

Undercover police, technology and the emerging Surveillance Society

**The greatest problem of any country is to
deal with its enemies without becoming its
enemies. E.L. Doctorow**

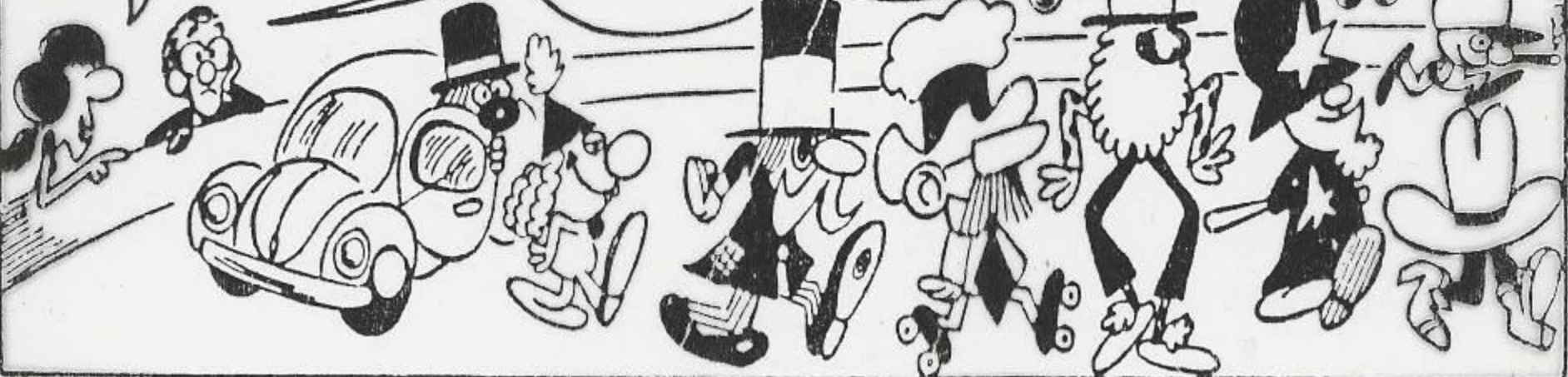
Gary T. Marx

Professor Emeritus MIT, garymarx.net

I ALWAYS WONDER HOW THEY GET ALL THOSE CLOWNS INTO ONE LITTLE CAR.

THAT'S THE DIFFERENCE BETWEEN US...

I ALWAYS WONDER WHY.



GOOD INTELLIGENCE ETHICS REQUIRES NEVER FORGETTING THE “DIRTY HARRY” PROBLEM

- The state sanctioned use of force, stops, coercive interrogation, searches, spying, and deception almost always involve a moral dilemma or ethical conflict. No matter what is chosen (and we must have the cojones to choose), there is a moral cost. The danger is not in using such means when appropriate, but in getting too comfortable with them.

Topics: a Compass Not a Map

- It depends: arguments for and against
- Examining assumptions before starting
- Some paradoxes of undercover work
- Types and variation within operations
- Questions to help determine ethics
- Special topics: internal uses; the private sector; intimate relations and sex as intel tools; international/cross border/global issues
- Becoming a surveillance society

K-9 Alert
No Dogs on
Beach!!!



Do you agree with these statements?

- ❑ **The methods of intelligence services do not fit the moral standards of polite society anywhere. (Markus Wolf, East German Spymaster)**
- ❑ **Every ship of state runs on a river of darkness. (Former CIA official)**
- ❑ **Out of the crooked timber of humanity no straight thing was ever made. (I. Kant)**
- ❑ **There is no occupation that fails a man more than that of a secret agent. (Conrad, *The Secret Agent*)**

And Yet...

- **Send men that they may spy out the land of Canaan, which I give to the children of Israel; of every tribe of their fathers shall you send a man, every one a prince among them. (*Numbers 13:1-2*)**
- **Those engaged in gathering intelligence are, “as rays of light to the human soul.” Thomas Hobbes**
- **What I do may not be reputable, but I am. In this town I’m the leper with the most fingers. (Jack Nicholson in *The Two Jakes*)**
- **It makes no sense to close the barn door after the horse has bolted. (California farm saying)**

“See yonder justice railing at you thief? Change places and handy, dandy, which is justice and which the thief?” Shakespeare, *King Lear*

- What is the difference between criminal justice and the criminal when the means used are often the same? Does the answer change when we are dealing with anticipatory, low visibility criminal intelligence collection --when there may be no crime (yet?) and little juridical oversight or regulation?**

Some Questions re Ethics and Covert Means

- **Can undercover practices be ethical?**
- **If “yes” then under what conditions are they ethical — as a broad strategy, and as tactically implemented?**
- **In any given case, to what extent do the conditions for ethical use hold?**

Arguments for and against undercover policing

These are my principles. If you
don't like them I have others.

Groucho Marx

For Use of the Tactic: Ethical Deception

- **Citizens grant government use of special means for protection**
- **subject to rules of democratic government in creation and regulation (democratic procedure)**
- **publicly announced (notice, informed citizens)**
- **when used for an important end (end justifies means)**
- **permits prevention**
- **When citizens use questionable means, government agents are justified in using equivalent means. (reciprocity)**
- **a way to apprehend those otherwise beyond the law (the only means)**

Ethical Deception Con't.

- **targeting hard to reach suspects**
- **increases fairness and equality, whether through random targeting or less intrusive and coercive than other means**
- **offers presumptive evidence of guilt**
- **can prove innocence**
- **when based on a predicate such as reasonable grounds for suspicion**
- **special risks justify special precautions**
- **when done by competent persons of upright character in accountable organizations**
- **when undertaken with the intention of eventually being made public and judged in court.**

Deceptive Ethics

- ❑ **Truth telling is moral; lying is immoral**
- ❑ **The government should set examples and not participate in crime, nor break the law in order to enforce it (blurs the line)**
- ❑ **The government should not make deals with criminals (dirty hands)**
- ❑ **The government should not offer unrealistic temptations or tempt the weak (cheap shots)**
- ❑ **Do no harm to the innocent (third parties, the vulnerable)**

Deceptive Ethics Con't.

- ❑ **Violates the sanctity of private places**
- ❑ **Violates the sanctity of intimate relations**
- ❑ **Violates the right to freedom of expression and action**
- ❑ **It is wrong to discriminate in target selection**
- ❑ **The government should not do by stealth what it is otherwise prohibited from doing absent a warrant**

Ethics must be accompanied by empirical analysis of assumptions

- ❑ **The world in question is clearly divided between criminals and non- criminals.**
- ❑ **The supply of and demand for illicit goods and services are limited.**
- ❑ **Undercover practices can have a major impact in reducing crime, apprehending criminals, and recovering stolen property.**
- ❑ **Those arrested in undercover operations are repeat offenders who might otherwise avoid arrest.**
- ❑ **The not guilty (this time) and guilty place assumptions**
- ❑ **Undercover operations are independent of each other.**
- ❑ **Undercover operations can control their environment.**

Of particular importance such operations must not amplify crime as a result of:

- a. generating a market for the purchase or sale of illegal goods and services or indirectly generating capital for other illegality;**
- b. generating the idea and motive for the crime;**
- c. using coercion, intimidation, trickery, or persuasion of a person not otherwise predisposed to commit the offense;**
- d. offering a seductive temptation to a person who would not otherwise encounter it;**
- e. providing the contraband or a missing resource or ingredients essential for the commission of the crime;**
- f. providing the context for false records and framing;**
- g. generating a covert opportunity structure for illegal actions on the part of the undercover agent or informant;**
- h. generating retaliatory violence against informers;**
- i. stimulating a variety of crimes on the part of those who are not targets of the operation.**



THE SCIENTIFIC COMMUNITY
IS DIVIDED.
SOME SAY THIS STUFF IS
DANGEROUS, SOME SAY
IT ISN'T.

