

quired for mandatory drug testing of certain classes of railroad and public employees. In each case, “special needs beyond the normal need for law enforcement” were identified as justifying the drug testing. In *Skinner v. Railway Labor Executives’ Ass’n*,<sup>361</sup> the Court upheld regulations requiring railroads to administer blood, urine, and breath tests to employees involved in certain train accidents or violating certain safety rules; in *National Treasury Employees Union v. Von Raab*<sup>362</sup> the Court upheld a Customs Service screening program requiring urine testing of employees seeking transfer or promotion to positions having direct involvement with drug interdiction, or to positions requiring the incumbent to carry firearms.

The Court in *Skinner* found a “compelling” governmental interest in testing the railroad employees without any showing of individualized suspicion, since operation of trains by anyone impaired by drugs “can cause great human loss before any signs of impairment become noticeable.”<sup>363</sup> By contrast, the intrusions on privacy were termed “limited.” Blood and breath tests were passed off as routine; the urine test, although more intrusive, was deemed permissible because of the “diminished expectation of privacy” in employees having some responsibility for safety in a pervasively regulated industry.<sup>364</sup> The lower court’s emphasis on the limited effectiveness of the urine test (it detects past drug use but not necessarily the level of impairment) was misplaced, the Court ruled. It is enough that the test may provide some useful information for an accident investigation; in addition, the test may promote deterrence as well as detection of drug use.<sup>365</sup>

In *Von Raab* the governmental interests underlying the Customs Service’s screening program were also termed “compelling”: to ensure that persons entrusted with a firearm and the possible use of deadly force not suffer from drug-induced impairment of perception and judgment, and that “front-line [drug] interdiction personnel [be] physically fit, and have unimpeachable integrity and judgment.”<sup>366</sup> The possibly “substantial” interference with privacy interests of these Customs employees was justified, the Court concluded, be-

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<sup>361</sup> 489 U.S. 602 (1989).

<sup>362</sup> 489 U.S. 656 (1989).

<sup>363</sup> 489 U.S. at 628.

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<sup>365</sup> 489 U.S. at 631–32.

<sup>366</sup> *Von Raab*, 489 U.S. at 670–71. Dissenting Justice Scalia discounted the “feeble justifications” relied upon by the Court, believing instead that the “only plausible explanation” for the drug testing program was the “symbolism” of a government agency setting an example for other employers to follow. 489 U.S. at 686–87.