Legal Aspects of Urinalysis Testing of Certain Federal Employees

Introduction

This memorandum will examine certain legal aspects of urinalysis testing of federal law enforcement personnel, federal prosecutors and federal officials who make drug policy decisions. It assumes that the tests used are reliable and that a reasonable program of testing is involved, and, therefore, contains no extended discussion of Fifth Amendment procedural due process issues. In addition, it does not examine possible civil actions, such as Bivens suits, which could arise if the urinalysis program is found to involve unconstitutional searches and seizures.

Fourth Amendment

The courts have consistently held that requiring a person to provide a sample of his urine is a seizure within the meaning of the Fourth Amendment, basing their analysis on Schmerber v. California, 384 U.S. 757 (1966) which held that the extraction of blood was a fourth amendment search. Division 241, Amalgamated Transit Union v. Suscy, 538 F.2d 1264 (7th Cir.), cert. denied, 429 U.S. 1029 (1976); McDonell v. Hunter, 612 F.Supp, 1122 (S.D. Iowa 1985); Allen v. City of Marietta, 601 F.Supp. 482 (N.D.GA 1985); Murray v. Halderman, 16 M.J. 74, 81 (CMA 1983). The Fourth Amendment prohibits only unreasonable searches and

seizures. Carroll v. United States, 267 U.S. 132 (1925). To determine the reasonableness of a search or seizure, the courts balance intrusiveness against benefit to the public. The more intrusive the search or seizure the higher level of suspicion of wrongdoing required to justify it. United States v. de Hernandez, _____ U.S._____, 105 S.Ct 3304 (1985). Generally, absent certain exceptions, warrantless searches are per se unreasonable. United States v. Karo, _____ U.S. _____, 104 S.Ct 3296 (1984).

Although there are insufficient cases to adequately determine the nature of an exception to the warrant requirement that might be involved in urinalysis, it could derive from cases allowing administrative searches of heavily regulated industries. United States v. Biswell, 406 U.S. 311 (1972); Colonnade Catering Corp v. United States; 397 U.S. 72 (1970). Another rationale might be the government's right as an employer, as opposed to a law enforcer, to investigate employee misconduct. See United States v. Bunkers, 521 F.2d 1217 (9th Cir.), cert denied, 423 U.S. 989 (1975) (warrantless search of postal employee's locker upheld); United States v. Collins, 349 F.2d 863 (2nd Cir. 1965), cert denied, 383 U.S. 960 (1966) (warrantless search of Custom's employee's jacket upheld where there were reasonable grounds to suspect he was pilfering goods).

To date, there are only three federal cases which examine the constitutionality of urinalysis testing of civilian government

employees. [1/] In Division 241, Amalgamated Transit Union v. Suscy, 538 F.2d 1264 (7th. Cir.), cert denied, 429 U.S. 1029 (1976), the court upheld urinalysis testing of bus drivers who had been involved in a serious accident or who were suspected of being under the influence of alcohol or drugs. The Court found the intrusion of the testing reasonable when weighed against the government's interest in protecting the public.

In Allen v. City of Marietta, 601 F.Supp 482 (N.D.Ga. 1985), the court upheld the urinalysis testing of city employees. Two factors were critical to the court's finding that urinalysis was reasonable, first, the employees' jobs were hazardous, involving working on high voltage wires, and, second, there was individual suspicion that each employee tested was using drugs.

In McDonnell v. Hunter, 612 F.Supp, 1122, 1130 (S.D. Iowa 1985), the court held that urinalysis of prison employees is permissible under the Fourth Amendment in three instances, reasonable suspicion that the employee is under the influence of alcohol or drugs, as part of routine physicals, or as a

---

1/ Urinalysis testing of military personnel has been routinely allowed. However, in permitting this testing, the courts have consistently distinguished military life from civilian life. See e.g., Committee For G.I. Rights v. Callaway, 518 F.2d 466 (D.C. Cir. 1975) (various drug tests permitted in military because of conditions pecular to military, different expectation of privacy in military, importance of military preparedness, and documented drug abuse problem in military).

condition of continued employment under a disciplinary disposition, when the testing is related to the basis for the disciplinary action. The court also held that a consent form signed by employees as a condition of employment was not a valid consent to search. Id at 1131.

In Shoemaker v. Handel, 619 F.Supp. 1089 (D.C.N.J. 1985), the district court upheld a State Racing Commission's regulations requiring random urinalysis testing of jockeys. Although not public employees, the jockeys were licensed by the State. The court based its finding that urinalysis testing was reasonable on the fact that house racing was an industry subject to pervasive and continuous regulation and, therefore, the exceptions to the warrant requirement for highly regulated industries of Biswell and Colonnade applied.

