TOPIC:
HUMAN TRACKING DEVICES AND EMPLOYEE PRIVACY

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I. Introduction

This paper will examine the challenges to privacy in and out of the workplace created by the increasingly prevalent use of human tracking devices, such as global positioning satellite systems (GPS) in vehicles and cell phones. Due to the affordability and availability of less detectable monitoring devices, coupled with the lack of federal or state regulation of the use of such technology, there has been a substantial increase in electronic monitoring and surveillance in the workplace.

The rapid development of sophisticated human tracking devices and their increased use by governmental entities, private employers, and individuals test our traditional concepts of freedom and protected privacy rights. Courts, private and public employers and labor organizations must determine whether historical expectations of privacy shall be subject to the latest development in surveillance technology. The potentially intrusive use of technology will likely make privacy issues in the workplace one of the dominant issues of the twenty-first century.

A survey of more than 500 companies conducted in 2007 by the American Management Association and ePolicy Institute (AMA) on Electronic Monitoring and Surveillance shows that employers are increasingly combining technology with policy to manage productivity and minimize litigation, security, and other risks. The survey revealed that 8% of the employers use Global Positioning Satellite Systems to track company vehicles, while 3% use GPS to monitor cell phones. Software programs have been developed to provide such information through GPS in cell phones or vehicles as weekly and daily reports on where a vehicle or cell phone has been, speeding and stop reports, mileage reports, and hours spent on the job, i.e. timecard reporting.

Recently, the United Parcel Service introduced its new “telematic review” of its package drivers. Telematics refer to vehicle-based mobile telecommunications systems. The review utilizes data from the computerized notebook (DIAD), Global Positioning Satellite (GPS) receivers, and hundreds of sensors mounted on the package car to record such information as:
• the number of times and miles driven without seat belts
• the number of times and miles driven with the bulk head door open
• driver’s braking patterns
• length of time and speed between deliveries
• length of time spent at each location and number of packages processed
• number of times, speed, distance, and location when a driver backs up his vehicle
• number of deliveries or pickups while idling

GPS receivers process signals from orbiting satellites to provide users with continuous and very accurate information on the driver’s position and speed at any given time. UPS calls its new “telematics review” system “Safety, Service and Performance.”

Today, almost all jobs have the potential to be subjected to some form of electronic surveillance. This includes truck drivers, cashiers, clericals, or manufacturing employees. There have been several reasons suggested for the predominance of surveillance in the workplace. According to the AMA survey, the top four reasons for using surveillance in the workplace were: (1) performance evaluations, (2) compliance with federal and local laws, (3) protection against legal liability, and (4) cost-control of the use of the company phone and internet. Other commonly stated reasons included protection of business information, security and safety.

In the context of workplaces in America, courts, labor, and management are challenged to create the proper balance between legitimate uses of technology to enhance productivity, security, and property right protection, while recognizing and protecting the employees’ constitutional right to privacy. As such a balance is established, we should be mindful of the following:

Technology per se is neither good nor evil, and it certainly cannot be held responsible for the sins of society. But technology can empower those who choose to engage in good or bad behavior. In this case, [location based services] will support and amplify some of the more extreme tendencies of human nature… [E]mployers who choose to dominate their employees now may do so in the extreme.
II. The Historical Relationship Between Technology And The Fourth Amendment

The right to privacy is derived from the Fourth Amendment to the United States Constitution which protects citizens from unreasonable searches and seizures by persons acting on behalf of the government. The Fourth Amendment does not apply to searches, reasonable or otherwise, by private individuals or employers, so long as the private party is not acting as an agent of the government or with the participation or knowledge of any governmental official.

Eavesdropping on telephone conversation by law enforcement officials raised the initial challenge between the Fourth Amendment and right to privacy. The United States Supreme Court, in *Olmstead v. United States*, 277 U.S. 438 (1928), held that the prohibition against unreasonable searches and seizures in the Fourth Amendment did not prohibit federal officials from eavesdropping on telephone conversations taking place in the defendants’ homes and offices by inserting small wires on the eight telephone lines outside those premises. The majority opinion in *Olmstead* held that, because the federal prohibition agents had placed wiretaps on the outside of the homes and offices, they had not engaged in unreasonable searches or seizures in violation of the Fourth Amendment. In affirming the conspiracy convictions under the National Prohibition Act, based on the eavesdropping evidence, the Court stated that issuance of a search warrant was not necessary because: “The intervening wires are not part of his house or office any more than are the highways along which they are stretched.”

