**Random drug testing of student athletes! Check it out!**

**Behold…Ginsburg and Breyer siding with Scalia, Rehnquist and Thomas??**

# VERNONIA SCHOOL DISTRICT v. ACTON

**SUPREME COURT OF THE UNITED STATES**
**515 U.S. 646**
**June 26, 1995**
**[6 – 3]**

**OPINION:** Justice SCALIA/REHNQUIST/KENNEDY/THOMAS/GINSBURG/BREYER… The Student Athlete Drug Policy adopted by School District 47J in the town of Vernonia, Oregon, authorizes **random urinalysis drug testing of student…[athletes]**…

In the mid-to-late 1980's…teachers and administrators observed a sharp increase in drug use. Students began to speak out about their attraction to the drug culture, and to boast that there was nothing the school could do about it. Along with more drugs came more disciplinary problems… Not only were student athletes included among the drug users…, [they] were the leaders of the drug culture. This caused the District's administrators particular concern, **since drug use increases the risk of sports-related injury**. Expert testimony at the trial confirmed the deleterious effects of drugs on motivation, memory, judgment, reaction, coordination, and performance…

According to the District Court: "The administration was at its wits end and…a large segment of the student body…was in a state of rebellion…The coincidence of an almost three-fold increase in classroom disruptions and disciplinary reports along with the staff's direct observations of students using drugs or glamorizing drug and alcohol use led the administration to the inescapable conclusion that the rebellion was being fueled by alcohol and drug abuse as well as the student's misperceptions about the drug culture."

At that point, District officials began considering a drug-testing program. They held a parent "input night" to discuss the proposed **Student Athlete Drug Policy** and **the parents in attendance gave their <u>unanimous approval</u>**…Its expressed purpose is to prevent student athletes from using drugs, to protect their health and safety, and to provide drug users with assistance programs.

**The Policy applies to all students participating in interscholastic athletics.** Students wishing to play sports must sign a form consenting to the testing and must obtain the written consent of their parents. Athletes are tested at the beginning of the season…[and] once each week of the season the names of the athletes are placed in a "pool" from which a student, with the supervision of two adults, blindly draws the names of 10% of the athletes for random testing. Those selected are notified and tested that same day, if possible.

The student to be tested completes a specimen control form which bears an assigned number. Prescription medications that the student is taking must be identified by providing a copy of the prescription or a doctor's authorization. The student then enters an empty locker room accompanied by an adult monitor of the same sex. Each boy selected produces a sample at a urinal, remaining fully clothed with his back to the monitor, who stands approximately 12 to 15 feet behind the student. Monitors may (though do not always) watch the student while he produces the sample, and they listen for normal sounds of urination. Girls produce samples in an enclosed bathroom stall, so that they can be heard but not observed. After the sample is produced, it is given to the monitor, who checks it for temperature and tampering and then transfers it to a vial.

The samples are sent to an independent laboratory, which routinely tests them for amphetamines, cocaine, and marijuana. Other drugs, such as LSD, may be screened at the request of the District, but the identity of a particular student does not determine which drugs will be tested. The laboratory's procedures are 99.94% accurate. The District follows strict procedures regarding the chain of custody and access to test results. The laboratory does not know the identity of the students whose samples it tests. It is authorized to mail written test reports only to the superintendent and to provide test results to District personnel by telephone only after the requesting official recites a code confirming his authority. Only the superintendent, principals, vice-principals, and athletic directors have access to test results, and the results are not kept for more than one year.

If a sample tests positive, a second test is administered as soon as possible to confirm the result. If the second test is negative, no further action is taken. If the second test is positive, the athlete's parents are notified, and the school principal convenes a meeting with the student and his parents, at which the student is given the option of (1) participating for six weeks in an assistance program that includes weekly urinalysis, or (2) suffering suspension from athletics for the

remainder of the current season and the next athletic season. The student is then retested prior to the start of the next athletic season for which he or she is eligible. The Policy states that a second offense results in automatic imposition of option (2); a third offense is suspension for the remainder of the current season and the next two athletic seasons.

