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The Constitution
December 15, 1791

THE WORKER'S WORLD: Privacy and the "Need to Know"

Third in a series of reports on INVASION OF PRIVACY IN AMERICA

Published by:
AFL-CIO Maritime
Trades Department
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INTRODUCTION

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This is the third report of a special committee established by the AFL-CIO Maritime Trades Department to determine the extent to which the privacy of American citizens is being eroded.

The special committee was authorized by the 1969 MTD convention. Its first report, published February 12, 1970, was entitled "The 'Lie Detector': Guilty until 'Proven' Innocent." The second, exactly a year later, was "Credit Bureaus: A Private Intelligence Network."

We believe it is most appropriate that this report of the committee deals with the invasions of privacy in the worker's world. As an organization of trade unions, our most immediate concern is the well-being of wage earners; and wage earners are subjected to a greater variety of attacks on their privacy than ever before.

To Justice Brandeis, the right to privacy was a critical distinction between a police state and a democracy. He saw privacy as essential to the pursuit of happiness; "the right to be let alone," he said, was conferred upon the American people by the Founding Fathers.

As Brandeis recognized, the framers of the Constitution were primarily concerned with the rights of the citizens as

against the state. Their work antedated the Industrial Revolution by half a century and the corporation by even more. But they surely would have agreed with Brandeis that in the free society that has since developed, a citizen's privacy must be protected against abuse by powerful non-government institutions as well as against the state.

This was among the few points of unanimous agreement at a forum on "The Privacy Battleground," jointly sponsored last June by the MTD and the Transportation Institute. The forum, which brought together spokesmen for a broad range of opinions, devoted two of its sessions to privacy and employment. While agreeing that abuses ought to be curbed, the participants did not agree at all on what constitutes abuse of privacy in employer-employee relationships.

One reason for this stems from history. Under the feudal system (a stage through which all European societies passed) "employees" were serfs. Voluntarily or otherwise they became part of a lord's establishment. They worked and lived as they were told; in return they were given their keep, and protected against outside attack.

The concepts of personal freedom and individual rights overthrew political feudalism but had less effect on its economic equivalent. Through most of the 19th Century the owner of a place of employment was generally acknowledged to hold total domain over it. He hired and fired whomever he pleased, whenever he pleased; he set the terms of employment, which workers had to accept or seek some other job.

The other side of the bargain, in theory, gave the worker complete freedom to offer his services as he wished. It was a lopsided bargain almost from the start and grew worse with the passing years.

Invasion of privacy was involved only in the sense that the exploited workers of that era had little time of their own to be private about. Limitations were often imposed on their use of even those few hours, including many that smacked of serfdom. But true invasions of privacy began in earnest as economic feudalism waned.

An obvious stimulus to snooping was the emergence of unions. The labor spy was a folk villain for three generations. Yet by the standards of what goes on today, he was a bumbling amateur.

Except for a minority of diehards, employers have little interest in the outlawed practice of labor spying. Today they are interested in the total employee and his total behavior; his thoughts, his tastes, his habits and his hobbies. To satisfy that interest they are armed with electronic gadgets of all kinds -- closed-circuit TV, radar and ultra-sensitive microphones for surveillance; complex "psychological" tests for applicants, both new hires and candidates for promotion, and of course, the polygraph. The old-fashioned methods of direct search and oversight are still widely used as well.

In addition, the last 25 years have seen the development of government surveillance on a broad scale -- a new practice in the United States. The stated targets are subversives, criminals, trouble-makers and persons suspected of leaning in one of these

directions. Dossiers are kept on all who come within the investigator's ambit, including bystanders and passers-by.

This brand of government surveillance is not specially directed at workers, but government dossiers have a way of turning up in employer files. Thus, as later pages will discuss, the very act of seeking or taking a job may make a worker the subject of a dossier he doesn't even know exists.

Moreover, government surveillance of its own employees has often been intolerably intensive, utilizing all the devices which make a mockery of the right to privacy.

The easy and perhaps the popular posture for this report would be a categorical denunciation of all employer efforts to discover facts about employees and applicants for employment. Such a posture would also be absurd.

An employer has a legitimate right to know the facts he needs to make sound decisions about his work-force and to insure the proper functioning of his enterprise.

How far and in what directions this right extends is dependent upon the nature of the job involved.

Some facts should properly be known about all employees.

Some lines of inquiry are improper under any circumstances.

A balance must be struck between employer needs and employee privacy. In our view an employer should have those facts about an employee which are relevant to the job he fills and necessary to an accurate assessment of his job performance, present and potential. He should not have nor seek additional facts that he may regard as interesting.

Unfortunately, this balance is seldom attained. And therefore in the worker's world, the words of the MTD convention resolution apply as truly as they did to our previous reports:

"These practices represent clear and unmistakable dangers to our democratic society. No infringement on privacy can be condoned -- because as the American people lose their privacy, they lose their freedom as well."

The following pages tell the story.

Edward J. Carlough
Chairman

LABOR'S HERITAGE

Labor's Heritage

"The American labor movement is an expression of the hopes and aspirations of the working people of America. It seeks for its members the full recognition and enjoyment of the rights to which they are justly entitled. From the first, the AFL-CIO, as the majority spokesman of organized labor, has recognized that the right of privacy is preeminent among the bundle of rights to which working men, and indeed, all members of our society, are justly entitled."

AFL-CIO President George Meany

The kind of privacy that concerned the American labor movement in its first years was winning enough non-working time for wage-earners so they could have private lives at all.

Sunrise to sunset, six days a week, was the prevailing schedule for hired help in the young republic. As the Journeymen Carpenters of Philadelphia resolved in 1827:

"House carpenters of the City and County of Philadelphia have for a long time suffered under a grievous and slave-like system of labor, which they believe to be attended with many evils injurious alike to the community, and the workmen; they believe that a man of common constitution is unable to perform more than 10 hours faithful labor in one day, and that men in the habit of

labouring from sunrise until dark are subject to nervous and other complaints."

The carpenters failed to establish a 10-hour day, but their failure was not in vain. It confirmed the need for united action on a wider scale, and led directly to the creation of the first central labor body.

But there was still a long way to go. Soon there were factories, where the nature of the work made sunrise to sunset even more oppressive. Women worked in these early factories, and children, too; the opportunities for a private life, a family life, dwindled.

Unions sprang up and were crushed by employers. Embryo national labor bodies were created and disappeared. But the 10-hour day was elusive until President Van Buren established it in 1840, by executive order, on federal construction projects. Not until seven years later did the first state, New Hampshire, enact a 10-hour law.

Until after the Civil War, time off -- a shorter work-week -- continued to be almost the only "privacy" issue. Then two simultaneous developments added to it.

One was the gradual emergence of a labor movement that was groping toward effectiveness. To the employers of that era, especially in mining and manufacturing, this was an evil to be extirpated at all costs. Old, informal exchanges of information on "troublemakers" no longer sufficed. Workers had to be watched.

The other development was the company town -- a community built by the employer for his employees alone. The community had

its own store or stores, its own church or churches, its own schools, library and recreational facilities; its own doctors and policemen. Everything -- and everyone -- was owned by the employer.

The first company towns had been established much earlier by the New England textile companies. They provided room and board for the "young ladies" employed in the mills. In order (it was said) to assure the moral rectitude and continued gentility of this work-force, a 10 p.m. curfew was enforced and a close watch kept from sunset to the starting bell. Actually, this was quite in keeping with the status of women in that era. Its similarity to serfdom was ignored.

Other company towns grew up, partly by circumstance, in mining areas. Then, in the last decades of the 19th Century, they became the norm for large industrial enterprises located away from big cities.

Most of them had moral pretensions of the narrowest Bible Belt brand. They were going to mold the characters of workingmen by removing them from temptation. As George M. Pullman said of the town he created, Pullman, Ill., the purpose was:

"To build, in close proximity to the shops, homes for workingmen of such character and surroundings as would prove so attractive as to cause the best class of mechanics to seek that place for employment in preference to others. We also desired to establish the place on such a basis as would exclude all baneful influences, believing that such a policy would result in the greatest measure of success, both from a commercial point of view,

and also, what was equally important, or perhaps of greater importance, in a tendency toward continued elevation and improvement of the conditions not only of the working people themselves, but of their children growing up about them."

There may have been a few, not including George Pullman, who were genuinely so motivated; but most company towns represented an incomparable opportunity to exert absolute control over the work-force. Outsiders simply could not get in. And often as not, insiders could not get out; one way or another, they were in hock to the company enterprises.

