

# **Devices and Desires –** shaping electronically monitored punishment in a digital era

The CEP 10<sup>th</sup> EM Conference

**Jubilee Lecture**

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# The Proposition 1

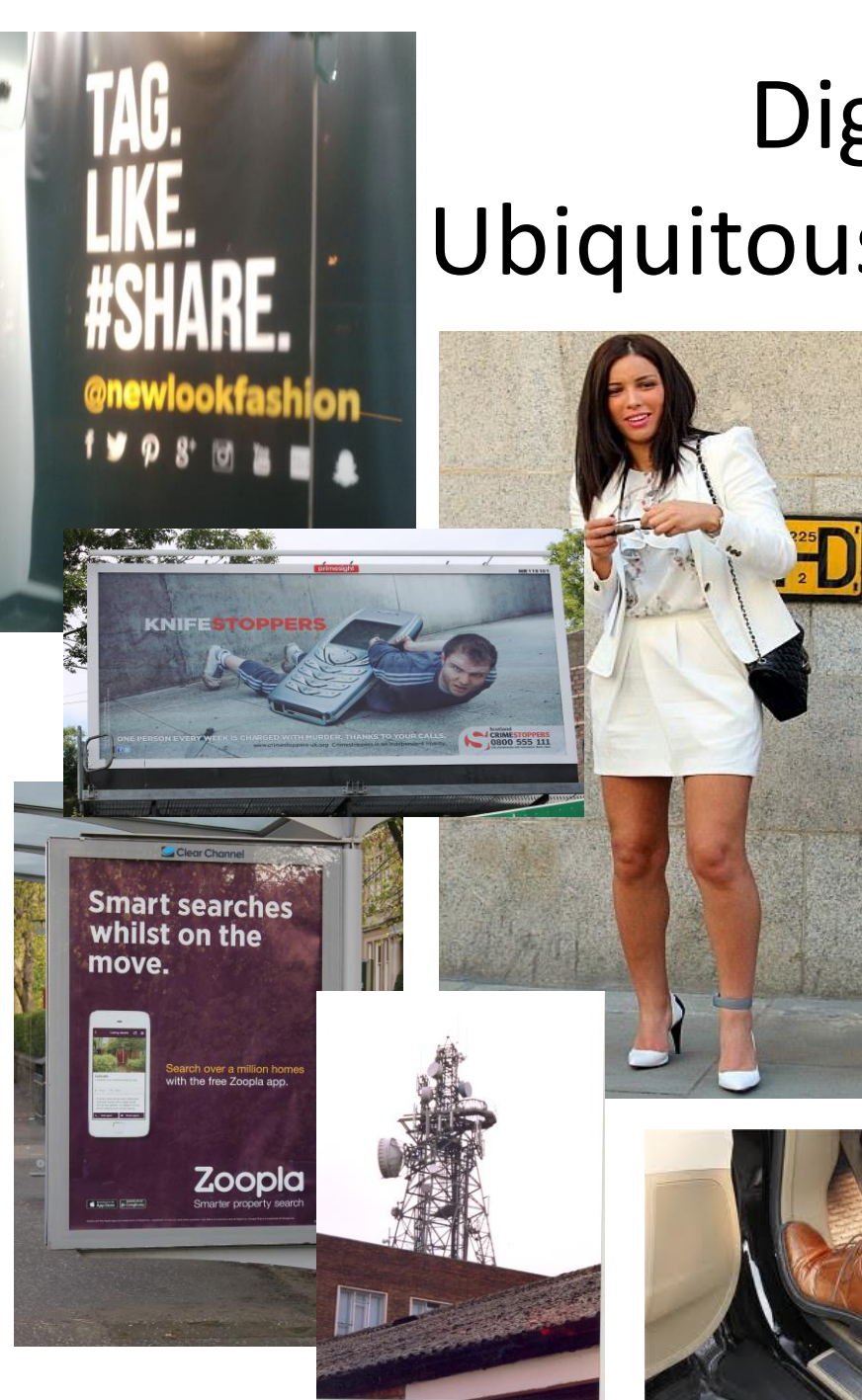
- EM is not a penal “thing-in-itself” but a customised application of widely available digital technology developed for penal systems.
- EM’s appeal and momentum is determined as much by the affordances of the global digital infrastructure as by penal policy-makers wanting to (cost-effectively) solve problems.
- Digital affordances are mostly commercially - driven but exploited and promoted in greater or lesser degree by governments as well as companies because ..... digital is normal