Mitchell

Types of Covert Activities Raise Different Ethical And Empirical Questions.

- We need to separate passive intelligence gathering, whether by humans or technical means, from more direct interaction with suspects.
- Preventive intelligence gathering needs to be kept separate from that after a crime has occurred.
- With respect to direct interaction, we need to separate co-conspiratorial actions from those where the agent is a potential victim, as with anti-crime decoys.

Even with good ethics, empirical analysis, organizations, policies and persons -- paradox rules and there is no free meal!

- **Undercover work involves some unavoidable trade-offs and risks. Undercover operations involve a number of paradoxes: doing good by doing bad (lies, deceit, and trickery); to see police act as criminals and criminal informers act as police; to seek to reduce crime and, in fact, to increase it; to see restrictions on police coercion result in increased police deception.**

Some Operational paradoxes

- **Other operational paradoxes involved in efforts to manage and control covert investigations are related to conflicts between gathering intelligence and taking action that gives the intelligence away; between bureaucratic control and innovation; between prevention and apprehension; and between secrecy and open communication. The very power of the technique also can be its undoing. These tensions can be stated as 24 hypotheses but first a good quote:**

Blindly Riding the Hurricane?

- **Some of [detective Sam] Spade's actions go beyond their intentions, some fall short, others boomerang on the actor. The point of all this is that actions hardly ever turn out to be what one expects them to be. Spade's wisdom consists in knowing that any action is, inherently, partly out of control, that actions must be herded or ridden but not programmed. The world changes actions, nullifying some, putting backspin on others....The only detectives who know where their cases are going from the start do their work on prime time. (J. Thompson, Gumshoe)**

24 operational paradoxes

- ❑ 1. the goal of equal law enforcement
- ❑ 2. legislative controls
- ❑ 3. the higher the level of supervision
- ❑ 4. the more extensive the controls
- ❑ 5. distance of undercover agent from the target
- ❑ 6. electronic surveillance and risks of discovery
- ❑ 7. the sophistication of the cover story
- ❑ 8. multiple agencies/agents playing undercover roles
- ❑ 9. closeness an operation comes to the real-world

Paradoxes continued

- **10. moral or legal requirements to make clear the illegal nature of the transaction**
- **11. use of juveniles**
- **12. use of new recruits**
- **13. criminal activities of informers**
- **14. use of unwitting informers**
- **15. informer compensation**
- **16. closeness to informers**
- **17. resource allocation between uniformed and non-uniformed**

Paradoxes con't.

- **18. internal uses (more in a moment on this)**
- **19. law-enforcement and the mass media**
- **20. image of the law-enforcement agency**
- **21. personality characteristics of undercover agents**
- **22. length of the operation**
- **23. concluding an operation**
- **24. secrecy and uncontrollable contingencies**

Questions to help determine the ethics of undercover in a given case

- **Autonomy**
- **Degree of deception**
- **Bad lessons**
- **Privacy and expression**
- **Collateral harm**
- **Equitable target selection**
- **Realism**
- **Relevance of charges**
- **Actors**

Consistency in Ethics: Bringing it Home to Law Enforcement?

- If we support covert and invasive means against citizens, what about applying them to police, given their special powers, skills and temptations? Consider:

- random integrity tests, searches, drug tests, DNA
 - anonymous tip lines

- mandatory financial disclosure

- secret “field associates” who report on their fellows

- video and audio tape all police actions

- implant RFID chips in all police personnel

- agencies with mandates to watch each other

- media, social movements watching police

- personal police info as public records-internet

Undercovering Undercover Under-the-Covers

- When if ever should intimate friendships and sex be used as tools in a covert investigation? Should this vary depending on whether it involves a serious offense that has occurred or is simply for intelligence purposes?

Blurring of the Lines Between Public and Private Police: Implications for Intelligence?

- New treasures troves of data and more eyes
- The circulation of personnel
- The exchange of data
- Joint operations –law for hire? Privatization
- Will government power become a resource for the private sector?

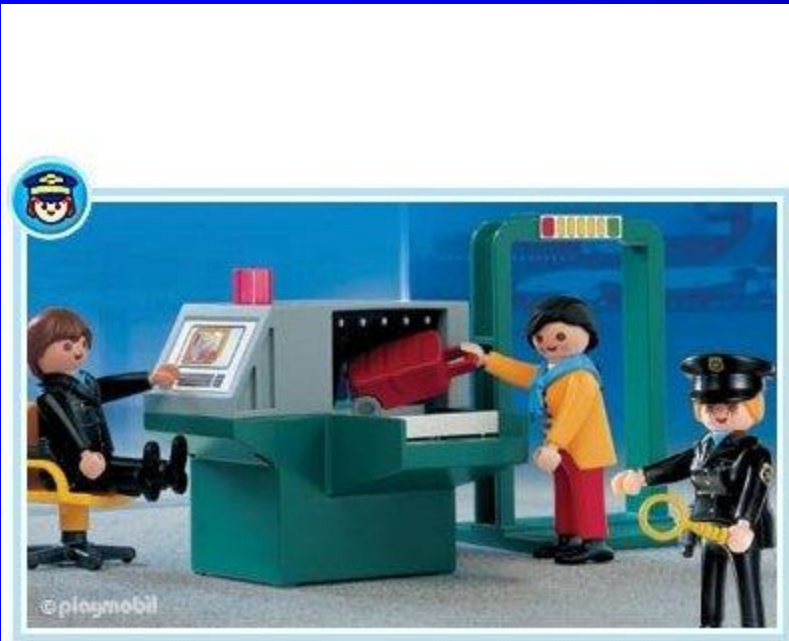
Will the private sector do end runs for the state, avoiding legal and policy restraints?

ETHICS AND INTERNATIONALISM

- GLOBALIZATION
- CROSS BORDER FLOWS OF PEOPLE, GOODS, IDEAS, DATA
- JURISDICTIONAL ISSUES AND WHOSE LAW?
- DATA SHARING ACROSS BORDERS
- DIFFERENT STANDARDS FOR CITIZENS AND NON-CITIZENS AND AT HOME AND ABROAD?
- CRIM.,ORG., DIPLOMATIC & MILT. INTELL.

