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CASE STUDY 15

Fired Over Facebook

Issues of Employee Monitoring and Personal Privacy on Social Media Websites

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This case explores the ways in which employers monitor employees' behavior inside and outside of the workplace as we increasingly use social media to communicate with others. The surveillance of social media use raises interesting questions related to the desire for organizations to retain their reputation and image and the need for employees to maintain some degree of privacy. As such, the case considers the ways in which organizational duties may conflict with personal rights.

This case examines organizational surveillance practices and their impact on employee communication (e.g., ability to engage in dissent, opportunities for collective resistance). The increased popularity of social media sites on the Internet (e.g., Facebook, Twitter) has added a new dimension to the struggle between managers and their employees regarding workplace monitoring tactics. Managers want to ensure employees are not compromising organizational interests by criticizing their company on public websites. However, workers often object to the idea that employers have the right to review or restrict their communication choices outside the formal boundaries of the office, particularly when they are *off the clock*. In order to examine this issue in more detail, this chapter examines the public controversy that erupted when a waitress in a North Carolina restaurant was fired over a comment she made on her personal Facebook page. Examining this case enables communication scholars to consider a growing topic of debate in the contemporary work environment: the degree to which organizations have the right to monitor their employees' behavior on the Internet.

Recent technological innovations and changing legal landscapes have converged to create new questions about the nature of workplace privacy. From an ethical theory perspective, this might be seen as a debate between those who support a *duty* perspective toward organizational ethics versus those who favor an individual *rights* perspective. When the interests of corporate leaders and their employees are in conflict (e.g., managers want to keep track of their employees' online activities but employees do not want their Internet behavior monitored), which side should prevail?

Drawing from a duty perspective, one might argue that workers have an obligation to support the interests and rules of their organization if they want to remain employed. Using this logic, employees should willingly participate in online surveillance practices that management believes to be in the best interests of the organization (e.g., to deter theft, to maintain a safe workplace). In order to ensure that all members of the company behave in an ethical fashion, some loss of individual privacy may be warranted. In contrast, a rights perspective might argue that collective systems have a responsibility to protect the individual interests of their members. Organizational leaders typically have more resources and power than any single employee. When the interests of management and workers are in conflict, it is not a fair fight. New workplace surveillance practices, such as the monitoring of employee behavior on social media websites, simply increases this power imbalance. As such, an ethical organization might consider protecting the online privacy of individual members rather than enhancing the supervisory power of its managerial staff.

Workplace privacy is a complex issue that requires an interdisciplinary discussion of how technological innovations, new social networks, and mediated forms of connectivity have shifted the presumed boundaries of self and others within both the public and private sphere. The interconnections presented through emerging technologies create a shifting landscape upon which individual privacy is based. These new boundaries change our sense of identity, as well as our relationships with other individuals and organizations.

THE CHANGING NATURE OF ORGANIZATIONAL SURVEILLANCE

The organizational use of technology to monitor employee behavior has a long history, from the 1879 "Incorruptible Cashier" that printed receipts (Campbell-Kelly & Aspray, 1996) to contemporary video and data monitoring systems that can track every movement of an employee for later analysis and managerial critique. The affordability and sophistication of information and communication technologies (ICTs) as surveillance devices has led to workplace monitoring becoming increasingly prevalent. If employees use computers, phones, or GPS-enabled company cars, they can be monitored in real time for specific information or patterns of behavior (Alder & Tompkins, 1997; Attewell, 1987; Botan & McCreadie, 1993). The "common quality is that these devices [ICTs] are more sensitive than ever before and overcome previous limits of time, space, and distance in gathering information about individuals" (Gandy, 1989, p. 62).

A survey conducted in 2007 by the American Management Association found that corporations engage in a number of different methods of technological surveillance, with 45% of firms reporting that they track the specific content employees produce on their workstations, their individual keystrokes, and actual time spent at the keyboard. This survey also revealed that 28% of firms have fired employees for e-mail-related offenses and 66% monitor the websites their workers access when at work (American Management Association, 2008b). Similarly, a commercial 2009 survey of U.S. companies with more than 1000 employees found that 38% of these firms have hired staff specifically to read or otherwise analyze outbound e-mail (Proofpoint, Inc., 2009).

