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DRUG TESTING IN THE PUBLIC SECTOR

by

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B.B.A., University of North Dakota, May 1988

An Independent Study

Submitted to

The Faculty of the Political Science Department

of the University of North Dakota

in Partial Fulfillment of the Requirements

for the Degree of

Master of Public Administration

July

1990

This independent study submitted by James R. Beal in partial fulfillment of the requirements of Master of Arts (Master of Public Administration) from the University of North Dakota is hereby approved by the faculty advisor under whom the work has been done.

  
Advisor

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## ABSTRACT

The purpose of this study is to assess the nature and extent of drug testing in the public sector. Drug testing of public employees as well as private employees has been on the rise since the later part of the 1980s. This trend may continue into the 1990s and beyond.

Though drug testing may appear to be means to end drug abuse among public employees, it may not be the best means. In order to fully understand the current controversies surrounding drug testing, a detailed examination of available literature was conducted. There are many issues that must be considered before testing public employees for drugs. This study examines the justifications for drug testing such as public safety, costs associated with drug abuse, and integrity of public positions. Also, the arguments against drug testing are examined. These include procedures and accountability, cost of testing procedures, unreliability of test results, and invasion of privacy. In particular, the issues of invasion of privacy and reliability of test results will be thoroughly examined.

## CHAPTER ONE

### INTRODUCTION

The problem of drug abuse in the workplace has affected a considerable number of organizations, both public and private, in the later part of the 1980s and will continue to have an impact in the foreseeable future. Drug abuse can affect and disrupt an employee's personal life, as well as his or her work environment. Each year billions of dollars are spent by American employers to deal with the problem of drug and alcohol abuse.<sup>1</sup> The Federal Government, being the nation's largest employer, has a special interest and responsibility regarding the effects drug abuse may have on work performance.<sup>2</sup> Employers are becoming acutely aware that efforts must be made to curb drug abuse and its associated costs.

At the same time, the Bush and Reagan Administrations' have declared a "war on drugs" which has garnered much public support. The "war on drugs" along with employer awareness of the considerable work-related consequences have made drug abuse an extremely important topic in the 1980s.

One method for dealing with the problems associated with employee's drug use which has gained considerable support in recent years is drug testing.

Drug testing involves analyzing assays of employees' blood, urine, and even hair samples to determine if there are traces, above a minimum level, of illegal drugs. An assay shows the extent and type of drugs found in the sample. Although there are many methods to test for drugs, such as blood and hair, this study will concentrate mainly on urine drug testing since it is the most widely used type of test.

There are many different techniques or screening methods through which urinalysis can be conducted. The Enzyme-Multiplied Immunoassay Test (EMIT) was one the first urine drug tests developed and is still popular today.<sup>3</sup> Also, the Gas Chromatography/Mass Spectrometry is a more recent and sophisticated drug testing technique. This study will look at the various techniques, such as the EMIT and the GC/MS, discuss the uses, advantages, and disadvantages of each particular screening method. The drugs for which samples are analyzed usually involve marijuana and cocaine. Samples are also commonly analyzed for opiates, amphetamines and phencyclidine (PCP).

A brief history of drug testing will be given in this study. Although the attention given drug testing has just come to the forefront in the last five years, it is not a

new issue in the federal domain. Drug tests have been conducted in the military since the early 1970s.<sup>4</sup> President Reagan's "Executive Order for a Drug Free Workplace" issued on September 15, 1986, had a direct impact on the push for drug testing in both the private and public sectors. Under this order it was left to the head of each executive agency to establish a program to test for illegal drugs, such as marijuana and cocaine. As stated by Reagan's Executive Order, the type of testing to be conducted was urinalysis<sup>5</sup>

The study will look at drug testing in the public sector, as well as look at the methods and techniques which are being used in analysis of samples. Also, it will provide an overview of those drugs which are most often tested for in employee samples.

While there has been strong support for drug testing, there also has been considerably resistance, both in the courtrooms and publicly. Due to the controversial and contemporary nature of drug testing, this study will examine the issues and consequences of drug testing, as they relate to public employees.

Those who support drug testing feel an enormous amount of money could be saved by decreasing the use of drugs by employees. Supporters also believe that public employees are often in positions in which the lives of others could be at stake. Positions in transportation or the military are often cited as examples. It is also felt that public



employees should demonstrate leadership by showing drug abuse will not be tolerated. Another reason for the support of drug tests is that employers should be receiving equal work for equal pay. By having employees who abuse drugs, employers are not always receiving the quality of work for which they are paying.

Most opposition to drug testing centers around whether the test results are reliable and whether they are an invasion of one's privacy. Many individuals feel urine drug tests are unreliable which can lead to results being inaccurately labeled false-positive or false-negative. A false-positive test shows the presence of drug, when there was actually none taken. This may be due to a phenomena known as cross-reactivity.<sup>6</sup> This occurs when an assay of a chemical or compound appears as an illegal drug in an employee sample. A false-negative test fails to show the presence of drug use when there actually was use.

With the invasion of an employee's privacy issue, it is felt that drug testing violates individual's constitutional right to privacy under the Fourth Amendment. There have been numerous court cases that have dealt with the issues of drug testing and invasion of privacy. Another issue explored in this study involves the procedures and accountability of the laboratories used to gather and analyze drug tests. Also, the expensive cost involved to conduct tests will be examined.

The author will attempt to draw conclusions on drug testing in the public sector from the arguments presented in the study. This will involve determining if there should be drug testing. If so, when and who should be tested. If not, possible alternatives will be offered.

## CHAPTER ONE

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## CHAPTER TWO

### DRUG TESTING: A HISTORY

There has been an enormous increase in the number of employees, both public and private, being testing for drugs. According to the American Management Association, the percentage of companies that gave workers or job applicants urine drug tests rose from 21 percent in 1986 to over 50 percent in 1989.<sup>1</sup> In 1989 more than eight million American workers were given urine drug tests, while this year as many as 15 million could be tested for drugs, according to the National Institute on Drug Abuse (NIDA).<sup>2</sup>

The sharp increase in drug testing is due in part to the fact that employers have become aware of the adverse impact employee's drug abuse can have on their organizations. The U. S. Chamber of Commerce estimated that it costs American employers over \$60 billion each year to deal with employees' drug and alcohol abuse.<sup>3</sup>

At the same time, the declaration of a "war on drugs" by the Bush and Reagan Administrations has garnered considerable public support. President Reagan's "Executive

Order for a Drug Free Federal Workplace" issued on September 15, 1986 had direct impact on the push for drug testing. Under this order it was left to the head of each Executive Agency to establish a program to test for illegal drugs. The program was meant to complement the traditional attack on supplies, by cutting the demand for drugs.<sup>4</sup> The goal was to identify chronic drug abusers for rehabilitation, while scaring off the casual drug users.<sup>5</sup> More importantly, the Executive Order sent a message that testing employees for drugs was not only acceptable, but was encouraged.

