

ISSUES BEYOND EMPIRICAL EM REPORTS

J. ROBERT LILLY

Northern Kentucky University

Evaluation reports on electronic monitoring (EM) programs in criminal justice systems, regardless of the equipment used, far too often fail to see the forest for the trees. Padgett et al.'s "Under surveillance: An empirical test of the effectiveness and consequences of electronic monitoring" (this issue) is illustrative. Its scope and methodological sophistication, however commendable, leaves untouched the important contours of the larger picture within which EM originated and continues to be situated. The purposes of this reaction essay are four-fold, which collectively suggest important topics for future EM policy research. It addresses how (1) EM is now more clearly part of surveillance technology than was evident during its birth and early growth, (2) that it is more often than not the result of power politics instead of rational appraisal of evidence as to what works to reduce crime, (3) that EM is part of the corrections commercial complex, and (4) that EM vendors are more interested in profit than rehabilitation or reintegration of criminals into the community. It is the task of sociologists to illuminate these connections and to place EM within one of the major transformations of the twenty-first century (Lyons, 2003:1). Unless these issues are integrated into EM discussions, reports like Padgett et al.'s are likely to attract only technocratic policy makers who have little interest in awkward political questions.

FROM THE OLD 'NEW SURVEILLANCE' TECHNOLOGY TO 'NO PLACE TO HIDE'

THE OLD 'NEW SURVEILLANCE'

Twenty years ago, the extent to which EM was part of, and embedded in, the numerous forms of the new surveillance technology that Marx (1985a,b) painstakingly, and at times entertainingly, laid out was somewhat muddled. It was not clear whether EM had a strong or loose *technical* degree of fit with the new surveillance technology. There was concern about whether EM equipment would be limited by distance and physical barriers, accurately report offenders locations, gaze only on those connected to it, and be cheaper than traditional forms of labor-intensive/surveillance supervision. Corbett and Marx (1991) speculated that the EM movement might be plagued with technofallacies so severe it would soon land in the criminal justice dustbin alongside numerous other fads. By the

late 1980s and early 1990s, mass surveillance had become a reality and electronic regulation had become relatively easy (Lilly, 1990).

Around the same time, scholars attempted to elucidate the *meanings* of the connections and explore the wide range of implications that EM had for human rights and privacy (Ball and Lilly, 1988; Lilly, 1990; 1992). This was not a surprising development. The new technological surveillance powers and attendant Orwellian overtones circa 1985–1990 had cast disturbing shadows on the meaning of home, privacy, and human rights. Some comfort was found in the fact that much of the new surveillance was self-activated and not the result of deliberate governmental efforts to be omnipresent. In those days there were still places and ways to hide.

WHAT'S NEW?

With the passage of time we can look at EM more objectively than 20 years ago. It is deeply embedded in the United States, although the extent of its usage is impossible to determine compared with other countries, especially England/Wales. Many of the technological surveillance tools of the recent past are still with us; some of them have experienced, expectedly, new and significant changes. Active and passive radio-frequency (RF) monitoring technology is still widely used in the United States and abroad. Global positioning system (GPS) monitoring technology entered criminal justice in 1997 (Florida), especially for sex offenders, and it is now the monitoring tool of choice (budget permitting), and it may soon exceed the use of RF equipment. Petersilia noted in 2003 that Florida, New Jersey, and Michigan were using this method, and that one of the most important benefits of satellite tracking is the increased protection it offers victims because its use permitted specifying and monitoring zones of exclusion, and it could also use pager or text messages to notify victims when offenders broke perimeter boundaries. RF technology cannot do this.

The reliability of monitoring equipment has increased. A national survey (Renzema and Skelton, 1989) reported that nearly 47% of the RF monitoring programs had equipment problems. Although no such report exists for today, making it impossible to make near-definitive comparative statements, industry and vendor observers agree that monitoring technology has improved. In 1985, RF equipment was based on crystal transmitters with ample power. Battery life was dismal, and antennas were literally pieces of wire.