The great Pullman strike of 1894 was smashed by federal troops and court injunctions, like so many others in those years. But it also did much to expose the evils of the company town. Soon afterward the state of Illinois forced the Pullman company to relinquish political control of the town it had built.

From then on, company towns declined for a multitude of reasons. Their last stronghold was the textile south. Mill villages survived long after World War II, almost as stubbornly as the industry's hostility to unions. Even today, Kannapolis, North Carolina remains as a magnificent anachronism, a pseudo-Colonial community and very much a colony of Cannon Mills, inhospitable to anyone who is not in some way beholden to the owner of it all.

What did not decline along with company towns was the determination of employers to have a "loyal" -- i.e., unorganized -- work-force. Labor spies were used even in the heyday of the

company town. Often they were under orders to foment trouble -- sabotage, assaults and the like -- on the grounds that any workers who joined in these enterprises had too much independence to be tolerated. The recruits who followed the company spy were, of course, caught by the company police, jailed and blacklisted. Sometimes company infiltrators provoked strikes, so that in breaking them the pro-union leaders could be eliminated.

During and after World War I the United States fell victim to its first great "red scare," with "red" and "union" often regarded as synonymous. Militant union members, especially of pacifist-minded organizations like the old Industrial Workers of the World ("Wobblies") were actually prosecuted for obstructing the war effort, on the basis of rumors spread by government and company provocateurs.

For almost 70 years, then -- from the close of the Civil War until the National Labor Relations Act (the Wagner Act) was held valid by the Supreme Court in 1937 -- the privacy of workers was under broad attack on fairly narrow grounds. Employers sought to ferret out and destroy every influence that would lead to a less docile work-force, especially any move toward union organization. Despite the moral pretensions of company towns, there was seldom much genuine interest in other aspects of a worker's life except for those having visible impact on his job performance.

The employers generally achieved their objectives. The basic manufacturing industries remained unorganized. Total union membership dwindled steadily, after a brief spurt in World War I. True, throughout the whole period there had been innumerable out-

breaks of violence; men were killed, property was destroyed, production was lost. But union organization on a mass scale was prevented.

However, changes were taking place in social and economic opinion in the nation as a whole. The excesses of industrial barons gave new strength to reform movements. States adopted measures restricting child labor and the work hours of women. Federal legislation established a system of labor-management relations on the railroads. Bit by bit, the 10-hour day was whittled to the eight-hour day.

New, lasting unions were also founded. Through the American Federation of Labor, established in 1886, they exerted more political and legislative influence then their numbers justified. The Clayton Act of 1914 finally put to rest the hypothesis that unions were "conspiracies" under the common law.

Paternalism became a popular pose for management in some large corporations; "employee representation plans" began to appear. But workers who mistook these company unions for the real thing soon learned their mistake; a company union simply makes surveillance easier.

The gruesome truth about labor spies, provocateurs, strike-breakers and other goons was finally exposed by a long, pains-taking investigation by a committee headed by Senator LaFollette of Wisconsin. The committee's findings were a major factor in the adoption of the Wagner Act in 1935. That act broke down the barriers to union growth and sounded the death knell of labor spying in the old sense, though some failed to hear it.

As late as the middle 1930's a close friend and fellow officer of Walter Reuther was exposed as a spy for auto management. And up to this moment, spies are used by southern textile companies to report on the attempts of workers to organize. Generally, though, invasions of privacy on trade union grounds have given way to new, and in some respects more insidious forms.

Those involving pre-employment and on-the-job practices will be treated in subsequent sections. So will the residual anti-union operations. But there are others, some relatively new, that should be noted.

One comes under the general title of "security," and is a leftover from America's second great "red scare" -- most of it connected with the depredations of the late Sen. Joseph McCarthy during the 1950's. This unhappy period began with the Smith Act in 1941, which sought (among other deplorable things) to make mere belief in Communist theory a crime; passed then to the Attorney General's List, comprising names of organizations arbitrarily deemed to be subversive by the Justice Department, and disqualified their members for federal employment, and finally to McCarthyism.

Through all of this the labor movement has strongly and consistently defended individual rights on every front.

It has fought blacklisting in every form.

It denounced from the very start the witch-hunt tactics of McCarthy, even before his cynical charges were exposed as baseless.

It has insisted that internal security must be safeguarded in a way that safeguards as well the full rights of every individual.

The AFL-CIO maintains that neither government nor employers nor any other agency has the right to know more about any individual than what is relevant to their direct relationship with him.

And this applies, not only to security in its various forms, but to life-style. A machine operator's hair should not be so long as to endanger him or interfere with his performance; but inside that limit, he should be free to wear it as he chooses. A worker's wife who prefers zinnias should not feel obliged to grow marigolds because the boss's wife likes them. Dress should be entirely an individual matter except where job circumstances (not employer tastes) impose valid regulations.

All these, and the more specific matters covered later, are part of a labor heritage that began with the quest for a few hours of private life, and has seen both the opportunities for a private life and the efforts to impinge upon it grow so much greater. As always, labor has adapted its tactics to changing problems. For as President Meany says:

"We in the labor movement are not armchair philosophers or social scientists . . . Organized labor is . . . active in the political and industrial life of this nation. We do not simply sit back and brood about the invasions of a basic right. We attempt with all the vigor at our command, to do what we can to blunt the efforts of those who would invade our freedom."

And that freedom includes the right to be left alone.

THE JOB APPLICANT: ONE AGAINST MANY

The Job Applicant: One Against Many

A worker employed in a union-organized establishment, protected by a good union contract and a strong organization to enforce it, may still be confronted with invasions of his privacy, as the following section will show. But his lot is a happy one compared to the job applicant.

The job applicant is truly one against many. He stands alone on the threshold of the work-place. The doorkeeper is the employer, and the employer alone will decide who enters. (The different circumstances in many apprenticed crafts do not cover large enough numbers to alter the general picture.)

Because he wants and needs the job, the applicant wants and needs to please the job-giver. Thus he is subject to intrusions into his private affairs that he would otherwise resist.

In theory, the job applicant should be covered by the common law protections for individual privacy. These were defined at the close of the 19th Century, when Samuel D. Warren and Louis D. Brandeis published "The Right to Privacy" in the Harvard Law Review. The tenets of that article -- definitions of privacy and liberty, the view that privacy is a property right, that the common law secures to each the right of determining to what extent his thoughts, sentiments and emotions shall be communicated to others -- have been widely accepted in civil and

criminal cases. The Supreme Court in relatively recent years has also recognized a Constitutional right of privacy.

If legal precedents were observed in the employment process, the applicant would have a right of privacy at every turn. His thoughts and emotions would be considered his private property -- the employer who sought to capture them would be stealing. He could refuse to answer any question he found self-incriminating, and would be sure of the protections of the Fifth Amendment.

But this isn't how it works, and perhaps it shouldn't. As pointed out in the introduction to this report, a balance must be struck between privacy and the employer's "need to know." Unfortunately, the job applicant is in a poor position to bargain.

Employers accurately point out that each new employee represents a substantial investment. In addition to the costs of job training, which may be minimal, there are the costs of making the new hire a part of the working establishment. This includes setting up his social security record, preparing his unemployment compensation and workmen's compensation forms, entering him in the social insurance and pension plans and so on.

These are not just paper costs. They involve money, too. They are what induce many large manufacturing firms (such as the auto companies) to pay overtime to men on the payroll rather than hire additional help during peak periods.

Employers therefore do have legitimate objectives in pre-hire examinations. They want to assess an applicant's abilities in relation to the prospective job. They want to avoid drifters, persons with poor attendance records (or physical

conditions apt to produce them) and, of course, crooks. Education, work experience and criminal record (if any) are not unreasonable avenues of inquiry.

But in too many cases and to an apparently increasing degree, this basic information is not enough to satisfy employers. They tend to agree with the industrial security chief of Temco Electronics, who pontificated:

"Regardless of where a man is going to work, his background should be looked at as carefully as if he were going to work on classified material."

What is required of persons who are "going to work on classified material" is indicated by a National Security Agency career bulletin, which cites among the qualifications for employment at the NSA "unquestioned loyalty to the United States," "excellent character and discretion" and a resistance to "coercion, influence, or pressure that may cause him to act contrary to the best interests of the nation's security."

Thorough investigation of individuals who will work at a job vital to the nation's security is understandable. A question of degree is involved, however, when the job at stake is mail clerk, groundskeeper, heating engineer or janitor -- jobs also found at companies like Temco.