President Reagan's Executive Order did not introduce a new phenomenon with drug testing, but increased the scope and dimension of something that had been done for quite some time. In fact, drug testing had been conducted as many as four decades prior to President Reagan's Executive Order. There are three areas in which drug testing was introduced and developed in the United States: the Olympic sports arena; methadone treatment programs; and the U.S. military.<sup>6</sup>

Drug testing at Olympic Games was primarily the result of the International Olympic Committee's (IOC) concern over use of illegal drugs, particularly anabolic steroids, by athletes. The first use of drug testing at a Olympic Games occurred at the Mexico City Games in 1968.<sup>7</sup> The IOC was not so concerned with the actual use of illegal drugs, but more concerned with the increased health risks which may result from using illegal drugs at such a high altitude.<sup>8</sup> The

testing of athletes urine for drugs continues to be conducted the IOC and has resulted in numerous athletes being banned from competition, most notably Canadian sprinter Ben Johnson.

Drug testing at methadone treatment programs began in the same decade as did Olympic drug testing. The drug methadone began to be used in the 1960s by drug-treatment centers as a treatment for heroin addiction.<sup>9</sup> The problem was that the centers needed a way to determine if their patients were remaining drug free while on methadone. In 1966, urinalysis was first used at methadone treatment centers by Dr. Vincent Dole to monitor drug abusers.<sup>10</sup> Dr. Dole felt urine screening was an effective way to determine if his patients were using illegal drugs while administered methadone. Today, urinalysis is required by the federal government in order to receive federal funding for methadone treatment programs.<sup>11</sup>

The military established one of the first and most comprehensive drug testing program following the occupation of Japan during World War II.<sup>12</sup> Due to the widespread use of heroin and opiates, urine drug tests were conducted on military personnel to detect the use of opiates.<sup>13</sup> The military continued limited testing until 1970 when it expanded the scope and intensity of its drug testing program.

The military began the first large scale urinalysis

drug testing program in 1971.<sup>14</sup> Two factors lead to the development of this large scale drug testing program. First, the military was concerned with identifying those returning Vietnam veterans who were addicted to heroin.<sup>15</sup> The military's concern was the direct result of a House Foreign Affairs Committee's special mission study report issued on May 27, 1971 that recommended that American military forces be withdrawn from Southeast Asia due to widespread heroin use.<sup>16</sup> Further, the study found that 10 to 15 percent or 30,000 to 40,000 U.S military personnel in South Vietnam were addicted to heroin in one form or another.<sup>17</sup> Also, it discovered that some military personnel transferred on short notice from South Vietnam to Laos suffered from and had to be treated for withdrawal symptoms because of lack of supply of heroin.<sup>18</sup> Second, was the signing of an Executive Order by President Nixon in June 1971 to begin random drug testing in the military.<sup>19</sup> It was determined that urinalysis should be conducted during physicals on all military personnel and on those about to enter the military. The use of urinalysis by the military had still not reached its full potential and would not do so until the early 1980s.

As the threat of heroin addiction and Nixon's Executive Order lead to the increase in the amount of drug testing in the early 1970s, a combination of factors lead to an increase in the amount of testing in the 1980s. First, was

a pair of studies on the use of illegal drugs by military personnel conducted by the Department of Defense. Second, was the development of a special procedure for detecting marijuana in urine samples. Third, was a blast aboard the U.S.S. Nimitz. Fourth, was a series of decisions by the Military Court of Appeals.

The first study, done in 1976, showed that 20 percent of the sailors on the aircraft carrier U.S.S. Midway were using opiates and other drugs.<sup>20</sup> Also, 33 percent of all seamen admitted using illegal drugs within the previous month.<sup>21</sup>

The second study conducted by the Department of Defense in 1980 had a much greater impact with respect to drug testing. It was titled the Worldwide Survey of Alcohol and Nonmedical Drug Use Among Military Personnel. It was considered worldwide because 15,268 randomly selected military personnel, stationed at 81 bases around the world, were given questionnaires.<sup>22</sup> The study found that 27 percent of military personnel admitted to using one or more illegal drugs in the past month.<sup>23</sup> Additionally, 31 percent stated that alcohol had some effect on their job performance, and 21 percent reported that their job performance suffered due to other drugs.<sup>24</sup> The findings of the study were bleak at best, but comparatively no worse than the general public.<sup>25</sup>

In 1981, the Armed Forces Institute of Pathology



developed a special procedure to test urine samples for marijuana.<sup>26</sup> The procedure, known as Gas Chromatography (GC), could confirm the presence of a metabolite of marijuana which was the illegal drug military personnel abused the most.<sup>27</sup> The GC test seemed to justify an increase in drug testing since it was a very sophisticated test and thus, could be used to confirm the positive results of initial drug tests.

The same year the GC test was developed, an accident aboard the U.S.S. Nimitz occurred. The U.S.S. Nimitz was off the east coast of Florida for night flight operations when a Marine Corps Prowler jet spun out of control and crashed on the flight deck while trying to land.<sup>28</sup> The crash led to a secondary explosion which resulted in 14 deaths and 48 injuries.<sup>29</sup> It was later discovered that half of the dead crewmen had traces of marijuana in their bodies.<sup>30</sup> Although the Navy denied that the use of marijuana was the cause of the accident, they did become more aware of the potential risks drug use could present.

The last factor that led to an increase in the use of drug testing in military during the 1980s were a series of Military Court of Appeals decisions. In 1981, Frank Carlucci, then Assistant Secretary of Defense, ruled that disciplinary action could be taken against military personnel from evidence gathered through urine tests.<sup>31</sup> The decision meant the environment of the military's drug

testing laboratories had to change from a clinical to a forensic nature in order to withstand legal challenges.<sup>32</sup> The GC urine test could meet the stricter guidelines used in the new forensic environment.