Undercover as one part of the
emerging surveillance society

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- Conveyor moves forward and reverse
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- Real Metal Detector Detection Alarm Alert Beacon

Requires
5 AA Batteries
*Not included



Art Anticipates Life in Every Breath You [we] take

- Every breath you take [breath analyzer]
- Every move you make [motion detector]
- Every bond you break [voice stress analyzer]
- Every step you take [location monitoring]
- Every single day [continuous monitoring]
- Every word you say [bugs, wiretaps]
- Every night you stay [night vision goggles]
- Every vow you break [voice stress analysis]
- Every smile you fake [brain wave analysis]
- **I'LL BE WATCHING YOU –The Police**

The New Surveillance:

- Transcends borders of time, distance, darkness, skin and physical barriers
- Permits the inexpensive and immediate sharing, merging and reproducing
- Permits combining discrete forms of data
- Permits altering data

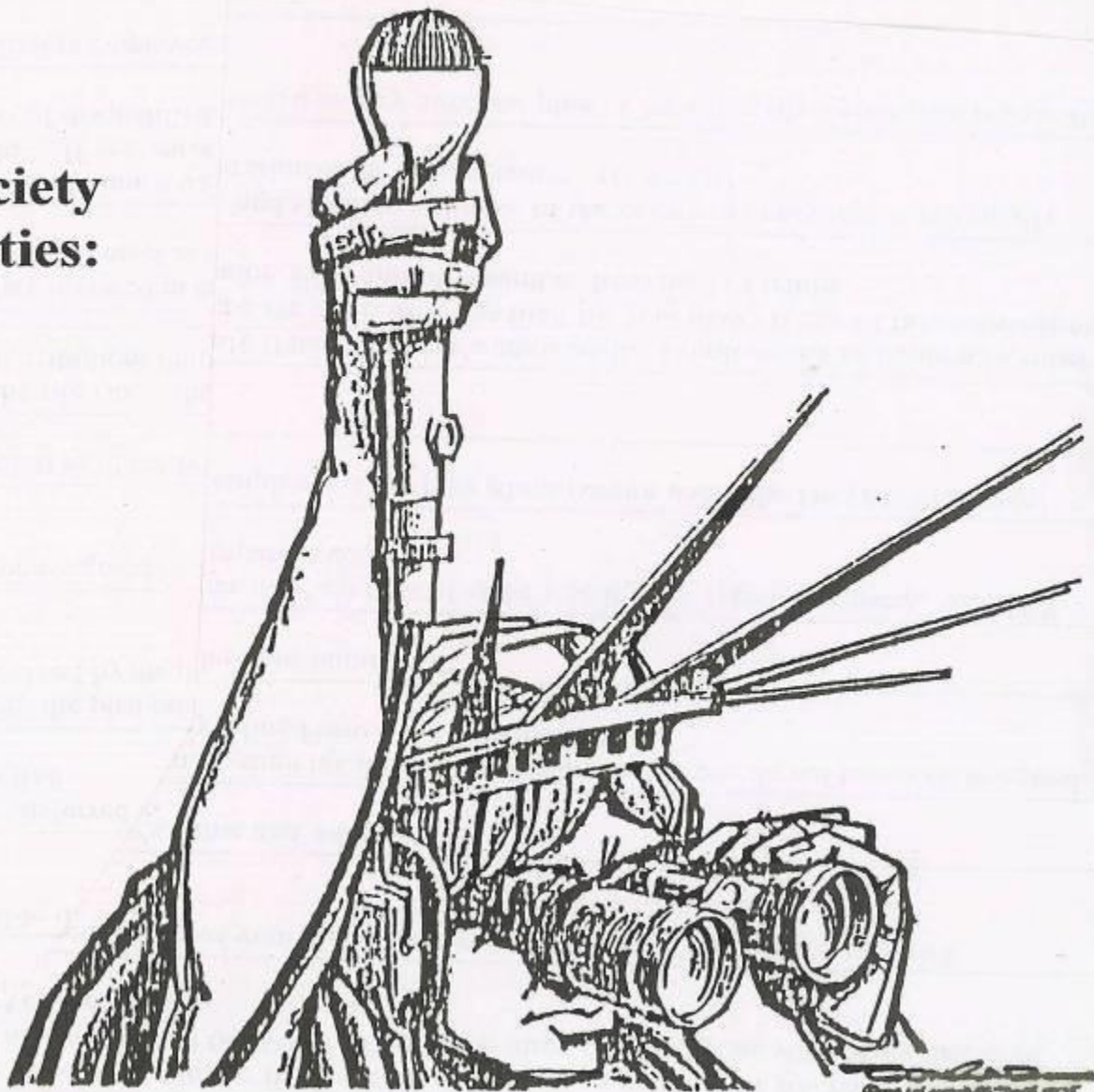
The New Surveillance, con't:

- Permits remote access
- May be done without the subject's knowledge or consent
- May be done invisibly, leaving no traces
- More intensive, probing more deeply to reveal previously inaccessible information
- More extensive, covering broader areas
- IS NEITHER GOOD, NOR BAD BUT CONTEXTS MAKE IT SO

ARE WE BECOMING A MAXIMUM SECURITY SOCIETY?

The maximum security society
Is composed of 6 sub-societies:

- 1) *an engineered society*
- 2) *a dossier society*
- 3) *an actuarial society*
- 4) *a transparent society*
- 5) *a self-monitored society*
- 6) *a suspicious society*



WITH TWO DECADES OF HINDSIGHT, SOME MORE SUB- SOCIETIES OF THE MAXIMUM SECURITY SOCIETY:

- 7) A “*SEDUCTIVE SOCIETY OF SOFT AND MANIPULATED CONTROL*”
- 8) A “*NETWORKED SOCIETY*” OF AMBIENT AND UNIQUITOUS SENSORS EMBEDDED AND COMMUNICATING EVERYWHERE ABOUT ALMOST EVERYONE AND EVERYTHING
- 9) A “*SAFE AND SECURE SOCIETY*” (WITH ATTENUATED TOLERANCE FOR RISK)
-
- 10) A “*WHERE ARE YOU, WHERE HAVE YOU BEEN, AND WHO ELSE IS THERE?*” SOCIETY.
- 11) A “*WHO ARE YOU ? SOCIETY*” OF PROTEAN IDENTITIES --BOTH ASSERTED BY (FACE BOOK, ID FRAUD +), AND IMPOSED UPON THE INDIVIDUAL (PROFILES, SCORES)

**ALSO MAY NEED A SONG
CALLED “WHOSE IS IT?”
as the affluent meet the effluent**

- **HUMAN WASTE POLLUTION IN MALIBU
LEADS TO CALL FOR DNA COLLECTION
AMONG OCCEAN-FRONT HOME OWNERS**



Litter and it will hurt

REPORT VIOLATORS

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866-548-8371

KCPW 3703 (07/04)

Vehicle description: _____

License plate #: _____ State: _____

What did you see?

- Thrown by driver Thrown by passenger
 Fell out of vehicle

What was thrown?

