged.

different status than that which is broadcast. Assuming that the surveillance does not break the law and that the goal is private consumption, a factor in moral assessment may be how good the secret surveillor is at keeping the results secret (the security question). As noted there is the risk of revelation, even with the best of intentions, although this is less likely when there is no documentary record.

As with any value-conflicted and varied-consequence behavior, particularly those that involve conflicting rights and needs, it is essential to keep the tensions ever in mind and to avoid complacency. Occasionally, when wending through competing values the absolutist, no compromise, don't cross this personal line or always cross it standard is appropriate. But more often compromise (if rarely a simplistic perfect balance) is required. When privacy and civil liberties are negatively effected it is vital to acknowledge, rather than to deny this, as is so often the case. Such honesty can make for more informed decisions and also serves an educational function.

Surveillance practices are shaped by manners, organizational policies and laws. These draw on a number of background value principles and tacit assumptions about the empirical world which need to be analyzed. Whatever action is taken there are likely costs, gains and trade-offs. At best we can hope to find a compass rather than a map and a moving equilibrium instead of a fixed point for decision making. Considering the questions in Table 1 (from Marx 2005) can help in doing this.

TABLE 1: Questions for Judgement and Policy

1. Goals—have the goals been clearly stated, justified and prioritized?
2. Accountable, public and participatory policy development—has the decision to apply the technique been developed through an open process, and if appropriate, with participation of those to be surveilled? This involves a transparency principle.
3. Law and ethics—are the means and ends not only legal, but also ethical?
4. Opening doors—has adequate thought been given to precedent-creation and long term consequences?
5. Golden rule—would the watcher be comfortable in being the subject rather than the agent of surveillance if the situation was reversed?
6. Informed consent—are participants fully appraised of the system's presence and the conditions under which it operates? Is consent genuine (i.e., beyond deception or unreasonable seduction) and can "participation" be refused without dire consequences for the person?

7. Truth in use—where personal and private information is involved does a principle of “unitary usage” apply in which information collected for one purpose is not used for another? Are the announced goals the real goals?
8. Means-ends relationships—are the means clearly related to the end sought and proportional in costs and benefits to the goals?
9. Can science save us?—can a strong empirical and logical case be made that a means will in fact have the broad positive consequences its' advocates claim? (the “does it really work question”)
10. Competent application—even if in theory it works, does the system (or operative) using it apply it as intended?
11. Human review—are automated results with significant implications for life chances subject to human review before action is taken?
12. Minimization—if risks and harm are associated with the tactic is it applied to minimize these showing only the degree of intrusiveness and invasiveness that is absolutely necessary?
13. Alternatives—are alternative solutions available that would meet the same ends with lesser costs and greater benefits (using a variety of measures not just financial)?
14. Inaction as action—has consideration been given to the “sometimes it is better to do nothing” principle?
15. Periodic review—Are there regular efforts to test the system's vulnerability, effectiveness and fairness and to review policies?
16. Discovery and rectification of mistakes, errors and abuses—are there clear means for identifying and fixing these (and in the case of abuse, applying sanctions)?
17. Right of inspection—can individuals see and challenge their own records?
18. Reversibility—if evidence suggests that the costs outweigh the benefits how easily can the surveillance be stopped (e.g., extent of capital expenditures and available alternatives)
19. Unintended consequences—has adequate consideration been given to undesirable consequences, including possible harm to watchers, the watched and third parties? Can harm be easily discovered and compensated for?

20. Data protection and security—can surveillants protect the information they collect? Do they follow standard data protection and information rights as expressed in the Code of Fair Information Protection Practices and the expanded European Data Protection Directive?

A central point of much social and legal analysis is to call attention to the contextual nature of behavior. Certainly these questions and the principles implied in them are not of equal weight, and their applicability will vary across time periods depending on need and perceptions of crisis and across contexts (e.g., public order, health and welfare, criminal and national security, commercial transactions, private individuals, families, and the defenseless and dependent) and particular situations within these. Yet common sense and common decency argue for considering them.

M. FUNNY STUFF CAN STILL BE SERIOUS

In describing Tom, I emphasized the bizarre and atypical to surface and highlight the issues. Tom's story has elements of humor and the harm he causes and suffers is in general not life threatening. But that is not to suggest that these issues are unworthy of serious attention. Freud said there are no jokes and he wasn't kidding.

One element in Tom's story is about limits of the law. Even as the law temporarily catches up, we need to realize it is only a partial solution. Its blunt and general quality is severely challenged by the contextual richness of concrete situations.

Law can't control everything that we may find offensive, nor can it redress all hurtful behavior. As a wise jurist said several hundred years ago, "the eyes cannot by the law of England be found guilty of trespass."⁴⁰

Much decent behavior must flow from custom and manners. Even considering culture lag and the fact that perhaps some of Voire's behavior, while legal when it occurred, will become illegal (e.g., secret videotaping or remotely listening to another's answering machine messages), the law can only go so far. Mostly what Voire is guilty of is bad manners and insensitivity. It is vital that awareness and standards emerge to guide the use of potentially invasive technologies. Public discussion and education are central for this.

However extreme, Tom's behavior and responses are at one end of a continuum. He illuminates (as both subject and agent) potential uses of the new technologies and the lack of adequate formal or mannerly protections against violation. Whatever his distinctive psychology, he reflects elements of our culture and conflicts within it.

⁴⁰ See *Entick v. Carrington*, 19 Howell's State Trials, 1029 (1765).