The Department of Defense instituted mandatory urinalysis to check for illegal drug use in all branches of services in December 1981.<sup>33</sup> The large increase in the number of urine sample tests combined with the lack of sufficiently trained personnel and necessary equipment led to many problems with the military's push for drug testing. It was estimated that approximately 30,000 of the samples given by soldiers in the Army were either mishandled, mixed-up, or misread.<sup>34</sup> Due to inefficiencies such as those experienced in the Army's drug testing program, a panel of experts reviewed the performances of the drug testing laboratories.<sup>35</sup> They recommended reviewing all positive urinalyses found after the Carlucci ruling.<sup>36</sup> Upon reviewing the positive urinalyses, it was determined only 49 percent of the scientific and 43 percent of the chain-of-custody records were legally defensible.<sup>37</sup> The Department of Defense initiated measures to improve the way in which laboratories were operated.

Today, the military is has one of the largest testing programs. The Navy tests its personnel approximately 3 times a year or 2.1 million tests total.<sup>38</sup> The Air Force tests half of its personnel once a year, while the Army

tests all personnel once a year and the Marine Corp test each person twice a year.<sup>39</sup>

The increase in the amount of drug testing, in both private and public sectors, has led to recent developments in methods and techniques used to test employees. In order to fully understand the issue of drug testing, it is important to examine the various techniques and methods through which drug testing can be conducted.

#### Drug Testing: Methods and Analytical Techniques

A drug test involves a chemical analysis of an employee's sample to determine if there are traces, above a minimum level, of illegal drugs. Although all drug tests involve a chemical analysis, there are many ways in which an employer can test an employee or applicant. Also, the type of sample gathered can vary.

One way an employer may test an employee for illegal drug use is through random drug tests. Random drug testing involves testing employees at different times throughout the year. The National Institute on Drug Abuse states that random testing should be as follows:

Each workday should present each employee with a new opportunity of having to produce a sample, with the odds equal for all employees on each new day, regardless of samples previously produced by any of them.<sup>40</sup>

In essence, it means that each employee should have an equal chance of being tested on any given day.

Another way in which to drug test employees is on a voluntary basis. Some employees may wish to volunteer to participate in random drug tests to refute any allegations against them or to show support for the drug testing program. It is important in voluntary drug testing that employees provide samples at random, unannounced times, rather than self-selected times.<sup>41</sup> This must be done to ensure that the sample is useful.

A third way in which drug tests may be conducted is on the basis of reasonable suspicion. Reasonable suspicion is as follows:

A supervisor may reasonably suspect that an employee illegally uses drugs, based upon (among other things) observation of drug use; apparent drug intoxication; abnormal or erratic behavior; investigation, arrest, or conviction for drug-related offenses; reports from apparently reliable and credible sources; or evidence that the employee tampered with a previous drug test.<sup>42</sup>

Specific condition testing is a fourth way a drug test may be conducted. Specific condition drug tests may occur when an employee has been involved in an on-the-job accident, such as a train wreck.

A fifth type of testing an employee for drug use is through follow-up testing. Follow-up testing may occur as part of a treatment program after an employee has been found to have used drugs. This type of testing should be done on a frequent, random, and unannounced basis.<sup>43</sup>

The last type of drug test is conducted through the use of applicant or pre-employment testing. In the Federal

government, any applicant may be tested for illegal drug use. It is the agency heads who determine if all applicants will be tested, only applicants for certain positions, or whether no applicants will be tested.<sup>44</sup> The private sector has increased its use of pre-employment drug tests to screen applicants. In 1987, the American Management Association found that 34 percent of the 1000 companies it surveyed used some form of applicant testing.<sup>45</sup> In another survey, 55 percent of the firms stated that they used applicant drug testing.<sup>46</sup> The increase in pre-employment testing in the private sector may be due the fact that since the testing in the private sector is not ordered by the government, it is viewed as a condition of employment and thus, not considered a Fourth Amendment search and seizure.<sup>47</sup> In essence, the constitutional rules only regulate the conduct of the government.<sup>48</sup>

There are many different methods in which employers may gather samples from an employee for drug testing purposes. Each method has its advantages and disadvantages when compared to the other methods. Employers can test samples of employees' blood, hair, saliva, and urine to detect drug use.

A blood sample used in drug testing offers the most accurate way to determine if an employee used illegal drugs on his or her time or on the employer's time.<sup>49</sup> Blood samples can give more accurate information about the timing

and amount of drug ingestion because drugs appear in blood for only a few hours.<sup>50</sup> Although using blood samples in drug testing has considerable advantages, they are seldom used. One reason is that blood tests are considered to be much more invasive which could lead to more legal problems for the employer.<sup>51</sup> Another reason is that blood tests are labor intensive and require trained personnel.<sup>52</sup>

Saliva and hair samples are seldom used in drug testing. A saliva sample is similar to a blood sample because the presence of drugs lasts for only a few hours. The problem is that concentrations of many drugs is often so low that they cannot be detected.<sup>53</sup> The use of hair samples is not used that often because of a lack of sufficiently validated clinical studies.<sup>54</sup> Hair samples are similar to urine samples because the presence of drugs can last for more than a few days.

Urine samples are the most widely used method of drug detection.<sup>55</sup> This is due to the following reasons:<sup>56</sup> 1. the collection of urine samples is considered not invasive, 2. large samples can be easily collected, 3. urine samples generally produce higher concentrations of drugs and their metabolites due to the concentrating function of the kidney, 4. due to the absence of protein and cellular constituents, urine is easier to analyze than blood and other fluids, and 5. urine can be frozen and still keep the drugs and their metabolites stable.

The analytical techniques can be grouped into two categories, screening tests and confirmation tests. Screening tests are an, "initial test designed to rapidly and reliably distinguish between negative specimens from those that may be positive."<sup>57</sup> Confirmation tests are a, "test performed to verify positive screening test result and based on chemical principals different from screening test."<sup>58</sup>

In general, the screening tests are immunoassays. An immunoassay consists of the following:

Immunoassays are based on the principle of competition between labeled and unlabeled antigen (drug) for binding sites on a specific antibody. Antibodies are protein substances with sites on their surfaces to which specific drugs or drug metabolites will bind.<sup>59</sup>

There are three immunoassays that can be used as a screening test. They are the Enzyme Multiplied Immunoassay Technique (EMIT), the Fluorescence Polarization Immunoassay (FPIA), and the Radioimmunoassay (RIA). The EMIT was introduced in 1972 and is considered the standard approach for screening tests.<sup>60</sup> This is due in part because it is an inexpensive mass-market test that costs approximately \$20 to \$40, relatively fast, and is highly sensitive to most drugs.<sup>61</sup> The major disadvantages of EMIT are that it does not identify specific drugs, which can lead to accuracy problems, and each drug requires a separate test.<sup>62</sup>

The FPIA is a competitive binding assay which uses a fluorescein-labeled drug to compete with the drug and the

metabolite for attachment to an antibody.<sup>63</sup> The FPIA measures the intensity of polarized light to determine drug concentration.<sup>64</sup> This technique has a major advantage in that it can be fully automated and thus reduce the chance for human error.<sup>65</sup> Other advantages include sensitivity, rapidness, precision and reliability.<sup>66</sup> The disadvantages are similar to the EMIT technique.