In the fall of 1991, respondent James Acton, then a seventh grader, signed up to play football at one of the District's grade schools. **He was denied participation, however, because he and his parents refused to sign the testing consent forms.** The Actons filed suit,…[contending that the Policy] violated the Fourth and Fourteenth Amendments to the United States Constitution… [T]he District Court entered an order denying the claims on the merits and dismissing the action. The…Court of Appeals…reversed, holding that the Policy violated both the Fourth and Fourteenth Amendments…We granted certiorari…

**As the text of the Fourth Amendment indicates, the ultimate measure of the constitutionality of a governmental search is "reasonableness."** At least in a case such as this, where there was no clear practice, either approving or disapproving the type of search at issue, at the time the constitutional provision was enacted, whether a particular search meets the reasonableness standard "is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." Where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, this Court has said that reasonableness generally requires the obtaining of a judicial warrant. Warrants cannot be issued, of course, without the showing of probable cause required by the Warrant Clause. But a warrant is not required to establish the reasonableness of all government searches; and when a warrant is not required (and the Warrant Clause therefore not applicable), probable cause is not invariably required either. **A search unsupported by probable cause can be constitutional, we have said, "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." *Griffin v. Wisconsin* (1987).**

We have found such "special needs" to exist in the public school context. There, the warrant requirement "would unduly interfere with the maintenance of the swift and informal disciplinary procedures [that are] needed," and "strict adherence to the requirement that searches be based on probable cause" would undercut "the substantial need of teachers and administrators for freedom to maintain **order in the schools**." The school search we approved in *T.L.O.*[1], while not based on probable cause, was based on **individualized suspicion of wrongdoing**. As we explicitly acknowledged, however,…[w]e have upheld suspicionless searches and seizures to conduct drug testing of railroad personnel involved in train accidents; to conduct random drug testing of federal customs officers who carry arms or are involved in drug interdiction; and to maintain automobile checkpoints looking for illegal immigrants and contraband, *Martinez-Fuerte*, and drunk drivers, *Michigan v. Sitz.*

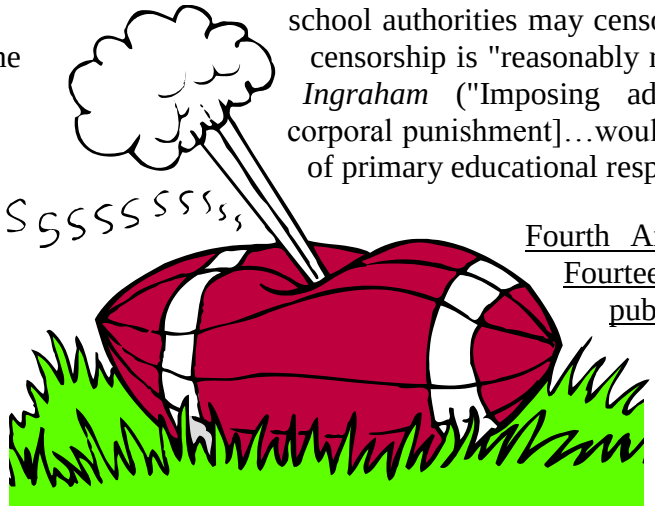
The first factor to be considered is the nature of the privacy interest upon which the search here at issue intrudes. The Fourth Amendment does not protect all subjective expectations of privacy, but only those that society recognizes as "**legitimate**." *T.L.O.* What expectations are legitimate varies, of course, with context, depending, for example, upon whether the individual asserting

[1] Case 4A-5 on this website.

the privacy interest is at home, at work, in a car, or in a public park. In addition, the legitimacy of certain privacy expectations vis-a-vis the State may depend upon the individual's legal relationship with the State…Central…to the present case is the fact that the subjects of the Policy are (1) **children**, who (2) have been committed to the **temporary custody of the State** as schoolmaster.

Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination--including even the right of liberty in its narrow sense, i.e., the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians. When parents place minor children in private schools for their education, the teachers and administrators of those schools stand in loco parentis over the children entrusted to them. In fact, the tutor or schoolmaster is the very prototype of that status…

In *T.L.O.* we rejected the notion that public schools, like private schools, exercise only parental power over their students, which of course is not subject to constitutional constraints…Thus, while children assuredly do not "shed their constitutional rights…at the schoolhouse gate," *Tinker*, the **nature** of those rights is **what is appropriate for children in school**. *Goss v. Lopez* (due process for a student challenging disciplinary suspension requires only that the teacher "informally discuss the alleged misconduct with the student minutes after it has occurred"); *Fraser* ("It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse"); *Hazelwood School Dist. v. Kuhlmeier*[2] (public school authorities may censor school-sponsored publications, so long as the censorship is "reasonably related to legitimate pedagogical concerns"); *Ingraham* ("Imposing additional administrative safeguards [upon corporal punishment]…would…entail a significant intrusion into an area of primary educational responsibility").




Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere; the "reasonableness" inquiry cannot disregard the schools' custodial and tutelary responsibility for children. For their own good **and that of their classmates**, public school children are routinely required to submit to various physical examinations, and to be vaccinated against various diseases. According to the American Academy of Pediatrics, most public schools "provide vision and hearing screening and dental and dermatological checks…Others also mandate scoliosis screening at appropriate grade levels."…Particularly with regard to medical examinations and procedures, therefore, "students within the school environment have a lesser expectation of privacy than members of the population generally."

Legitimate privacy expectations are even less with regard to student athletes. School sports are not for the bashful. They require "suiting up" before each practice or event, and showering and

[2] Case 1A-S-36 on this website.

changing afterwards. Public school locker rooms, the usual sites for these activities, are not notable for the privacy they afford…There is an additional respect in which school athletes have a reduced expectation of privacy. By choosing to "go out for the team," they voluntarily subject themselves to a degree of regulation even higher than that imposed on students generally. In Vernonia's public schools, they must submit to a preseason physical exam (James testified that his included the giving of a urine sample), they must acquire adequate insurance coverage or sign an insurance waiver, maintain a minimum grade point average, and comply with any "rules of conduct, dress, training hours and related matters as may be established for each sport by the head coach and athletic director with the principal's approval." Somewhat like adults who choose to participate in a "closely regulated industry," students who voluntarily participate in school athletics have reason to expect intrusions upon normal rights and privileges, including privacy.

Having considered the scope of the legitimate expectation of privacy at issue here, **we turn next to the character of the intrusion** that is complained of…[T]he privacy interests compromised by the process of obtaining the urine sample are in our view **negligible**.

**The other privacy-invasive aspect of urinalysis is, of course, the information it discloses** concerning the state of the subject's body, and the materials he has ingested. In this regard it is significant that the tests at issue here look only for drugs, and not for whether the student is, for example, epileptic, pregnant, or diabetic. Moreover, the drugs for which the samples are screened are standard, and do not vary according to the identity of the student. And finally, the **results** of the tests are disclosed only to a limited class of school personnel who have a need to know; and **they are not turned over to law enforcement authorities or used for any internal disciplinary function.**

Respondents argue…that the District's Policy is in fact more intrusive than this suggests, because it requires the students, if they are to avoid sanctions for a falsely positive test, **to identify in advance prescription medications** they are taking. We agree that this raises some cause for concern. In *Von Raab*, we flagged as one of the salutary features of the Customs Service drug-testing program the fact that employees were not required to disclose medical information unless they tested positive, and, even then, the information was supplied to a licensed physician rather than to the Government employer. On the other hand, we have never indicated that requiring advance disclosure of medications is per se unreasonable. Indeed, in *Skinner* we held that it **was not "a significant invasion of privacy."** It can be argued that, in *Skinner*, the disclosure went only to the medical personnel taking the sample, and the Government personnel analyzing it… and that disclosure to teachers and coaches--**to persons who personally know the student**--is a greater invasion of privacy. Assuming for the sake of argument that both those propositions are true, **we do not believe they establish a difference that respondents are entitled to rely on here…**Accordingly…the invasion of privacy was not significant.