Companies are increasingly concerned that their employees' use of social media may enable corporate espionage efforts, foster negative PR, or undermine the managerial control of important organizational information (Crawford, 2005). Any employee with a website or Twitter account can instantly alert their friends, family, and members of the general public to issues that their supervisors may want to keep private or "spin" in a particular fashion. Even if workers do not use their own names or identify their employer, the information they disclose may undermine their firm's business strategy or public image. For example, in 2005, Nadine Haobsh lost her job as a beauty editor at *Ladies' Home Journal* when her employer discovered that she was the author of "an anonymous blog that revealed shocking truths about the fashion and beauty industries . . . swag, editor gifts, and workplace hierarchy, things known in the industry, but often not divulged to the general public" (Dhami, 2010, para. 2). Even though Haobsh did not provide specific names or identify any organizations, her employer determined that her blog "scandalized" the industry, and she was fired as a result. It is not enough to simply avoid "naming names"; anything said online can become grounds for termination.

To emphasize this fact, firms have increasingly added "social media" clauses to employment contracts (Bahney, 2006; Foley, 2005; Gossett & Kilker, 2006). Recent survey results indicate that at least 12% of U.S. firms "monitor the blogosphere to see what is being written about the company, and another 10% monitor social networking sites" (American Management Association, 2008a, para. 5). This practice has become so common that an entire industry has emerged to help managers more effectively track their employees' online activities. For example, companies can subscribe to services such as "Social Sentry," which does the following:

> for $2 to $8 per employee . . . [it] will track their every move on Facebook and Twitter, whether it's from their desktop computer or their own smartphone or anywhere else. It will also provide charts tracking exactly how much time employees are spending (wasting?) on social media. (Rubin, 2010b)

In 2009, 8% of U.S. firms reporting firing workers specifically for violating their company's social media policy, compared to only 4% citing this as a reason for termination in 2008 (Proofpoint, Inc., 2009). These new surveillance techniques raise this question: Where do the boundaries and authority of an employer end and an individual's personal space and right to privacy begin?

As we consider when and where employers have the right to monitor the communicative behavior of their workers, we should also reflect upon the implications these policies might have on society as a whole. As individuals share their workplace experiences online, they essentially provide a separate and independent method of organizational surveillance. It is through online tools like Facebook and Twitter that workplace boundaries become fluid and control over organizational information shifts, at least slightly, toward the employees. This phenomenon has been observed in other marginalized groups interacting online: "On the internet, the marginalized can call out to the dominant and put the dominant in the difficult position of either having to acknowledge the marginalized, or further distance the dispossessed by ignoring the call" (Mitra, 2001, p. 31). The famous

organizational whistle-blowers of our past (e.g., Karen Silkwood, Jeffrey Wigand) turned to more traditional media outlets in order to share their stories; however, the next generation of whistle-blowers may more likely arise out of the pages of Facebook. If employers are able to effectively silence the voices of their workers on social media sites, they may also reduce the ability of these employees (and the public in general) to hold them accountable for inappropriate or illegal behavior. While there may be compelling managerial reasons to limit the degree to which employees are allowed to share organizational information, we must also consider the consequences for society if we create a system in which workers are forced into online silence simply to keep their jobs.

THE WAITRESS, THE RESTAURANT, AND THE "PIECE OF **** CAMPER"

In May 2010, the BRIXX restaurant in Charlotte, North Carolina, fired a 22-year-old waitress (Ashley Johnson) after learning that she had used her personal Facebook page to complain about a customer who left a $5 tip after occupying a table for 3 hours. Ms. Johnson was upset by the amount of her tip and posted the following comment on her personal page: "Thanks for eating at BRIXX, you cheap piece of ****[1] camper."

The restaurant justified firing Ms. Johnson because it claimed she had violated company policy with her Facebook posting. Like many organizations, this restaurant had a clause in its employment contract that strictly forbade workers from making negative statements about the company on social media websites. BRIXX management explained the policy on their own corporate Facebook page: "We respect everyone's right to free speech, and our employees can engage in social media. As employees, they are ambassadors for Brixx Wood Fired Pizza. Our company social media policy clearly states that employees are not to disparage our customers, and there are consequences for those who do." According to the local newspaper, the *Charlotte Observer,* Ashley publically apologized for the comments she made on her Facebook page and did not fight the termination of her employment at BRIXX.