# The Proposition 2

- How far can (digital) technological momentum be managed – and how much (if any) is irresistible? Can tech be shaped, & by whom and how?
- Longstanding question in STS (Science and Technology Studies) – but not much applied to EM.
- This is a burning issue for Probation Services in a digital age, (possibly, some say) on the edge of “The Fourth Industrial Revolution”.
- What does probation desire – and not desire - in respect of EM? What do other players desire from it?
- England and Wales has contemplated upgrading EM and downgrading probation. No less important despite the upgrade not being successful so far.

# Digital Connectedness is Ubiquitous, Normal & Desirable

- EM technologies & systems customise ordinary ICT for penal purposes
- EM creates “economies of presence” (W Mitchell) – cost-determined balance of human and virtual contact with offenders
- EM is “coercive connectedness” - ordered by judicial or penal authority and inscribed in supervision processes.
- The Question now is: Why would we NOT do EM in a digital age?  
How should probation answer this? What do we desire of this device?



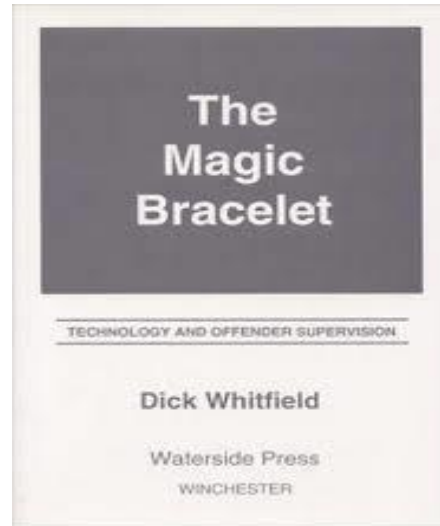
# The CEP EM Conferences

1998, 2001, 2003, 2005, 2007, 2009, 2011, 2012, 2014, 2016



- Sweden and the Netherlands did the first “probation thinking” about EM in the mid-1990s
- The CEP took an early lead, realising EM would become a significant European penal issue
- Sponsored conferences became major focus of debate, commercial networking and mutual learning on EM ...
- ..... and have helped shape its development in particular countries.
- The only conference in the world solely devoted to EM
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# The Pioneers



- **Dick Whitfield** (UK) and **Ruud Boelens** (Netherlands) set up first CEP EM conference
- Sense of EM as danger & opportunity for Probation Services
- State or private sector delivery?
- Whitfield promoted Swedish model, on “positive” not just “irresistibility” grounds
- **Kjell Carlsson** was an influential voice in Europe.





# The Sustainers



- James Toon and Dominik Lehner maintained the EM Planning Group when the CEP was uncertain of its commitment.
- Leo Tigges and Marc Ceron gave firm direction to the EM conferences
- Soraya and Willem have brought us to today ...
- **Critically celebrating European EM – successful shaping of practice**

# Learning from the USA

- Bob Lilly, Peggy Conway, Marc Renzema, George Drake, Edna Erez, James Kilgore
- Initially, nowhere else to learn from .....
- Evaluation matters!
- Americans told us: Europe may become more socially innovative and more humane with EM than USA
- And so it proved ..... Kilgore 2014 – “the voice of the monitored”