The notable dissenting opinion of Justice Louis D. Brandeis in the *Olmstead* case criticizes the government’s use of technology to invade the privacy of its citizens. Justice Brandeis rejected the majority’s opinion which relied on trespass law to limit the concept of the privacy rights protected by the Fourth Amendment. In his dissent, Justice Brandeis described the scope of his view of constitutionally protected privacy as follows:
The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man’s spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment.

Olmstead, 277 U.S. at 478 (Brandeis, J., dissenting)

In 1967, the United States Supreme Court, in Katz v. United States, 389 U.S. 347 (1967), overruled its decision in Olmstead when it held that the FBI’s placement of a microphone on the roof of an enclosed public telephone booth to eavesdrop and tape record telephone calls made by an illegal gambling suspect, without a warrant, constituted a violation of the Fourth Amendment regardless of whether or not a physical intrusion had taken place. The Court’s majority in Katz rejected both a strict reliance on trespass law to define the scope of protected privacy under the Fourth Amendment and Justice Brandeis’ expanded concept that the Fourth Amendment gave Americans “the right to be let alone” by other people. Id. at 350

Justice Harlan, in his concurring opinion in Katz, established the following test that is currently used to determine whether the Fourth Amendment’s prohibition against unreasonable searches and seizures applies, even in situations involving invasive technology: a) whether the individual possesses a subjective expectation of privacy, and b) whether the individual’s subjective expectation of privacy is “one that society is prepared to recognize as ‘reasonable.’” Id. at 361 However, Justice Harlan’s dissent, in United States v, White, 401 U.S. 745, 786 (1971), indicates that he cautioned against reliance on his test in Katz when he stated that it can “lead to the substitution of words for analysis” and stressed that the important issue “is whether under our system of government, as reflected in the
Constitution, we should impose on our citizens the risks of the electronic listener or observer without at least the protection of a warrant requirement.”

In *Smith v. Maryland*, 442 U.S. 735 (1979), the Supreme Court, quoting Justice Harlan’s concurring opinion in the *Katz* case, noted that the inquiry regarding whether a person has a reasonable expectation of privacy normally embraces two discrete questions. The first is whether the individual, by his or her conduct, has “exhibited an actual (subjective) expectation of privacy.” The second is whether the individual’s subjective expectation of privacy is “one that society is prepared to recognize as ‘reasonable,’” that is, whether the individual’s expectation, viewed objectively, is justifiable under the circumstances.

Tracking technology to monitor the movement and location of a vehicle was addressed in *United States v. Knotts*, 460 U.S. 276 (1983) when the Supreme Court held that, where visual surveillance from public places along the driver’s route to the owner’s cabin or from the adjoining owner’s premises would have sufficed to reveal the driver’s arrival with a container of chemical used to manufacture illicit drugs, the fact that police officers relied not only on visual surveillance, but on the use of a beeper, placed in a container of chemical used to manufacture illicit drugs, to signal the presence of the driver’s automobile to the police receiver did not violate the Fourth Amendment. The Supreme Court established a broad rule making human tracking devices outside the protection of the Fourth Amendment by stating that: “A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.”

The expanded use of tracking technology in vehicles on public roads has not served to breach the sanctity of the home. In *Kyllo v. United States*, 533 U.S. 27 (2001), the Supreme Court recognized Fourth Amendment protections against technological surveillance in the home. The police in *Kyllo* suspected that marijuana was being grown inside a home utilizing high-density halide lamps. To determine whether said lamps were being used, the police, while seated in their car, used a “thermal imager” to detect infrared radiation that is invisible to the naked eye. The “thermal imager” indicated that portions of the house were hotter than other sections of the house. The Court concluded that the police’s use of the thermal imaging device without a warrant violated the Fourth Amendment because it was capable of detecting lawful behavior in the house.
In *U.S. v. Devorce*, 526 F. Supp. 191 (D. Conn. 1981), the district court held that the owner of a rental car had authority to consent to the installation of an electronic automobile-tracking device while the car was still in the owner’s possession, and, in light of the valid third-party consent by the owner, installation of the device did not violate any constitutional rights of persons renting the car. The court concluded that monitoring the movements of the rental car through the use of the device was not a search within the meaning of the Fourth Amendment, in light of the fact that the defendants, who had rented the car, had no reasonable expectation of privacy which was violated by the electronic surveillance. See also *Turner v. Am. Car Rental, Inc.*, 884 A.2d 7, 11 (Conn.App.Ct.2005) where the court held that “the plaintiff has not presented us with authority that equipping a motor vehicle with a global positioning system violates the privacy of the vehicle’s operator.”

