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Index

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The Supreme Court ruling in this case exerted an impact on blacks beyond Dred Scott himself. Reaction to the *Dred Scott* ruling was mixed and did not settle the controversial slavery issue for the United States. Rather, the Court's decision only furthered the country's division over the slavery issue, which ultimately led to the Civil War. The other two branches of government eventually responded with attempts to overcome the issues surrounding slavery. In 1862, Congress passed the Act of June 19, 1862, which prohibited slavery and involuntary servitude in any of the territories of the United States. That same year, Congress also passed legislation prohibiting slavery in the District of Columbia and repealed the Fugitive Slave Act. Likewise, in 1863, President Lincoln issued the Emancipation Proclamation, which announced that slaves who lived in rebellion states would be free once these states were under the control of the Union army.

Despite these efforts of the legislative and executive branches to eradicate the effects of the *Dred Scott* case, these efforts were inconsistent with the original Constitution. Consequently, the document had to be amended to overcome the problems of slavery and to promote the civil rights and civil liberties of blacks.

With the end of the Civil War, three Reconstruction amendments were written and ratified to overcome the *Dred Scott* ruling. Specifically, these amendments recognized and promoted civil rights and civil liberties for blacks. In 1865, slavery and involuntary servitude were abolished with the ratification of the Thirteenth Amendment. Likewise, in 1868, the Fourteenth Amendment recognized all persons born or naturalized in the United States as "citizens." This amendment specifically overturned *Dred Scott's* ruling that blacks were not U.S. citizens. Moreover, the Fourteenth Amendment prohibited the states from denying blacks, as well as all other citizens, "equal protection" of the laws and "due process of law." Finally, in 1870, the Fifteenth Amendment extended voting rights to black males. Thus, although the case of *Dred Scott v. Sandford* is notorious for its denial of rights and liberties to blacks, the three constitutional amendments that overturned this ruling have been instrumental in protecting civil rights and civil liberties of all American citizens.

FRANCENE M. ENGEL

References and Further Reading

- Ehrlich, Walter. *They Have No Rights: Dred Scott's Struggle for Freedom*. Westport, CT: Greenwood Press, 1979.
- Fehrenbacher, Don Edward. *Slavery, Law and Politics: The Dred Scott Case in Historical Perspective*. New York: Oxford University Press, 1981.

- Finkelman, Paul. *Dred Scott v. Sandford: A Brief History With Documents*. Boston: Bedford Books, 1997.
- Herda, D. J. *The Dred Scott Case: Slavery and Citizenship*. Hillside, NJ: Enslow Publishers, 1994.

Cases and Statutes Cited

- Rachel v. Walker*, 4 Missouri Rep. 350 (1836)

DRUG TESTING

President Reagan announced the War on Drugs in a televised speech in 1982. Shortly thereafter, federal agencies began to drug test their employees randomly, particularly those involved in law enforcement and those in safety-sensitive positions. The Supreme Court's first foray into defining the contours of the constitutionality of drug testing of federal government employees came in the companion cases *Skinner v. Railway Labor Executives' Association*, 489 U.S. 602 (1989), and *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989).

Skinner involved the drug testing of federal railway employees who had been involved in serious train accidents. In upholding the drug testing regulations, the Court relied on the "special needs" exception to the Fourth Amendment as articulated in *Griffin v. Wisconsin*, 483 U.S. 868 (1987). The Court also noted that the Federal Railway Administration had made a finding that there was a high rate of alcoholism and drug abuse among railway workers. Finally, the Court held that public safety was a concern that outweighed the privacy interests of the railway workers, focusing on the fact that trains were dangerous instruments when in the hands of inebriated workers.

Von Raab, decided on the same day, upheld the drug testing regulations of the Commission of Customs. The regulations provided for random, suspicionless drug testing of all customs officers because they carried weapons and many of them engaged in drug interdiction activities. The Court accepted the government's argument that there was a serious crisis brewing in law enforcement due to drug abuse and held that the government had a compelling interest in randomly testing its customs officers, emphasizing the "extraordinary" dangers of drug interdiction.

Following these two cases, the D.C. circuit adopted a "nexus" test in *Harmon v. Thornburgh*, 878 F.2d 484 (D.C. Cir. 1989), requiring the government to prove a direct nexus between the employee's position and the possible safety repercussions that could result from drug or alcohol abuse. This nexus test tends to invalidate most drug testing schemes of federal government workers unless the government

can prove that a very serious safety issue exists. A few states, such as Alaska and Massachusetts, have declared all random, suspicionless drug testing to be in violation of state constitutions.