The RIA uses radioactive iodine to react with a drug reagent antigen. This test is used by the military as a screening test and is considered very sensitive and reliable.<sup>67</sup> The biggest disadvantages are that the RIA requires a license from the Nuclear Regulatory Commission and it produces radioactive waste.<sup>68</sup>

There are three chromatography's, two of which are used for confirmation purposes. The least specific chromatography test is the Thin-Layer Chromatography (TLC). A TLC can test several drugs at once. It involves extracting the drugs from urine by placing the sample on a covered plate. Then the plate is put in a solvent-containing tank. The solvent shows evidence of drug use by color reactions.<sup>69</sup> It is a simple, inexpensive test that identifies a variety of drugs in one test, but is not extremely sensitive and requires expert interpretation.<sup>70</sup> For this reason, TLC is used as a screening test rather than a confirmation test.

The Gas Chromatography (GC) is much more sophisticated



than the TLC. The GC identifies drugs by the amount of time it takes to pass through an absorbent or inert gas, such as nitrogen or helium.<sup>71</sup> The major advantages of GC is that it is a sensitive technique and small amounts of drugs can be easily identified.<sup>72</sup> The disadvantages are that the test is quite slow and expensive.<sup>73</sup> The GC is primarily used as a confirmation test.

The Gas Chromatography/Mass Spectrometry (GC/MS) is by far the most sophisticated and sensitive test on the market today. The GC/MS uses the molecular structure as a basis for detecting drug classes and specific drug metabolites.<sup>74</sup> Due to its high degree of sophistication and sensitivity, the GC/MS is the preferred test for confirmation purposes. The GC/MS is a very time-consuming and expensive test. A single test can cost \$70 to \$100.<sup>75</sup> The machine used in analysis costs \$100,000 each.<sup>76</sup>

In general, there are five drugs or drug classes that are screened for most often in urinalyses. They are cannabinoids, cocaine, opiates, amphetamines, and phencyclidine. Cannabinoids, such as marijuana and hashish can be detected in the body for quite some time. The metabolite or inactive by-product, tetrahydrocannabinol, can be detected up to a month.<sup>77</sup> The Federal Addiction Research Center found that a person can actually test positive for up to two or three days from just passive inhalation.<sup>78</sup> This means that employees who have never used drugs may be

labeled as drug users. Cocaine, amphetamines, opiates, and phencyclidine (PCP) generally leave the body within four days.<sup>79</sup> The fact that these drugs leave the body so quickly could mean that the weekend drug user may go undetected.

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## CHAPTER THREE

### DRUG TESTING: THE CONTROVERSY

Throughout history there has been constant tension between the government's need to promote the public welfare and the right of people to be secure in their persons. Although these goals are not necessarily at odds, the methods used to achieve each goal often can be. Crucial to this tension is the perspective taken at various times by both the government and private citizens; specifically, individual freedom in our society is perceived as the rule rather than the exception. The problem of drug abuse has brought the tension between governments' need to promote the public welfare and an individual's rights to the forefront once again.

The problem of drug abuse affects a considerable number of private and public employees each year. Drug abuse can affect and disrupt an employee's personal life, as well as his or her work life. The U.S. Chamber of Commerce estimated that it costs American employers over \$60 billion and could be as much as \$100 billion, each year to deal with



employees' drug and alcohol use.<sup>1</sup> Virtually all people are in favor of diminishing or putting an end to drug abuse, but how to accomplish this task is not unanimously agreed upon.

One aspect of the government's effort to control drug abuse which has created great controversy can be found in drug testing. The controversy surrounding drug testing involves public welfare and the "war on drugs" versus an individual's rights and a "Big Brother society."

On one side of the controversy are those who feel that in order to put an end to the drug abuse problem and ensure public welfare, some individual rights must be sacrificed. Government efforts to monitor drug abuse by public employees, through drug testing, have been matched by private sector initiatives to identify these employees who engage in such behavior. The support for these initiatives is found in many segments of society. Many political figures vigorously support drug testing, particularly in pre-election speeches, because it is viewed as a no-lose situation: the general public is opposed to drug abuse.<sup>2</sup>

Moreover, the support is due in part to the fact that society has become aware of the adverse effects of drugs and the Bush and Reagan administrations' "war on drugs." Employers have begun to realize that those employees who abuse drugs can pose a greater safety threat, be absent more often, and be less productive than employees who do not. At the same time, the Bush and Reagan administrations feel that

drug testing is a weapon that can be used in the "war on drugs" to fight the demand side of the drug abuse problem.<sup>3</sup> In essence, those who support drug testing argue that the ends justify the means.

On the other side of the controversy are those who feel that there are other ways to combat the drug abuse problem. Therefore, no individual rights should be sacrificed. Their argument is based on the premise that when government takes action on behalf of the "common good", its efforts are often seen as intrusive. The recent intense preoccupation surrounding drug abuse has lead critics, such as the American Medical Association and the American Association for the Advancement of Science, to label drug testing "chemical McCarthyism" or George Orwell's Big Brother society come to life.<sup>4</sup> It can be argued that when government policy is driven by emotion, citizens rights are often undermined, as they were during the McCarthy era when national security was the concern.

Opposition to recent drug testing of employees has generated considerable public dialogue. This dialogue has involved discussion of issues relating to procedures used to control individual drug samples, the costs of drug testing, the reliability of the results, and violations of the individual's right to privacy. Moreover, opposition has often been viewed as politically unhealthy. Therefore, it has been slow to form, but now opponents enjoy the open

backing from such groups as union personnel, members of Congress, the American Civil Liberties Union (ACLU), and private as well as public employees.<sup>5</sup> Recent court cases and official complaints reflect the growing concern by individual citizens, public employees, and organized labor about the issue of drug testing.