The federal district court in New York, in *U.S. v. Moran*, 349 F. Supp. 2d 425 (N.D.N.Y. 2005), held that the attachment of a global positioning system (GPS) device to defendant’s vehicle without a warrant did not constitute a search or seizure under the Fourth Amendment. According to the court, the defendant had no expectation of privacy in the whereabouts of defendant’s vehicle while traveling on public roads. Therefore, the court concluded that there was no search or seizure and no Fourth Amendment implications in the use of the GPS device.

In *Alexandre, et al. v. New York City Taxi and Limousine Commission*, 2007 WL 2826952 (S.D.N.Y.), plaintiff cab drivers sought to enjoin the city’s requirement to implement the Taxicab Technology System which included GPS in order to enhance the taxi services by providing for use of credit cards, text messaging, automated trip data collection, and data transmission such as trip tracking for and by passengers. Among other things, plaintiffs claimed that the required installation of GPS violates the drivers’ fundamental right to privacy because the “GPS technology enables the TLC [Taxi and Limousine Commission] to know the location of taxi vehicles in between fares, as well as when the drivers are off duty.” In denying plaintiffs’ motion for an injunction, the court noted that a person’s privacy interest are not absolute and “can be overcome by a sufficiently weighty government purpose,” citing *Statatharos v. New York City Taxi & Limousine Comm’n*, 198 F.3d 317, 323 (2d Cir. 1999). The use of GPS technology was determined by the court to outweigh any burdened privacy rights because the
GPS in cabs helps “to improve taxi service and TLC’s ability to regulate it for the public good by utilizing modern methods.” The court also cited *Turner v. American Car Rental, Inc.*, 884 A. 2d 7, 11 (Conn.App.Ct.2005). In *Turner v. American Car Rental*, the car rental company had installed a GPS system in its vehicles as a means of controlling and fining drivers for exceeding an established speed limit. The vehicles’ GPS receiver transmitted the speed and location of the vehicle to a monitoring company which faxed the results to the rental company. The company’s form rental agreement stated that each rental vehicle contained a GPS receiver and set as a contractual condition that each time the rented vehicle exceeded 79 miles per hour for two minutes or longer, the leaser would be fined $150.00. In dismissing the invasion of privacy tort action, the Connecticut Appellate Court held that “the plaintiff has not presented us with any authority that equipping a motor vehicle with a global positioning system violates the privacy of the vehicle’s operator.”

**III. Federal And State Legislative And Judicial Efforts To Address Technology And Privacy Issues**

The Electronic Communications Privacy Act of 1986 (“ECPA”), 18 USC § 2510, et seq. sanctions interception of communications such as e-mail. Employers are permitted, for example, to intercept a communication that is likely to further any legitimate business interest, such as to determine whether the employee is revealing company secrets to competitors. See *Fraser v. Nationwide Mutual Ins. Co.*, 352 F.3d 107 (3d Cir. 2003) Because the ECPA was structured to afford electronic communications in storage less protection than communications intercepted during transmission, information stored on blogs, Web pages, forums, and the like are less likely to receive the ECPA’s protection. See *Konop v. Hawaiian Airlines, Inc.*, 302 F.3d 868, 877 (finding the ECPA inapplicable where the employer viewed employee’s secure Web site by using other employees’ names and passwords without permission).

The Stored Electronic Communications Act, 18 USC § 2701, et seq. places some limitations on employer interception, access to, use and disclosure of electronic communications such as telephone calls, voice mail messages and e-mails, and provide for private rights of action for recovery of actual, statutory and punitive damages. See, e.g., *Thompson v. Johnson City Community College*, 930 F. Supp.
501, 505 (D. Kan. 1996) (and cases cited therein); aff’d 108 F.3d 1388 (10th Cir. 1997). The Act makes it an offense to intentionally access without authorization a network through which an electronic communication service is provided, and thereby obtain access to wire or electronic communication while it is in electronic storage in such system. The Storage Act exempts from liability conduct authorized by a user of that service with respect to a communication of or intended for that user.