Later, the Supreme Court heard two cases relating to random, suspicionless testing of public high school students: *Veronia School District 47J v. Acton*, 515 U.S. 646 (1995), and *Board of Education of Independent School District of Pottawatomie County v. Earls*, 536 U.S. 822 (2002). In *Veronia*, the Court upheld the random, suspicionless drug testing of high school athletes, holding the deterrence of student drug use to be at least as important as the schemes in *Skinner* and *Von Raab*, particularly since high school athletes faced potential physical injury during sports activities. The Court also noted that children entrusted to the care of public schools had lesser expectations of privacy than adults, a holding the Court relied on in *Earls* as well. There, the Court upheld the random, suspicionless drug testing of public high school students who participated in any extracurricular activity, even those that would pose no danger to the children, such as choir.

The Court's lone invalidation of a drug testing scheme occurred in *Chandler v. Miller*, 520 U.S. 305 (1997). There, the Court invalidated Georgia's requirement that all candidates for state office must submit to a drug test. Georgia made no showing of any concrete threat that would serve to show a special need for the test. Also, the Court noted that the test would not serve to deter illicit drug use because the test was not a secret and drug abusers could abstain for a sufficient time period before the test.

Public opinion about drug testing shifted dramatically after President Reagan's drug war declaration in 1982. Private employers and landlords began drug testing employees and tenants. State and federal public housing authorities began to require tenants to consent to drug tests as a condition of residence. Many state government and private employers require a pre-employment drug screen as a condition of employment. Federal and state agencies sometimes require organizations that receive grants to adopt drug testing policies. Finally, and perhaps most pervasively, individuals convicted of crimes and placed on probation or released on parole are usually subjected to random drug tests as a condition of their release from detention.

Scholars disagree as to the efficacy and constitutionality of drug testing. The magnitude of false positives and negatives detracts from the usefulness of drug testing as a deterrent to drug abuse. Anecdotal evidence suggests that, for example, marijuana users switched to cocaine when their employers began random drug testing because traces of cocaine use leave

the body much more quickly. Moreover, an entire industry of manufacturing chemicals that disguise drug abuse has arisen. Recent scientific evidence suggests that expert testimony in criminal cases about the accuracy of drug tests is deeply flawed.

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References and Further Reading

- American Civil Liberties Union. "Drug Testing: A Bad Investment," <http://www.aclu.org/Files/Files.cfm?ID=9998&c=184> (1999).
- Charles, Guy-Urjel, *Fourth Amendment Accommodations: (Un)Compelling Public Needs, Balancing Acts, and the Fiction of Consent*, Michigan Journal of Race and Law 2 (1997): 1:461-512.
- Lang, David, *Get Clean or Get Out: Landlords Drug-Testing Tenants*, Washington University Journal of Law and Policy 2 (2000): 459-487.
- Zeese, Kevin B. *Drug Testing Legal Manual and Practice Aids*, 2nd ed. Deerfield, IL: Clark, Boardman, Callahan, 2000.

Cases and Statutes Cited

- Anchorage Police Department Employees Association v. Municipality of Anchorage*, 24 P.3d 547 (Alaska 2001)
- Board of Education of Independent School District of Pottawatomie County v. Earls*, 536 U.S. 822 (2002)
- Chandler v. Miller*, 520 U.S. 305 (1997)
- Griffin v. Wisconsin*, 483 U.S. 868 (1987)
- Guiney v. Police Commission of Boston*, 582 N.E.2d 523 (Mass. 1991)
- Harmon v. Thornburgh*, 878 F.2d 484 (D.C. Cir. 1989)
- National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989)
- Skinner v. Railway Labor Executives' Association*, 489 U.S. 602 (1989)
- Veronia School District 47J v. Acton*, 515 U.S. 646 (1995)
- See also Chandler v. Miller*, 520 U.S. 305 (1997) (candidates); *Griffin v. Wisconsin*, 483 U.S. 868 (1987); *National Treasury Employee Union v. Von Raab*, 489 U.S. 656 (1989); *Skinner v. Railway Labor Executives' Association*, 489 U.S. 602 (1989); *Veronia School District 47J v. Acton*, 515 U.S. 646 (1995); *War on Drugs*

DRUGS, RELIGION, AND LAW

Law on many levels regulates access to drugs, complicating any incorporation of an interdicted substance within religious ceremonies. Arguments to obtain that liberty implicate issues on at least three levels. Drug restrictions exist on federal and state levels, and thus the religiously motivated drug users must confront the impediments at both levels.