- Cigarette butt Bottle/can Paper
 Fast food container Plastic bag or film
 Other item _____

Date/time it happened: _____

Closest town: _____

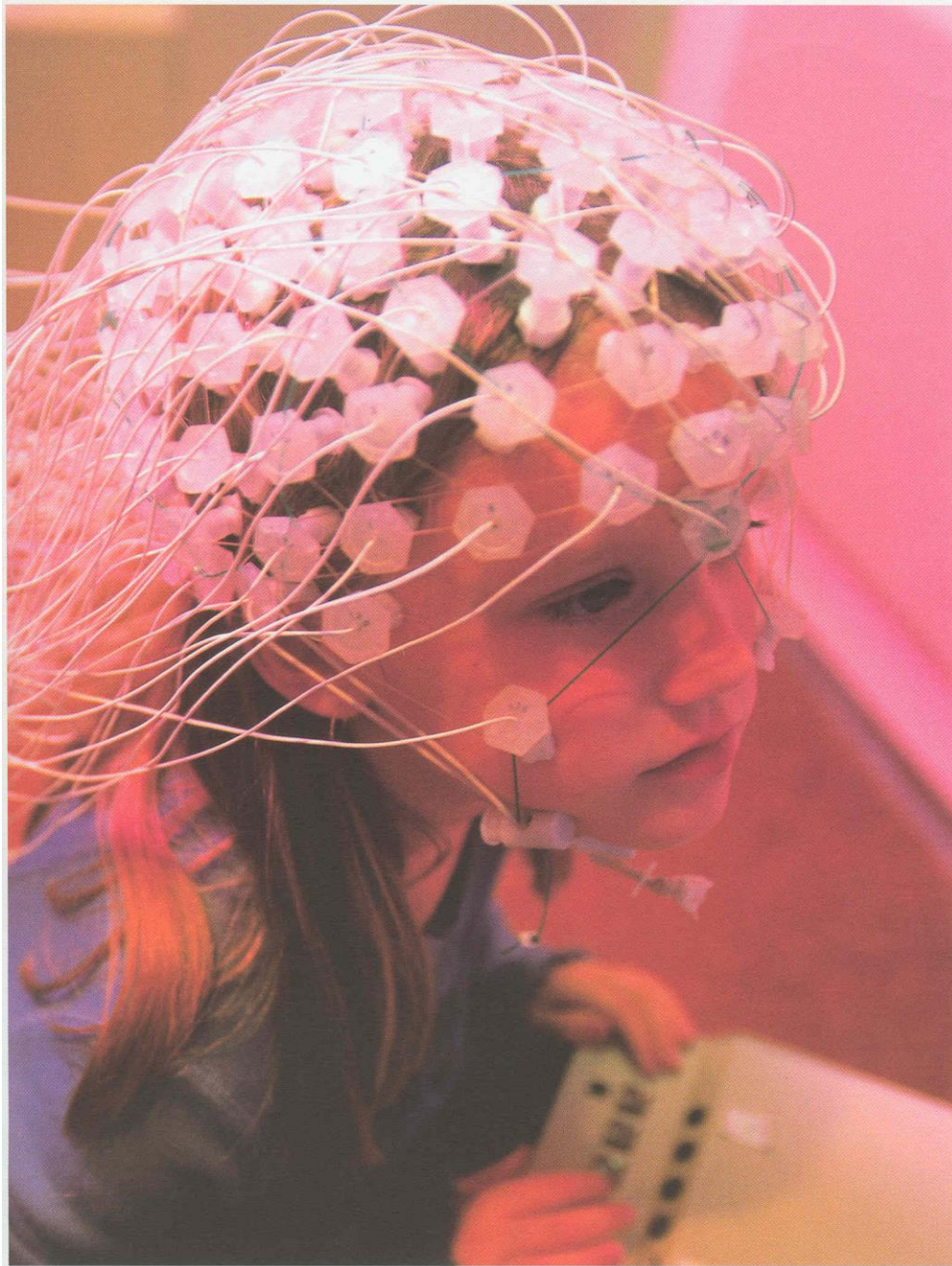
Street name: _____

Nearest intersection: _____

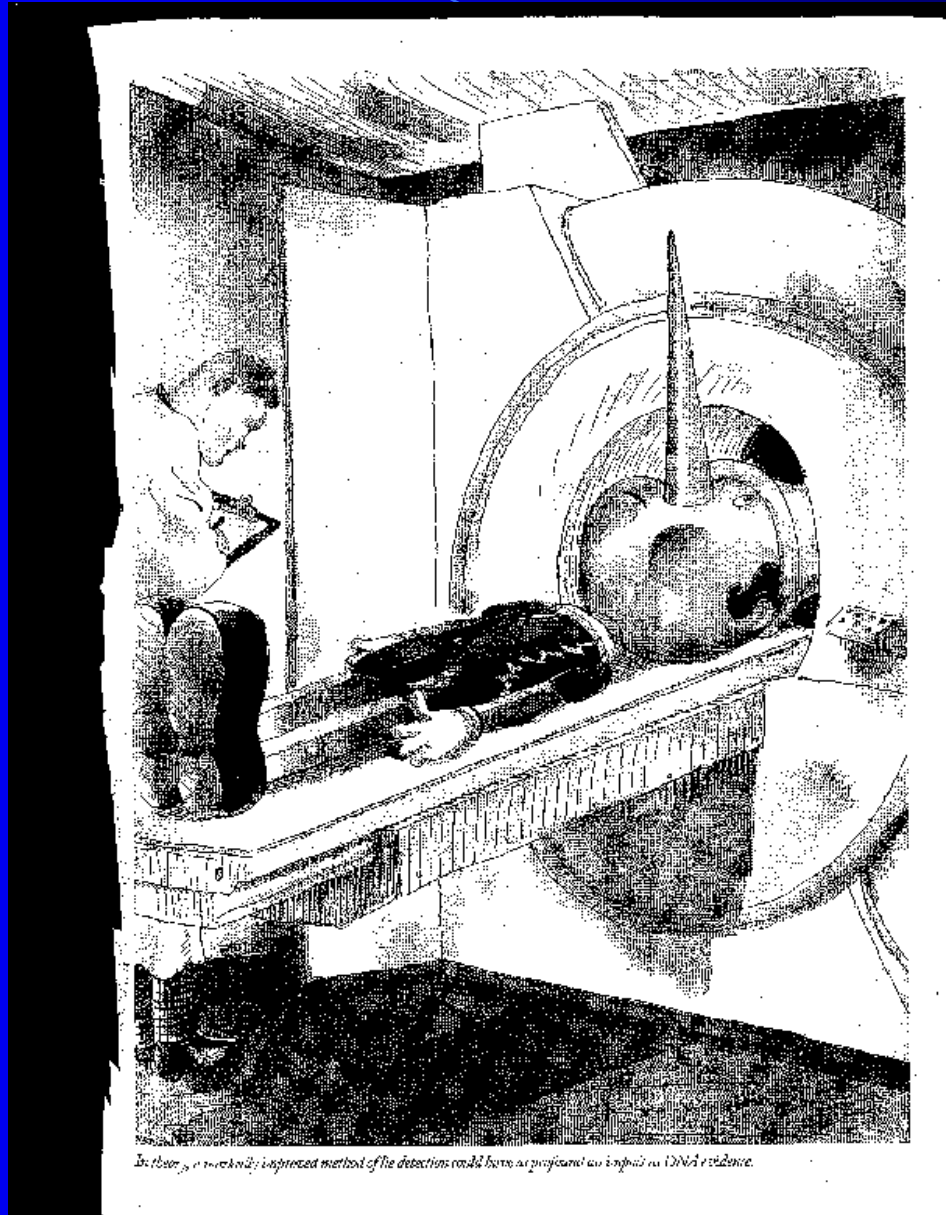
Which direction was vehicle going? N S E W

**THANKS
FOR BEING
A HERO!**





Are you ready for this?