**Finally, we turn to consider the nature and immediacy of the governmental concern at issue here, and the efficacy of this means for meeting it**…That the nature of the concern is important--indeed, perhaps compelling--can hardly be doubted. Deterring drug use by our Nation's schoolchildren is at least as important as enhancing efficient enforcement of the Nation's laws against the importation of drugs, which was the governmental concern in *Von Raab* or deterring drug use by engineers and trainmen, which was the governmental concern in *Skinner*… "Maturing nervous systems are more critically impaired by intoxicants than mature ones are;

childhood losses in learning are lifelong and profound"; "children grow chemically dependent more quickly than adults, and their record of recovery is depressingly poor." And of course the effects of a drug-infested school are visited not just upon the users, but upon the entire student body and faculty, as the educational process is disrupted. In the present case, moreover, the necessity for the State to act is magnified by the fact that this evil is being visited not just upon individuals at large, but upon children for whom it has undertaken a special responsibility of care and direction. Finally, it must not be lost sight of that this program is directed more narrowly to drug use by school athletes, where the risk of immediate physical harm to the drug user or those with whom he is playing his sport is particularly high…

As for the immediacy of the District's concerns: We are not inclined to question…the District Court's conclusion that "a large segment of the student body, particularly those involved in interscholastic athletics, was in a state of rebellion," that "disciplinary actions had reached epidemic proportions, and that the rebellion was being fueled by alcohol and drug abuse as well as by the student's misperceptions about the drug culture." That is an immediate crisis of greater proportions than existed in *Skinner*, where we upheld the Government's drug-testing program based on findings of drug use by railroad employees nationwide, without proof that a problem existed on the particular railroads whose employees were subject to the test. And of much greater proportions than existed in *Von Raab*, where there was no documented history of drug use by any customs officials.

As to the efficacy of this means for addressing the problem: It seems to us self-evident that a drug problem largely fueled by the "role model" effect of athletes' drug use, and of particular danger to athletes, is effectively addressed by making sure that athletes do not use drugs. **Respondents argue** that a "less intrusive means to the same end" was available, namely, "**drug testing on suspicion of drug use**." We have repeatedly refused to declare that only the "least intrusive" search practicable can be reasonable under the Fourth Amendment. Respondents' alternative entails substantial difficulties--if it is indeed practicable at all. It may be impracticable, for one thing, simply because the parents who are willing to accept random drug testing for athletes are not willing to accept accusatory drug testing for all students, which transforms the process into a badge of shame. Respondents' proposal brings the risk that teachers will impose testing arbitrarily upon troublesome but not drug-likely students. It generates the expense of defending lawsuits that charge such arbitrary imposition, or that simply demand greater process before accusatory drug testing is imposed. And not least of all, it adds to the ever-expanding diversionary duties of schoolteachers the new function of spotting and bringing to account drug abuse, a task for which they are ill prepared, and which is not readily compatible with their vocation…In many respects, we think, testing based on "suspicion" of drug use would not be better, but worse.

**Taking into account all the factors we have considered above--the decreased expectation of privacy, the relative unobtrusiveness of the search, and the severity of the need met by the search--we conclude Vernonia's Policy is reasonable and hence constitutional.**

We caution against the assumption that suspicionless drug testing will readily pass constitutional muster in other contexts. The most significant element in this case is the first we discussed: that the Policy was undertaken in furtherance of the government's responsibilities, under a public school system, as **guardian and tutor of children entrusted to its care**…We therefore vacate

the judgment, and remand the case to the Court of Appeals for further proceedings consistent with this opinion…

**DISSENT:** JUSTICE O'CONNOR/STEVENS/SOUTER…The population of our Nation's public schools, grades 7 through 12, numbers around 18 million. By the reasoning of today's decision, the millions of these students who participate in interscholastic sports, an overwhelming majority of whom have given school officials no reason whatsoever to suspect they use drugs at school, are open to an intrusive bodily search…

So what? In the interest of saving lives (in more ways than one) and preventing injuries, the relative intrusiveness seems but a small price to pay, does it not?

