Employment law—particularly privacy issues and individual employee rights and protection—is the focus of Professor Pauline Kim’s research.

**Protecting People in the Workplace**

An expert in employment law, Professor Pauline Kim focuses her research on issues of privacy.

by Judy H. Watts

As both scholar and citizen, she admits to some unease: “Privacy issues affect all of us, not just as workers, but as consumers and citizens. At heart, concerns about privacy are concerns about the use of power, and so one worries about concentrations of information in the hands of powerful entities.

“In the workplace context,” she observes, “employers potentially have a great deal of power over individual workers. The questions are: What kinds of information can employers get? What should they be entitled to get? Should they be able to use that information to make decisions about a person’s job?”

In new works designed for law students and in ongoing research for the legal community, Kim continues to examine the law’s ability to protect people—or not—in the workplace. In June 2005 LexisNexis published an innovative casebook, *Work Law: Cases and Materials*, which Kim co-wrote with labor law specialist Marion G. Crain, the Paul Eaton Professor of Law at the University of North Carolina, and with employment discrimination expert Michael Selmi, professor of law at George Washington University.

“We have different, but overlapping, areas of expertise,” says Crain, who asked Kim to co-author the book because “I was impressed by her research on employment at-will and on privacy, and knew she would be a fantastic addition to this casebook.”

The casebook’s title reflects the authors’ commitment to taking a more holistic approach, circumventing boundaries dividing labor law, employment law, and employment discrimination. A key premise is that the law governing individual employment relations should be taught—and employee rights interrogated—against a historical backdrop. Today’s lawyers must know the multiple legal structures governing the workplace, Kim and her colleagues believe. The thematically organized scholarly articles, court cases, and notes offer a comprehensive survey that encourages students to think flexibly about the law governing the workplace, which is forever in flux because of labor-market changes.

Kim’s current works-in-progress focus on issues of employee privacy. She has been invited to contribute a chapter to a forthcoming book titled *Employment Law Stories* to be published by Foundation Press in 2006. Using a richly detailed narrative form, the chapter will explore how the law deals with employee privacy rights by exploring the background, litigation, and ultimate resolution of *Luck v. Southern Pacific Transportation Company*. This case, involving a challenge to an employer-mandated drug testing policy, was decided by a California court a year after the Supreme Court of the United States had ruled on two public-sector drug-testing challenges under the Fourth Amendment. Those cases, *Skinner v. Railway Labor Executives* and *National Treasury Employees Union v. Von Raab*, opened the door wider for certain employers to test their workers.

In the *Luck* case, a private employee challenged a company’s drug-testing policy. “It’s a good teaching case,” Kim says, “because it shows a court struggling to sort out the rights of private-sector employees—and most employees work in the private sector, where constitutional protections don’t apply.”

The plaintiff, Barbara Luck, who worked as a computer programmer for a railroad company, was asked to submit to a urinalysis drug test. Her employers did not suspect her of using
Workshop on Empirical Research in the Law, known on campus as WERL. This workshop, founded in 2001, continues to draw law and Arts & Sciences faculty every week to discuss recent empirical scholarship in the law and to present their own works-in-progress.

Kim also helps facilitate an annual May workshop on conducting empirical legal scholarship that is co-sponsored by WERL and the School of Law's Center for Interdisciplinary Studies. She reports, “This year more than 50 people wanted to register—we had to turn people away! That's a sign of the growing recognition that understanding empirical methods is important not only for social scientists, but for legal scholars as well.”

Kim's curiosity about workplace drug testing since the *Skinner* and *Von Raab* decisions has also led her to take a systematic look at drug-testing litigation in the courts subsequent to those cases.

“Aside from professional sports, little public attention is paid to the issue of workplace drug testing anymore,” she notes. “Yet disputing about the issue continues. The nature of the cases, however, has shifted. The focus is much more on after-the-fact challenges to the application of those policies to particular individuals, not the big-picture questions about privacy rights and public policy raised in the earlier cases.”

Kim attributes the change in part to a shift in public norms as drug testing has become more common. She also believes it is a response to the courts’ lack of receptivity to such privacy claims. “Here is an issue people felt passionately about, and yet, in a short period, the conversation has largely disappeared.”

Although her current work on employee privacy does not use statistical analysis, Kim champions the relatively new practice of using empirical methods to understand the law and legal rights. She used these methods in survey work she did regarding workers’ perceptions of their legal rights and in a recent co-authored paper comparing legal and political science approaches to predicting decisionmaking in the Supreme Court. In addition, she co-founded and organized the successful Workshop on Empirical Research in the Law, known on campus as WERL. This workshop, founded in 2001, continues to draw law and Arts & Sciences faculty every week to discuss recent empirical scholarship in the law and to present their own works-in-progress.

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Professor Pauline Kim discusses employment law issues with her research assistant, Jason Retter.