In these circumstances, expressed method of the detection could have as profound an impact on DNA evidence.

Spy on Anyone by
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Spy on Anyone
by sending them an
E-Card.



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Spouse, Kids,
or Employees

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BRITAIN

- YOUR RECORD
- WILL BE ON THE
- NATIONAL DATA
- BASE FOREVER

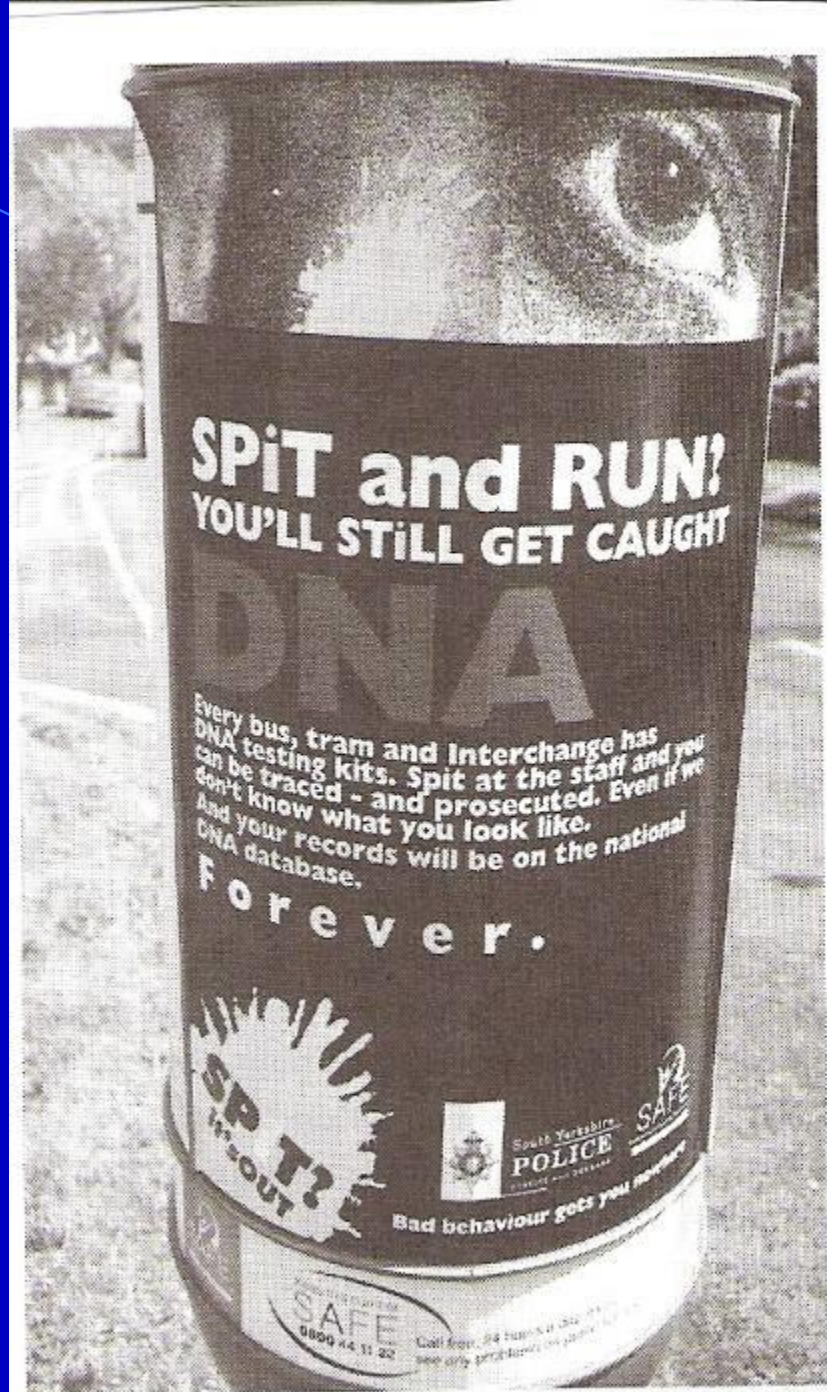


PHOTO BY CLIVE NORRIS

[SURVEILLANCE]



Is it Really New?

What is to Be Done? Some Immodest (and not so) Proposals

1. Specific Policies:

opt in; share benefits; GNPI measures; Euro. model limiting 3rd party and secondary uses; create liability for erroneous data; warrant req. for hidden video.

2. General Policies:

- Privacy and Freedom of Information Commission
- Some Extens. of Bill of Rights to Private Sector?
- Const. Amend. For Privacy/Personal Dignity?
- Be guided by principles
- Be aware of techno-fallacies!



Rocky Bottoms aka



George C. Scott in
"Dr. Strangelove"

Born 6/6/66 place: Repressa, Calif.

Work experience: police, military
intelligence, marketing, engineering

:

Rocky was a consultant to the recently disbanded U.S. Total Information Awareness Office

□ **Motto: Scientia Est Potentia**



Techno-fallacies Illustrated

- **THE FALLACY OF A PASSIVE, NON-REACTIVE ENVIRONMENT**
- **THE FALLACY OF THE 100% FAIL-SAFE SYSTEM**
- **THE FALLACY OF THE SURE-SHOT**

11 Neutralization Moves

It may well be doubted whether human ingenuity can construct an enigma of the kind which human ingenuity may not, by proper application resolve.

Edgar Allen Poe, The Gold Bug

- Discovery
- Switching
- Masking (id)
- Cooperating and Compromising
- Counter-surveillance
- Avoidance
- Distorting
- Breaking
- By-pass
- Blocking
- Refusal

Ethel R. – 1899 Santa Catalina Island



If I had not believed it
I would not have seen it.

- Home
- Great Gifts Under \$25!
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- Child Security Products
- Phone/Voice Recorders
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- Optics & Binoculars
- Professional's Corner
- In The News
- FAQ's
- GPS Personal Locator
- View Shopping Cart
- Privacy Policy/About Us
- Order Policies
- Search
- Index

PRIVACY POLICY!

Don't think you need to sweep for bugs?