In order to fully understand the nature of the concerns regarding mandatory drug testing, I have directed my research efforts toward those controversies currently under consideration. As stated earlier, the arguments for drug testing, such as cost to employers and safety risks. The arguments against drug testing, focus on questions such as costs to employers, procedures, test reliability, and individual privacy. Therefore, my findings seek to reflect an overview of the nature of the problems surrounding drug testing, paying particular attention to the issues of reliability and invasion of privacy.

#### Justifications for Drug Testing

There are many common justifications that are stated for the increase and use of drug testing. First, public employees' are in positions that require a high amount of integrity. The next justification is that an employer should receive a fair day's work for a fair day's pay. A third justification is that drug testing will reduce employee medical costs associated with drug abuse. In turn,

it will increase the productivity of employees as a whole. Finally, drug testing acts as a deterrent to drug use and thus, will help create a safe work place and society.

It is believed that many public employee have positions that require them to uphold a high degree of responsibility, trust, and integrity. A few of these positions include the military, police personnel, and customs agents. Also, public employees should demonstrate leadership since they are given special privileges and responsibilities to serve the public.<sup>6</sup> One of the responsibilities is to show that drug abuse will not be tolerated.<sup>7</sup> This type of thinking was demonstrated by the Bush Administration's plan to conduct random drug tests on over 80 percent of the 1,850 employees in the Executive Office of the President.<sup>8</sup> The Administration stated that it must offer "leadership in providing random drug testing as a means of ensuring a clean workplace."<sup>9</sup> It is argued that the use of illegal drugs could enable employees to be coerced, influenced, and to act irresponsibly in positions that demand a great deal of reliability, stability, and good judgement.<sup>10</sup> Thus, the use of illegal drugs could pose a threat to national security, the public safety, and law enforcement.<sup>11</sup>

There are two basic arguments with regard to the integrity of public employee's positions. The first is that if an employee is willing to break one law, then he/she might break other laws.<sup>12</sup> In other words, if a public

employee is willing to break the law by taking drugs, then that person may be predisposed to break other laws. The second argument is that the use of drugs can turn into an addiction.<sup>13</sup> Reuter states that these addictions "will induce otherwise honest employees to deviously enrich themselves at the expense of their employer."<sup>14</sup> It is believed that drug testing will help curb drug use and addiction. Therefore, it will help maintain the integrity of public employees.

Further, it is argued that employers should be getting equal work for equal pay. If an employee is under the influence of drugs, then the employer may not be receiving sufficient productivity and thus eventually lose money. The use of drugs can lower a person's productivity due to impairment of his/her performance. Employees' productivity, when drugs are in their system, is 33 percent below that of a drug-free employee.<sup>15</sup>

Additionally, there are other costs associated with drug abuse besides loss in productivity. In a study done by the National Institute of Drug Abuse (NIDA) it was found that drug users were of considerable cost to their employers. According to the NIDA, drugs and alcohol are used on the job by at least 10 percent of American workers.<sup>16</sup> Those employees who use drugs have three times the accident rate and cost of medical benefits.<sup>17</sup> Also, it was found that they were absent twice as much and had a

higher rate of turnover.<sup>18</sup> In sum, it is estimated that each year drug abuse costs employers in this country an estimated \$100 billion in lost productivity, absenteeism, drug-related accidents, medical claims and theft.<sup>19</sup>

Those who support drug testing believe that it will act as a deterrent to drug abuse and thus, cut down on its associated costs. In 1988, the Transportation Department estimated that it could save business about \$8.7 billion in increased productivity, accident reduction, and medical cost savings by reducing drug abuse through drug testing.<sup>20</sup>

Other studies are often given as examples of how drug testing can act as a deterrent. In particular, the Navy reported a decrease in the number of young enlistees testing positive for at least one drug from 48 percent in 1980 to 3 percent in 1987(it should be noted that the Navy raised the detection level from more than 5 nanograms per milliliter to more than 100 nanograms per milliliter, which may account for some of the decrease).<sup>21</sup> The U.S. Coast Guard claims similar success with its drug testing program with a decrease in employees who test positive from 10.3 percent in 1984 to 2.9 percent in 1989.<sup>22</sup>

The last and most often expressed argument for drug testing deals with ensuring the safety of society. It is believed that the health and safety of the citizens is society's moral duty.<sup>23</sup> Even some of those who argue that drug testing may infringe on one's privacy feel that it is a

reasonable act, due to the safety threat of drug and alcohol abusers.<sup>24</sup>

The fact people are placed in a position of danger by those who use drugs, especially in the transportation and national security, draws major support for drug testing. This line of defense is fueled by tragic examples. One such example occurred in January 1987, when a collision between a Conrail freight locomotive and an Amtrack passenger train in Maryland led to 16 deaths and more than 170 injuries.<sup>25</sup> The accident was caused by the Conrail locomotive running stop signals and hitting the Amtrack train shortly after the Conrail engineer and brakeman had smoked marijuana.<sup>26</sup> Additionally, between 1975 and 1983, abuse-related accidents accounted for 34 deaths and \$28 million worth of damages.<sup>27</sup> It is felt that, although drug testing may be an invasion of privacy, it is of little consequence when taking into account the danger that drugs could pose to human life and property.

While it appears that there are sound justifications for drug testing, there are also many justifications as to why drug testing programs should not be implemented.

#### Arguments Against Drug Testing

The opposition against drug testing centers around the four major issues: procedures and accountability; costs of drug tests; the reliability of test results; and the

invasion of an individual's privacy. The greatest opposition is directed at the issues of reliability and invasion of privacy.

The issue of procedures and accountability involves the procedures used to collect specimens for testing, preservation of samples, and translating the test results into evidence that a non-expert can easily understand.<sup>28</sup> The procedures used to collect specimens can present a unique dilemma for an employer. Specifically, the employer must be able to establish that the suspected employee actually gave the sample being tested. This seems easy enough to prove except for the fact that the collection procedure is viewed as being more intrusive with more monitoring.<sup>29</sup>

Though close monitoring is needed, it has been held that direct supervision and observation of urination is intrusive and offensive to the privacy rights of employees.<sup>30</sup> However, this has resulted in the substitution of other non-human forms of urine as well as the sale of drug-free urine. In 1986, urine could be purchased from a firm in Texas for \$49.95.<sup>31</sup> This can be dealt with by employers in a variety of ways. They can search employees prior to testing, put "blueing agents" in the water system, immediately check samples for temperature and color, and place a person of the same gender in the room, but not directly observing.