THE APPLICATION

The job-seeker's first contact with his potential employer is usually an application form covering education, work experience,

conviction record and general health. Most also ask for personal references, marital status and family size.

The Civil Service Commission's current application form -- SF 171, July, 1968 -- is a model of its kind. It limits itself to the items cited above (even foregoing marital and family questions) -- it probes as little as possible into the applicant's private life.

Many non-civil service branches of government, and many private employers, ask for additional personal data. For example, VISTA (Volunteers in Service to America), a part of the Office of Economic Opportunity, uses a 13-page application which includes the following on marital status: check one (single, never married; single, but plan to marry within a year; married, living with husband or wife; married, not living with husband or wife; widowed; divorced, date; legally separated, date). If one is divorced or separated, VISTA wants to know if you "are required to make support payments," and if so, "to whom, for what length of time and amount per month."

Many agencies inquire if there have been any "breaks" in your education or employment, and if so, why and for how long.

Possibly because of its own unusual nature, Goodwill Industries of America, Inc. concludes its application form with a request for a handwritten statement on "This Is the Kind of Person I Am."

Thanks to federal law, application forms no longer include offensive questions respecting race, religion, nationality and the like. Despite these and other improvements they still ask more

than they need to know from applicants who, after all, need the jobs.

THE BACKGROUND CHECK

What happens after the relatively innocuous job application form is completed and filed may be a very different story.

Any sensible employer will routinely check some of the replies on the form -- the last school attended, the last place worked, anything else that seems warranted -- and perhaps query a person given as reference.

Some, such as VISTA and the Peace Corps, send elaborate printed forms to persons named as references, covering such traits as "emotional stability" and "maturity." These characteristics may be important to the agencies mentioned, but it's questionable if they can be determined in this fashion.

Much worse in privacy terms are the background checks conducted by agencies that have made this service a specialty. Retail Credit Co. is the largest of these (and despite its name, does little else but pre-employment and insurance investigations). Burns International Detective Agency, Pinkerton's, Dun & Bradstreet, Hooper-Holmes and Bishop's Reporting Service are among the others.

A highly-organized, efficient industry, the pre-employment inspection business employs legions of "field inspectors" who annually turn out millions of reports. Prices range from a few dollars for a routine credit check to $1,000 or more for an elaborately-detailed probe of candidates for top executive jobs

or those requiring high level security clearance.

The cost of the background report, employers say, is fully justified by the "assurance" that they are taking on an honest, reliable, well-regarded employee. Rising costs of recruitment, training and on-the-job benefits have made the business of hiring -- and firing -- an expensive one.

The investigation specialists make their living from uncovering everything the prospective employer wants to know. Were they to submit bland, strictly factual and mostly favorable reports to their clients, they would soon be out of business.

The agencies' vested interest in turning up derogatory information is reflected in a Pinkerton's promotional brochure statement: "Job applications and personal references tell only what the applicant wants known. Pinkerton's Personnel Investigation Service tells the employer all that should be known."

Inevitably there is a premium on derogatory reports. Testimony during the Senate investigation of consumer credit reporting revealed a quota system: "I was told," said one witness, "that if I didn't turn in my 15 percent quota of negative reports, my superiors would probably investigate my work."

The law that resulted from this investigation, the Fair Credit Reporting Act, has brought about some improvements in the consumer credit field, most experts agree. One reason may be that the subjects of credit reports have a legal right to know what's in them. But there are no such safeguards covering personnel investigations as such. The personnel probers routinely have access to the credit bureau files, but what else they compile

is beyond the reach of law.

An area obviously subject to distortion is the "neighborhood field check" of the people next door and across the street, the landlord, the local merchants. As one investigative agency executive said: "People love to talk about their neighbors. We capitalize on this human failing. We couldn't operate without talkative neighbors. And neighbors know a hell of a lot more than people realize."

Information of public record -- lawsuits, judgments, divorces, arrests, licenses, tax liens, voter registrations, bankruptcy proceedings, naturalization papers and education records -- is sooner or later dealt with in the personnel inspection report. The investigator is particularly interested in the low points.

The trouble with this type of information is that, while it may be accurate, it is often incomplete. An official of the Associated Credit Bureaus, Inc., admitted that while the fact a person was sued will be in his file, the fact that he may have won the case is much less likely to be entered. It is harder -- and uneconomical -- for an agency to obtain information regarding the disposition of legal actions, which may go on for many years.

These elaborate background investigations are, of course, not performed on every applicant for every job, but the practice seems to be growing if the investigative agencies themselves are to be believed.

The only real excuse for using private-eye tactics on job applicants is a proposition actively promoted by the agencies --

that the typical job-seeker lies on his application blank and in his pre-employment interview. It is disheartening that so many employers seem to share this lugubrious assessment of the American character.

Actually, the worst "lies," and certainly the most destructive in human terms, would seem to result from derogatory personnel reports based on false information. An example is the fate of a New York City policeman, reported in the New York Times.

The policeman, who has taken his fight for reappointment into the courts, had resigned from the force to take his ailing wife to California, then reapplied after her recovery. Having passed the medical examination, he was notified by mail that his request for reappointment had been turned down. No reason was given.

Subsequently he applied for a job as a sky marshal, completed a one-month training course and then was told to resign or be dismissed. Again no reason was given.

Finally, accompanied in his efforts by a New York City councilman, he was told unofficially that he had been rejected because of a "reference from a past employer."

"I am an honest, upstanding citizen and I know I could easily rebut any defamatory statements in my file," he told a Times reporter. But that's the rub; unless he wins in court, he cannot find out what those statements are.

Accuracy, access, and the way information is acquired are problems shared by credit checkers and personnel investigators alike. In the second report in this series, "Credit Bureaus: A

Private Intelligence Network," the accuracy, security and mode of acquisition of credit information were dealt with in terms of the way agencies operated before the Fair Credit Reporting Act became effective April 25, 1971.

Clearly there is a need to extend the terms of that Act into personnel reporting, too. For the price of a job is still high in terms of personal privacy. And what can be worse, the job applicant is usually unaware of the depth of the snooping into his background and life style that may be touched off by the very act of applying.

THE 'LIE DETECTOR' TEST

The first report in the MTD's invasion of privacy series, "The Lie Detector: Guilty Until Proven Innocent," emphasized the monstrous privacy-invading character of these tests, and made a strong case for banning their use in all aspects of employment.

One expert has estimated that between 30,000 and 40,000 business firms use polygraph tests each year for personnel "analysis." A single polygraph company has a clientele consisting of 15 banks, 6 mail order houses, 19 hotels and 12 department stores. Among the large employers who require a polygraph test in the pre-employment process include Montgomery Ward, Lord & Taylor, McKesson and Robins, Armour & Co., Marshall Field, and the Chicago Lake Shore Bank.

Use of the polygraph is based on the belief that there are certain physical and emotional responses -- breathing, blood pressure and skin moisture -- which betray an individual when he

is lying. The machine consists of measuring devices which monitor selected physiological reactions, translate them into electrical impulses and record these signals on paper. The resulting graphs are then "interpreted" by the polygraph examiner, who is more often than not untrained in the basic sciences and medical techniques which would form the presumptive background of a person charged with discerning patterns of "truth" and "falsehood" in diagrams of perspiration, blood pressure and breathing.

As a rule, the prospective employee is asked to sign a waiver in which he both agrees to take a polygraph examination and absolves employer and testing company of legal responsibility for "liability" or "damage" he might suffer as a result. Sometimes the waiver is handed to the job seeker along with the application form.

At least one company flatly asserts that applicants who refuse to take the test will not be given further consideration. In practice, other companies have followed the same course.

Refusal to take the test undoubtedly stigmatizes a job applicant even if he is subsequently hired. For the rest of his working life his refusal will be on record, and the question "What did he have to hide?" will lie behind every consideration of his status.

Such arm-twisting tactics are clearly in violation of Constitutional guarantees against self-incrimination and of the right to be secure in one's person. For the fundamental purpose of the polygraph test is to uncover self-incriminating evidence. A Denver police officer pointed out that "by forcing a man to

submit to such a test, you imply that he is guilty of a crime. This is contrary to our entire way of life."

Yet police departments throughout the country impose these tests on candidates for the force. The Stockton, Calif. department has drawn up a litany of 300 questions to be asked during the examination, aimed at revealing any "crimes" an applicant has committed. The questions pertain to loyalty, arrest and traffic record, physical and mental health, financial stability, use of liquor and narcotics, marital records and abnormal sexual behavior.

