

PRIVACY ON THE JOB

Swelling Tide of Litigation

Los Angeles Times

All of a sudden, Richard Schowengerdt's secret life was not a secret anymore.

Security guards, searching his office at the Naval Industrial Reserve plant in Pomona, Calif., where he worked as a civilian engineer, found a packet of the explicit letters he had been exchanging with women he contacted through personal ads in swingers newspapers.

The consequences of the August, 1982, investigation were severe. Schowengerdt was cleared by the U.S. Postal Service of charges that he was sending pornography through the mails.

But he was dismissed from the Naval Reserve on the grounds that the letters indicated that he was involved in homosexual activities — an allegation he denied. And there was a long delay when he sought a security clearance for another defense industry job.

Most painful, though, an intensely private part of the 57-year-old Costa Mesa, Calif., man's life was exposed for his co-workers and family to see. His privacy was invaded, Schowengerdt says, and the resulting humiliation was profound.

"How do you put a value on this sort of thing?" Schowengerdt said, trying to describe his anger and embarrassment. "The damage it does to your psyche is not measurable."

All the same, Schowengerdt wants a court to put a price on the damage. He is suing the federal government and General Dynamics, which operates the Pomona plant.

with no easy answers.

A recent study by the private Bureau of National Affairs found 20 times as many workplace privacy suits decided by U.S. courts in the last three years as in the three years before. Since 1985, jury verdicts in favor of aggrieved workers have averaged \$316,000, according to the study.

"All of us who are doing labor law, whether from management or labor, are dealing with these issues," said Alan Friedman, chairman of the Los Angeles County Bar Association's labor law section. "That is the emerging area."

Litigation about employee drug testing has received the most notice. But other issues pitting workers against bosses in court are just as tough.

Employers, workers, lawyers and experts are probing for answers in the realm of privacy in the workplace, among them:

Do employers have any business in testing workers or job applicants for AIDS? Can supervisors listen to a telephone operator's phone calls? Should they be allowed to program computers to flash subliminal messages to influence employee behavior?

If polygraph tests are considered unreliable in criminal trials, can their results be used as the basis for hiring or firing employees? Can a company fire a worker because supervisors don't approve of whom he or she dates?

Should managers have access to employees' medical records? And just how private is an office or a

Yet the U.S. Constitution contains no explicit guarantee of a right to privacy, and federal privacy legislation is sparse. Last month the House passed a bill prohibiting the use of polygraphs in most employment settings, a decade after a federal privacy commission called for such legislation.

The rules on privacy mainly are being drawn by individual judges weighing the facts of individual cases against the murky guidelines established by precedent.

"We're treading in some new areas, and we're having to feel our way," said John N. Raudabaugh, an Atlanta management lawyer who is chairman of an American Bar Association committee on labor law.

Lawyers and privacy experts have many explanations for the intensification of the conflict. To begin with, Americans are suing each other more about everything.

Attorneys representing workers, moreover, say business has invited a barrage of lawsuits by seizing on the conservative political climate of the Reagan years to try to expand its control over employees. At the same time, competitive pressures have given companies little choice but to seek new ways to increase productivity.

New technologies, from devices that can monitor computer operators' every keystroke to low-cost drug-testing systems, have given employers seeking that productive edge the ability to probe into aspects of workers' lives and performance that previously were con-

JOBS

How Cities Compare In Pay . . .
Average annual pay for workers in several of 299 metropolitan areas for 1986.

Region	Annual avg. pay	Rank
Baltimore	19,911	69
Boston	22,250	25
Cleveland	21,189	39
Dallas	22,769	21
Detroit	24,807	7
Houston	23,175	15
Los Angeles	23,487	12
Miami	19,781	73
New York	26,241	4
Philadelphia	21,115	40
Pittsburgh	20,193	59
St. Louis	20,969	42
San Francisco	25,594	6
Washington, D.C.	23,859	10

. . . In Costs . . .

Recent consumer price indexes for selected metropolitan areas; 1967 = 100

Baltimore	346.0
Boston	347.2
Cleveland	367.5
Dallas	360.5

The case, in U.S. District Court in Los Angeles, is one in a swelling tide of litigation about the extent to which employees give up the right to privacy when they cross the threshold of the workplace.