Once a sample has been collected, employers must ensure that it remains in the same condition and that it has not been switched or changed in any way. According to Chamberlain, this is when the chain of custody "is needed to establish control and accountability of specimens after collection until testing is completed, results reported, and while specimens are in storage."<sup>32</sup> Chain of custody shows who came in contact with the sample and when. Thus, the shorter the chain, the better the quality control an employer will have. Additionally, employers must choose a laboratory that has an acceptable internal quality control system. Employers and laboratories should determine how many control samples to use and the procedures to ensure that their samples are not given special treatment or consideration.<sup>33</sup>

The type of record keeping, retention period, confidentiality, and chain of custody all apply to the test and procedural safeguards of the laboratory. This is very important since high error rates can occur from administrative and operation errors, such as inadequate management and personnel, broken chain of custody, and improper record keeping.<sup>34</sup> Finally, laboratory personnel must be prepared to describe the tests, how they work, and why a sample tested positively.<sup>35</sup> If they fail to do so, they may be sued or have one of their cases thrown out of court.

It is also argued that the cost to implement drug testing programs is much higher than currently stated estimates. When President Reagan issued an Executive Order that dealt with drug testing in September 1986, the estimated cost to implement the program was \$56 million.<sup>36</sup> That figure is considered by many to be a very conservative estimate. To begin with, the order stated that all 1,100,000 sensitive position employees, positions with clearances, anyone serving under the President, and those in law enforcement or public safety must be tested.<sup>37</sup> This brings the total number of people to be tested at more than 1,350,000 people, or 64 percent of the federal work force.<sup>38</sup>

If you use the estimated cost of \$15 to \$45, for mass-market tests, this would make the initial cost of the testing a minimum of \$20 million. Add to this the cost of rehabilitation, \$1,250 per person, for those who test positive and you have \$135 million more. This is calculated by using a very low rate of 8 percent of the employees who test positive.<sup>39</sup> According to Schroeder, the cost of litigation in trying to fire those who test positive could run as high as \$90 million.<sup>40</sup> In one case alone a woman was paid \$485,000 in awarded damages because she was fired for refusing to take a urinalysis.<sup>41</sup> In another case a Texas court awarded \$200,000 to a falsely accused employee.<sup>42</sup> These were in the private sector, but could easily happen in the public sector.

There is also the cost for time lost and quality control, estimated at \$10 million.<sup>43</sup> The total estimated cost would be closer to \$255 million, almost \$200 million more than the Reagan administration's estimate. This is not including the cost if the government is allowed to test all 4 million that are connected with the Executive Office of the President and the Transportation Department.

As previously mentioned, the problem with the reliability of urine tests is one of the strongest arguments made against drug testing. It is argued that the unreliability of the tests results may lead to an employee being falsely labeled a drug user or could lead to a drug user not being detected. A drug test's accuracy and reliability are determined by its sensitivity and specificity.<sup>44</sup> The sensitivity is a measure of how well the test detects true positives, while the specificity is a measure of how well a test detects true negatives.<sup>45</sup> The higher the sensitivity the less false negatives and the higher the specificity, the less false positives a test will show.<sup>46</sup> Thus, an increased level of sensitivity, without an increase in specificity, can result in more false positives.<sup>47</sup>

Initial drug tests (Refer to Chapter Two) such as the RIA and EMIT can have high rates of false positives because of their high sensitivity and low specificity. The RIA "may yield false positive rates of 43 percent for cocaine, 21 percent for opiates, 51 percent for PCP, and 42 percent for

barbiturates."<sup>48</sup> The EMIT does not fair much better, "may have false positive rates estimated at 10 percent for cocaine, 5.6 percent for opiates, 5.1 percent for barbiturate, 12.5 percent for amphetamines, and 19 percent for tetrahydrocannabinol."<sup>49</sup> The false positives may be due in part to cross-reactivity.

When over-the-counter, prescription drugs, and foods result in a diagnosis of false-positive, it is known as cross-reactivity.<sup>50</sup> Nasal decongestants, diet pills, heart and asthma medication can show up as amphetamines in drug tests.<sup>51</sup> Cough syrups that contain dextromethorphan can show up as opiates, and anti-inflammatory drugs or painkillers, like Advil and Nuprin, can be diagnosed as marijuana according to O'Keefe.<sup>52</sup> Many foods can also show up as false-positive. A positive test for heroin can result from eating a poppyseed bagel.<sup>53</sup> Some herbal teas have produced a positive result for cocaine use.<sup>54</sup> The problems with cross-reactivity have led the Syva Corporation, which makes the popular EMIT drug test, to reformulate the reagents in the screening process at least three times in order to avoid false reactivity.<sup>55</sup> Due to problems such as these it is recommend that confirmations tests be used.

Under the most ideal conditions, having unlimited time, the best instruments (GC/MS), and the most qualified laboratory technician, urine tests are 98 to 99 percent accurate. A one percent error may seem acceptable, however,

it must be considered within the context of those affected. This is illustrated by the fact that if the Bush and Reagan Administrations' testing programs are upheld, then out of the 3.1 million federal workers subject to testing, nearly 31,000 will be judged incorrectly. Some of these 31,000 misjudged tests will be false-positive, while some will be false-negative. Even if only 25 percent of the misjudged tests are judged false-positive, that amounts to approximately 8,000 people who will be processed and labeled as drug users. It can certainly have a serious effect on their careers. Just as there is no such thing as ideal competition or an ideal economy, there is no such thing as an ideal drug test. This means that the rate of error may be much higher than the ideal rate of one percent.

Some other factors that can contribute to diminish the reliability of drug tests are the fact that samples are sometimes handled improperly (chain of custody and procedures). Also, the tests do not measure when a drug was taken, and how much was taken, therefore, cannot measure the level of impairment.<sup>56</sup>

In studies done by the Center for Disease Control (CDC) and the National Institute of Drug Abuse (NIDA), it was determined that error rates were quite high. Specifically, CDC studies were done using 13 laboratories which served 262 testing centers across the country.<sup>57</sup> These laboratories were sent urine samples that had drugs already inserted.