At first glance, this case may not seem all that unique or even of enormous social importance. Ms. Johnson was not trying to alert the public to some great danger or illegal activity. She was simply complaining about a bad tip. However, what makes the BRIXX case worthy of discussion is the fact that Ms. Johnson *did not* make her comments available to the general public. While she did post her message to Facebook, the privacy settings on her account limited this message to her immediate friends (which did not include members of BRIXX management or the poor-tipping customer). As such, it is not clear how Ashley Johnson's employer was made aware of her online gripe. Officials from the restaurant indicated that the waitress's comments were sent to her manager by a third party; however, they have not identified the person who forwarded this information.

> Johnson can't pinpoint the leak. She has about 100 Facebook friends (mostly high school and college friends), but her page is private and she says she doesn't add

[1] Ms. Johnson's actual quote was censored by the press and has since been removed from Facebook. As such, we can only guess at the actual wording she used to describe her customer.

> people she doesn't know to her network. Brixx partner Jeff Van Dyke said he wasn't sure how the company learned of Johnson's indiscretions. "It's just like high school students posting stuff on their social networking sites and thinking it's not going to get back to their parents," he said. "But somehow, it does." (Rubin, 2010a)

Ms. Johnson admitted to posting the offending comment but seemed surprised that it was something that could get her fired. "It was my own fault . . . I did write the message. But I had no idea that something that, to me is very small, could result in my losing my job" (Frazier, 2010).

THE RIGHTS OF THE ORGANIZATION VERSUS THE RIGHTS OF THE WORKER

The BRIXX/Facebook incident not only received attention in the Charlotte media. It was also picked up by several national and international news organizations (e.g., MSNBC, *Huffington Post, INC Magazine, Metro UK*). The story generated thousands of comments on various online forums and prompted a public debate about the rights of workers to speak their mind versus the rights of employers to protect the public image of their organizations. While there were a number of issues brought up in these comment sections, six central themes emerged. Next, these themes are summarized and examples are provided to help illustrate the complicated nature of this case.

If You Don't Like the Rules, Find Another Job

Some people argued that companies have the right to set any rules they want for their employees. As long as workers are made aware of the rules and agree to abide by them, they have no reason to complain if they are fired for breaking company policy.

> Hey, the girl violated company policy. Her fault, not the company's, that she can't act professionally and adhere to policy, especially on a very public forum like the Internet. If she didn't like it, she could have gone elsewhere. (Deidre, BRIXX Facebook Page)

> Has this society gone so far astray to not realize an employer has all the rights to set work rules and standards, so long as they don't require an employee to be unethical or do anything illegal? This reminds me of the lawsuits about requiring head coverings, uniforms, and hand washing I have read about. She knew about the rules, she broke them, end of story. (Krock65, *Charlotte Observer* Forum)

> Brixx has a policy stating you can't write bad things about the company on social networking sites. She broke the rule and got fired. They didn't just fire her because of what she said—she broke the policy which she was aware of when she was hired. (Jef, Charlotte City Blog)

Talking About Your Job Online Is Okay as Long as You Cover Your Tracks

Another common response was that workers have the right to complain about their jobs online as long as they do not identify anyone (client, company, themselves, etc.) by name. If workers keep their online activity relatively anonymous, their employers should not interfere.

> That's a dumb reason to fire someone . . . but you shouldn't be venting on public sites like Facebook anyway—that is what Muttr.com is for: venting anonymously is definitely the way to go! (Nate, *Metro UK* "You Say" Section)

> Had Ashley not mentioned Brixx then it would be just another person complaining about her job. By revealing the company name her comment becomes a reflection on the company. (Scott, Charlotte City Blog)

> The only thing she did wrong was mention her employer's name on a social networking site. She should be able to say anything about cheap customers that she wants to say. It's her page. (Guest, *Inc. Magazine* Forum)

The Employee Was Wrong But Should Have Been Given a Second Chance

Some people argued that the waitress was wrong to make comments about her job online but that her punishment (e.g., being fired) did not fit the crime (e.g., griping about a bad tip).

