TREASURY EMPLOYEES v. VON RAAB, 489 U.S. 656 (1989)

Emphasizing the "special needs" of the public school context, reflected in the "custodial and tutelary" power that schools exercise over students, and also noting schoolchildren's diminished expectation of privacy, the Court in Vernonia School District v. Acton Supp.7 upheld a school district's policy authorizing random urinalysis drug testing of students who participate in interscholastic athletics. The Court redefined the term "compelling" governmental interest. The phrase does not describe a "fixed, minimum quantum of governmental concern," the Court explained, but rather "describes an interest which appears important enough to justify the particular search at hand." Supp.8 Applying this standard, the Court concluded that "deterring drug use by our Nation's schoolchildren is at least as important as enhancing efficient enforcement of the Nation's laws against the importation of drugs . . . or deterring drug use by engineers and trainmen." Supp.9 On the other hand, the interference with privacy interests was not great, the Court decided, since schoolchildren are routinely required to submit to various physical examinations and vaccinations. Moreover, "[l]egitimate privacy expectations are even less [for] student athletes, since they normally suit up, shower, and dress in locker rooms that afford no privacy, and since they voluntarily subject themselves to physical exams and other regulations above and beyond those imposed on non-athletes. The Court "caution[ed] against the assumption that suspicionless drug testing will readily pass muster in other contexts," identifying as "the most significant element" in Vernonia the fact that the policy was implemented under the government's responsibilities as guardian and tutor of schoolchildren. Supp.10

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Moreover, the mere circumstance that all but a few of the employees tested are innocent does not impugn the program's [489 U.S. 656, 658] validity, since it is designed to prevent the substantial harm that could be caused by the promotion of drug users as much as it is designed to detect actual drug use. Pp. 673-675.

Addicts may be unable to abstain even for a limited period or may be unaware of the "fade-away effect" of certain drugs. More importantly, since a particular employee's pattern of elimination for a given drug cannot be predicted with perfect accuracy and may extend for as long as 22 days, and since this information is not likely to be known or available to the employee in any event, he cannot reasonably expect to deceive the test by abstaining…. Pp. 676-677.

We have recognized before that requiring the Government to procure a warrant for every work-related intrusion "would conflict with `the common-sense realization that government offices could not function if every employment decision became a constitutional matter.'" O'Connor v. Ortega, supra, at 722, quoting Connick v. Myers, 461 U.S. 138, 143 (1983). See also 480 U.S., at 732 (SCALIA, J., concurring in judgment); New Jersey v. T. L. O., supra, at 340

NATIONAL TREASURY EMPLOYEES UNION ET AL. v. VON RAAB, COMMISSIONER, UNITED STATES CUSTOMS SERVICE
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
No. 86-1879.

Argued November 2, 1988
Decided March 21, 1989

The United States Customs Service, which has as its primary enforcement mission the interdiction and seizure of illegal drugs smuggled into the country, has implemented a drug-screening program requiring urinalysis tests of Service employees seeking transfer or promotion to positions having a direct involvement in drug interdiction or requiring the incumbent to carry firearms or to handle "classified" material. Among other things, the program requires that an applicant be notified that his selection is contingent upon successful completion of drug screening, sets forth procedures for collection and analysis of the requisite samples and procedures designed both to ensure against adulteration or substitution of specimens and to limit the intrusion on employee privacy, and provides that test results may not be turned over to any other agency, including criminal prosecutors, without the employee's written consent. Petitioners, a federal employees' union and one of its officials, filed suit on behalf of Service employees seeking covered positions, alleging that the drug-testing program violated, inter alia, the Fourth Amendment. The District Court agreed and enjoined the program. The Court of Appeals vacated the injunction, holding that, although the program effects a search within the meaning of the Fourth Amendment, such searches are reasonable in light of their limited scope and the Service's strong interest in detecting drug use among employees in covered positions.

Held:

1. 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. Cf. Skinner v. Railway Labor Executives' Assn., ante, at 616-618. However, because the Service's testing program is not designed to serve the ordinary needs of law enforcement - i. e., test results may not be used in a criminal prosecution without the employee's consent, and the purposes of the program are to deter drug use among those eligible for promotion to sensitive positions and to prevent the promotion of drug users to those positions - the public interest in the program must be balanced against [489 U.S. 656, 657] the individual's privacy concerns implicated by the tests to determine whether a warrant, probable cause, or some level of individualized suspicion is required in this particular context. Railway Labor Executives, ante, at 619-620. Pp. 665-666.

