

Dangerous Lessons: Urine Testing in Public Schools

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IN 2002 the U.S. Supreme Court decided an important case (*Board of Education v. Earls*) opening the doors to much wider drug testing of America's public school students. The day after the decision, Psychemedics, a company that widely markets hair testing for MDMA and other illegal drugs, pronounced the decision very good for business, its CEO commenting, "We believe that yesterday's Supreme Court decision to broaden the parameters of drug testing in public high schools could dramatically increase the number of drug tests performed." Unfortunately, while drug testing companies work to fill their cups and stuff their pockets, the rest of us, with our children leading the way, are being forced down a dark and dangerous path.

The Supreme Court's ruling giving public school authorities the green light to conduct random, suspicionless, drug testing of all junior and senior high school students wishing to participate in extra-curricular activities, teaches by example. The lesson, unfortunately, is that the Fourth Amendment has become a historical artifact, a quaint relic from bygone days when our country honored the "scrupulous protection of Constitutional freedoms of the individual." (See *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 637 [1943].)

The Court's ruling turns logic on its head, giving the insides of students' bodies less protection than the insides of their backpacks, the contents of their bodily fluids less protection than the contents of their telephone calls. The decision elevates the myopic hysteria of a preposterous "zero-tolerance" Drug War, over basic values such as respect and dignity for our nation's young people.

Under the ruling, America's teenage students are treated like suspects. If a student seeks to participate in after-school activities his or her urine can be taken and tested for any reason, or for no reason at all. Gone are any requirements for individualized suspicion. Trust and respect have been replaced with a generalized distrust, an accusatory authoritarian demand that students prove their "innocence" at the whim of the schoolmaster.

The majority reasoned that requiring students to yield up their urine for examination as a prerequisite to participating in extracurricular activities would serve as a

deterrent to drug use. The Court reasoned that students who seek to join the debate team, write for the student newspaper, play in the marching band, or participate in other after-school activities knowing that their urine will be tested for drugs, would be dissuaded from using drugs.

While some students may indeed be deterred from using drugs, the conventional wisdom (supported by empirical data) is that students who participate in extracurricular activities are some of the least likely to use drugs. Noting this, Justice Ruth Bader Ginsburg, whose dissenting opinion was joined by Justices Stevens, O'Connor, and Souter, harshly condemned random testing of such students as "unreasonable, capricious and even perverse." Even when applied to students who do use drugs, the Court's decision merely makes matters worse.

The federal government has tried everything from threatening imprisonment to yanking student loans, to spending hundreds of millions of dollars on "Just Say No" advertisements, and still, some students continue to experiment with *Cannabis* and other drugs. Like it or not, some students will use illegal drugs before graduating from high school, just as some students will have sex. Perhaps it's time to rethink the wisdom of declaring a War on Drugs and adopt instead a realistic and effective strategy more akin to safe sex education.

Ultimately, if a student does choose to experiment with an illegal drug (or a legal drug, such as alcohol), I suspect that many parents, like myself, would prefer that their child be taught the skills necessary to survive the experiment with as little harm as possible to self or others. The DARE program, the nation's primary "drug education" curriculum, is taught by police officers, not drug experts, and is centered on intimidation and threats of criminal prosecution rather than on harm reduction. Random, suspicionless, urine testing fits the same tired mold.

Among the significant gaps in the majority's reasoning is its failure to consider the individual and social ramifications of deterring any student (whether they use drugs or not), from participating in after-school activities. Students who on principle prefer to keep their bodily fluids to themselves, or who consider urine testing to be a gross invasion of privacy, will be dissuaded from partici-

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pating in after-school activities altogether. Similarly, students who do use drugs and who either test positive or forego the test for fear of what it might reveal, will be banned from after-school activities and thus left to their own devices.

Extracurricular programs are valued for producing “well-rounded” students. Many adults look back on their extramural activities as some of the most educational, enriching, and formative experiences of their young lives. Extracurricular programs build citizenship. For many universities, participation in after-school clubs and academic teams is a decisive admissions criterion. Whether a student uses drugs or not, it makes no sense to bar them from the very activities that build citizenship, and that help prepare young people for leadership roles in the workforce, or that help them get into college. In other words, a policy that deters students or bans them outright from participating in extracurricular activities is not just bad for students; it’s bad for society.

Aside from eviscerating the Fourth Amendment rights of the nation’s 23 million public school students and imposing a punishment that harms society as much as it harms students, the decision foreshadows a Constitutional Dark Ages. When a young person is told to urinate in a cup within earshot of an intently listening school authority, and then ordered to turn over her urine for chemical examination, what “reasonable expectation of privacy” remains? When today’s students graduate and walk out from behind the schoolhouse gates, what will become of society’s “reasonable expectation of privacy?”

Raised with the ever-present specter of coercion and control, where urine testing is as common as standardized testing, today’s students will have little if any privacy expectations when they reach adulthood. As a result, within a single generation, what society presently regards as a “reasonable expectation of privacy” will be considerably watered down. Rivers of urine will have eroded the Fourth Amendment, our nation’s strictest restraint on the over-reaching and strong-arm tendencies of some government police agents. As aptly stated by Justice Ginsburg and the three other justices who joined her dissenting opinion: “That [schools] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.”

The U.S. Government recently allocated another 20 billion dollars to fight the so-called War on Drugs, yet all we really have to show for it is a tattered *Constitution* and the largest prison population in the history of the world. Fellow Americans have been constructed as “the enemy” simply because they’d rather have a puff of *Cannabis* than a shot of bourbon.

And that is perhaps the greatest tragedy of the Court’s ruling. The decision not only victimizes our children, it makes them the enemy. Being a public school student is now synonymous with being a criminal suspect or a prisoner. The values of trust and respect have been chased from the schoolyards and replaced with baseless suspicion and omnipresent policing. The lesson for America’s students as they stand in line with urine bottles in hand, is that the Fourth Amendment’s guarantee is a broken promise, yesterday’s dusty trophy, worthy only of lip service. The lesson for the rest of us is that the so-called War on Drugs desperately needs rethinking. •

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