> I think a written warning would have been enough for the comment. I mean really Brixx, was firing her necessary? What about her frustration?? At least she didn't say it to the customer! (Teach72, *Charlotte Observer* Forum)

> They could have given her a warning and asked her to remove the complaint on her Facebook page. While yes she violated policy, waitresses and waiters depend on tips as part of their income (they are paid less than minimum wage) and customers who stiff them or don't give at least 15 percent are very frustrating. (Pennsylvanianne, *Huffington Post* Forum)

> It seems a bit harsh to have fired a waitress over a Facebook status in which all she really does is vent to her friends. According to the news story, she did not talk bad about BRIXX, just vented. Could you not have got your point across by giving her a warning and suggesting she take a look at her privacy settings? (Joe, BRIXX Facebook Page)

The Managers Had an Obligation to Preserve the Image of the Restaurant

Another theme in the public comments was that negative online comments can do a lot of damage to an organization's image and corporate culture. As such, these people argued that organizations not only have a *right* but they actually have a *duty* to monitor the Internet behavior of their employees.

> Firing Ashley was very severe but everyone knows that you shouldn't publicly speak ill of your employer or your employer's customers. Employers know that the words spoken on social network sites can be far reaching and very damaging. (Carmay3600, *Inc. Magazine* Forum)

> It doesn't matter that she did it on her own time, it doesn't matter that the people were inconsiderate, what matters is that she ranted about a customer in a public forum and mentioned the name of the company, this puts the company in a bad light and many companies have policies in place stating that you cannot have negative comments about the company, the employees or the customers. The company was completely within their legal boundaries in firing this person, if those customers had somehow seen the comment, they could have known it was about them and been upset with the company. In the end, the company has to watch out for themselves. (natedom, MSNBC Website)

> Do not make negative comments about the customers or the company on a public stage and expect no consequences. It is your job to represent the company you work for in the best light possible. Otherwise why does the company want you around? (Kcohne, *Inc. Magazine* Forum)

The Worker Didn't Violate the Rules Because the Message Was to Her Friends and Not the General Public

Some people argued that the waitress should not have been fired because she did not actually violate the restaurant's social media policy. Ms. Johnson limited her Facebook comments to her immediate friends and family. As a result, these people claimed that she did not engage in *public* speech against her employer.

> The waitress did not speak bad about the customers publicly, she did it on private. She did it to her 100 Facebook friends and this is the same of doing it by e-mail or by phone once at a time. (FOM, *Charlotte Observer* Forum)

> If Johnson were to verbally complain to a few friends, she would clearly be within her rights to do so. If she were to take out an ad in Creative Loafing saying the

same thing, the company's policy against dissing customers would probably prevail. Now take it to Facebook. If she has the usual 100 friends or so, upon which side of the line does it fall? 200? 20? (Dan, Creative Loafing Website)

I think it's perfectly fine for her to vent. Facebook is meant for friends and being able to talk about your day and how it went. Brixx is stupid for firing her for doing something on her OWN time. Now, if she was doing this while on the clock and venting on her iphone or blackberry THEN maybe they'd have reasons for termination. (Audrey, BRIXX Facebook Page)

It's Okay to Complain About Your Job; Just Don't Do It Online

A final set of comments focused on the specific communication channel the waitress used to complain about her tips. These people argued that it is reasonable for employees to talk about their work experiences with others; they should just not use the Internet to do it.

Facebook is like shouting on the street corner. Whether a tip is bad or there is some other problem with your job, if your employer sees it they can fire you. The same can happen if you are sitting at another restaurant complaining to a friend. If your boss is at a nearby table and overhears you using the company name in a bad light, then they can fire you. It may not seem fair, but that is the way it is. If you are going to complain, get on the phone and call a friend. Gripe to your spouse or roommate. Call your mom. You have the right to complain to your heart's content. Just don't post it on the web if it can be traced back to you. (Bike Commuter, *Huffington Post* Forum)

Once you post something on Facebook, it ceases to be a private matter. It doesn't matter what your settings are. It's like having a private conversation in public and getting pissed when someone butts in. (Robyn, BRIXX Facebook Page)

When you accept employment you also accept to abide by company policy. Most employers make you sign off on the handbook at hiring. If you want to complain about work call your girlfriend or your mom and talk on the phone. Don't do it on facebook or twitter. (Schwarzfalke, MSNBC Website)