About 40 to 60 percent of the candidates for this department are rejected solely on the basis of polygraph results. Such a high percentage among men who seriously thought they were qualified for police work should be considered in light of the fact that polygraph screening of job applicants can today be found at every level of local, state and federal service.

Like other secret dossiers surreptitiously gathered, the pseudo-scientific mysteries of the polygraph can have catastrophic impact on innocent individuals. A case in point is a young veteran of Viet Nam who applied for a job as police dispatcher in his home town.

The youth had an excellent military record, was of above average intelligence and had never been involved in criminal activities of any kind. He readily agreed to take the polygraph test required by the department. Questions asked him included:

-- Did you engage in any sex acts as an adolescent?

-- Did you visit whorehouses in Viet Nam?

-- Do you date much?

-- Do you seek permanent employment?

Answering truthfully, the veteran indicated that he did not frequent whorehouses in Vietnam. He responded "no" to the question "do you date much," because he assumed it meant taking out a lot of different girls. He had been going steady with the same girl for three years.

He answered that he was not seeking permanent employment, saying that his career objective was to eventually join a larger police force. Ostensibly on the basis of this answer, he was refused a job.

But when the young veteran applied to larger police departments, including that of the National Park Service, he was also rejected. These others imposed no polygraph tests, but had access to the one he took. Eventually he discovered that he had been rated "sexually passive and psychologically unsound" by the polygraph examiner.

Determined to erase this blot on his record and pursue his chosen career, the veteran has enlisted the aid of Congressmen and Senators. He may ultimately prevail, but how many job-seekers would have the resolution, the presence of mind, even the faith in the principles of justice, to conduct the necessary campaign?

To the minority group job seeker, such a rejection would appear to be just one more example of how an unsympathetic "establishment" works to discriminate against him. To the young job-seeker, entering the labor market for the first time with an already-shaken faith in our institutions, the rejection could offer

one more reason to "tune out" and "drop out."

Senator Ervin has introduced a bill to ban the use of polygraph tests in pre-employment tests throughout the federal government, and by employers engaged in interstate commerce. This badly-needed measure should be enacted without delay.

THE PERSONALITY TEST

Newer, more sophisticated, free of electronic fakery but an intrusion upon the very depths of personal privacy are the personality tests.

Many names are given to these tests that seek to lay bare the inner man -- psychological, personality, aptitude. Dr. Alan Westin, for example, defines personality testing as any "oral or written tests that go beyond measurement of intelligence, skills or aptitudes and seek to measure emotional states, traits of character, socio-political beliefs or values, sexual adjustment and general propensities, and to use these measurements to predict future performance."

Westin points out that by the late 1950's the administering of personality tests had become a routine procedure and "a new professional subgroup had come into being -- the 'test psychologist' working for institutional clients."

Whatever aura of respectability the tests have gained, many eminent scientists have questioned their validity and reliability in employee selection. Prof. Richard S. Barrett, writing in the Harvard Business Review, refers to the "dismal

history" of personality testing. "There may be exceptions . . ." states Yale's Dr. John Dollard, "but generally speaking, projective tests, trait scales, interest inventories or depth interviews are not proved to be useful in selecting executives or salesmen, or potential delinquents or superior college students."

Perhaps because of these criticisms, many companies in the industrial testing business perfer to call their wares "aptitude tests." The Klein Institute for Aptitude Testing, Inc., for example, claims that "a large percentage of today's successful managers use aptitude testing as standard procedure before they hire or promote a man." The managers have found, Klein continues, that "it improves their ratio in reaching conclusions on personnel problems."

Klein's tests promise to reveal "simple things like how a man will get along with customers and fellow employees," "complicated things like whether he will be a disruptive or constructive influence to the company," "vital things like whether he has energy, bounceback, stick-to-itiveness, intellectual curiousity, growth potential."

By Westin's definition this means a personality test -- designed to measure emotional states and traits of character.

A survey of 300 corporations revealed that 97 used such tests including Delta Airlines, Doubleday & Co., Dun & Bradstreet, Equitable Life, Ford Motor Co., Helene Curtis, Johnson & Johnson, Kellogg, Lever Brothers, Pet Milk and Warner Brothers.

The same survey showed that 15 companies had abandoned the

practice, concluding that personality tests were "expensively worthless and did not give a true picture of the individual."

Given the nature and purpose of these tests it is not surprising that the head of one of the corporations that discontinued them "failed" when he took the test himself. For as Justice William O. Douglas said in Points of Rebellion, "Industry uses personality tests to weed out those who are individualistic and assertive and to find those who tend to conform and who will therefore fit into the social climate of the industry." Few leaders emerge from the dun-colored ranks of conformism.

The very nature of personality testing is to invade privacy, for inherent in the right of privacy is the right to be an individual. The "test psychologist" assumes that human emotions; feelings and idiocyncracies can be measured statistically. William H. Whyte, Jr. author of the bestselling book, The Organization Man, alleges that "what the personality testers are trying to do is to convert abstract traits into a concrete measure that can be placed on a linear scale, and it is on the assumption that this is a correct application of the scientific method that all else follows . . . People are daily being fitted into linear scales for such qualities, and if their dimensions don't fit they are punished."

Whyte conducted his own personality testing experiment designed to answer the question: "What would happen if the presidents of some of our large corporations had to take the same tests their juniors do?" The test results indicated they would be unemployed: As in the instance mentioned earlier, not one president fell within the "acceptable" range, and two failed to meet even the

minimum profile for foreman.

Corporation executives can take such experiences in stride, but lesser ranks can be ruined by them. As Justice Douglas wrote:

"Personality testing is held in awe by many people because its scales sound so definitely scientific and certain: psychopathic deviates, hypomania, schizophrenics, and so on. The psychiatrists join forces as they work on the periphery of what is 'normal' and are interested in people who show 'pathology' . . . Someone's label 'schizophrenic,' 'neurotic,' etc., can give a person a lifetime brand, ruinous to his career, though the label may have been improperly attached to begin with. Even if it was valid at one time, the condition may have been completely cleared up."

The very existence of personality tests in the job selection process amounts to an invasion of privacy, for -- even before they administered a single test to a single individual -- the testers had presumed to define the limits of "normalcy" and other highly-subjective personal qualities. Rep. Cornelius Gallagher has called the personality test "Tantamount to peering into an employee's bedroom window."

Still a favorite tool for corporate screening is the Minnesota Multiphasic Personality Inventory, a test developed during the 1950's at the psychiatry clinic of the University of Minnesota. In contains more than 500 items that compare responses to those of psychiatric patients. The job applicant is asked to answer true or false to questions such as:

-- I feel sure there is only one true religion.

-- My sex life is satisfactory.

-- I believe in the second coming of Christ.

-- There is very little love and companionship in my family as compared to other homes.

-- I loved my mother.

-- There is something wrong with my sex organs.

Such questions can only be intended to reveal the subject's innermost secrets -- his beliefs; his sex habits; his family life; his political, social and religious feelings. But do they really suggest how well he can do a job?

Job selection -- by these criteria -- becomes similar to sorority or fraternity rushing. An applicant may be "blackballed" from a job for much the same reason a prospective member would be blackballed by a country club -- "His sort just wouldn't fit in here." Many Americans who have rejected this form of snobbery in the social arena nonetheless tolerate it in the job market.

Some psychologists vigorously defend the use of the personality test in the pre-employment process. Dr. Zigmong Lebensohn of the American Psychiatric Association told a Senate committee that omitting questions concerning sex, religion, and political ideas from these "screening" tests:

". . . would be like doing a physical examination and omitting the rectal . . . like practicing medicine as you do in certain of the countries of the Middle East, in which the person, because of modesty and cultural habits, keeps himself clothed in his robes and permits the doctor only to examine that part which hurts."

There is something missing in this glib analogy -- a respect for the individual's right to the privacy of his thoughts and beliefs equal to respect for the right of the employer to hire honest, capable men and women. As behavioral scientist Dr. Douglas McGregor of the Massachusetts Institute of Technology has said, "The critical point is whether management has any moral right to invade the personality."

On that point, this MTD committee has no doubts.