Congress in 1999 passed the Wireless Communications and Public Safety Act, 47 USC § 222(f) (2006) which expressly limits the use or disclosure by telecommunications companies of call location information regarding mobile service customers.

California is the only state with provisions in its constitution which explicitly extends the right to privacy to private employers. See Hill v. National Collegiate Athletic Association, 7 Cal. 4th 1, 18, 26 Cal. Rptr. 2d 834, 844 Cal. 1994). Several other states, including Alaska, Arizona, Florida, Hawaii, Louisiana, Montana, South Carolina, and Texas, have constitutional provisions which recognize the right to privacy.

The states of Delaware and Connecticut require employers to give employees notice that electronic surveillance is being used. In Connecticut, employers must give employees written notice of electronic monitoring. (Conn. General Statute § 31-48d) The Delaware statute requires employers to give employees notice of monitoring telephone, e-mail or internet usage. (Delaware Code Annotated Title 19, § 705)

Courts in some states have sought to limit the intrusive use of GPS tracking. In State v. Jackson, 76 P.3d 217 (Wash. 2003), the court required the police to obtain a warrant before attaching a GPS device on a vehicle despite the diminished expectation of privacy due to the prevalence of GPS use in society. According to the court, GPS tracking is more intrusive than devices such as flashlights or binoculars, which merely augment the ability to track a vehicle visually, in that GPS allows for constant monitoring of the vehicles location. The data obtained from such monitoring included records of trips to doctors’ offices, places of worship, the family planning clinic, or a labor rally. In the court’s view, citizens have the right under the Washington state constitution to be free from such
intrusive surveillance, even if the GPS device was only tracking the vehicle in places accessible to the public.

In *State v. Campbell*, 759 P.2d 1040, 1044 (Or. 1988), the Oregon court held that the police were required to obtain a warrant before attaching an electronic tracking device to a vehicle. The court defined the privacy right under the state constitution as the right to be free from particular forms of scrutiny, as opposed to the right under the Fourth Amendment only to the privacy that one reasonably expects.

In the criminal context, the Seventh Circuit, in *United States v. Garcia*, 474 F.3d 994, 997 (7th Cir. 2007), held that a warrant was not required for use of GPS to conduct remote surveillance and that attaching the device did not constitute a search and seizure under the Fourth Amendment.

**IV. Privacy in the Employment Context**

The Supreme Court, in *O’Connor v. Ortega*, 480 U.S. 709 (1987), held that public employees have constitutional protections against unreasonable searches and seizures in the workplace. When employees through the use of doors, locks and personal passwords have a reasonable expectation of privacy, the Fourth Amendment is implicated. The Court recognized a reasonable expectation of privacy in the governmental workplace. The plaintiff employee in *O’Connor* was found to have had a legitimate expectation of privacy in his desk and file cabinet.

An employee’s expectation of privacy in his/her work area can be affected by various considerations, including “whether the area was given over to an employee’s exclusive use, ... the extent to which others had access to the work space, ... and whether office regulations placed employees on notice that certain areas were subject to employer intrusions.” *Acosta v. Scott Labor, LLC*, 377 F. Supp. 2d 647, 651 (N.D.II 2005), quoting *Vega-Rodriguez v. Puerto Rico Telephone Co.*, 110 F.3d 174 (1st Cir. 1997).

In an action by a state college employee who was videotaped by a hidden camera as she changed clothes, the court held that the employee could have no objectively reasonable expectation of privacy in her workplace for the purpose of her Fourth Amendment claim, where the entire workplace was open to other

In *Consolidated Freightways, Inc. v. Cramer*, 255 F.3d. 683 (9th Cir. 2002) (en banc), *cert. denied* 534 U.S. 1078 (2002), the court permitted 274 Teamsters, who were secretly videotaped in a workplace restroom by cameras hidden between two-way mirrors, allegedly for the purpose of catching drivers using or selling drugs, to sue their employer.

In *Kline v. Security Guards, Inc.*, 386 F.3d 246 (3rd Cir. 2004), employees were permitted to bring a state law privacy claim against their employer who had collected audio and video tape records near time clocks without notifying employees, whose contract was silent on the issue of electronic surveillance.