# Dialogue with Sponsors



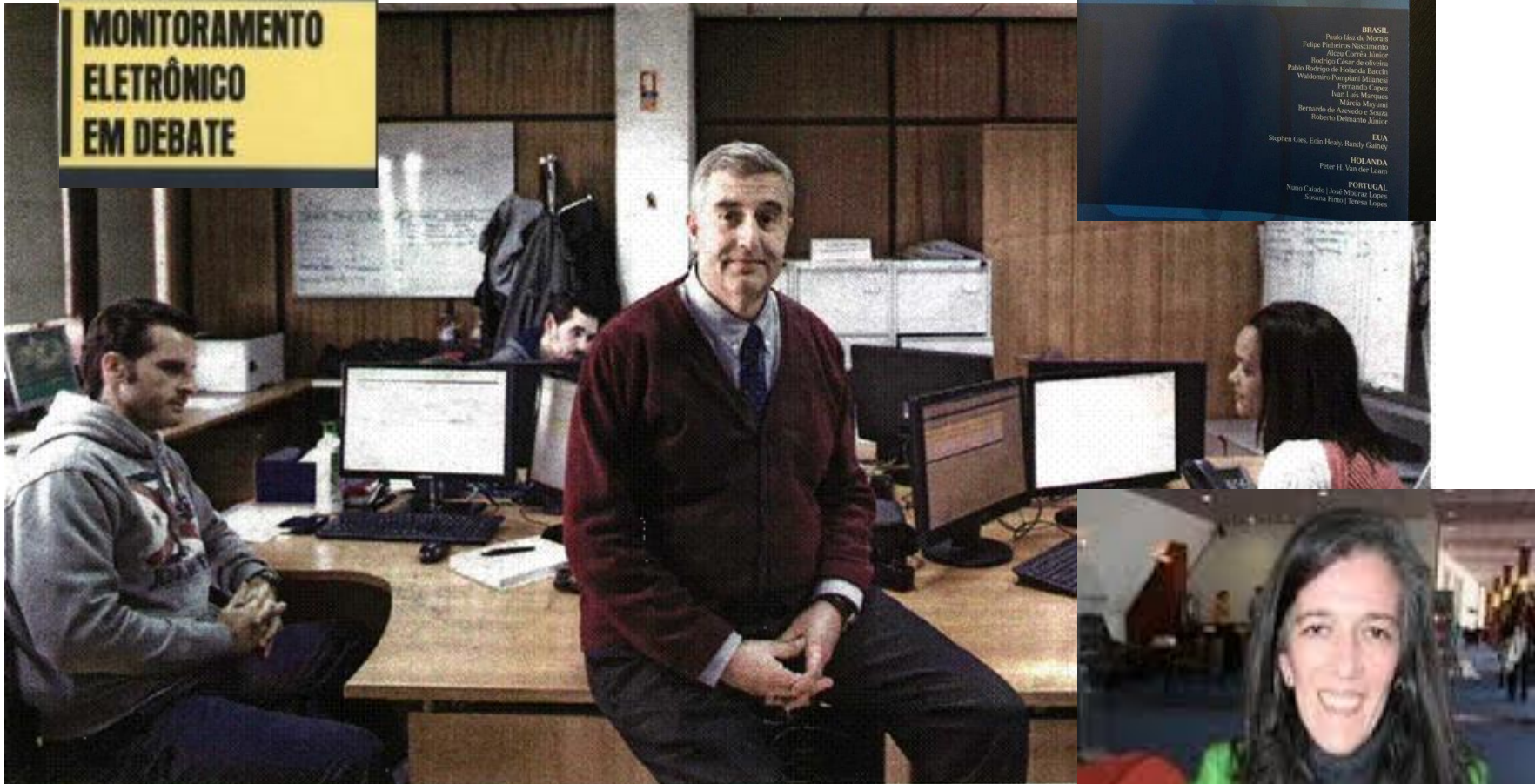
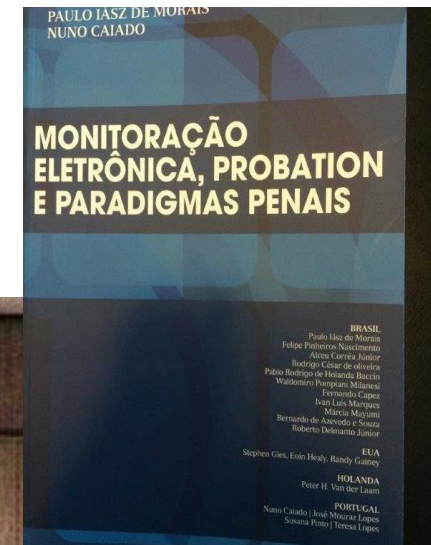