In unprecedented numbers, workers are pitted against their employers in American courts over an expanse of privacy questions

locker or a desk—or an employee's car parked on the employer's lot?

The answers have proven elusive because worker privacy is an uncertain area in the law. Some states regulate aspects of workplace conduct. And some state constitutions enshrine a right to privacy among their citizens' basic freedoms.

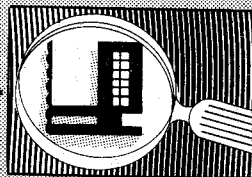
SMALL CHANGE

Witch switch. Witchcraft, which in traditional covens involves fireside rites and nude worship, is a religion, say

Canadian labor arbitrators who ruled a male witch is entitled to a paid religious holiday from his job at a Toronto college. Charles Arnold, 40, won the right to take paid leave for the May 1 fire festival of "Beltane." While the rites may be unusual, an independent three-member arbitration panel ruled 2 to 1 that Witchcraft "is obviously a religion" and Arnold was entitled to paid leave for Beltane this year. Labor lawyer Chris Pallare said the ruling could set a precedent for other labor rulings involving minority religions.



Asleep at the switch. Speaking of mythology, a new report suggests that executives regard the problems of automation, productivity and the central role of manufacturing industries as a collection of myths, or at least don't take them very seriously. Curtis Associates, a Massachusetts consulting firm that serves manufacturers, surveyed senior execs at 2,900 U.S. factories and found only one out of 50 believes automation is the most important force in manufacturing. Just one out of 20 says improving productivity is the most important problem they face, and nearly all—19 out of 20—say manufacturing is not an important focus of top management. Instead, they seem to focus more intensely on product cost reductions and the accuracy of production forecasts.



sidered off-limits, or at least impossible to supervise.

"There's a tension between privacy and the employer's right to make sure illegal things aren't done on their premises with their property," said Paul Grossman, a Los Angeles management lawyer.

Other forms of high-tech supervision are so new that they have not become the subject of litigation.

Privacy experts and some worker groups, though—including the Communications Workers of America, the United Food and Commercial Workers, the American Civil Liberties Union, the National Association of Working Women and some federal employee unions—have begun calling for a national debate on the use in the workplace of computer monitoring, genetic screening and still-speculative procedures such as brain-wave monitoring that could be used to assess workers' attitudes or to pace and measure work output.

The outcome of privacy cases can vary considerably from state to state, and depending on whether a worker is employed in the public or private sector.

In New Jersey, a court ruled in 1984 that Jon Slohoda, a United Parcel Service employee, could not be fired because he was having an adulterous affair. But Patricia McCluskey had no legal protection in Illinois when she was fired by Clark Oil & Refining for marrying a fellow employee.

In Michigan, Ryder Truck Rental employee Rebecca Sears lost in court when she challenged her firing for dating a co-worker. But a Michigan court said Richard Briggs' rights were violated when he was fired from his part-time job as a North Muskegon police officer for living with a woman whose divorce from another man was not final.

Detroit	339.3
Houston	346.5
Los Angeles	350.4
Miami	181.3
New York	347.4
Philadelphia	344.1
Pittsburgh	344.1
St. Louis	339.5
San Francisco	359.9
Washington, D.C.	347.8

SOURCE: Bureau of Labor Statistics

... And Cost Controls

Percentage of companies that have already used certain cost-cutting methods

Region	Wage freeze	Hiring freeze	Staff cut	Early retire bonus
Atlanta	0	12	21	19
Boston	5	12	33	23
Chicago	10	16	46	28
Dallas	15	24	45	25
Kansas City	6	15	27	18
Los Angeles	10	23	37	13
Minneapolis	3	16	41	22
New York	3	18	33	21
Philadelphia	0	11	34	21
Pittsburgh	15	27	47	26
St. Louis	10	14	33	29
San Francisco	14	32	36	14
Seattle	9	14	32	9
Stanford	7	24	38	27
Washington, D.C.	4	11	26	19
National average	7	18	37	22

SOURCE: The Hay Group