In *Riverside Sheriffs’ Association v. Trask*, No. E043461, 2009 WL 618239 (Cal. App. 2009) (unpublished decision), a state appeals court in California decided that a public employer did not have an obligation to meet and confer with the union before secretly installing GPS in the take-home vehicle of an employee who was suspected of violating established rules regarding the use of county vehicles. However, the holding was limited to the facts involving the individual employee. The court stated that the issue before it was not whether the county could randomly install GPS systems without notifying the union.

The Massachusetts Labor Relations Commission held, in *City of Worcester and Local 495, National Association of Government Employees*, Case No. MUP-05-4409, 2007 WL 5880578 (2007), that the public employer was not obligated to bargain over the implementation of GPS-equipped phones because there was no evidence that GPS phones changed standards of productivity and performance, or otherwise changed terms and conditions of employment.

The New York Public Employee Relations Board in *Village of Hempstead*, 41 PERB ¶ 4554 (2008) dismissed an improper practice charge which challenged the Village’s installation of GPS tracking in vehicles in the Department of Public Works.

**V. NLRB Prohibits The Use Of Tracking Devices To Interfere With Protected Concerted Activities**
Section 8(a)(1) of the National Labor Relations Act provides that it is an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7 of the Act.

Employer surveillance or conduct which creates the impression of employer surveillance violates Section 8(a)(1) if it interferes with employees’ right to organize for collective bargaining purposes. See *Ivy Steel & Wire, Inc.*, 346 NLRB No. 41 (2006)

Photographing or videotaping employees engaged in protected activities violates Section 8(a)(1) absent a legitimate employer justification for such surveillance. *F.W. Woolworth Co.*, 310 NLRB 1197 (1993)

NLRB Office of the General Counsel, Advice Memorandum, *East Coast Mechanical Contractors*, Case 22-CA-25324 (Feb. 26, 2003) found interference with the employees’ Section 7 rights when the employer installed GPS tracking in two of the employer’s eight vehicles during an organizing campaign. The employer failed to provide a legitimate business justification for the increased surveillance during the organizing campaign. The only employees being monitored were those who had engaged in union activities. The Regional Office had decided to issue a Section 8(a)(3) complaint for the installation of GPS in the trucks assigned to the two union activists.

**VI. Installation Of Human Tracking Devices Is A Mandatory Subject Of Bargaining**

The NLRB has determined that the installation and use of surveillance equipment is a mandatory subject of bargaining. *In re National Steel Corp.*, 335 NLRB 747 (2001), enforced *National Steel Corp. v. NLRB*, 324 F.3d 928, 932 (7th Cir. 2003). The NLRB found that surveillance equipment affects employees’ terms and conditions of employment as it impacts their job security. Issues subject to negotiation with the union include:

- the times and general areas in which the surveillance equipment may be used;
- whether the employer must demonstrate some level of suspicion before using the equipment; and
• whether the surveillance equipment may be used to discipline employees.

In *Roadway Express, Inc.*, Case 13-CA-39940-1 (April 15, 2002), the NLRB Office of the General Counsel, Advice Memorandum, although apparently reasoning that the installation of GPS in employer-owned trucks is a mandatory subject of bargaining, the Division of Advice held that there was no significant change in the employees’ conditions of employment from the use of two-way radios to the use of GPS to maintain contact with drivers and compile information about the drivers’ location. The Division, citing *Rust Craft Broadcasting*, 225 NLRB 329 (1976), concluded that the change to using GPS was a change in a mechanical procedure and that the difference between the two systems was that the drivers had to initiate the call on the two-way radio to provide the information, whereas the GPS automatically obtained the information.

The employer’s unilateral installation of vehicle data recorders (VDRs) containing GPS was a mandatory subject of bargaining as determined by the NLRB Office of the General Counsel, Advice Memorandum in *BP Exploration of Alaska, Inc.*, Case 19-CA-29566 (July 11, 2005) The Division of Advice reasoned that the installation of the VDRs affected the employees’ terms and conditions of employment. According to the Division, the employer’s use of the VDRs was analogous to an employer’s use of new technology to investigate employee misconduct which was previously found to be a mandatory subject of bargaining in *Colgate Palmolive*, 322 NLRB 515 (1977). In *Colgate-Palmolive*, the NLRB found that the employer had violated Section 8(a)(5) of the NLRA in refusing to respond to the union’s request to bargain over the installation of surveillance cameras. The Board concluded that the installation of such cameras is “outside of the scope of managerial decisions lying at the core of entrepreneurial control.”

