

Drug testing grows up

Privacy and progress in conflict

The Bork nomination

By now, everything that can be said about the consequences of Robert Bork's appointment to the Supreme Court has been. If you picked up a paper this summer, you know that women's groups oppose Bork because his vote could give the court the numbers it needs to reverse 1973's *Roe v. Wade* decision legalizing abortion nationwide. You know that the NAACP opposes Bork because of his hostility to affirmative action. And you know People for the American Way sees Bork as a danger to the traditional separation of church and state.

You know. You've heard it, again and again. And it's true. Bork's appointment to the court poses a profound threat to numerous significant rights minorities, women, and the general population have fought hard to obtain over the past 25 years. So now something must be done.

Seldom does a presidential appointment harbinger such a great change in the lives of all of us. Bork's opponents don't just disagree with his stand on one or two arcane cases; they see him as a threat to whole areas of established legal doctrine—including the right to privacy and freedom of speech—that touch our lives on a daily basis. Even in these egocentric times, the most apathetic and self-consumed of us must roll over and realize that this appointment is worth fighting against. It will affect you—not in 20 years, not in 10, but immediately. Your access to safe abortion. Your right to affirmative action hiring policies. Your freedom to consent to sexual acts of your choice. Your right to a safe workplace. These freedoms, which we have casually counted on for decades, are in danger. And that should be enough to stop all of us from sitting on our fists in silence.

Some say Bork's legal credentials are unimpeachable, and that's all that matters. But legal credentials weren't the only consideration when Reagan nominated Bork—or Scalia or Rehnquist or O'Connor. And legal qualifications should not be the only thing the Senate examines when it decides the fate of the court for the rest of the century. No matter how many eloquent arguments George Will or Bill Buckley manage to crank out about an apolitical judiciary, a glance at the last two centuries of Supreme Court appointments serves as forceful contradiction. Supreme Court appointments are political. So we must fight this particular appointment with every means we have in the political arena—including organized protest and calls and letters to key senators.

It's not enough to oppose Robert Bork's nomination over dinner at Tom's or beer at Cannon's. If you want to keep him off the court, do something to keep him off, now. Talk's cheap. But in as close a vote as the Senate's promises to be, real action could be priceless.

By Simson Garfinkel

News item: "Washington, Sept. 10—The Department of Transportation today began random urine tests of its employees in safety and security jobs in an effort to detect drug use."—*New York Times*, September 11, 1987

All of a sudden, drug testing is in the news again. A new DOT program will test air traffic controllers, pilots, safety inspectors and other personnel for illegal drug use. Workers who test positive in an initial screening will be subjected to a highly sensitive test. Those still testing positive will be moved to less sensitive positions and asked to join a drug rehabilitation program.

In safety-related jobs, performance should be the measure by which hiring and firing decisions are made, not off-hour drug use. I'd much rather fly with a seasoned pilot who smokes an occasional weekend joint than with a straight-arrow rookie. The evaluations of supervisors and co-workers are a far better measure of a worker's potential on-the-job performance than his after-hours activities.

Perhaps the *Times* article should have read that the new DOT program is designed to "deter" or "prevent" drug use rather than simply "detect" it. The often unstated premise of drug testing is that the threat of discovery and possible loss of employment is enough to keep an employee from using drugs. In the past, it was not economical or legal for an employer to continuously watch a worker for drug use. Instead, employees were trusted not to use drugs on the job. Drug testing removes the need for trust, requiring workers instead to continually prove their innocence.

Substituting proof for trust is something that technology often does. In this case, the old trust was based on a delicate balance between feasibility and privacy. Now that balance is changing. The idea of using a technology—in this case, drug testing—to monitor a person 24 hours a day and report deviations from acceptable behavior seems straight out of 1984. By describing drug testing as a program that aims at detection rather than deterrence, the *Times* softened the perceived impact of the technology on workers' lives.

Although the drugs themselves are illegal and penalties are already in place to punish users, drug testing allows an employer (coincidentally, in this case, the government) to increase both the penalties and the chance of detection, while at the same time decreasing workers' options for defense and appeal. Drug testing literally places the responsibilities of police, prosecutor, judge, and jury in the hands of the administrators of the drug program.