2. A warrant is not required by the balance of privacy and governmental interests in the context of this case. Such a requirement would serve only to divert valuable agency resources from the Service's primary mission, which would be compromised if warrants were necessary in connection with routine, yet sensitive, employment decisions. Furthermore, a warrant would provide little or no additional protection of personal

privacy, since the Service's program defines narrowly and specifically the circumstances justifying testing and the permissible limits of such intrusions; affected employees know that they must be tested, are aware of the testing procedures that the Service must follow, and are not subject to the discretion of officials in the field; and there are no special facts for a neutral magistrate to evaluate, in that implementation of the testing process becomes automatic when an employee pursues a covered position. Pp. 666-667.

3. The Service's testing of employees who apply for promotion to positions directly involving the interdiction of illegal drugs, or to positions that require the incumbent to carry firearms, is reasonable despite the absence of a requirement of probable cause or of some level of individualized suspicion. Pp. 667-677.

(a) In light of evidence demonstrating that there is a national crisis in law enforcement caused by the smuggling of illicit narcotics, the Government has a compelling interest in ensuring that front-line interdiction personnel are physically fit and have unimpeachable integrity and judgment. It also has a compelling interest in preventing the risk to the life of the citizenry posed by the potential use of deadly force by persons suffering from impaired perception and judgment. These governmental interests outweigh the privacy interests of those seeking promotion to such positions, who have a diminished expectation of privacy in respect to the intrusions occasioned by a urine test by virtue of the special, and obvious, physical and ethical demands of the positions. Pp. 668-672.

(b) Petitioners' contention that the testing program is unreasonable because it is not based on a belief that testing will reveal any drug use by covered employees evinces an unduly narrow view of the context in which the program was implemented. Although it was not motivated by any perceived drug problem among Service employees, the program is nevertheless justified by the extraordinary safety and national security hazards that would attend the promotion of drug users to the sensitive positions in question. Moreover, the mere circumstance that all but a few of the employees tested are innocent does not impugn the program's [489 U.S. 656, 658] validity, since it is designed to prevent the substantial harm that could be caused by the promotion of drug users as much as it is designed to detect actual drug use. Pp. 673-675.

(c) Also unpersuasive is petitioners' contention that the program is not a sufficiently productive mechanism to justify its intrusion on Fourth Amendment interests because illegal drug users can easily avoid detection by temporary abstinence or by surreptitious adulteration of their urine specimens. Addicts may be unable to abstain even for a limited period or may be unaware of the "fade-away effect" of certain drugs. More importantly, since a particular employee's pattern of elimination for a given drug cannot be predicted with perfect accuracy and may extend for as long as 22 days, and since this information is not likely to be known or available to the employee in any event, he cannot reasonably expect to deceive the test by abstaining after the test date is assigned. Nor can he expect attempts at adulteration to succeed, in view of the precautions built into the program to ensure the integrity of each sample. Pp. 676-677.

> 4. The record is inadequate for the purpose of determining whether the Service's testing of those who apply for promotion to positions where they would handle "classified" information is reasonable, since it is not clear whether persons occupying particular positions apparently subject to such testing are likely to gain access to sensitive information. On remand, the Court of Appeals should examine the criteria used by the Service in determining what materials are classified and in deciding whom to test under this rubric and should, in assessing the reasonableness of requiring tests of those employees, consider pertinent information bearing upon their privacy expectations and the supervision to which they are already subject. Pp. 677-678.

Illicit drug users, the court found, are susceptible to bribery and blackmail,….

As we note in Railway Labor Executives, our cases establish that where a Fourth Amendment intrusion serves special governmental needs, beyond the normal need for law enforcement, it is necessary to balance the individual's privacy expectations against the Government's interests to determine whether it is impractical to require a warrant or [489 U.S. 656, 666] some level of individualized suspicion in the particular context. Ante, at 619-620.

Petitioners do not contend that a warrant is required by the balance of privacy and governmental interests in this context, nor could any such contention withstand scrutiny. We have recognized before that requiring the Government to procure a warrant for every work-related intrusion "would conflict with `the common-sense realization that government offices could not function if every employment decision became a constitutional matter.'" O'Connor v. Ortega, supra, at 722, quoting Connick v. Myers, 461 U.S. 138, 143 (1983). See also 480 U.S., at 732 (SCALIA, J., concurring in judgment); New Jersey v. T. L. O., supra, at 340 (noting that "[t]he warrant requirement . . . is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools").

a warrant would provide little or nothing in the way of additional protection of personal privacy. A warrant serves primarily to advise the citizen that an intrusion is authorized by law and limited in its permissible scope and to interpose a neutral magistrate between the citizen and the law enforcement officer "engaged in the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 U.S. 10, 14 (1948).