ON THE JOB:
RELENTLESS PRYING

On The Job: Relentless Prying

As we have seen, the successful job applicant has survived an investigation which may well have included the total loss of his privacy. At the furthest extreme, he has run a gauntlet of questioners and questionnaires regarding his honesty, his life history, his health and his psyche. He may have undergone a ruthless background investigation, a soul-searching polygraph examination, a detailed personality test. He has given his employer an intimate portrait of his actions, thoughts, emotions and sentiments. He would seem to have reasonable grounds for assuming that he is a certified good guy, a loyal, honest, competent conformist, who can now be left in peace.

Not so. To some degree in every place of employment, and to the highest degree in those that have already laid him barest, the worker's privacy remains under constant assault.

It may be a small consolation to wage-earners that surveillance is equally intense in the upper echelons, and psychological intrusions even more so.

"Surveillance of the teammates on the job in private industry has shot up at such a rate in recent years that the phenomenon might seem to have pathological overtones," Vance Packard says.

One symptom of this is a recent membership growth of more than one-third by the 17-year-old American Society for Industrial

Security, now numbering more than 4,000. Among the society's services to its members are seminars on subjects such as "Surreptitious Listening and Surveillance Devices," "Polygraphs: Are They Ethical Investigative Tools for Criminal and Personnel Investigations?", and "Industrial Espionage Prevention."

THE OLD WAYS REMAIN

For wage-earners, though, the most visible intrusions on privacy are the old-fashioned kind, such as arbitrary search. Keith Reed, a Chicago-based specialist in labor law from the viewpoint of management, puts the issue this way:

"The question is whether or not an employee's Constitutional rights against invasion of privacy carry over into his employment relationship."

And Reed, of course, has an answer: "No."

From a trade union viewpoint the answer isn't that easy. Take a case cited by Reed:

Two employees of a trucking company were found by the police to be in possession of stolen merchandise. The merchandise was the property of the employer who was notified by the bonding company that it was cancelling bond on these two employees. The trucking firm then discharged the two employees. In the course of their criminal trial, the judge found that the evidence was obtained through an illegal arrest because the officer who stopped the car did not know a crime had in fact been committed. The criminal charges were thus dropped, and the union appealed the dismissals. The arbitrator of the appeal, John P. McGury, found:

"There is an essential difference between procedural and substantive rights of the parties. The Constitutional principles may keep the grievants out of jail,but do they guarantee them their jobs in the face of company knowledge of extremely strong proof of dishonesty involving company property?"

McGury found they did not, and upheld the dismissals. This led Reed to comment:

"With rare exception, arbitrators have adhered to the general rule that the Fourth Amendment's protection against illegal searches and the use of evidence obtained thereby is not applicable to the industrial sector."

But the arbitrator, McGury, does not dismiss the Constitution so flatly, as he demonstrated in another case that involved an employee's refusal to cooperate with a company investigation of theft. While "protection afforded by the Fifth Amendment in connection with criminal prosecutions does not extend to the job situation," he said, "the dilemma is . . . between implementing the obviously legitimate right, concern and duty of the company to make an exhaustive investigation of all the facts surrounding the theft of a substantial amount of company property, while protecting the rights of employees and citizens to be free from unreasonable search and interrogation, or the humiliation caused by the implicit suggestion of dishonesty."

So the question is not whether the Constitution applies, but how it can reasonably be applied to the employment relationship.

Few workers with factory experience would argue seriously against the employer's right to inspect lunchboxes and other receptacles that are brought into (and especially out of) the work area. Thieves do exist, even among union members, and in most places of employment there are small articles of very considerable intrinsic value that are easy to tuck away.

An alternative to a regular inspection might be a physical separation between the work area and the other facilities such as locker rooms and lunchrooms. But even so, a company must protect itself against pilferage. The issue is the reasonableness of the measures it adopts.

In two cases (Scott Paper and Campbell Soup), arbitrators ruled against personal searches. In another (Aldens, Inc.), however, an arbitrator found a "plant rule requiring inspection of female employees' large purses to prevent theft was reasonable, and an employee with long seniority was presumed to have knowledge of its strict enforcement; hence, refusal to permit inspection warranted discharge."

Washroom privacy has probably been an issue since the first factory installed inside toilets, and it is still being fought over. It is true that a malingerer, left to his own devices, can use the washroom as a hideout. But is it a proper remedy to take the doors off the toilet booths?

Unions have fought hard and for the most part successfully on the issue of doors, but as we shall see, have not insured the privacy of the water-closet when the employer is determined to break it. Electronics provided a less obvious way.

EVEN YOUR BEST FRIEND . . .

Once the employee is inside the plant, he may be subjected to continued and continuous surveillance. Industrial security organizations sell a wide array of both human and electronic techniques to help management maintain an unblinking eye.

"It takes more than fences to protect a plant today!" advertises the William J. Burns Detective Agency, a leader in the field of industrial security. Norman Jaspan, owner of Norman Jaspan Associates, and often called "the J. Edgar Hoover of Private Industry," advances a five-point program for maintaining plant security:

1. Establish dual responsibility.
2. Keep the nature of controls secret.
3. Utilize spot checks.
4. Develop a created-error program.
5. Utilize important psychological checks.

"The trick is not to catch people any more than you want to catch your children," Jaspan says. "You want to remove temptation, so you have to set up safeguards as you would watch children, so that they do not run wild."

The idea that employers ought to be all-seeing, all-knowing parents to their childlike workers is still a commonly held notion in some management circles. Hence, surveillance is regarded as a valid management tool.

One of the most popular forms of surveillance is the use of undercover agents. An example of how this technique works is provided by the Security Engineers, Inc. brochure:

"An all important service . . . is the 'Efficiency and Integrity Survey' . . . This service includes the assignment of an investigator to secure employment in a client's business and render daily reports on all activity observed."

How this works out can border on the sinister. Jaspan Associates, for example, sends undercover agents into clients' firms in all forms of "disguise" -- porters, executive trainees, accountants and engineers. Jaspan selects and trains these agents with a thoroughness unsurpassed in James Bond thrillers. As Jaspan explains:

"We take out industrial engineers of the universities and they go to work as typical employees, where they evaluate systems, methods, procedures, controls, supervision. We keep them under contract for the first three years out of school as undercover agents. We now have 350 undercover men in the first three-year phase. After the three years the men are ready to become a part of our industrial engineering staff. We draw from MIT, also Cornell for the hotel field, and Northwestern, among others. If the men are on their toes, and not married, you can't get a better opportunity for a man."

Jaspan claims that in one year his undercover agents uncovered $60 million in frauds -- 62 percent of which was at the supervisory and advisory levels. He gives this example of the system:

"One undercover man was sitting on a toilet at an electrical plant in northern New York State, when he heard keys fall on the

floor of the booth next to him, and no one picked up the keys. A Jaspan man is trained to be curious, so this man stood up on his seat and looked over and saw a man tracing a blueprint of a new electronic tube. That was why he hadn't been able to pick up the keys."

The Burns Detective Agency is an even bigger supplier of undercover agents. It has supplied spies to at least 500 companies. One Burns brochure shows two searing eyes peering out, and promises:

"No one is aware of their indentity including those with whom they may be working closely as a fellow employee -- or even as an executive -- on your company's regular payroll."

The point to note is that these agents spy on everyone, including company officials. Only one or two executives may know that spies exist at all.

Just as in intelligence work, when there are two or more operatives within a company, neither is permitted to know about the presence of the other.

How do companies feel about their secret police forces? One respondent to a survey conducted by Dun's Review and Modern Industry reported, "Planting private detectives among the employees costs $25,000 a year, but it is well worth it."

But the price is much more than $25,000 per year. It is a work atmosphere permeated with fear and suspicion. It is a work force where fellow employees must distrust each other -- for any employee may be an undercover agent.

An article on "The Value of Internal Intelligence," which appeared in the August 1971 issue of Industrial Security, points out that "Besides theft and dishonesty, the undercover operative is often able to detect and disclose to management some or all of the following:

"1. How effectively and thoroughly new employees are indoctrinated.

2. General employee attitudes and morale.

3. The degree of skill and conscientiousness of workers and supervisors.

4. Excessive loitering or malingering contributing to unnecessary overtime situations.

5. Hazardous or dangerous working conditions or activities of employees, such as smoking in unauthorized areas.

6. Whether production 'breakdowns' are truly accidental or intentional.

7. Evidence of illegal use of drugs among employees.

8. Gambling and/or drinking during working hours.

9. How new employees are treated by veterans in the company; whether 'cliques' have a desirable or undesirable effect on new employees."

THE NEW WAYS EXPAND

The American Civil Liberties Union has observed that "A hallmark of totalitarian societies is that the people are apprehensive of being overheard or spied upon." Under that criterion, many industrial complexes in America are indeed totalitarian

societies. And many industrial managements believe they ought to be.

