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Sandra S. Klein

ABSTRACT. Drug testing is one of the most controversial of recent privacy issues. The bibliography which follows provides the reader with access to a wide range of discussion on this topic which is, or should be, of interest to everyone. Whether in our private lives, or on the job, drug use and drug testing will have an impact on every one of us.

One of the most controversial of recent privacy issues revolves around the practice of drug testing. At a time when individual privacy seems under increasing pressure from several quarters, the imposition of drug testing only serves to further complicate privacy concerns.

Of interest to widely varying groups within society, drug testing programs have affected a surprisingly broad subset of the American population, including: members of the armed forces, health professionals, public transportation and other over-the-road drivers, the airline industry, federal, state, and local government employees, amateur and professional athletes, and students, among others. It seems clear that as the general concern for public safety grows, not only will more people become affected by drug testing programs, but that the contention already surrounding their use (and perceived abuse) can only be exacerbated.

Of primary legal interest regarding drug testing is the fourth amendment and its concern for unreasonable searches and seizures.

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It should be remembered that this amendment does not in any way proscribe actions that are deemed "reasonable," and it is precisely the question of what types of drug testing may be deemed to be "reasonable" that lies at the heart of this extraordinarily complex legal dilemma. What, for example, is it "reasonable" for a city to do when it is justifiably concerned about the use of drugs on the part of its subway personnel? Similarly, is it inherently "reasonable" for a community to expect its police officers to submit to random drug testing because there is a socially-perceived need to ensure against harmful actions taken by affected individuals?

In their articles, both Craig M. Ayers ("Constitutional Issues Implicated by Public Employee Drug Testing") and Phyllis T. Bookspan ("Behind Open Doors: Constitutional Implications of Government Employee Drug Testing"), among others, take a careful look at the range of issues surrounding the increasing use of urinalysis in the public employee workplace and its fourth amendment considerations. Similarly, Daniel J. Fritze expands the discussion to include government-related/government regulated industries, while Mary E. Lathers asks, and is prepared to answer, the penultimate question in her article, "Do you abandon all Constitutional Protections by Accepting Employment with the Government? Mandatory Drug Testing of Government Employees Violates the Fourth Amendment."

On the private employee side of the issue, other concerns are voiced, as well. What, for example, is the legitimate consequence, if any, for an employee who, while being tested for one substance, is found to exhibit some other problem? Or, what guidelines should apply to employers who are concerned with a more "holistic" approach to their employees lives? Jon D. Bible provides a basic labor law exploration of this question in "When Employers Look for Things Other Than Drugs: The Legality of AIDS, Genetic, Intelligence, and Honesty Testing in the Workplace." General issues are looked at in another overview article by Stephone K. Addison: "Drug Testing: Avoiding a Prospective Chill on Employees' Rights to Privacy and Fourth Amendment Protection Against Unreasonable Searches and Seizures."
Drug testing is affecting adults not just as straightforward employees, but as the parents of young athletes, and as amateur or professional athletes as well. Deanne L. Ayers, in her article, “Random Urinalysis: Violating the Athlete’s Individual Rights?” concerns herself with broad questions of civil and privacy rights. Along the same lines, David R. Cochran, Charles F. Knapp, and Kerrie S. Covell briefly survey the areas of amateur and college athletics and the ways in which they have been affected by the imposition of drug testing.

Finally, the important issue of “balancing” is reviewed in some depth by a number of commentators who seek to detail the ways in which personal privacy imperatives are to be balanced against the perceived social good associated with drug testing. Laura A. Lundquist, in her detailed examination, “Weighing the Factors of Drug Testing for Fourth Amendment Balancing,” considers historical and practical, as well as theoretical, matters in evaluating the drug testing issue. Michael A. Mass, in his “Public Sector Drug Testing: A Balancing Approach and the Search for a New Equilibrium,” looks at the same general approach to problem resolution. With Steven O. Ludd’s article, “Athletics, Drug Testing and the Right to Privacy: A Question of Balance,” the perspective of those involved in sports is reviewed.

As a subject and as a social issue, the question of drug testing is evolving, and as such it is both analytically problematic and thus necessarily difficult for the interested scholar to easily summarize. A thorough review of the periodical literature is clearly necessary, with a historical appreciation of the issue being of real value. Clearly useful as well is an understanding of the relationship between drug testing as an issue, and the wider issue of privacy in general.

This bibliography is divided first into Monographs (Books), and then into Periodical Articles. Both sections are arranged alphabetically by the author’s last name. The range of years covered is from 1980 through 1992. The books and articles included here should provide the reader with a unique opportunity to evaluate all sides of the question, while at the same time gaining a needed historical and general privacy issue context.
DRUG TESTING MONOGRAPHS


**PERIODICAL ARTICLES**


Roberts, Dorothy E. "Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy." *Harvard Law Review* 104:7 (May 1991): 1419-1482. A large number of women, mostly black, "have been charged with criminal offenses after giving birth to babies who test positive for drugs." The author contends that such prosecution is racially motivated and infringes upon the rights of women of color to choose motherhood while being addicted to drugs.


Westphal, Edward E. "Public-Sector Employer Drug Testing Programs: Has Big Brother Finally Arrived?" *John Marshall Law Review* 20:4 (Summer 1987): 769-793. Before 14th amendment protection can be granted an individual employee, the intrusive action taken by the employer must be viewed as state action. Drug testing, without notice and fair hearing elements, is shown to deprive an employee of 14th amendment due process. Additionally, employees should have an expectation of protection under fourth amendment guidelines insofar as mass and random drug tests violate constitutional mandates against illegal searches and seizures. In practice, however, such protection seems to be applied only where an individual has a "legitimate expectation of privacy." Drug tests are searches, for fourth amendment purposes, and must therefore be subject to review in this constitutional context.