United States v. Martinez-Fuerte, 428 U.S., at 557

Our precedents have settled that, in certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion. E. g., ante, at 624.

United States v. Ramsey, 431 U.S. 606, 608 -609 (1977).

The record also indicates, and it is well known, that drug smugglers do not hesitate to use violence to protect their lucrative trade and avoid apprehension. Id., at 109.

Without disparaging the importance of the governmental interests that support the suspicionless searches of these employees, petitioners nevertheless contend that the Service's drug-testing program is unreasonable in two particulars. First, petitioners argue that the program is unjustified because it is not based on a belief that testing will reveal any drug use by covered employees. In pressing this argument, petitioners point out that the Service's testing scheme was not implemented in response to any perceived drug problem among Customs employees, and that the program actually has not led to the discovery of a significant number of drug users. Brief for Petitioners 37, 44; Tr. of Oral Arg. 11-12, 20-21. Counsel for petitioners informed us at oral argument that no more than 5 employees out of 3,600 have tested positive for drugs. Id., at 11. Second, petitioners contend that the Service's scheme is not a "sufficiently productive mechanism to justify [its] intrusion upon Fourth Amendment interests," Delaware v. Prouse, 440 U.S. 648, 658 -659 (1979), because illegal drug users can avoid detection with ease by temporary abstinence or by surreptitious adulteration of their urine specimens. Brief for Petitioners 46-47. These contentions are unpersuasive. [489 U.S. 656, 674]

Petitioners' first contention evinces an unduly narrow view of the context in which the Service's testing program was implemented. Petitioners do not dispute, nor can there be doubt, that drug abuse is one of the most serious problems confronting our society today. There is little reason to believe that American workplaces are immune from this pervasive social problem, as is amply illustrated by our decision in Railway Labor Executives. See also Masino v. United States, 589 F.2d 1048, 1050 (Ct. Cl. 1978) (describing marijuana use by two Customs inspectors). Detecting drug impairment on the part of employees can be a difficult task, especially where, as here, it is not feasible to subject employees and their work product to the kind of day-to-day scrutiny that is the norm in more traditional office environments. Indeed, the almost unique mission of the Service gives the Government a compelling interest in ensuring that many of these covered employees do not use drugs even off duty, for such use creates risks of bribery and blackmail against which the Government is entitled to guard. In light of the extraordinary safety and national security hazards that would attend the promotion of drug users to positions that require the carrying of firearms or the interdiction of controlled substances, the Service's policy of deterring drug users from seeking such promotions cannot be deemed unreasonable.

The mere circumstance that all but a few of the employees tested are entirely innocent of wrongdoing does not impugn the program's validity. The same is likely to be true of householders who are required to submit to suspicionless housing code inspections, see Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967),…. The Service's program is designed to prevent the promotion of drug users to sensitive positions as much as it is designed to detect those employees who use drugs.

We think petitioner's second argument - that the Service's testing program is ineffective because employees may attempt to deceive the test by a brief abstention before the test date, or by adulterating their urine specimens - overstates the case. As the Court of Appeals noted, addicts may be unable to abstain even for a limited period of time, or may be unaware of the "fade-away effect" of certain drugs. 816 F.2d, at 180.

We think petitioner's second argument - that the Service's testing program is ineffective because employees may attempt to deceive the test by a brief abstention before the test date, or by adulterating their urine specimens - overstates the case. As the Court of Appeals noted, addicts may be unable to abstain even for a limited period of time, or may be unaware of the "fade-away effect" of certain drugs. 816 F.2d, at 180. More importantly, the avoidance techniques suggested by petitioners are fraught with uncertainty and risks for those employees who venture to attempt them. A particular employee's pattern of elimination for a given drug cannot be predicted with perfect accuracy, and, in any event, this information is not likely to be known or available to the employee. Petitioners' own expert indicated below that the time it takes for particular drugs to become undetectable in urine can vary widely depending on the individual, and may extend for as long as 22 days. App. 66. See also ante, at 631 (noting Court of Appeals' reliance on certain academic literature that indicates that the testing of urine can discover drug use "`for . . . weeks after the ingestion of the drug'"). Thus, contrary to petitioners' suggestion, no employee reasonably can expect to deceive the test by the simple expedient of abstaining after the test date is assigned. Nor can he expect attempts at adulteration to succeed, in view of the precautions taken by the sample collector to ensure the integrity of the sample. In all the circumstances, we are persuaded that the program bears a close and substantial relation to the Service's goal of deterring drug users from seeking promotion to sensitive positions. 4 [489 U.S. 656, 677]