Every day, thousands of businesses and residences are subject to covert audio surveillance devices. The information recorded can cost you millions in lost contracts, lawsuits, etc.

Protect your valuable privacy with any of these easy to use detectors.

discovery
Discovery



LIPSTICK SIZE RF SIGNAL DETECTOR

This tiny RF detector can find and alert you to hidden audio or video transmitters. You can quickly and easily do a "bug sweep" any room you enter or be alerted if anyone enters your room or office wearing or carrying a transmitter.

It detects RF signals from 50 MHZ to 3.0 GHZ covering all covert video camera transmitters, audio or telephone bug transmitters, cell phones, etc.

When it detects an RF transmitter, the buzzer will beep and the LED will turn green for visual and audio alert.



Micro Radio Frequency Detector
Small enough to wear on your body without being noticed!
Compare At: \$289.95
Sale Price: \$249.95



RF Bug Detector
High Quality RF Bug Detector!
Compare At: \$299.
Sale Price: \$239.9!



Lipstick Size RF Signal Detector
Find RF Transmitters With This Lipstick-Sized Detector!
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Sale Price: \$59.95



RF Detector With Frequency Display
See The Exact Frequency Of Any Transmitter!
Compare At: \$549.
Sale Price: \$475.9!



Hand Held "Bug Detector"
Compare At: \$148.95
Sale Price: \$130.95



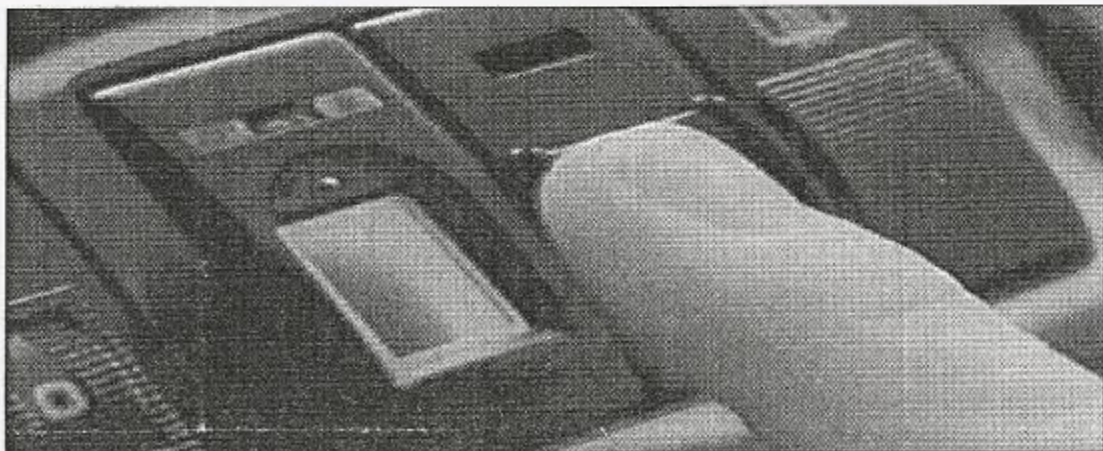
TeleSafe Phone Tap Detector
Protect your phone line against electro taps and eavesdroppers!
Compare At: \$199.
Sale Price: \$163.9!

steer autos into future

Masking



Look, Mom, no keys: Siemens Automotive's fingerprint recognition system will adjust the radio, seats, steering wheel and mirrors to a driver's specifications.



Siemens Automotive

Press to start: Touch your finger to a sensor on the car's console, and the fingerprint recognition system starts the engine.

With the touch of a finger

Siemens Automotive's Fingerprint Recognition.

- ▶ Press finger to sensor on instrument panel.
- ▶ Engine starts.
- ▶ Mirrors adjust.
- ▶ Steering wheel adjusts.
- ▶ Seats adjust.
- ▶ Radio tunes to favorite stations.

Source: Siemens Automotive

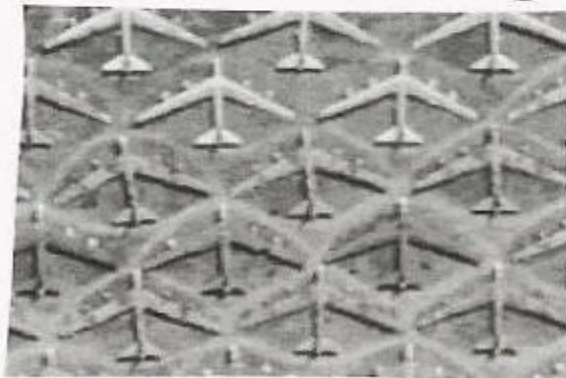
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SSSSSS

Hidden Message



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GLE BLUE AND AMERICAN H.I.J.
YOU WON'T FIND LASER POINTERS THIS ADVANCED ANYWHERE ELSE. THESE 65000000 YARD LASER POINTERS BEHOLD AS STYLISH WRITING INSTRUMENTS. SILVER AND BLUE POINTERS ARE STANDARD REEFILL POINTERS. RED POINTERS IS STANDARD REEFILL POINTERS. 3 AAA WATCH BATTERIES PROVIDE UP TO 10 HOURS OF "ON/START OFF" OPERATION. BATTERIES INCLUDED.

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INFINITER MICRO 200
65000000 YARD LASER BATTERIES. 65000000 YARD LASER POINTERS ARE TEN TIMES BRIGHTER THAN OTHER COMPARABLE POINTERS. LIGHT WEIGHT ALUMINUM 6 IN. LONG POINTERS OPERATED BY AAA BATTERIES (INCLUDED) ALSO AVAILABLE IN 65000000 YARDS AND 670 000000 YARDS. COMPLETE WITH KEY RINGS.

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OUR FINEST AND MOST DURABLE POINTERS. THE ULTRA NDK (65000000 YARD) AND SUPER NDK (65000000 YARD) ARE CONSTRUCTED OF SOLID BRASS WITH A SATIN CHROME FINISH AND PATENTED CLIP SWITCH. IMPACT PROOF TO 2 METERS. 2 AAA BATTERIES PROVIDE UP TO 2 HOURS OF CONSTANT "ON/START OFF" OPERATION. COMPLETE WITH ATTRACTIVE LEATHER WALLET.