Another exception to the Fourth Amendment warrant requirement is consent. A search or seizure conducted pursuant to a voluntary consent does not violate the Fourth Amendment. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). "Voluntariness is a question of fact to be determined from the totality of the circumstances." Id. at 249. If federal employees consent to urinalysis testing, the voluntariness of that consent becomes an issue. If employment is conditioned on the relinquishment of constitutionally protected rights, it is unlikely that the consent will be viewed as voluntary. See Pickering v. Board of Education, 391 U.S. 563 (1968); Garrity v. New Jersey, 385 U.S.

493 (1967). In McDonell v. Hunter, supra at 1131, the court held that an advance consent to urinalysis was an advance consent to a future unreasonable search and, therefore, not a reasonable condition of employment.

Conclusion

In view of the paucity of case law, it is difficult to predict whether the courts would find required urinalysis of federal employees to be a reasonable search or seizure under the fourth amendment. A finding of constitutionality is most likely if urinalysis is required only when there is reasonable suspicion that an employee is using drugs. It is least likely when random urinalysis is required.

In order to justify warrantless urinalysis, it would be necessary to balance a strong public interest in the testing against the intrusion on personal privacy involved. Some factors which might be persuasive:

1. Federal prosecutors and law enforcement officials are charged with enforcing the United States' drug laws.

2. Use of drugs by federal prosecutors, policy makers and law enforcement personnel would make them targets for corruption and blackmail.

3. Federal employment in these jobs is highly regulated and requires an in-depth security clearance.

4. Some federal employees, i.e., United States Attorneys, Assistant United States Attorneys, high ranking Justice attorneys serve at the will of the President or the Attorney General. See e.g., 28 U.S.C. 541, 542, 543; Windsor v. The Tennessean, 719 F.2d 155, 159 (6th Cir. 1983) (no property or liberty entitlement to a position as an Assistant United States Attorney because Attorney General's power to remove Assistant United States Attorneys is unconditional). 2/

5. A strong argument can be made that drug use by law enforcement personnel presents a serious public safety problem because law enforcement personnel carry firearms.

2/ This factor is more significant in lessening any procedural requirements for dismissal under the Fifth Amendment due process clause than in negating Fourth Amendment claims. Even if an individual has no property interest in a particular governmental job, hiring or continued employment may not be conditioned upon the sacrifice of constitutional rights. See Elrod v. Burns, 427 U.S. 347 (1976) (sheriff's department at will employees may not be dismissed solely on basis of political affiliation).

Pre-employment urinalysis is most likely to be considered reasonable in light of the already extensive pre-employment screening done in the security clearance procedure. Based on the limited case law to date, it also appears that the requirement of urinalysis testing when there is a reasonable suspicion of drug use will withstand constitutional challenge. Random screening is far more problematic. It is more likely to be upheld for law enforcement personnel than for other Department of Justice employees for two reasons. First, when law enforcement officers carry firearms there are serious public safety concerns if their instincts are impaired by drug use. Second, corruption of and drug use by law enforcement officers is difficult to detect because they work directly with drugs and drug traffickers.

CHAPTER 18—MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS

Sec.

Historical Note

1981 Amendment. Pub.L. 97–86, Title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1114, added the chapter heading for chapter 18 and the analysis of sections 371 to 378 comprising that chapter.

Cross References

Assistance requested from Secretary of Defense under this chapter in prohibiting transactions involving nuclear materials, see section 831 of Title 18, Crimes and Criminal Procedure.

§ 371. Use of information collected during military operations

The Secretary of Defense may, in accordance with other applicable law, provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of any Federal or State law within the jurisdiction of such officials.

(Added Pub.L. 97–86, Title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97–86, see 1981 U.S. Code Cong. and Adm.News, p. 1781.

Code of Federal Regulations

Acquisition and dissemination of information collected during normal course of military operations, see 32 CFR 213.8.

Library References

Armed Services ⚖3. C.J.S. Armed Services §§ 7 to 10, 31, 33, 41.

§ 372. Use of military equipment and facilities

The Secretary of Defense may, in accordance with other applicable law, make available any equipment, base facility, or research facility of the Army, Navy, Air Force, or Marine Corps to any Federal, State, or local civilian law enforcement official for law enforcement purposes.

(Added Pub.L. 97–86, Title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97–86, see 1981 U.S. Code Cong. and Adm.News, p. 1781.