Tom reminds us that the social and ethical issues around information technology do not just involve large organizations (merchants, banks, insurers, workplaces, medical facilities, government) and their treatment of individuals, or organizational rivals, but also the behavior of individuals towards each other.

Tom does not come from the far reaches of American society. He has been formed and affected by surveillance experiences in mainline institutions—the military, education, work, therapy. His ideas are not drawn from the sanity-defying fringe media but from mainstream sources such as “Reality TV” and the popular press.

He shows how easy it is to rationalize highly questionable behavior and how muddled expectations regarding all of this can be. There is some of Tom in all of us, regardless of gender, although in our culture more in men than in women. To varying degrees, we also share something with the subjects (or perhaps they are objects when treated in a depersonalized way) of Tom’s covert activity.

In offering Tom as satirical fiction, I do not wish to detract from the mundane and omnipresent reality of the topic, nor from its seriousness. Tom may be an outlier and even an outlaw, but it is premature to conclude that he is not also a guinea pig and pioneer.

III. APPENDIX 1 A NOTE ON METHOD

Satirical fiction offers a neglected way of knowing, communicating, and performing socio-legal studies. As important as traditional systematic data and theory are, they usually lose the non-specialist reader and neglect the richness of situational detail. Ernest Hemingway advises the writer to show rather than to tell. But the scholar should not be forced to choose. The affectivity of art, whether in the form of narrative writing or visual images, may enhance the effective comprehension of the topic. We understand some things non-cognitively, and passion can fuel the effort to cognitively understand.

Fiction can help us avoid what Mark Twain (1984) referred to as the “impressive incomprehensibility” of many scientific and legal treatises. Our conventional approaches can be supplemented by more explicitly writing fiction informed by reality.

Things may be fiction in multiple ways. One involves lies, deception, hoax, fraud, and distortion, in which it is claimed that something happened that did not in fact happen. When caught, scientists and journalists get a bad name for passing off fiction as fact.

In contrast, conventional fiction acknowledges that it is imaginary and makes no necessary claim to direct correspondence to a particular empirical entity. An intermediate case is the roman-a-clef which involves real persons under invented names. Language conspires with us here in giving multiple means

to words such as “fabricate” which means both to construct and to concoct, and “forge” to shape and to invent.⁴¹

Another type of fiction well known to the social scientist is the ideal type that makes a greater claim on reality (this contrasts with the practical “legal fictions” of the law). For Max Weber, this was abstract and involved relatively few elements in pristine form. But more detailed case reports, such as Tom’s, are also a form of ideal type. Tom is fiction because he is not “embodied.” Nor is he a copy. Yet as an ideal type, he resonates with empirical events and captures essential objective and subjective features of watching and being watched. The question is not did it really happen this way, but does it happen this way and is the account useful in capturing the central features of the behavior we wish to understand? While the scenarios I offer are fiction, they are to be judged by a standard of verisimilitude that need not burden the novel.

A composite account may be *true*, even if it is impossible for it to be empirically *accurate*. While the Tom I. Voire incidents did not occur together at the imaginary times and places I describe, they do happen. Tom may be fiction, but he is not science fiction. The line between fiction and reality can be fluid and Tom represents intentional genre blurring. The complexity of the situation made me do it. While I have taken some leeway, most of the substance and many direct quotes are from my observations, interviews, and reading.

A map or compass coordinates are not literally the territory. Yet they reflect elements of it and can be essential in navigating it. In the same way I hope my use of fiction can help make sense of actual and emerging social worlds. And perhaps by sparking thought can help shape these.

Tom is both docudrama and mockudrama. The nature of such writing must be clearly stated, or else misuse of the form may degenerate into propaganda. There can be a tension between the scholar’s need for accuracy, balance, fairness, logic, and depth and the requisites of provocative satire and fiction. Education needn’t be entertaining, but neither should the solemnity of the academy preclude its being entertaining. Psychologists have a natural advantage over sociologists here in dealing with individual narratives as against the abstractions of social structure.

The risk for a social scientist in mixing fact and fiction is that some readers will assume that the situations described are real in the literal sense, rather than being real in the ideal typical sense of representations of things in, or potentially in, the world.⁴² At the other extreme, some readers will dismiss it all precisely because it isn’t “real” as in literal.

⁴¹ With respect to the self there is the implication that presentations as constructed or forged may, but need not be, disingenuous or deceptive as well.

⁴² Of course, this is not a problem for those who view social science as mostly fiction anyway, whether because of the complex, ever-changing nature of its topics, its relatively weak methods, or the biases of its practitioners. I learned about this problem when some readers, seeing earlier satire,

In a moment of aging indiscretion, I had the temerity to offer thirty-seven moral mandates for aspiring social scientists (Marx 1997). I urged greater attention to writing and argued for new ways of communicating. I also suggested that researchers should have more fun. Drawing again from Weber (1958), I argued for social inquiry as a vacation as well as a vocation. Life is short, and the stuff many of us study is depressing and tragic. Humor not only can alleviate stress, it can afford unique insights by pointing out cultural contradictions (Davis 1993). Having a store of information built up from studying the topic for several decades, I didn't have to *do* research. I simply thought about Tom and his case flowed out. It was great fun. I loved writing it.

I think our legal and social methods courses would do well to train students in writing reality-grounded fiction and in the uses of irony, parables, satire, and humor. Note the enduring power of Lon Fuller's (1949) article on the Speluncean explorers for generations of law students. There is a well-established fictional tradition in quantitative analysis of using simulated data. It is more than time to develop an equivalent tradition for qualitative work.

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