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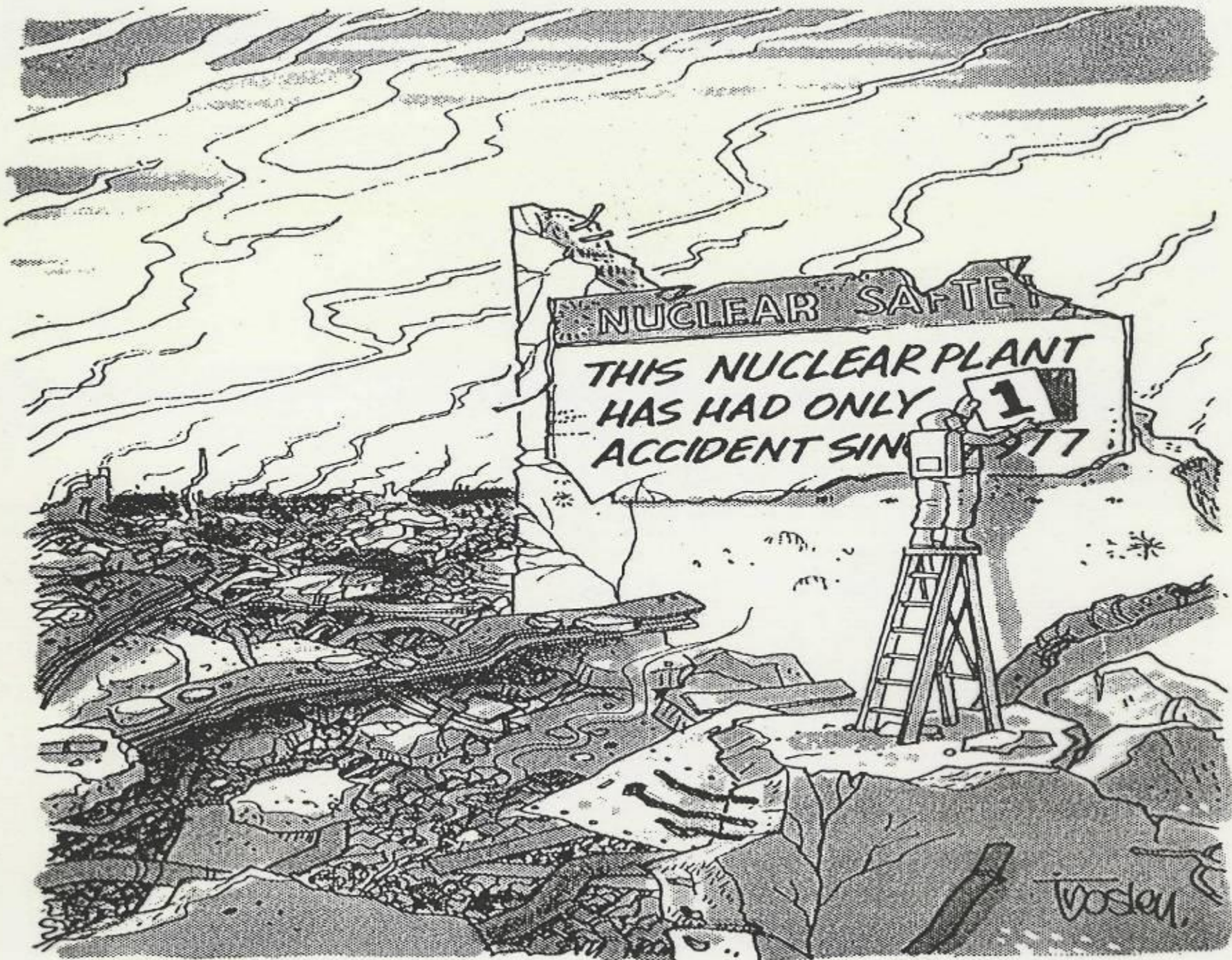
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Techno-Fallacies: Illustrated Con't.

- ❑ **THE FALLACY THAT GREATER EXPENDITURES AND MORE POWERFUL AND FASTER TECHNOLOGY WILL CONTINUALLY YIELD BENEFITS IN A LINEAR FASHION**
- ❑ **THE FALLACY THAT IF SOME INFORMATION IS GOOD MORE IS BETTER**
- ❑ **THE FALLACY OF BELIEVING THAT BECAUSE IT IS POSSIBLE TO SKATE ON THIN ICE IT IS ACCEPTABLE TO DO SO**
- ❑ **THE FALLACY OF RE-ARRANGING THE DECK CHAIRS ON THE TITANIC INSTEAD OF LOOKING FOR ICEBERGS**



NUCLEAR SAFETY

THIS NUCLEAR PLANT
HAS HAD ONLY
ACCIDENT SINCE 1977

1

Vossler

The Constitution and the Bill of Rights “guarantees to all of us all the rights to personal and spiritual self-fulfillment. But the guarantee is not self-executing. As nightfall does not come at once, neither does oppression. In both instances, there is a twilight when everything remains relatively unchanged. And it is in such twilight that we all must be most aware of change in the air --however slight --lest we become victims of the darkness.”

Justice William O. Douglas



A COMPASS NOT A MAP --20 QUESTIONS FOR DECIDING ABOUT THE ETHICS OF A GIVEN SURVEILLANCE PRACTICE

TABLE VI ON HANDOUT –THE MORE
THESE CAN BE ANSWERED
AFFIRMATIVELY THE MORE
JUSTIFIED THE ACTION (OFBE)

Some Principles for Surveillance Manners, Policies and Laws

1. **The principle of the informed subject**
2. **The principle of the consenting subject**
3. **The principle of co-determination, or at least consultation, in setting surveillance policies**
4. **The principle of opting-in favored over opting-out**

5. The principle of relevance

6. The principle of minimization with respect to the kind, amount of data and degree of intrusiveness/invasiveness in collection and data essence