Under the old system of human supervisors, an employee could at least relax when he was weary and the boss was out of sight. He was not watched constantly. Nor was a continuing record made of his every action.

The new electronic "eyes and ears" have changed all that. As Burns Detective Agency notes, "We're getting into electronics more and more in industrial use because electronics never sleep. We're also getting into closed-circuit TV for monitoring."

Because electronic devices never sleep, many employees are spending 40 hours a week under constant surveillance. Not only is their job performance recorded, but every personal action -- biting a fingernail, scratching an ear, blowing the nose.

The American Society for Industrial Security, mentioned earlier, includes many of the giants of American industry -- General Motors, Ford, LTV, Dow, Dupont, IBM, General Electric. Each month the society's magazine carries ads for electronic surveillance equipment. In addition, there are generally articles on electronic surveillance, and the readership is introduced to new products in the field. In one issue alone (August 1971) the following new visual surveillance systems were discussed:

"CCTV Camera, a new television camera for various closed-circuit applications. When used in conjunction with a video-tape recorder, scenes may be replayed for closer examination, analysis, or evidence. Camera System, the Scan-o-Scope Gate Security Camera . . . a new concept in industrial security. It provides

additional vision and memory for plant security personnel, recording the who, what, and when for every truck entering and leaving. Vehicle Location System . . . an electronic system that enables a driver to report the location and status of his vehicle in less than one second . . . processes messages . . . illustrates vehicle status and location . . . transmits and receives information."

Statistics on the use of visual electronic surveillance equipment are not available because many managements feel these devices are most effective when kept secret. However, it is doubtful that successful companies such as Ampex and General Telephone would engage in expensive research and development of these devices if there was not a substantial market for them.

Sometimes visual surveillance can constitute such a twisted incursion on privacy that it is best described as voyeurism. For example, some of the personnel security surveillance at motion picture studios in California is <u>really</u> designed to permit "high level" viewing of the starlets. American Telephone & Telegraph Company has been accused of installing a hidden camera in a men's room. The Communications Workers of America reported that some managements even used cameras in the ladies' rooms.

A ONE-PARTY LINE

Eavesdropping appears to be a more popular form of surveillance than cameras or closed-circuit TV. These bugs are also secreted in rest rooms. In fact, there are "miniature

transmitters inside the toilet-paper rollers in a number of washrooms," according to Vance Packard. (These are probably the ones with doors.) A 1965 survey published in Law and Order magazine revealed that nine out of fourteen retail stores indicated they used hidden microphones in washrooms and dressing rooms. More than a fourth of all firms said they used eavesdropping equipment. The survey reported that hidden microphones were used primarily to:

-- Collect data on the number of people loitering in washrooms during working hours;
-- Gather information about the opinions employees had about supervision and management;
-- Listen in on the way stockroom personnel handled material orders;
-- Find out how sales people talked to customers and customer reaction.

A partial listing of the buyers of electronic listening devices from but one supplier -- Consolidated Acoustics of Hoboken, New Jersey -- gives a fair indication of how widespread eavesdropping is. From Alabama Gas Corp. and American Oil, the list runs through the alphabet to Walt Disney Productions and Westinghouse. According to a 1966 report by the American Broadcasting Co., one out of every five businesses in the country eavesdrops on its workers.

Secret listening is not the exclusive province of big business only, as Dr. Alan Westin has documented in his book,

Privacy and Freedom. Some of the incidents he recounts follow:

-- A new executive of a major national talent agency with offices in Hollywood had used wiretapping as an OSS officer during World War II. He became suspicious when a superior mentioned something that could only have been heard through a bug in his office. So he had the office searched. The search revealed a miniature transmitter in the base of a floor lamp. The executive disconnected it, and was promptly fired. The company's policy of personnel control required that all the offices be kept bugged, and all the telephones tapped.

-- Telephones of the executive personnel of a department store in a small town outside Philadelphia were bugged or tapped. The lines from the tapped phones went directly to a listening post in the manager's office. By throwing various switches, the manager could hear over a loudspeaker any of the conversations on any of the phones involved.

-- A construction company that announced plans to build a new home office building in a southern city was visited by a well-dressed "electronics company" salesman. The salesman asked one of the managing partners whether the "listening contract" had been given out yet. "It's so much cheaper when you do it during the original construction," he said, "than when you have to rip out paneling and snake in lines later."

-- Telephone companies use microphones hidden in dummy desk calendars to monitor employee-customer conversations.

-- A factory foreman used a four-way intercom system to

listen in on the conversations of girls working at the assembly tables. Whenever the foreman didn't approve of the topic being discussed by the girls, he would cut in and tell them so.

GOVERNMENT LOVES GOSSIP

A Defense Department 1969 directive is an example. The directive states that "Department communications systems are subject to communications security monitoring at all times." The department insisted that the purpose was not surveillance but simply "to improve the technical performance and security of the communications system." However, the Washington Star found it was also intended to "discover unauthorized use of the phones for non-Defense Department business."

Telephone monitoring is not the only form of surveillance indulged in by the federal employer. In testimony before a House subcommittee several years ago the United Federation of Postal Clerks pointed out that "Peephole observation units are used by Postal Inspectors to spy on postal workers in practically every post office throughout the 50 states." And the unions might have added that this has been true for two generations.

THE PSYCHOLOGICAL AUDIT

"Psychological testing," points out the Management Newsletter, "has woven its way into the fabric of American industry." In many corporations the psychological audit is as routine and regular as the financial audit, especially for executive personnel. Psychologists are retained by corporations to assess the company's

on-the-job managers at regular intervals. The psychologist's report, or a summary of it, usually goes into the subject's personnel file, where it may sit for years, or drastically affect the course of his career.

Dr. Harry Levinson of the Menninger Foundation commented on the impact of psychological profiles on employee job security:

"In (one) case, a small company was swallowed up in a merger with a large corporation. The new parent company, whose headquarters were thousands of miles away . . . demanded the files of all middle management employees. The small company . . . used a psychological consulting firm. So in each man's file was a personality assessment. The parent company used these profiles to decide what to do with each of the managers they had acquired, without ever interviewing or observing the personnel."

Dr. Martin L. Gross, author of The Brain Watchers, has warned that "We should never underestimate the extent and power of personality testing in every phase of society; ministers of the clergy are chosen through personality testings, as are executives, pilots, salesmen and I understand certain federal employees." Dr. Gross testified before a House of Representatives Special Inquiry on Invasion of Privacy that he had been "constantly amazed" during a three-year investigation of personality testing by the tester's unfeeling probing of a subject's sex life, religion, political beliefs and the like -- "as if it were necessary to eliminate human dignity in order to be employable."

Employers who use psychological tests argue that this psychic probing of personal secrets is for the employee's "own good." An employee is fortunate, they maintain if he is refused a promotion because he failed a personality test; he would not have been "happy" in the higher paying job. Charles F. Luce, then administrator of the Bonneville Power Administration, explained this to a 1966 Congressional inquiry:

"Psychological testing thus helps to minimize the 'square peg in round hole' situations that exist in every large organization. A brilliant engineer is not necessarily a good executive. An expert accountant may not have the temperament to be a supervisor. A man or woman in the wrong job is neither happy nor efficient. He may develop anxieties and tensions that adversely affect his health, even shorten his life."

A 1965 study conducted by John C. Arnell, director of personnel and industrial relations for Consolidated Edison Co. of New York, revealed that of 63 large and small electric companies in all sections of the country, 90 percent utilize tests during pre-employment; 65 percent find them useful during selection for promotion; 54 percent use tests during selections for transfers.

Although the tests are less commonly applied to production workers, some wage-earners do run afoul of them. In one instance a member of the International Brotherhood of Electrical Workers, having 13 year's seniority with a large utility firm bid for a promotion. He was turned down, because his employer found that his psychological test on file indicated that he would "break down

under stress." During his 13 years of work for this company, the employee had never "looked bad" under stress. Nonetheless, a labor arbitrator upheld the company's position.

Not only had this worker been denied this promotion, but his personnel file bears a permanent notation that he would "break down under stress." Thus, the worker's career has been permanently damaged. Since the Minnesota Multiphasic Personality Inventory is the test most commonly used in industry, the worker may have been barred from advancement because of his answers to the following categories of questions, to be checked yes or no:

"A. Questions relating to private thoughts --

"I think of things too bad to talk about.