When the labs were aware that the samples were from the CDC, the drug-detection error rate averaged below 10 percent.<sup>58</sup> The drug-detection error rates average jumped 31 percent, with a high of 100 percent, when the labs were not aware that identical samples were from the CDC.<sup>59</sup> Overall, 91 percent of the laboratory tests failed to achieve a 60 percent accuracy rate.<sup>60</sup> Laboratories are already getting a workload that is stressing their capabilities. Adding the additional burden of more drug testing, in both the private and public sectors, may adversely influence the reliability and accuracy.

The NIDA study involved medical laboratories proficiency. The presence of illegal drugs in drug-free urine samples was reported by 20 percent of the laboratories.<sup>61</sup> The NIDA reported that the tests are more likely to label innocent people as drug users than to identify real users because the error rates for drug tests are higher than the actual drug use in the workforce.<sup>62</sup> Moreover, in an independent study, 100 out of 160 urine samples were diagnosed false-positive.<sup>63</sup> In a study on drug testing conducted by Northwestern University, false-positives were found among 25% of the EMIT positives.<sup>64</sup>

Another argument in support of the problem of reliability of drug tests is that they are overly sensitive to some drugs and insensitive to others. The drug tests are probably most sensitive to the least dangerous drug,

marijuana. Its metabolite or inactive by product, tetrahydrocannabinol, can be detected for up to a month.<sup>65</sup> The federal Addiction Research Center found that a person can actually test positive for up to two or three days from just passive inhalation.<sup>66</sup> The tests are least sensitive to the one illicit drug whose use is rising, cocaine.<sup>67</sup> Cocaine usually disappears within two days. This means that a person could use cocaine on the weekend and probably go undetected.

A final aspect of the issue of reliability is the level of impairment. The argument is that even if the various urine tests were 100 percent accurate, a positive test tells an employer nothing about the level of impairment on the job, how recent the drug was used, or how often.<sup>68</sup> Moreover, employers must show worker dysfunction or malfeasance in order to discipline a them for misconduct.<sup>69</sup> Worker dysfunction occurs when an employee is unable to function safely and effectively due to intoxication or impairment, while worker malfeasance is possessing or consuming a chemical substance at work.<sup>70</sup> Urine drug tests demonstrate neither. It is also important to note that possession of a controlled substance is usually illegal, but being under the influence often is not.<sup>71</sup>

Additionally, even if blood tests were used, the question of impairment is still not fully answered. One problem is that the concentration levels for drugs in blood

are not as precise as concentration levels for alcohol.<sup>72</sup> Valium, a legally prescribed drug, will show relatively low levels of concentration when a person is impaired, but high levels of concentration several hours after impairment.<sup>73</sup> Marijuana passes through blood in only a few hours, while PCP does not show up at all.<sup>74</sup>

Alcohol is another drug that is virtually undetectable after a few hours. I find it surprising that more is not made of mandatory testing for alcohol. Even though alcohol is legal, it surely can affect a worker's ability as much, if not more than the other drugs. Alcohol is also a much bigger problem in the workplace than other forms of drugs.<sup>75</sup>

Another problem with impairment is the establishment of specific levels for impairment. While there are laws establishing impairment for alcohol, there are no laws specific for drug impairment.<sup>76</sup> Even with alcohol there are various levels for impairment. The District of Columbia has a level of .05, while North Dakota is .10. In essence, since there are no established levels for drug detection an employer can set their own levels. This may have an affect on whether an employee is considered positive for drug use.

Probably, the biggest opposition to drug testing is in the realm of invasion of privacy. This is related to the Fourth Amendment, which protects people from unreasonable search and seizure from the government. When determining what is legitimately private to a person who is employed or



seeking employment, you must look at the relationship between employee and employer which depends greatly upon the customs, conventions, and rules of society.<sup>77</sup> It a complex relationship, one in which the employee is contracted by an employer to perform services which will bring him/her a gain. The employer/employee relationship is basically a complicated mixture of trust and antagonism, connectedness and disparity of ends.<sup>78</sup> There are two types of information to which an employer is entitled. The first is information which is job relevant to the employer. This is information which is directly connected to the job description. The second type of information that an employer is entitled to is the kind that shows a person can perform a certain task in an acceptable manner.

The issue of drug testing, invasion of privacy and the Fourth Amendment whhich has been brought before the U.S. Supreme Court on several occasions, has provided mixed guidance. One of the first questions asked, regarding drug testing and the Fourth Amendment, is whether obtaining blood samples constitutes a search and seizure and thus, an invasion of privacy. There is no doubt that the Supreme Court considers the collection of blood samples a search and seizure under the Fourth Amendment. In a landmark case, *Schmerber v. California*(1966), the Supreme Court found that "the taking of a blood sample was assumed to be a seizure to be a "seizure" because it was an invasion of the body."<sup>79</sup>

The court stated,

Search warrants are ordinarily required for searches of dwellings, and absent an emergency, no less could be required where intrusions into the human body are concerned ...The importance of informed, detached and deliberate determinations of the issue whether or not to invade another's body in search of evidence of guilt is indisputable and great.<sup>80</sup>

In essence, the court ruled that "intrusions into the body are permitted by the Fourth Amendment only if a warrant is issued or exigent circumstances exist and there is an indication that evidence will be found."<sup>81</sup> This ruling was reaffirmed in the more recent cases *Skinner v. Railway Labor Executives Association*(1989) and *United States v. Berry*(1989).

A second question that is asked is whether the collection of urine samples constitutes a search and seizure under the Fourth Amendment. The argument is made that while the taking of blood is invasive, a urine sample is only a waste product of the body and is not invasive.<sup>82</sup> In *Capua v. City of Plainfield*(1986), the court did not see a distinction.<sup>83</sup> Moreover, "it found the involuntary taking of urine under direct observation to be both a search and a seizure."<sup>84</sup> Recent court cases, such as *Skinner v. Railway Labor Executives' Association*(1989) and *Treasury Employees v. Von Raab*(1989), have reaffirmed this decision. In *Treasury Employees v. Von Raab*, the court stated the following:

Where the Government requires its employees to produce urine samples to be analyzed for evidence of illegal

drug use, the collection and subsequent chemical analysis of such samples are searches that must meet the reasonableness requirement of the Fourth Amendment.<sup>85</sup>

Thus, the U.S. Supreme Court has found that the taking of blood and urine samples constitutes a search and seizure by the Fourth Amendment. This means that without a warrant or reasonable circumstances, they cannot be obtained. Examples of reasonable searches without a warrant are blood-alcohol and breathalyzer tests.