Blanket searches, because they can involve "thousands or millions" of searches, "pose a greater threat to liberty" than do suspicion-based ones, which "affect one person at a time," *Illinois v. Krull*, (O'CONNOR, J., dissenting). Searches based on individualized suspicion also afford potential targets considerable control over whether they will, in fact, be searched because a person can avoid such a search by not acting in an objectively suspicious way. And given that the surest way to avoid acting suspiciously is to avoid the underlying wrongdoing, the costs of such a regime, one would think, are minimal.

Flag…Real World Violation! Justice O'Connor really believes that if searches are limited to those that raise suspicion, drug use will likely cease. Pleeeeze! That is the very system Vernonia had in place prior to random testing! Plus, all her approach will do is cause the best undercover drug users to be better at secrecy!

But whether a blanket search is "better" than a regime based on individualized suspicion is not a debate in which we should engage. In my view, it is not open to judges or government officials to decide on policy grounds which is better and which is worse. For most of our constitutional history, mass, suspicionless searches have been generally considered per se unreasonable within the meaning of the Fourth Amendment. And we have allowed exceptions in recent years only where it has been clear that a suspicion-based regime would be ineffectual. Because that is not the case here, I dissent…

The view that mass, suspicionless searches, however evenhanded, are generally unreasonable remains inviolate in the criminal law enforcement context, see *Ybarra v. Illinois* (1979) (invalidating evenhanded, nonaccusatory patdown for weapons of all patrons in a tavern in which there was probable cause to think drug dealing was going on), at least where the search is more than minimally intrusive…It is worth noting in this regard that state-compelled, state-monitored collection and testing of urine, while perhaps not the most intrusive of searches, see *Bell v. Wolfish* (visual body cavity searches), is still "particularly destructive of privacy and offensive to personal dignity." We have not hesitated to treat monitored bowel movements as highly intrusive (even in the special border search context), compare *United States v. Martinez-Fuerte* (brief interrogative stops of all motorists crossing certain border checkpoint reasonable without individualized suspicion), with *United States v. Montoya de Hernandez* (monitored bowel movement of border crossers reasonable only upon reasonable suspicion of alimentary canal smuggling), and it is not easy to draw a distinction…And certainly monitored urination

combined with urine testing is more **intrusive** than some personal searches we have said trigger Fourth Amendment protections in the past…Finally, the collection and testing of urine is, of course, a search of a person, one of only four categories of suspect searches the Constitution mentions by name…

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| Oh, for heaven's sake! We are talking about peeing in a cup! Get over it!<br><br>RWV! |

Thus, it remains the law that the police cannot, say, subject to drug testing every person entering or leaving a certain drug-ridden neighborhood in order to find evidence of crime. And this is true even though it is hard to think of a more compelling government interest than the need to fight the scourge of drugs on our streets and in our neighborhoods. Nor could it be otherwise, for if being evenhanded were enough to justify evaluating a search regime under an open-ended balancing test, the Warrant Clause, which presupposes that there is some category of searches for which individualized suspicion is nonnegotiable would be a dead letter.

Outside the criminal context, however, in response to the exigencies of modern life, our cases have upheld several evenhanded blanket searches, including some that are more than minimally intrusive, after balancing the invasion of privacy against the government's strong need. Most of these cases, of course, are distinguishable insofar as they involved searches either not of a personally intrusive nature, such as searches of closely regulated businesses…or arising in unique contexts such as prisons, see, e. g., *Wolfish* (visual body cavity searches of prisoners following contact visits); cf. *Cuddihy* (indicating that searches incident to arrest and prisoner searches were the only common personal searches at time of founding). This certainly explains why JUSTICE SCALIA, in his dissent in our recent *Von Raab* decision, found it significant that "until today this Court had upheld a bodily search separate from arrest and without individualized suspicion of wrongdoing only with respect to prison inmates, relying upon the uniquely dangerous nature of that environment."