# CEP's Sponsors

- These conferences owe much to **Andy Homer, Tamy Mazell and Mark Griffiths**
- Informed, intelligent, mutually respectful dialogue between probation and commerce is possible
- Privatisation - a theme for discussion
- The cut-throat competition, the high costs, the patent wars and post-contract procurement disputes not discussed ..... (and should be!)
- But EM can't be delivered without some commercial input.
- Probation is a market condition to which companies adapt – **it does not necessarily figure** in their imagined future for EM.
- Penalty should not be governed by the expansionist & innovation-driven logic of the market - but can't ignore it.



# Nuno Caiado - EM as a “Third Way”



Nuno Caiado dirige Direção-Geral da Reinserção e Serviços Prisionais, que conta com vários centros de monitorização das 755 pessoas



# The Gold Standard for EM?

Michiel van der Veen – judge/management consultant



- 7<sup>th</sup> CEP EM conference – specify the ideal use of EM, then bridge the gap with reality.
- Q – Not “what can the technology do?” but “what penal problem to you want to solve” – & “can EM help”?
- Best Practice – Yes!
- Goal orientation –Yes!
- **But who decides the goals? In what context? With what values?**
- **WHO** shapes EM?



# Council of Europe CR/Rec 2014(4)

- First codification of soft law standards and ethics in EM for member states.
- Focus on definitions, implementation principles, conditions of execution, data protection, staffing
- Important reflections on judicial authorisation, proportionality, privatisation of service delivery
- A touchstone of European EM debate – but not the final word.
- Picked up by Bob Lilly and James Kilgore for US.

## An American Perspective on the new EM Rec.

"Whatever its limitations, Recommendation 2014(4) is a wholly commendable development, a model document for any state that uses EM, inside or outside Europe."

J. Robert Lilly Autumn 2014





# Example: Reforming EM in Scotland

## Then

- RF EM piloted - 1998
- National rollout – 2002
- Standalone sentence, (some probation and EM until 2012) - early release, and parole
- Peaked at over 1000 per day, 700 in 2014
- No strategic use to reduce reoffending or reduce custody
- Variable take-up by sentencers

## Now

- Government Interest in more integrated and strategic uses, and new technologies (GPS, alcohol monitoring)
- 2014 – 3 month public consultation, 50 page document, 48 agency replies
- Attend Frankfurt CEP event 2014
- 2015-16 Interagency working party – how to shape EM tech.
- Learn from Netherlands & Belgium
- Focused stakeholder engagement
- Devise communication strategy
- A model of deliberative democracy

# An all-GPS Upgrade in England and Wales?

- 2012-2015 Ministry of Justice hatched a plan to replace RF with a larger scale, all-GPS EM
- Influenced by think tank, Policy Exchange
- Aim for 75,000 people per day in GPS by 2020 (vague target groups)
- **Plan failed – internal contradictions not opposition + secrecy – but the fact that it was envisioned at all is a politically interesting sign.**
- No penal justification for abandoning RF EM – curfews are useful, can and should be used creatively - but there may be a commercial –technological justification for upgrading to GPS.
- The GPS plan ran parallel to privatising 70% of the Probation Service into Community Rehabilitation Companies ....
- .... who are not legally required to employ trained probation officers.
- GPS plan not connected to any plan to reduce the prison population.
- **The mass GPS plan was a world's first attempt at “disruptive innovation” using EM – but it is probation that is being disrupted, not prison.**
- What will the Ministry of Justice do now?