Today the equipment is based on microelectronic parts that have “fallen out” of cell phone miniaturization. Batteries have only recently been improved, again from cell phone technology. Antennas are now printed circuits, balanced, and tuned. Tamper straps are now made of fiber optics.

Memory is now cheaper and larger, thereby allowing for more programming instructions and monitoring features.

It could then, and still does, with limitations transcend time (collected data can be easily stored, retrieved, combined, analyzed, and communicated), target specific suspects or categories of suspicion (today terrorists and immigrants, tomorrow who knows), and trigger self-policing activities that may or may not be under official surveillance; yet, nonetheless, it provides loose threads that now can be woven into gigantic tapestries of information.

An intensification in the capacity and deployment of surveillance technology has occurred post-9/11. Before it had evolved quietly and largely unnoticed. In today's "age of terrorism," it is on everyone's lips. Surveillance and analytical technology like NORA (non-obvious relationship awareness) and the massive daily collection and selling of 40,000 public individual personal data records (marriages, divorces, births, deaths, address changes, commercial transactions, civil and criminal court records, etc.) to the government by firms like ChoicePoint have made 'no place to hide' a near reality in the United States and increasingly for other countries (O'Harrow, 2005). Surveillance of everyday life is now easy, increasingly cheap, and unavoidable (Lyons, 2003:1-2).

POLITICALLY DRIVEN: CULTURES OF FEAR AND SURVEILLANCE

News account-after-news account in the United States during the 1980s-1990s reported the adoption by politicians and criminal justice officials of EM as a new criminal justice tool with great promise to reduce prison/jail overcrowding and costs, while watching criminals like a hawk, according to one EM vendor's moniker, despite the lack of supporting evidence. Its early appeal was dazzling; nothing like it had been seen before, but it did not take long for EM adoptions to all but flat-line. In relative terms, it all but failed to deliver on its criminal justice related promises and it did nothing to reduce the perceived sources and fears about most of the nation's domestic problems including crime (Glassner, 1999). This is hardly surprising, and it was not the result of technological failures. Most clearly, its potential was never really tested to determine whether it could deliver on its promises. In fact, it was hardly tried; its most frequent use was with relatively minor offenders and the more serious problem of drunk drivers (Greff, 2005). In this context, EM/RF was seriously hampered.

Accompanying the failure to test its potential, it became more and more evident, as clearly seen in retrospect, that two additional contextual EM albatrosses had developed. Unsurprisingly, it failed to generate significant

and lasting public support largely because it was perceived as *soft* punishment compared with long sentences and other harsh sanctions. At the same time, its appeal to politicians and corrections officials diminished. They got far more attractive and expendable forms of capital out of binge-building prisons and jails (Lawrence and Travis, 2004). Beyond providing sound bite opportunities for “get tough” testosterone-testing rhetoric, expanding and increasing the number of prison/jails provided jobs, tax revenues, and business opportunities for lucrative contracts for vendors selling prison/jail goods and services. Less visible to the public and media and more awkward for politicians to crow about were the latent but valuable benefits for local communities of expanding its prison and jail populations. These increases enhanced local opportunities for acquiring federal formula grants (Lawrence and Travis, 2004; Lilly, 2005).

Today matters have somewhat changed. Some of the most powerful U.S. fears are deeply rooted in moral panics, especially around sex offenders, and domestic and foreign terrorism, both of which provide new fodder for our advancing surveillance culture (Staples, 1997). Since 9/11, the United States has become obsessed with security, protection, and surveillance. We are now a nation of spies, suspicious of the many nuances of everyday society. The 2001 Patriot Act’s assault on civil liberties, the new Department of Homeland Security, and President Bush’s 2002 orders approving domestic eavesdropping without warrants by the National Security Agency are but the most obvious examples of these developments from the federal government (Risen and Lichtblau, 2005). Our culture of fear has been augmented by our culture of surveillance with little or no evidence that the latter is worth the costs to privacy and human rights. Within this context, EM, especially GPS tracking, has greater all-round cultural saliency than before. Concern about security has now trumped economics at both the national and the local levels. Fear still sells, “[it] is a tough thing to combat”(Edgar quoted in Lichtblau, 2004).