…[W]e upheld the suspicionless regime at issue in *Skinner* on the firm understanding that a requirement of individualized suspicion for testing train operators for drug or alcohol impairment following serious train accidents would be unworkable because "the scene of a serious rail accident is chaotic." *Skinner* (Of course, it could be plausibly argued that the fact that testing occurred only after train operators were involved in serious train accidents amounted to an individualized suspicion requirement in all but name, in light of the record evidence of a strong link between serious train accidents and drug and alcohol use.) We have performed a similar inquiry in the other cases as well. *Von Raab* (suspicion requirement for searches of customs officials for drug impairment impractical because "not feasible to subject such employees and their work product to the kind of day-to-day scrutiny that is the norm in more traditional office environments"); *Camara* (suspicion requirement for searches of homes for safety code violations impractical because conditions such as "faulty wiring" not observable from outside of house); *Wolfish* (suspicion requirement for searches of prisoners for smuggling following contact visits impractical because observation necessary to gain suspicion would cause "obvious disruption of the confidentiality and intimacy that these visits are intended to afford"); *Martinez-Fuerte* ("A requirement that stops on major routes inland always be based on reasonable suspicion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a

given car that would enable it to be identified as a possible carrier of illegal aliens"); *United States v. Edwards* (suspicion-based searches of airport passengers' carry-on luggage impractical because of the great number of plane travelers and "conceded inapplicability" of the profile method of detecting hijackers).

Moreover, an individualized suspicion requirement was often impractical in these cases because they involved situations in which **even one undetected instance of wrongdoing could have injurious consequences for a great number of people**. *Camara* (even one safety code violation can cause "fires and epidemics [that] ravage large urban areas"); *Skinner* (even one drug-or alcohol-impaired train operator can lead to the "disastrous consequences" of a train wreck, such as "great human loss"); *Von Raab* (even one customs official caught up in drugs can, by virtue of impairment, susceptibility to bribes, or indifference, result in the noninterdiction of a "sizable drug shipment," which eventually injures the lives of thousands, or to a breach of "national security"); *Edwards* (even one hijacked airplane can destroy "hundreds of human lives and millions of dollars of property").

Time out. Is not **one** life of an athlete worthy of a slight invasion of privacy? Is it the number of lives spared that determines constitutionality and, if so, how many potential lives does it take to make the search constitutional?

…The principal counterargument to all this, central to the Court's opinion, is that the Fourth Amendment is more lenient with respect to school searches. That is no doubt correct, for, as the Court explains, schools have traditionally had special guardianlike responsibilities for children that necessitate a degree of constitutional leeway. This principle explains the considerable Fourth Amendment leeway we gave school officials in *T.L.O.* In that case, we held that children at school do not enjoy two of the Fourth Amendment's traditional categorical protections against unreasonable searches and seizures: the warrant requirement and the probable cause requirement. And this was true even though the same children enjoy such protections "in a nonschool setting."

The instant case, however, asks whether the Fourth Amendment is even more lenient than that, i.e., whether it is so lenient that students may be deprived of the Fourth Amendment's only remaining, and most basic, categorical protection: its strong preference for an individualized suspicion requirement, with its accompanying antipathy toward personally intrusive, blanket searches of mostly innocent people. It is not at all clear that people in prison lack this categorical protection…and we have said "we are not yet ready to hold that the schools and the prisons need be equated for purposes of the Fourth Amendment." Thus, if we are to mean what we often proclaim--that students do not "shed their constitutional rights…at the schoolhouse gate," *Tinker v. Des Moines*, --the answer must plainly be no.

I have really had it with this "schoolhouse gate" misleading argument. See the Tinker case (#9 on this website). Don't the innocent victims of the drug culture have some say? Look, all parents of Vernonia students except Mr. Acton approved of this random suspicionless testing. Perhaps that is because they would rather have their child caught (if guilty) or go through a search (even if not guilty) if, to do so, helps rid their child's school of this drug epidemic. And, perhaps drug free athletes want drug testing. Perhaps the awful trauma of peeing in a cup is less of a burden than being falsely suspected of drug use. Perhaps, Justice O'Connor, you are acting as super-parent over the very parents and students who welcome the intrusion. Let the legislative/political process work! Let democracy work!