Consistent with the obligation to bargain, the Teamsters Union and the trucking industry employers, for example, bargained in Article 26 of the National Master Freight Agreement, about the following limitation on the use of video cameras and computer tracking devices:

**Section 2. Use of Video Cameras for Discipline and Discharge**
The Employer may not use video cameras to discipline or discharge an employee for reasons other than theft of property or dishonesty. If the information on the video tape is to be used to discipline or discharge an employee, the Employer must provide the Local Union, prior to the hearing, an opportunity to review the video tape used by the Employer to support the discipline or discharge.

The Employer shall not install or use video cameras in areas of the Employer’s premises that violate the employee’s right to privacy such as in bathrooms or places where employees change clothing or provide drug or alcohol testing specimens.

Section 3. Computer Tracking Devices

Computer tracking devices, commonly known as “Black Boxes”, mandated by regulations shall not be used for disciplinary purposes, except in those incidents of violations of Federal Mandated Regulations or when an employee has intentionally committed malicious damage to the Employer’s equipment or when an employee has unsafely operated the Employer’s commercial motor vehicles.

VII. Model Contract Language To Protect Workplace Privacy

In view of the lack of regulations controlling the use of technology in the workplace and the rapid development of surveillance technology with the potential to adversely impact the privacy and job security of workers, Unions should consider developing model contract language which mandates that the employers give notice of the use of monitoring devices and bargain about every aspect of the use of electronic surveillance. The following are example of specific concepts which should be included in contract provisions covering GPS or human tracking devices and other developing technologies:

1. Notice Requirement. Employers should be required to notify employees that GPS or other human tracking devices are being used in the workplace. Written notice of the use of such devices should be signed by the employees.

2. On-Off Switch. The tracking devices should have technology that permits employees to turn-off the device when employees are on off-
duty time. This will guarantee that the observation of off-duty activities will not be used in employment decisions.

3. Employee Access to Information. Employees should have access to all information collected by the tracking device.

The purpose of clause on workplace privacy should create a mechanism for ongoing discussion between the Employer and the Union of any and all technological changes that may arise during the period of the contract.

**Definition:** When used in this clause, the term “workplace change” shall be interpreted to include all changes in technology (such as computer hardware and software, and electronic surveillance equipment or devices)

**Advance Notice:** The Employer shall provide the Union with advance notice of any proposed workplace change at the point that the Employer begins to develop plans for the workplace change. Such notice shall be in writing and shall contain supporting information outlined below. The Employer shall provide updates of new or revised information as it becomes available

**Information:** Within the time periods referred to above, the Employer shall provide the union with the following information:

(a) a full description of the change including its purpose and function, and how it would fit into existing operations and processes (including existing computer systems – both hardware and software—or existing monitoring systems);

(b) a detailed review of how, when, and where the Employer plans to use the new technology and whether such use will have any impact on the terms and conditions of employment of the employees;

(c) a stipulation by the Employer that information obtained from the new technology will not be used for discipline or as a basis for having management personnel engage in direct monitoring of employees;

(d) the proposed implementation timetable for the workplace change; and
(e) the expected impact of the change on job content, pace of work, and safety, and training needs of the workers.

VIII. Conclusion

As indicated by the review of the case law and federal and state statutes and constitutions, the development of human tracking technology has far outpaced the creation of statutory or other legal restrictions on its impact on privacy in the workplace. In a global economy where workers in nations with a higher standard of living must compete with workers who earn substantially less, employers will be economically motivated to use technology to force employees to be more and more productive. Of course, employers have some legitimate uses of electronic monitoring to enhance their ability to get a fair day’s work for a fair day’s pay; to cut costs by more efficiently utilizing its equipment and resources; and to improve the quality of its services and safety for its workers.

However, employees, unions, and advocates for appropriate concepts of privacy must be vigilant to create collective bargaining agreements, statutes, and state constitutions which protect worker privacy by limiting the time when electronic monitoring can occur and the type and use of information that can be conducted. Unless such restrictions are mandated, global positioning satellite systems in vehicles, cell phones and ID cards will convert most workplaces into “electronic sweatshops” where constant monitoring will take place in order to increase profits and compete in the world economy. Yes, George Orwell’s “Big Brother” has arrived and workers are subject to monitoring both during work and non-work hours. The dominant workplace issue of our time will involve the creation of the proper balance between the employers’ right to use technology to conduct its business in an efficient and safe manner and the employees’ privacy interest in the workplace.