7. The principle of validity and reliability

8. The principle of timeliness

9. The principle of inspection and correction

10. The principle of data security

11. The principle of confidentiality

12. The principle of joint ownership of transactional data

13. The principle of unitary usage (non-data migration)

14. The principle of joint ownership of transactional data

15. The principle of restoration

16. The principle of redress (including means of compensating for unwanted effects)

17. The principle of human review of automated decisions

18. The principle of periodic review and evaluation of surveillance policies

19. The principle of consistency

20. The principle of redress

21. The safety net or equity principle

22. The sanctity and dignity of the individual principle

23. The principle of asking the golden rule question

24. The equity in application principle

Some Value and/or Outcome Conflicts

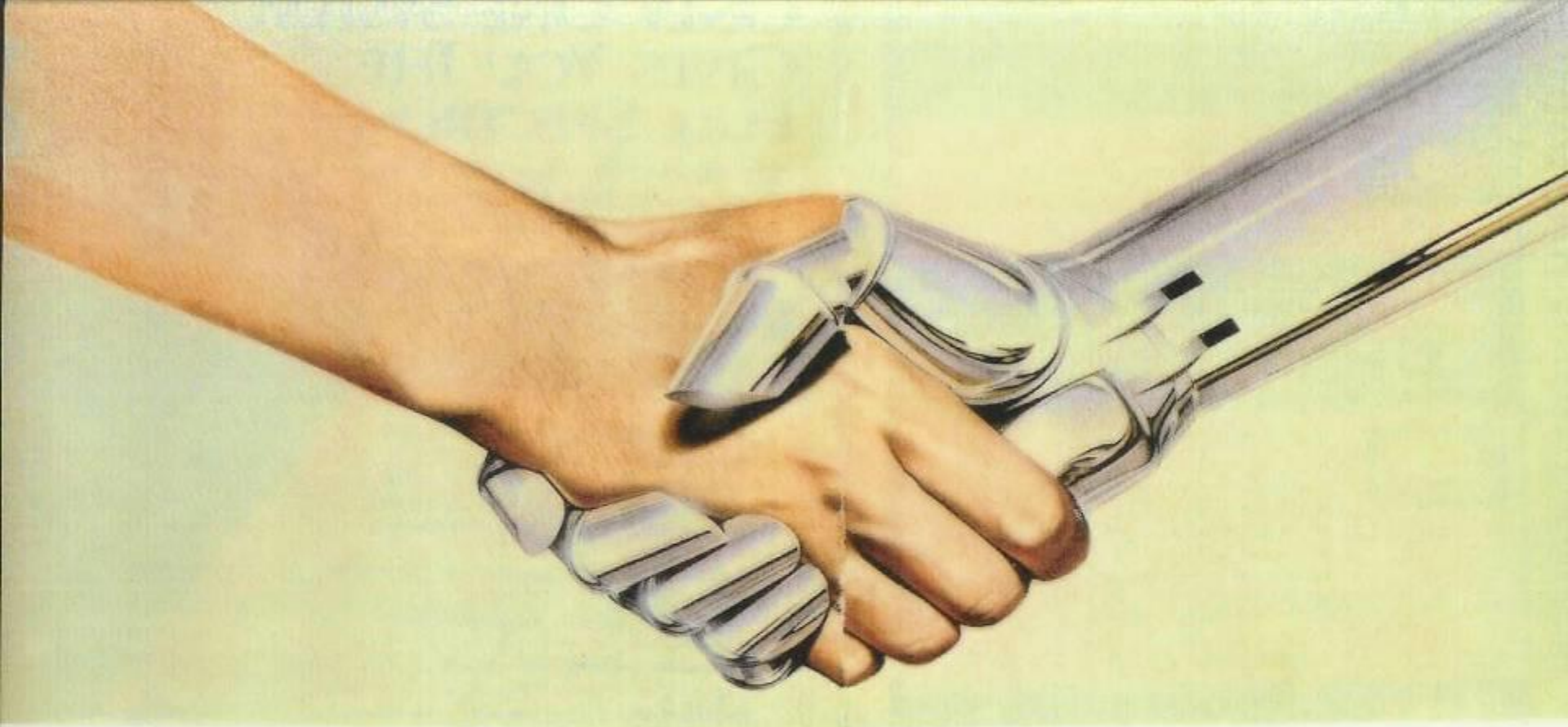
1. liberty and order
2. accountability and privacy
3. community and individualism
4. freedom of expression and the right not to be defamed or harassed
5. honesty in communications and civility/diplomacy
6. creativity and experimentation from anonymity versus its serving as a shield for irresponsibility
7. encouragement of whistle-blowing and due process
8. the right to know and the right to control personal data
9. the universalistic treatment due citizens and the efficiency of fine-honed personal differentiation
10. the desire to be noticed and the desire to be left alone
11. security, safety and convenience, cost, timeliness



Miramax Fil

Jeremy Irons in the title role of the new Steven Soderbergh film, "Kafka," which is at Cinema 2.





the **GLOBAL** issues of moving into the **HYBRID WIRELESS/WIRELINE** networks of the **FUTURE.**

While *wireless* networks provide personal, portable telephone access, and *wireline* networks provide the connections that span the globe, it is the *interconnection* of the two that promises an exciting future with greater reach and a wider range of services.

At TeleSciences, we're leveraging our long-term telephony experience and investing in solutions that will help you deliver, measure and manage worldwide calls in the hybrid wireless/wireline networks of tomorrow.

Annual Cato Institute/*Forbes* ASAP Conference

Technology & Society 1999

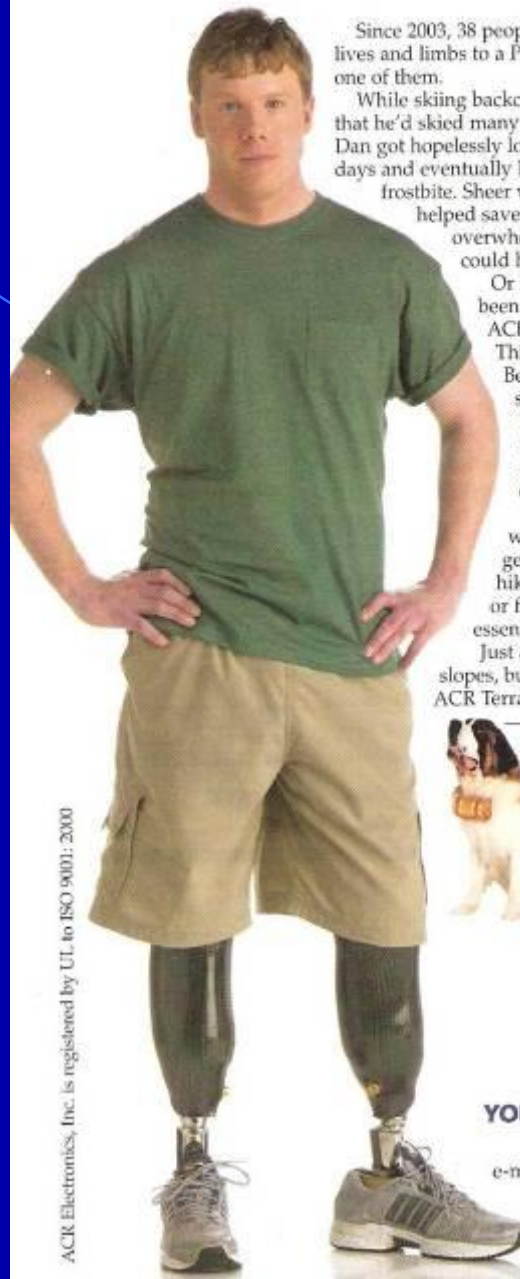


November 4-5, 1999

Biltmore Hotel & Suites, Santa Clara, CA

Last year's speakers included Larry Ellison of Oracle, Eric Schmidt of Novell, Scott Cook of Intuit and

With a PIB, Dan could have walked away with more than his life



Since 2003, 38 people owe their lives and limbs to a PLB. Dan isn't one of them.

While skiing backcountry terrain that he'd skied many times before, Dan got hopelessly lost for five days and eventually lost his legs to frostbite. Sheer willpower helped save his life amid overwhelming odds. It could have been worse.



5.7 in. tall, 12 oz.

Or it could have been much better if Dan had packed ACR's new TerraFix™ 406 GPS I/O. This powerful, little Personal Locator Beacon (PLB) transmits a distress signal over both 406 MHz and 121.5 MHz, alerting the nearest rescue team worldwide through a satellite system that's continually orbiting the Earth.

Where cell phones fail and two-way radios fall short, TerraFix can get you out of a jam fast. If you ski, hike, bike, climb, canoe, kayak, hunt or fish in remote locations, a PLB is essential gear.

Just ask Dan. He's already back on the slopes, but not without the protection of his ACR TerraFix 406 PLB.



To read Dan Witkowski's incredible tale of survival while lost skiing in the Cascade Mountains, visit www.acrterrafix.com/os

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