

Liberty for Me, Not for Thee

BY MARJORIE KELLY

Oddly enough, free enterprise is in the business of trampling freedoms



It's curious how we miss the obvious things. It's odd how a contradiction can stare us in the face and simply not be seen—like the casual way we equate capitalism with freedom, as in “free enterprise,” “free trade,” and “free market.” The opposite of freedom is restraint, and the common wisdom tells us capitalism is about avoiding government restraint, leaving the market free to regulate itself.

But free enterprise, in truth, is in the business of trampling freedom. What's odd is that we don't see it. The police would need a court order to do what we allow corporations to do routinely: tape conversations, install cameras, or monitor computers. Employee surveillance like this occurs at seven out of ten companies with more than 2,500 employees, according to a 1997 American Management Association (AMA) survey.

More pervasively, 81 percent of major corporations do drug testing, according to the AMA. It's so commonplace, we fail to see how downright creepy it is. Imagine if agents of the federal government showed up at your door and said they were conducting a drug-screening, so would you please pee in the jar. And when you went to the bathroom, they watched, to make sure you didn't cheat. You would be justified in screaming about police state tactics. Free enterprise does the same thing daily, and no one screams.

It's chilling, how intimate the corporate invasions of privacy can be. Sibi Soroka recalls applying for a security guard position at Target Stores, and being required to submit to a Minnesota Multi-Phasic Personality Inventory (MMPI) test. “After 704 questions like, ‘Was there ever a time in your life that you liked to play with dolls,’ and ‘I have often wished I was a girl,’ I was physically sick,” Soroka told the *New York Times*. He brought a class-action lawsuit against Minneapolis-based Dayton Hudson, parent company of Target, which was settled for \$1.5 million in 1993. The company also dropped use of the test. But that's a rare story, for the practice remains widespread. In 1997, the AMA found that close to 40 percent of major companies did psychological testing of job applicants.

Even more outrageous are company restrictions that reach brazenly into the realm of personal choice—with little or no justification.

► Legal secretary Rita DelRey was told by her Portland, Ore., law firm she had to lose weight, or lose free health insurance. She had already lost 33 pounds, but Klarquist, Sparkman, Campbell, Leigh & Whinston considered her 12 pounds overweight—and dictated it would cost her \$56 a month until she lost the additional weight.

► A Nabisco plant in Oxnard, Calif., refused to al-

low female employees the simple freedom of deciding when to go to the bathroom, forcing some to wear diapers to work. The women filed a class action in 1995—citing “bladder and urinary tract infections...from being forced to wait hours for permission to use the restrooms.” The company settled in 1996 on undisclosed terms.

This issue of freedom to use the toilet (“Let My People Go,” the *National Law Journal* quipped) is an apt example, because it shows how little help government offers. The Occupational Safety and Health Administration (OSHA) does have a regulation requiring employers to provide toilet facilities, but only once in 25 years has anyone been cited. That lone incident was in July 1997, when OSHA cited Hudson Foods poultry plant in Noel, Mo., for not allowing employees to use the toilet. There was no fine. And the agency acted only after prodding by the United Food and Commercial Workers (UFCW).

It's outrageous that employees must go to a union, which then must go to the federal government, to fight for the most simple, daily, bodily freedom: the freedom to go when you have to go. It's like calling out the United Nations to contest a parking ticket. What it means is that at the local level—the level of daily life inside companies—there are no mechanisms to ensure freedom. No due process, no right to privacy, no protection against unreasonable search and seizure, no representatives to take your side, no say in governance, no free speech, no right of appeal, no jury to hear your case. Those are democratic freedoms, and they stop at the company door. Inside the company a different world exists—a world run by archaic, even feudal standards of freedom.

In historic terms, there are two conflicting conceptions of freedom, or liberty:

► In the medieval era, there was *liberty of property*—the notion of freedom as the right to undisturbed possession of property. For the feudal baron, this meant freedom from the king's interference. The lord of the manor could do what he liked to his serfs, who had no recourse. The barons had property, the serfs were property.

► In the democratic era, we've come to recognize *liberty of persons*—the right to full personhood, no matter how low one's station in life. All men are created equal. It is the right of all human beings to live in dignity and freedom. It is a liberty we turn to government to protect.

Where liberty of property is paramount, liberty of persons does not exist. That's the case inside major corporations today. And that, indeed, is the contradiction that stares us in the face: Free enterprise trumpets freedom, but in its archaic, anti-democratic form. It is freedom for capital, which means trampling the freedom of employees. There is a better word for it, and that's tyranny.

One Nabisco plant refused to allow female employees the freedom of deciding when to go to the bathroom, forcing some to wear diapers to work.