SELLING JUSTICE: EM AND THE CORRECTIONS-COMMERCIAL COMPLEX

More than 10 years ago, the concept of ‘selling justice’ was useful in explaining the growth and implementation of EM in the United States and the United Kingdom. At that time, it was concluded that EM would likely continue to grow within criminal justice, in part because it was directly linked to another and more powerful sub-government, the defense industry and its surveillance technology (Lilly, 1992; Lilly and Knepper, 1992; 1993; Lilly and Deflem, 1996). This aspect of EM remains extraordinarily understudied given what we know about the power and influence of privatization in criminal justice and its role the corrections-commercial complex

(Nellis, 2003). The development of GPS in Florida is a case in point because it demonstrates how a (1) former elected high-level public official influenced the adoption of GPS by (2) emphasizing its “. . . tracking technology is the same used by the [US] Defense Department to locate troops and equipment on a battlefield” (Sun-Sentinel, 1997).

Between 1987 and 1991, Bob Martinez was Florida's governor and the City of Tampa's mayor from 1979 to 1986. After his re-election defeat for the governorship, he was hired by then-President Bush as the federal “drug czar” despite the fact that Florida's drug and drug-related crimes had soared while Martinez was governor. The irony of his appointment was not lost on critics, one of whom candidly asked: “You couldn't do nothing about drugs in your state because all of your friends was the dope dealers. What do you expect to do on the national level?” (Crawford and Groer, 1991).

Despite “spin control” efforts, criticism followed Martinez when it was made public that after his election defeat, he divvied up \$63,000 in leftover campaign funds by giving \$61,000 to the Republican Party of Florida for the purpose of getting President Bush re-elected. A little more than a year later he was associated with a bank scandal when it was revealed that he sat on a bank's board of directors that made more than a dozen loans to four members of a crime family who “were later convicted of large-scale drug trafficking” (Danielson et al., 1992).

When the Florida Department of Corrections (DOC), which Martinez oversaw from 1987 to 1991, announced in February 1996 that it was interested in using “orbiting wardens” [GPS] for some of its offenders, he and his son, Alan, were identified as partners in ProTech, the company that the DOC indicated it might use. In early 1997, Florida's DOC signed a five-year contract to test criminal tracking technology called the Smart System. Its GPS equipment came from ProTech Monitoring. “The company was the only bidder on the contracts” (Sun-Sentinel, 1997). The first year of the agreement Florida promised to pay \$340,000 to ProTech.

VENDORS: FOR PROFIT, NOT REHABILITATION

EM technology and service vendors have never asserted that they were in business to rehabilitate offenders, and for this reason, they cannot be faulted for being disingenuous. But here it would be grossly irresponsible to ignore that they are driven by *business ethics and practices* and not immune from using these in the contemporary corrections marketplace. Boulder, CO-based BI Inc. is a prime example. In late 2004, the 26-year-old business announced it was now ‘banking on the burgeoning field of re-entry services as the key to its growth (Poppen, 2004). It returned to the private sector four years after it had been traded publicly. Its current CEO

now claims BI Inc. is more nimble and can quickly adapt to a changing marketplace. After selling its jail-management software division, the company now has 500 employees instead of the 900 it had in 2000. With a reported \$72 million in sales in 2000, and new contracts with Colorado (\$9.3 million) and the U.S. Immigration and Customs Enforcement agency of the Department of Homeland Security, plus \$16 million from Allied Capital for recapitalization, it might be the nation's largest and fastest growing U.S.-based EM company (Business Wire, 2005).

