

A TIMELINE OF DRUG TESTING IN THE UNITED STATES

From Nixon to Bush (both of them), each successive regime has made the Fourth Amendment a casualty in the Drug War.

1791 - *The Right of the People to Be Secure in Their Persons, Houses, Papers and Effects Against Unreasonable Searches and Seizures, Shall Not be Violated; And No Warrant Shall Issue, but upon Probable Cause, Supported by Oath or Affirmation, and Particularly Describing the Place to Be Searched and the Person or Things to Be Seized.*

- The Fourth Amendment of the United States Constitution



1967 - Seeking election to the Presidency, candidate Richard Nixon declares law-and-order the number one goal of his proposed administration with special emphasis on a War on Drugs: "As I look over the problems in this country" he told supporters at Disneyland, "I see one that stands out particularly - the problem of narcotics."

"I believe in civil rights," Nixon averred. "But the first civil right of every American is to be free from violence, and we are going to have an administration that restores that right in the United States of America."

1969 - Washington, D.C. Department of Corrections tests the urine of 129 District prisoners in an effort to prove a casual relationship between crime and drugs. Since prisoners, by definition, have mitigated rights, no constitutional violation is cited. An imperfect study at best, the results are ambiguous and debatable.

1971 - Acting on recommendations from the White House, the Pentagon prepares to randomly drug test soldiers returning from Vietnam. Since drug use is an infraction of military code and automatically results in a dishonorable discharge, many servicemen would be placed in legal jeopardy, and the result would be a public relations nightmare. To solve the problem President Nixon - acting as commander-in-chief - sends a one-page memo to the secretary of defense ordering that drug use will no longer be considered a crime under the military code of justice. This single act reverses decades of military policy and simultaneously introduces random urine testing as a matter of public policy.

1975 - the U.S. Supreme Court declared constitutional an "administrative search exception" to the Fourth Amendment [Committee for GI Rights v. Callaway 518 F. 2D 466, 474 D.C. Cir. 1975] with regard to random drug testing of military personnel, reasoning that the state's strong public interest to ensure military readiness outweighs the privacy interests of servicemen who already serve under considerably diminished Fourth Amendment rights.



1985 - Although the Fourth Amendment protects the privacy rights of citizens from government intrusion, the private sector has traditionally had much less restriction. By 1985 urine testing was a \$100 million business. Twenty-five percent of the Fortune 500 corporations had some kind of urine-testing program in place. Companies like Federal Express fired employees on the basis of a single positive drug test despite a federal survey that found such testing procedures to be in error at least twenty percent of the time. According to government figures the percentage of false-positive results at many labs was much higher.

1986 - **President Ronald Reagan** issued [Executive Order 12564](#) requiring federal agencies to institute urine testing programs for the purpose of creating 'drug-free federal workplaces.'

DRUG TESTING TIMELINE [cont.]

1986 - The United State's Third Circuit Court of Appeals, citing the administrative search exception, approved, for the first time, mass urinalysis procedures in the public workplace. In *Shoemaker v Handel* [795 F. 2d. 1136 [3rd cir. 1986] five well-known jockeys brought action challenging New Jersey Racing Commission regulations requiring all official jockeys, trainers or grooms to submit to breathalyzers and urine testing. The jockeys argued that such testing was unreasonable and thus unconstitutional, absent of individualized suspicion. The Third Circuit Court disagreed stating that "warrantless searches or seizures by voluntary participants in [a] highly [state] regulated industry... are reasonable" and that "The states's interest in the revenue generated by wagering and the vulnerability of the industry to untoward influences" overrides the individual's constitutional right to privacy.

1987 - The United States Eighth Circuit Court of Appeals, citing the administrative search exception, finds urine testing of federal prison guards to be constitutional [*McDonell v. Hunter*, 809 F. 2d 1302]

1988 - The United States Eighth Circuit Court of Appeals, citing the administrative search exception, finds urine testing of nuclear power plant employees to be constitutional [*Rushton v. Nebraska Public Power District*, 844 F. 2D 562]

1989 - The United States Supreme Court, citing the administrative search exception, finds constitutional a Custom Service program requiring all Custom Service employees seeking promotions to certain "sensitive positions " to submit to urinalysis regardless of whether their existed probable cause or individualized suspicion of drug use. The testing policy had the potential to infringe upon the Fourth Amendment rights of over 120,000 Federal employees despite statements from the Commissioner for the Customs Service maintaining that the workplace was "largely drug-free" to begin with. Affirming the state's interest in maintaining a drug-free workplace and the protection of "truly sensitive information" over the individual interests of its employees, the Court reasoned that those individual seeking employment in sensitive positions must assume diminished expectations of privacy. With this decision the Court demonstrated that urinalysis would now be upheld even when there is no suspicion of drug use at all.

1988 - Congress passes the Drug Free Workplace Act requiring companies awarded federal contracts to institute drug testing as a condition of contract.

1991 - Congress requires random drug testing for any U.S. Worker in safety sensitive positions.

1995 - The U.S. Supreme Courts, citing a drug crisis that has reached "epidemic proportions" rules in favor of a Veronia, Washington School District law mandating mass urinalysis for all high school and junior high school athletes regardless of individual suspicion. The "epidemic" drug use cited in the petition before the court resulted in only twelve positive drug tests in four and a half years since Veronia's mandatory urinalysis program had been instituted.

1998 - The Drug-Free Workplace Act of 1998 provides federal funds to small businesses that want to impose drug testing on their employees.

1998 - The U.S. Congress overwhelmingly approved legislation encouraging states to drug test all teenage driver's license applicants. The provision, included in H.R. 4550, further recommends that states adopt policies denying licenses to applicants who test positive for drug metabolites.

2002 - The U.S. Supreme Court approves a major expansion of suspicionless student drug testing mandating drug testing for all students who wish to participate in any extracurricular activities, including, for example, the chess club, the Honor Society and the



marching band. ([Board of Education of Independent School District No. 92 \[OK\], et al v. Lindsay Earls et al, No. 01 332](#)). Since adopting the policy in 1998, only three Tecumseh, Oklahoma students - all athletes - had tested positive for drugs. Writing for the majority, **Justice Clarence Thomas** ruled that the drug testing policy was "reasonable," even in the absence of individualized suspicion or an identifiable school-wide drug problem. "This Court has not required a particularized or pervasive drug problem before allowing the government to conduct suspicionless drug testing," Thomas opined. "Indeed, the nationwide drug epidemic makes the war against drugs a pressing concern in every school."



Benjamin Franklin

**They that can give up
essential liberty to obtain a
little temporary safety
deserve neither liberty nor
safety.**