"I dream frequently about things that are best kept to myself.

"B. Questions relating to religion --

"I believe there is a God.

"I believe in the second coming of Christ.

"Christ performed miracles such as changing water into wine.

"I believe there is a devil and hell in afterlife.

"C. Questions concerning sexual matters --

"I am worried about sexual matters.

"I wish I were not bothered by thoughts about sex.

"When a man is with a woman he is usually thinking about things related to her sex.

"There is something wrong with my sex organs.

"D. Questions relating to family matters and social life--

"Some of my family have habits that bother and annoy me very much.

"My relatives are nearly all in sympathy with me.

"My parents often objected to the kind of people I went around with.

"I loved my father."

On the basis of answers to these questions and over 500 others the Peace Corps, which does use the MMPI, has labeled trainees "psychotic," "schizophrenic," etc. -- and recommended intensive psychotherapy.

Dr. Abraham Carp, director of selection for the Peace Corps, provided case studies for a House hearing in 1965. One presented the story of a 20-year old man who "was invited to an agricultural program as a small industries specialist." The training staff found him "competent, able, flexible and willing." He was liked and respected by his peers.

During the training course, he was subjected to the MMPI -- as is every Peace Corps volunteer. The results of the test indicated that both the staff and his peers were dead wrong: This was not a normal, competent individual at all. "The MMPI was indicative of either a psychotic or of an adolescent without focus . . . these results were substantiated in psychological interview and by other psychological tests which indicated very low frustration tolerance, low superego strength, suspiciousness, insecurity, lack of criticalness, tension and uncertainty of self."

This evaluation, of course, became part of the man's permanent record. Dr. Carp stated in conclusion that "the MMPI made a significant contribution in this case and was protective to the individual."

That's one way of looking at it. The "subject" and those who found him wholly acceptable might think otherwise.

Dr. Raymond A. Katzell, past president of the New York State Psychological Association, has put the problem squarely:

"There is good reason to believe that a substantial degree of privacy is a necessary condition to mental and emotional well-being. Conceivably, a society which fails sufficiently to protect the individual's privacy may become characterized by behavior patterns such as mutual mistrust and hostility, which to me, as to most Americans, are much less desirable characteristics than their opposites of trust and amity. As a psychologist, I would therefore endorse a system of mores and laws which frees the individual from the stress and indignity of brainwatching."

HERE, TOO, THE POLYGRAPH

The polygraph, or "lie detector," also survives as an employer on the job. Indeed, it may be more firmly entrenched in this area, despite strenuous trade union efforts to dislodge it, than in any other.

There is no need to repeat in this section what has already been said about the evils of the polygraph. Some indication of its applications may be instructive.

Thousands of employers apparently agree with the one quoted in the magazine Printing Impressions, who said, "I can tell you unequivocally that the lie detector is my most trusted and faithful employee." The Burns Detective Agency, which hires out its polygraph services to employers, admits that its examiners "frequently" perform a lie test on every employee of a client firm so "that there is no personal affront."

It is estimated that between 30,000 and 40,000 business enterprises use the polygraph for personal analysis. Among them are Montgomery Ward, Armour & Co., E.F. Hutton and Lord & Taylor.

In one recent year, some 21 federal agencies gave a total of 28,000 lie detector tests to their employees. Some of the questions asked on these tests were:

-- When was the first time you had sexual relations with a woman?

-- How many times have you had sexual intercourse?

-- Have you ever engaged in homosexual activities?

-- Have you ever engaged in sexual activities with an animal?

-- When was the first time you had intercourse with your wife?

-- Did you have intercourse with her before you were married? How many times?

In the course of such "routine" examinations, individuals are forced to reveal self-information usually reserved for "confession." But in most religions the penitent, after baring his soul to his clergyman, is told that God forgives him. After the

polygraph examination, he is fired.

Labor arbitrators have consistently prohibited the introduction of polygraph evidence, or have required that polygraph evidence be substantiated by other tangible proof of misconduct, in disputes involving private industry. In addition, they have generally ruled that refusal by an employee to take a polygraph test is not grounds for discharge. Nonetheless, employers continue to use the device.

Following are some items from the polygraph record:

1. A woman checker in a California supermarket answered "no" to the question, "Did you check out items to your mother at a discount?" The polygraph registered she was lying. The checker was fired, even though her mother had been dead for years.

2. In Illinois, a woman sales clerk with a 6-1/2 year record of honesty was discharged for refusing to take a "lie detector" test. The employer claimed she had rung up on her register $1 less than her sale. The woman denied it. At the end of the day in question, the register had a 42¢ overage, and others had used the same register. But the woman was not only fired, but refused unemployment compensation.

3. In Texas, an 18-year old boy, along with others, was given a "lie detector" test when some money was stolen from the company he worked for. The polygraph examiner reported that the test was "inconclusive" so the boy was fired as a "shady customer."

Polygraph operators have admitted that the greatest asset of the "lie detector" is in scaring the individual into admitting his transgressions.

As Senator Ervin put it, in a rhetorical question:

"Is there anything more destructive to our system of government than attempting to seize a man's innermost thoughts; compelling him to confess his beliefs, his religious practices, his every sin; requiring him to bare his soul to a machine in order to hold a job?"

'SENSITIVITY TRAINING'

The latest wrinkle in management brainwashing, called "sensitivity training" and centering around what are known as "encounter" sessions, hasn't reached many wage-earners except those who may have seen a television program that dealt with its validity as a technique in treating persons with emotional problems.

However, the technique has been widely used in some federal agencies (Health, Education and Welfare; Agriculture; General Services Administration), in many local governments, and has reached the foreman level in at least one large corporation (Chrysler). Esso even brags about its program in some TV commercials.

In as so many other such undertakings, the ostensible purposes of "sensitivity training" are laudable. The general notion is that by forcing people to reveal their hangups -- race prejudice, for instance -- in a group of strangers, they'll be

helped in overcoming them. But the "encounter" sessions where this takes place, under the monitorship of a professional or para-professional psychologist or sociologist, run the gamut of neuroses, and to many participants are deeply offensive.

Making participation in such programs mandatory (as it is in some agencies) surely represents an extreme invasion of individual privacy, no matter how highly motivated. For the most precious individual right of every American is the right to be wrong.

A quotation from Justice Brandeis seems particularly applicable to "sensitivity training":

"Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficient. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachments of men of zeal, well-meaning but without understanding."

THE ENDLESS EROSION

For every spectacular offense against the privacy of workers by their employers there are a dozen smaller, more subtle ones. All purport to be well-intended and many actually are. Some are barely recognizable as invasions of privacy, and quite a few are highly regarded.

Company-sponsored recreational activities are an example. Workers are encouraged to join in the softball and bowling leagues, perhaps. It's fun for those who enjoy it. On the other hand, a good player who doesn't want to participate is often branded as

"anti-social", which can get worse with time.

Then there's the encouragement of "good citizenship." Join the Parent-Teachers Association. Be a Den Mother for the Cub Scouts. Pass the plate on Sundays. Is this really the employer's business?

Along comes the United Fund. Do your share. Often the company does the collecting, and it wants to look good in the papers. Until about 15 years ago, the Detroit papers used to run banner headlines to the effect that "General Motors Gives $2 Million to Drive" when nearly all the money came from worker payroll deductions. The UAW was finally able to get the truth across. But the pressure is still there.

Is it right for any good cause to be promoted by employer pressure on workers over whom he holds a measure of economic control? Surely this constitutes an invasion of privacy -- a dimunition of an individual's freedom of choice.

The federal government is in the midst of a new burst of zeal along these lines. Agencies are urging employees to promote such federal programs as beautification and equal employment opportunities; to lobby their local governments for fair housing ordinances, to supply seeds for school gardens. And along with this are the usual United Fund and Savings Bond "quotas".

Not all the "causes" are so innocent. The American Security Council, a far-right group whose name was deliberately coined to make it sound official, is supported by such corporations as Sears Roebuck, Schick Razor, Quaker Oats and National

Airlines. Its targets are "radicals" who may adhere to a "dangerous philosophy." It maintains a blacklist of groups it puts into that category. Its members have had great influence in shaping the political outlook of the Defense Department, some of whose "indoctrination" films, inspired by the council, have embarrassed even the conservative Eisenhower and Nixon Administrations. Films and other materials produced by or on behalf of the council are imposed upon workers by member companies; they also carry a covert but easily identifiable anti-union message.