Competition for market share is intense, to say the least. Securicor EMS, BI Inc.'s largest competitor in the United States and a subsidiary of Denmark-based Group 4, in 2004 won a profitable \$4.5 million contract in Missouri over BI Inc., who had held the contract for several years. Allegedly, BI Inc. lost the bid because its proposal did not include any provisions that satisfied Missouri's requirement that a percentage of its government contracts had to involve minority groups. Piqued by the loss, BI Inc. filed a lawsuit against the Missouri Office of Administration based on the argument that such a requirement was illegal because it violated the U.S. Constitution (Murphy, 2005; St. Louis Post-Dispatch, 2005; News Tribune, 2005).

The threat of litigation has not deterred the creation of new businesses hoping to profit from EM. STOP (Satellite Tracking of People LLC), a recent newcomer to the U.S. monitoring business, is a minority-owned subsidiary of ConnectGov., whose Chair of the Board is one of the cofounders of Corrections Corporation of America (CCA). It is the nation's first and largest private operator of prisons and jails that today generates over \$1 billion annual revenues. In early 2005, STOP moved aggressively into the GPS tracking market by purchasing the VeriTrack business line from General Dynamics and 100% of the stock of Verquis, LLC from Strategic Technologies, Inc. (Canada), who had purchased On Guard Plus LLC in 2004. In February 2005, STOP LLC announced it had filed a patent violation action against Florida-based ProTech, claiming the latter's crime scene correlation system infringed on its similar technology (STOP LLC, 2005).

CONCLUSIONS

Evaluation studies should critically inform public policy. This can best be done when they are properly placed within the larger socioeconomic and political context, especially when the latter has undergone radical change. It would be naïve and irresponsible to do otherwise. EM has always been part of the commercial-corrections complex. Hopefully future EM evaluations will attend to this point; after all, the forest and the trees are equally significant.

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J. Robert Lilly is the Regents Distinguished Professor of Sociology/Criminology and Adjunct Professor of Law at Northern Kentucky University. He is the co-editor of the *Howard Journal of Criminal Justice*. He has published extensively on electronic monitoring in the United States and Europe. His work has appeared in *Criminology*, *Social Problems*, *Crime & Delinquency*, *The Howard Journal*, *Legal Studies Forum*, *Journal of Drug Issues*, *The New Scholar*, *Adolescence*, *Qualitative Sociology*, *Federal Probation*, *International Journal of Comparative and Applied Criminal Justice*, *Justice Quarterly*, *The Howard Journal*, *Vista*, and *Revue de Droit Penal et de Criminologie*. He has coauthored several articles and book chapters with Richard A. Ball, and he is the coauthor of *House Arrest and Correctional Policy: Doing Time at Home* (1988) and *Criminological Theory: Context and Consequences* with Ball and Francis T. Cullen (Sage, 1989; 1995; 2002, and 2006, forthcoming). In 2003 (Payot), he published *La Face Cachee Des*

GI's: Les Viols commis par des soldats americains en France, en Angleterre et en Allemagne pendant La Seconde Guerre mondiale. This book was translated into Italian (Mursia) and published (2004) as *Stuppi Di Guerra: Le Violenze Commesse Dai Soldati Americani in Gran Bretagna, Francia E Germania 1942-1945*. It is expected to be published by Palgrave/Macmillan within 18 months. The latter work is part of his extensive research on patterns of crimes and punishments experienced by U.S. soldiers in WW II during the European Theater of War. *Taken by Force: American GI's and Rape in Europe*, a made-for-TV documentary by Programm33 (Paris) will be released in 2006. It is based on the French edition of his book on wartime rape. He is the past Treasurer of the American Society of Criminology. In 1988 he was a visiting professor at the School of Law, DeMontfort University, Leiscester, U.K., and a visiting scholar at All Soul's College, Oxford, U.K. In 1992 he became Visiting Professor at the University of Durham, U.K.

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