EVOLUTION OF THE ISSUE

In the months following the BRIXX incident, other Facebook-related terminations received attention by the press. In most situations, the courts upheld the rights of organizations to set the terms of employment (e.g., restrict worker comments on social media sites, monitor employee internet activities both on and off the clock). However, one notable exception to this trend was a recent case against the American Medical Response (AMR) Company. In 2009, AMR fired an employee after discovering that she

had posted what the company considered disparaging remarks about her supervisor on her Facebook page. More specifically, this employee described her supervisor as "a dick" in one posting and "a scumbag" in another. On February 7, 2011, the National Labor Relations Board ruled that firing an employee for this reason "violated the National Labor Relations Act, which allows employees to discuss the terms and conditions of their employment with co-workers and others" (Musil, 2011, para. 4). One issue that made the AMR case different from the BRIXX case was the fact that the AMR employee was a member of the Teamsters Union. The union argued AMR denied the employee access to her union representatives during the termination proceedings, which was a violation of her rights as an employee.

In the end, AMR reached a financial settlement with their former employee and agreed to "revise 'overly broad rules' in the employee handbook regarding how employees can communicate on the Internet and with co-workers regarding their work conditions" (Musil, 2011, para. 6). It is important to note that this case differs from the BRIXX case in that the AMR employee's relationship with a union gave her additional rights with respect to her company's termination practices. As a result, it is not clear that nonunionized employees (e.g., the majority of the private U.S. workforce—such as the employees at BRIXX) would have the same protections.

ISSUES TO CONSIDER

The previous discussion helps to illustrate the range of issues organizational communication scholars must consider when evaluating employee privacy rights and corporate social media policies. To what extent is forwarding a private website posting to a third party (who would not have access to this post on their own) significantly different from sharing an e-mail in which a person says something negative about his/her work situation? In an era when most people carry phones that can record personal conversations, nearly all interactions can be preserved on a digital file and sent to people who are not the intended recipient of this information. What limits (if any) should there be on an employer's ability to use a worker's private statements as justification for termination? Companies certainly have an interest in getting rid of disgruntled or disruptive employees. However, when and where does an organization no longer have the right to monitor an employee's behavior? Companies need to protect their public image, and managers should defend their employees against harassment from coworkers. However, to what extent should an employment contract (or a manager's desire to keep employees civil toward each other) be used to restrict an individual's right to free speech?

Does it matter *when* an employee communicates (i.e., *on* versus *off* the clock)? Does it matter *where* an employee communicates (e.g., in their own home, in the company break room, in a shopping mall)? Does it matter *how* the employee communicates (e.g., a public website, over e-mail, on the phone, in person)? Does it matter *who* the employee communicates with (e.g., their friends, their family, other employees, current customers, the general public)? Does it matter *what* the employee says (Can they use the organization's name? Are *positive* comments okay but *negative* comments forbidden)?

DISCUSSION QUESTIONS

1. If you were Ashley Johnson's manager, what would you do in this situation? How would you interpret BRIXX's "social media" policy? What standards would you use to justify your interpretation of this policy and the action (or lack of action) you decided to take?
2. What limits (if any) should organizations be allowed to place on the communication choices of their members when they *are* at work? What about when employees are *not* at work?
3. If employees share embarrassing information or criticize their employer to people outside the organization, should this be grounds for termination? Does it matter where/how the information was shared (e.g., on a public website, to friends in a restaurant where others might overhear the conversation, in a private e-mail to a family member)?
4. Should employees have *any* expectations of privacy and job protection when it comes to sharing their opinions (positive or negative) about their organization with others? Why or why not?
5. Companies have an economic incentive to manage their public image and ensure that employees are not disrupting the corporate culture. As such, when should managers (if ever) have the right to fire people who make negative comments about their job, their coworkers, or their employer? When (if ever) might online free speech cross the line and become cyberbullying or other forms of workplace harassment?
6. Given the restrictions some firms want to place on their employees' use of social media, is it appropriate or inappropriate for these organizations to also encourage workers to "Friend" or "Like" their own company Facebook pages?
7. Many people, particularly the younger members of the workforce, interact with their peers through digital media (e.g., social media sites, texts, e-mail). How might the fact that managers monitor these channels impact these workers' ability or willingness to share employment information with each other or engage in workplace dissent?

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