But primarily, the aim of these smaller incursions on privacy is to promote conformity -- a "happy family" atmosphere in which everyone will "feel at home." This may seem innocuous on the surface, but it becomes a real danger when non-conformity becomes a stigma, and is extended from the work-place to the community as a whole.

Judge Learned Hand put this fear into words:

"I believe that community is already in process of dissolution where each man begins to eye his neighbor as a possible enemy, where non-conformity with the accepted creed, political as well as religious, is a mark of disaffection; where denunciation, without specification or backing, takes the place of evidence; where orthodoxy chokes freedom of dissent; where faith in the eventual supremacy of reason has become so timid we dare not enter our convictions in the open lists to win or lose. Such fears . . . may in the end subject us to despotism as evil as any that we dread; and they can be allayed only insofar as we refuse to proceed on suspicion, and trust one another until we have tangible ground for misgiving . . ."

KEEPING AN EYE ON THE UNION

Keeping An Eye On The Union

A worker's personal, private right to have his own views about union organization, and to act upon them, was legally established by the Wagner Act in 1935.

After the act was upheld by the Supreme Court, and was systematically enforced by the National Labor Relations Board, employers as a whole accepted the fact that they could no longer use meat-axe methods to resist or defeat unions.

There were and still are exceptions. The J. P. Stevens textile chain continues to discharge workers brave enough to take part in union organizing efforts, and fights the cases to the Supreme Court in the face of certain defeat. Elsewhere in the rural and semi-rural south, union organizers are shadowed by state or local police, union meetings are monitored and the attendance checked, freedom of speech, press and assembly are curtailed.

But generally, employers now fall into two larger groups -- those who accept unions (or the possibility of union organization) as a permanent part of the economic scene, and those who hope they can develop new weapons to achieve the old objectives of preventing workers from organizing and frustrating the unions that exist. The latter group is the concern of this section.

ELECTRONIC DEVICES

Electronic devices are the major new weapons now employed to keep watch on union affairs, and thus to violate the privacy of workers who participate in those affairs.

There are numerous examples of taps and bugs. The home phone of a local Communications Workers of America leader in West Virginia was tapped during an organizing drive. A microphone was installed in the kitchen of a New York cafe to check on talk about union organizing. A public phone used by shop stewards was bugged by the Southern Pacific Railroad; the line led to the superintendent's office. Innumerable in-plant phone lines have been tapped for like purposes. Hangout areas, in and outside the workplace, have been equipped with listening devices.

The hotel rooms and meeting rooms used by union officers during negotiations have so often been wired that anti-eavesdropping precautions are routinely taken. This has been true of negotiations with some of the nation's largest corporations.

There is no doubt that such electronic surveillance is just as illegal as any other kind under the National Labor Relations Act, but it is seldom as easily traced as the line to the railroad superintendent's office. A complainant must prove that the employer directly authorized the installation and use of the device. This is not easy, and with the development of stronger wireless eaves-droppers, it will become even harder.

THE LABOR SPY

The labor spy is still not obsolete; only the application of his work has been modified. His reports to the employer must not only be secret at the time but must remain secret. The employer who acts upon a spy's reports cannot be obvious about it.

Here is how an NLRB trial examiner reported the case of a former employee of the Edwards Transportation Co. who offered to help fight off the Inland Boatmen's Union of the SIU:

"He voluntarily went to Personnel Manager Stewart and offered to go out and find some information about the union. Stewart indicated that he thought Frank's idea was a good one and stated (in Frank's words), 'Go find out who all was for the union, and if they done something wrong on the boat, he was going to let them go.' Thereafter, Frank went from one boat to another, 'went along with the crew like I was for the union, and the ones that was for it, I would write down on a piece of paper, and I would give that information back to Billy Stewart'."

The existence of more sophisticated spies throughout industry, even in corporations where the union is ostensibly "accepted," is not seriously doubted by anyone familiar with labor-management affairs.

Even the polygraph has been used to uncover union sentiments. In 1963, the Lone Star Liquor Co. of Houston, which had just received a union letter requesting a meeting to begin collective

bargaining, shortly fired nine union members as "security risks." Lone Star claimed their undesirability had been revealed by polygraph tests administered to all employees. The NLRB, however, ruled that the polygraph tests had been a transparent device for getting rid of the union supporters.

Direct interrogation of workers by supervisors about union affairs can be legal or not, depending on what is asked and under what circumstances. Another factor is how the membership of the NLRB is constituted at the time the case comes up.

GOVERNMENT WORKERS

Special problems arise for workers in state and local government, whose collective bargaining rights are still not clearly defined even in states where they are recognized at all. (Public employees are specifically excluded from the Labor Management Relations Act.)

Members of the American Federation of State, County and Municipal Employees in Huntsville, Ala. found that it was the mayor himself who was responsible for bugging their telephones. In this case, 118 sanitation men had been locked out of their jobs after demanding a union contract the mayor had promised to negotiate. AFSCME members found a bug on the telephone at the church which served as the union's headquarters. Another AFSCME sanitation workers local, this one in Atlanta, was infiltrated by an Army intelligence agent who reported back on the progress of negotiations. Members of the 111th Military Intelligence Group videotaped at least one meeting of these workers.

The first need in the government area, of course, is legislation.

In general, this can be said about invasions of "union" privacy:

Flagrant surveillance and intimidation of workers with respect to their union membership still exists but is no longer common.

Through electronic devices or human spies, even the most "progressive" managements do their best to keep an eye on the union.

There is no certain safeguard in law or otherwise that can prevent this watch from being kept.

CONCLUSION

Conclusion

The preceding pages have defined the privacy problem as it especially affects the workers' world.

This report also makes the obvious point that it is organized labor that has been in the forefront of the battle to protect human rights and individual freedoms.

We hope the testimony we have offered leads others to the conclusion we ourselves have reached: there exists a desparate need for a common-sense balance between the citizen-worker's right to keep his personal life inviolate from probers of any kind, and the right of this citizen-worker's employer to know what kind of fellow he is hiring and to keep some sort of track of him while he's on the payroll.

Put in these terms the balance doesn't seem that remote from the good-will efforts of reasonable men. But the evidence makes it clear that encroachment on the private lives of workers continues unabated and increases as our technology soars. It is therefore, imperative for the trade union movement to re-intensify its activities and to make an all out effort to see that any and all invasions of the worker's private life be driven from the American labor scene.

With renewed vigor, this report sets forth the following propositions:

I. APPLICATION FORMS

A. Information sought should be within the general limits of the standard Civil Service form.

B. Job applicants should answer the questions on such forms truthfully, and should instruct persons and institutions they name to do the same.

II. INVESTIGATION OF APPLICANTS

A. Basic facts about an applicant's stated background should be verified by the employer with the cited schools, places of employment, etc.

B. So-called "background" investigations by professional snoopers, based on the proposition that applicants are liars, should not be authorized nor accepted by employers.

C. Applicants should be judged solely on the verified facts set forth in their application forms and on any additional impressions gathered by personal interview, all in the context of an applicant's ability to fill a specific job.

D. Polygraph and "personality" tests are not to be used.

III. PRIVACY OF EMPLOYEES

A. "Personality" tests, profile studies and other gimmicks should not be inflicted on employees. A management that needs these devices to evaluate its own personnel is incompetent to manage.

B. Off-the-job activities of employees are their own business. Pariticipation or non-participation in company-sponsored or company-favored activities is irrelevant to the employment relationship.

C. Employees and unions must recognize the employer's legitimate right to protect his property from theft and other depredations, but employers should not require unreasonable search and inspection in the pursuit of this right.

D. Polygraph examinations of employees, covert surveillance of employees in the work-place by electronic or other means, forced attendance at meetings or classes of any kind are totally incompatible with individual rights on the job.

We submit that acceptance of these propositions would make the workers' world a better place for everyone, including employers.

But, we do not expect this happy end to come about of itself. Some legislative help and collective bargaining agreements will be needed.

Senator Ervin's bill to outlaw the polygraph in pre-hire examinations would be an outstanding start.

The files of personnel probers should -- by law -- be made as freely available to their subjects as the files of credit investigators.

A re-examination by the National Labor Relations Board of the whole area of employer surveillance and interrogation might

be useful. We are aware that the board is taking on a more "conservative" coloration, by popular assessment. We do not believe, however, that any board would condone employer interference with the privacy of workers, whether by electronic means or any other.

The American Labor movement is an expression of the hopes and aspirations of the working people of America. Therefore, it is the responsibility of this movement to protect its members and the rights to which they are justly entitled.