Drug testing of personnel is often justified on the grounds that drug use impairs an individual's ability to perform a complex task. In a safety-related job, such as air traffic control, drug users risk innocent lives rather than their own. Drug testing of individuals in security positions is justified on the grounds that drug use, especially secret drug use, makes someone highly vulnerable to blackmail. The Central Intelligence Agency and the National Security Agency use a similar rationale to bar employment of homosexuals.

One problem with the DOT program is that it uses too broad a definition of "safety and security" jobs, lumping electronic technicians in with test pilots and air traffic controllers. And it establishes a bad example for the private sector, setting the stage for further intrusions into a worker's privacy as



Spectator/Jo-Ellen Truelove

technology advances.

For the past few years, most opponents of drug testing have fought their battle on the grounds that the tests are inaccurate and biased in favor of false positives that wrongly indicate drug use. Indeed, the EMIT (Enzyme Multiplied Immunoassay Technique) urine test, used to detect recent marijuana use, "may show positives from passive inhalation, natural bodily enzymes, aspirin, poppyseeds in bagels, or herbal tea," according to an article in the July-August issue of *Case & Comment* on drug-testing negligence. Tests for amphetamine use will detect diet pills. And women using oral contraceptives will test differently than women using other forms of birth control, requiring a woman to notify her employer if she is on the pill.

Unfortunately, as the technology gets better and the tests become both more sensitive and more discriminating (able to tell the difference between similar drugs), the argument about

See *Drug Test*, p. 4

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Correction

In the Sept. 15 *Spectator*, Columbia College Dean of Students Roger Lehecka was quoted as saying that one reason he would like to trade undergraduate space in Fairholm Hall for graduate space in Johnson Hall was Fairholm's location on 121st Street near Amsterdam Avenue.

Lehecka did not mention Fairholm's location as a reason for the housing swap. Rather, he said that 47 Claremont is an inappropriate location for undergraduate housing. *Spectator* regrets the error.

continued from page three

Drug Test

testing accuracy becomes less and less pertinent. The gas chromatography/mass spectrometry test—the highly sensitive second test being used by the DOT—actually detects the presence of drugs or their byproducts, rather than detecting their effect. Other chemicals might cause the same effects in a test tube, but only cocaine use is going to leave traces of cocaine molecules in someone's urine. With the wide use of highly selective tests such as these, the only remaining argument against systematic testing will be that it violates an individual's right to privacy—that drug testing is a form of unreasonable search and seizure, forbidden under the Fourth Amendment of the Constitution.

The widespread acceptance of drug testing will open the door to further biologically based intrusions by employers and prospective employers. A wealth of information can be learned about someone from bodily fluids. Nearly everything a person eats or breathes can be determined from urine and saliva. An employer might want to know why a person is taking aspirin, or sleeping pills, or mood-controlling drugs (perhaps under the supervision of a psychiatrist). Information that has been traditionally regarded as private and personal—and which has no relation to the use of illegal drugs—will shortly become available to employers because of drug-testing programs.

In the near future, blood or urine testing will be able to report a predisposition to many diseases or the probability of future

illness. (Already tests exist that detect exposure to the AIDS virus and the presence of sickle-cell anemia, to name two examples.) An employer in possession of this information might not choose to hire an individual who might contract a disabling sickness in a few year's time—better to hire a person who will probably remain healthy. These tests could easily be performed as part of a routine or pre-employment physical by a company doctor. By paving the way to such tests, the DOT program puts us one step closer to a world in which a worker's worth is measured by a cup of piss.

Bandor, not consultants

to the Editor:

In the Sept. 11 article about Columbia's decision to hire a new public relations firm,

Columbia shouldn't need to pay a consulting firm to tell it that.

David Goldman
Law '88

Freedom of speech is

In the same context, Goldberger argued further that there should be no constraints on the participation of academic physicists in "Jason," a high-level military think-tank. This is also close to home, since Columbia physics professors Malvin Ruderman and Robert Novick in fact belong to Jason. Again we are

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