The question that must be answered is what determines a reasonable search? The Court uses the following test to determine if drug testing of urine will be permitted: "The constitutionality of urine testing is evaluated by balancing the need for the testing against the individual's expectation of privacy."<sup>86</sup> Basically, the balance test which weighs the need to search or seize against the invasion of this action, is used by the courts to determine whether there has been an unreasonable invasion of privacy.<sup>87</sup> In two recent court cases, *Skinner v. Railway Labor Executives*(1989) and *Treasury Employees v. Von Raab*(1989), the court found the Government's compelling interest outweighed the employees' minimal interests. The court stated in *Treasury Employees v. Von Raab*:

In sum, we believe the Government has demonstrated that its compelling interests in safeguarding our borders and the public safety outweigh the privacy expectations of employees who seek to be promoted to positions that directly involve the interdiction of illegal drugs or that require the incumbent to carry a firearm. We hold that the testing of

these employees is reasonable under the Fourth Amendment.<sup>68</sup>

The court also ruled that employers could test for alcohol and drugs even though there was lack of individualized suspicion and probable cause.<sup>69</sup> This may result in employees being tested for drugs as a means of control. In general, people can only be asked if they have used drugs if they are going to be handling narcotics or it is believed that drugs are impairing their performance. Thus, permitting employers to test without any evidence that a person's performance is being impaired by drugs lets them use testing to punish or silence grievances by employees.<sup>70</sup> In one example, a group of safety inspectors, whose performance was satisfactory, were fired after failing ordered drug tests. All this was brought on because they had complained to the Nuclear Regulatory Commission about problems at the plant. Employers have to show that there is a real drug-related impairment to performance. This is not an easy matter to prove since tests do not measure levels of impairment. Also, testing without a reasonable basis puts the worker under a cloud of suspicion.<sup>71</sup> It was concluded drug tests (urine) are "offensive and demoralizing to employees and hence, destructive to work productivity," in a report by the House Committee on the Postal Service and Civil Service.<sup>72</sup>

Urine drug testing also violates the right to privacy since it can reveal details of a person's private life,

unrelated to illegal drug use. "An employer can determine whether an employee or job applicant is being treated for a heart condition, depression, epilepsy, or asthma."<sup>93</sup>

In summary, it appears that the U.S. Supreme Court's balancing test has given little guidance and thus, leaves the lower courts to decide on a case-by-case basis.<sup>94</sup> The court has established that obtaining samples for drug testing is a search and seizure under the Fourth Amendment, but whether it is an unreasonable search will be determined based on the given case.

## CHAPTER THREE

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## CHAPTER FOUR

### CONCLUSION

There has been a increase in the use of drug testing, in both the public and private sectors, during the last decade. The public employees, in particular, have witnessed a dramatic increase largely due to President Reagan's "Executive Order for a Drug Free Workplace" and the Reagan and Bush Administration's "war on drugs." These actions expanded the scope and intensity of drug testing, while at the same time legitimizing such action.

While the use of drug testing has been on the rise, it is by no means a cut-and-dry issue. There are many who staunchly support drug testing, but there are also those who just as staunchly oppose it. Those who support drug testing argued that something must be done to diminish or end the serious problem of drug abuse in America. They feel that drug testing is a weapon to fight the demand side of the "war on drugs." Moreover, by using drug testing, supporters argue that costs associated with drug abuse, such as increased absenteeism, lower productivity, and higher

medical costs, will be diminished. Additionally, it is argued that public employees hold positions that require high levels of trust and integrity, by submitting to drug testing it will demonstrate acceptance and leadership to the general public. The most support for drug testing is in the realm of public safety. It is argued that many of the positions that public employees hold, such as those in the Transportation Department, deal with a large number of people. Further, an employee who is impaired while on the job puts the lives of the public at risk.

Those who oppose drug testing argue that the procedures and accountability of drug testing programs could lead to false accusations. Also, it is argued that while drug abuse is of considerable cost to employers, the cost of drug testing would also be quite large. The major opposition to drug testing is focus at the issues of reliability and invasion of privacy. Many argued that the test results are often unreliable and drug tests violates an individual's privacy. This study attempted to closely examine the issues of reliability and invasion of privacy.

Clearly, both sides of the drug testing issue have very good justifications for why drug testing should or should not be conducted. While there is no doubt that public safety should be a major consideration, the issues of reliability and invasion of privacy must also be considered.

In this study it was found that initial drug tests,

such the RIA or EMIT, can be very unreliable. In fact, because of cross-reactivity, many over-the-counter drugs appear as illegal drugs in these. The more sophisticated test, GC\MS, was found to be much more reliable at 98 to 99 percent. Due to this fact, it is recommended that if drug testing is going to be conducted, all initial tests should be confirmed by a test such as the GC/MS. Through the examination of the issue of reliability in this study, it is recommended that other possible alternatives to drug testing be considered. One reason for this recommendation is that even a one percent error rate can adversely affect a large number of public employees. Though the major reason is that the test results of urine samples and drug tests in general, fail to show level of impairment. All a positive test result shows is that a drug was taken at some time. Until test results can demonstrate inconclusive impairment the use of drug testing only acts as a control mechanism.

With regard to the issue of invasion of privacy, this study found that the U.S. Supreme Court considers the obtainment of urine or blood samples a search and seizure under the Fourth Amendment. The question than becomes whether the search is reasonable. To determine this the Court balances the Government's interest against the individual's interest. In recent cases the Supreme Court has ruled in favor of Government interest. More importantly the Court ruled that individual suspicion was not needed.

In the author's opinion, rulings such as those made by the Supreme Court in *Skinner v. Railway Labor Executives Assn*(1989) and *Treasury Employees v. Von Raab*(1989), are a mistake and could lead greatly affect the freedoms enjoyed under the Bill of Rights. Also, the rulings will in all likelihood led to a push by the Federal government to bring drug testing to a new level. Though overall drug testing will increase, random drug testing will decline in the future. A major reason for this is that random testing may violate employees' substantive and due process rights under the Fifth and Fourteenth Amendments.

To avoid the problems surrounding employee drug testing, employer's should invest their energy and money in employee assistance programs and drug education programs. This will avoid potential lawsuits, while still addressing the problem of drug abuse. Also, future technology may provide a way to measure employees' impairment, but not infringe on their rights' to privacy. Currently, there is work being done on a computer-based test that is quick to administer and focuses on impairment. The test measures hand-eye coordination and quick reaction time, which are needed for many public safety related jobs. Though this test may present problems of its own, it seems like a workable solution to drug testing.

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