For the contrary position, the Court relies on cases such as *T.L.O., Ingraham v. Wright* and *Goss v. Lopez*. But I find the Court's reliance on these cases ironic. If anything, they affirm that schools have substantial constitutional leeway in carrying out their traditional mission of responding to particularized wrongdoing. *T.L.O.* (leeway in investigating particularized wrong-doing); *Ingraham* (leeway in punishing particularized wrongdoing); *Goss* (leeway in choosing procedures by which particularized wrongdoing is punished).

By contrast, intrusive, blanket searches of schoolchildren, most of whom are innocent, for evidence of serious wrongdoing are not part of any traditional school function of which I am aware. Indeed, many schools, like many parents, prefer to trust their children unless given reason to do otherwise. As James Acton's father said on the witness stand, "**suspicionless testing sends a message to children that are trying to be responsible citizens…that they have to prove that they're innocent…, and I think that kind of sets a bad tone for citizenship.**"

None of you will likely be surprised if I were to refer to the foregoing comment as a perfect example of what is wrong with our society today. Please feel free to discuss!

…I do not believe that suspicionless drug testing is justified on these facts. But even if I agreed that some such testing were reasonable here, I see two other Fourth Amendment flaws in the District's program. First, and most serious, there is virtually no evidence in the record of a drug problem at the Washington Grade School, which includes the seventh and eighth grades, and which Acton attended when this litigation began…The only evidence of a grade school drug problem that my review of the record uncovered is a "guarantee" by the…grade school principal that "our problems…started in the elementary school." But I would hope that a single assertion of this sort would not serve as an adequate basis on which to uphold mass, suspicionless drug testing of two entire grades of student athletes--in Vernonia and, by the Court's reasoning, in other school districts as well. Perhaps there is a drug problem at the grade school, but one would not know it from this record. At the least, then, I would insist that the parties and the District Court address this issue on remand.

Real World Violation! Justice O'Connor, do you really believe a school district would voluntarily put themselves through this and spend their money if there were not a problem in seventh grade? Please let the experts do their job. This is not an issue for the judiciary!

Second, even as to the high school, I find unreasonable the school's choice of student athletes as the class to subject to suspicionless testing--a choice that appears to have been driven more by a belief in what would pass constitutional muster (indicating that the original program was targeted at students involved in any extracurricular activity), than by a belief in what was required to meet the District's principal disciplinary concern.

What am I missing? Any school district that implements much of anything would be negligent if they did not attempt to design a program "to pass constitutional muster." Would you have it otherwise, Justice O'Connor? That is one of the very purposes of stare decisis!

Reading the full record in this case, as well as the District Court's authoritative summary of it, it seems quite obvious that the true driving force behind the District's adoption of its drug testing program was the need to combat the rise in drug-related disorder and disruption in its classrooms and around campus. I mean no criticism of the strength of that interest. On the contrary, where the record demonstrates the existence of such a problem, that interest seems self-evidently compelling. "Without first establishing discipline and maintaining order, teachers cannot begin to educate their students." *T.L.O.* And the record in this case surely demonstrates there was a drug-related discipline problem in Vernonia of "epidemic proportions." The evidence of a drug-related sports injury problem at Vernonia, by contrast, was considerably weaker. On this record, then, it seems to me that the far more reasonable choice would have been to focus on the class of students found to have violated published school rules against severe disruption in class and around campus -- disruption that had a strong nexus to drug use, as the District established at trial. Such a choice would share two of the virtues of a suspicion-based regime: testing dramatically fewer students, tens as against hundreds, and giving students control, through their behavior, over the likelihood that they would be tested. Moreover, there would be a reduced concern for the accusatory nature of the search, because the Court's feared "badge of shame" would already exist due to the antecedent accusation and finding of severe disruption…I cannot avoid the conclusion that the District's suspicionless policy of testing all student athletes sweeps too broadly, and too imprecisely, to be reasonable under the Fourth Amendment.