# “The Fourth Industrial Revolution”

steam

electricity

electronics

AI and robots

- Bank of England, Bank of America, World Economic Forum, + key academics all claim .....
- Vast efficiency-driven increase in automation and robotics is imminent/underway
- This gives symbolic and material encouragement to non-human modes of productivity and administration
- ... and seriously threatens middle class occupations, not just blue collar factory work.
- (How) will Probation be affected by this?
- EM systems are easily and necessarily automated
- EM industry is nested in the tech industries that will drive automation and robotics and will gain impetus and credibility from that
- This is the root of Anthea Hucklesby's intuition that Europe is on the brink of a resurgence in EM use - opening Pandora's Box?
- The Anglo MoJ attempt to “upgrade EM, downgrade probation” was an early, local iteration of this emerging global process

# Will Probation go the the Way of the Gas Lamplighter in the Electric Age?



- Probation is mainland Europe seems resilient
- Probation in England & Wales seems precarious
- 21st century technoculture is a new environment in which probation must learn to survive .... and thrive.
- Governments will ask – why pay for longer term social work if short term reduced reoffending is possible with EM alone?
- What is the (probation) answer to this?

# Making Probation Modern

- **This is NOT just about adopting EM**
- Probation - a state-based public service with vital links to civil society (the third sector)
- The essence of probation remains care and respect for offenders, a belief in their redeemability and a commitment to social inclusion.
- Accommodating risk management and public protection do not obviate that.
- **EM will not be used wisely if probation does not do other things well**
- An experimental approach to effective support for desistance & reintegration
- Restorative justice – a balanced approach to the needs, rights and interests of offenders and victims
- Proper professional training
- Clear commitment to progressive penal values, including prison reduction
- A political voice at local, national and transnational levels
- **Align and engage with broader debate on “technological solutionism” (Evgeny Morozov) ....**
- **..... and set the wise use of EM in that context.**



# Reducing Prison Populations Matters



- A liberal democratic imperative to keep full deprivation of liberty to a minimum, reserved for the most serious
- Short custodial sentences do much harm to socially disadvantaged offenders and little good.
- Cost – more prisons = fewer schools and hospitals?
- “Custody may prevent people from harming others, but it also prevents them from doing things that are harmless. It prevents far more than is necessary. (Nigel Walker, *Why Punish?* 1997)



Can – should – modern alternatives to prison be devised without EM?

# Minimalist EM in Germany

“surveillance society” but NOT “surveillance state” (M Nagenborg)



- A very low user of EM (both RF and GPS) – no plans for expansion.
- Adverse history of state surveillance, decentralised administration, probation scepticism, some “popular punitiveness”
- An effective RF project in Hesse.
- ECHR drove adoption of GPS for high risk sexual and violent offenders
- Doesn’t use full GPS capabilities – no “anytime-everywhere” tracking – just inclusion and exclusion zones.
- BUT – does Germany do enough to reduce the use of short custodial sentences?

# The CEP and EM in a Changing Europe



- New political challenges, irrespective of technology
- Migration and austerity
- Weakening of European “community” - the fate of transnational bodies?
- Rise of the political right – collateral consequences for EM – less EM and/or more punitive use of EM?
- Border control, terrorism & radicalisation = surveillance
- BREXIT + exemption from Euro human rights law

# Conclusions

- EM has been shaped in constructive ways – it has not eclipsed probation
- CEP has been a key part of this
- In some countries RF EM has peaked and declined – but this is not evidence of its inherent limits
- EM could legitimately be used more strategically to achieve desirable penal goals
- Anthea Hucklesby et al's EU-funded comparative EM research helps with this.
- No case for fully replacing RF with GPS
- The near-future danger is that technological and economic pressures will change the nature of penal goals in EM's favour .. and threaten/marginalise probation services
- The EM industry has its own views of what progressive futures look like – these can't be rejected – some are good - and must be engaged with.
- Probation services should favour tech companies who openly favour and value probation
- Probation must become more sophisticated and articulate in understanding what it wants and doesn't want EM to do
- Probation must preserve and enhance the best of itself , and insist that EM is embedded in that.
- CR/Rec 2014(4) should be the ethical starting point for debate among all parties.
- CEP EM events should continue.



# The End – Thank You

cartoon by Stephen Camley – *The Herald* March 2016