Code of Federal Regulations

Availability of equipment, base facilities or research facilities to civilian law enforcement officials, see 32 CFR 213.9.

Library References

Armed Services ⇐3 C.J.S. Armed Services §§ 7 to 10, 31, 33, 41.

§ 373. Training and advising civilian law enforcement officials

The Secretary of Defense may assign members of the Army, Navy, Air Force, and Marine Corps to train Federal, State, and local civilian law enforcement officials in the operation and maintenance of equipment made available under section 372 of this title and to provide expert advice relevant to the purposes of this chapter.

(Added Pub.L. 97–86, Title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97–86, see 1981 U.S. Code Cong. and Adm.News, p. 1781.

Code of Federal Regulations

Military cooperation with civilian law enforcement officials, see 32 CFR 213.1 et seq.

Library References

Armed Services ⇐3 C.J.S. Armed Services §§ 7 to 10, 31, 33, 41.

§ 374. Assistance by Department of Defense personnel

(a) Subject to subsection (b), the Secretary of Defense, upon request from the head of an agency with jurisdiction to enforce—

(1) the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

(2) any of sections 274 through 278 of the Immigration and Nationality Act (8 U.S.C. 1324–1328); or

(3) a law relating to the arrival or departure of merchandise (as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401)) into or out of the customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States (19 U.S.C. 1202)) or any other territory or possession of the United States,

may assign personnel of the Department of Defense to operate and maintain or assist in operating and maintaining equipment made available under section 372 of this title with respect to any criminal violation of any such provision of law.

(b) Except as provided in subsection (c), equipment made available under section 372 of this title may be operated by or with the assistance of personnel assigned under subsection (a) only to the extent the equipment is used for monitoring and communicating the movement of air and sea traffic.

(c)(1) In an emergency circumstance, equipment operated by or with the assistance of personnel assigned under subsection (a) may be used outside the land area of the United States (or any territory or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of a law listed in subsection (a) and to transport such law enforcement officials in connection with such operations, if—

(A) equipment operated by or with the assistance of personnel assigned under subsection (a) is not used to interdict or to interrupt the passage of vessels or aircraft; and

(B) the Secretary of Defense and the Attorney General jointly determine that an emergency circumstance exists.

(2) For purposes of this subsection, an emergency circumstance may be determined to exist only when—

(A) the size or scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and

(B) enforcement of a law listed in subsection (a) would be seriously impaired if the assistance described in this subsection were not provided.

(Added Pub.L. 97–86, Title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1115.)

Historical Note

References in Text. The Controlled Substances Act, referred to in subsec. (a)(1), is Title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (section 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables volume.

The Controlled Substances Import and Export Act referred to in subsec. (a)(1), is Title III of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (section 951 et seq.) of chapter 13 of Title 21. For complete classification of the Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables volume.

The Tariff Schedules of the United States, referred to in subsec. (a)(3), are no longer set out in the Code. See Notice set out under section 1202 of Title 19, Customs Duties.

Legislative History. For legislative history and purpose of Pub.L. 97–86, see 1981 U.S. Code Cong. and Adm.News, p. 1781.

Code of Federal Regulations

Military cooperation with civilian law enforcement officials, see 32 CFR 213.1 et seq.

Library References

Armed Services ⚖3

C.J.S. Armed Services §§ 7 to 10, 31, 33, 41.

§ 375. Restriction on direct participation by military personnel

The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any assistance (including the provision of any equipment or facility or the assignment of any personnel) to any civilian law enforcement official under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in an interdiction of a vessel or aircraft, a search and seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.

(Added Pub.L. 97–86, Title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97–86, see 1981 U.S. Code Cong. and Adm.News, p. 1781.

Code of Federal Regulations

Restrictions on participation of military personnel in civilian law enforcement activities, see 32 CFR 213.10.

Library References

Armed Services ⇐3. C.J.S. Armed Services §§ 7 to 10, 31, 33, 41.

§ 376. Assistance not to affect adversely military preparedness

Assistance (including the provision of any equipment or facility or the assignment of any personnel) may not be provided to any civilian law enforcement official under this chapter if the provision of such assistance will adversely affect the military preparedness of the United States. The Secretary of Defense shall issue such regulations as may be necessary to insure that the provision of any such assistance does not adversely affect the military preparedness of the United States.

(Added Pub.L. 97–86, Title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97–86, see 1981 U.S. Code Cong. and Adm.News, p. 1781.

Code of Federal Regulations

Military cooperation with civilian law enforcement officials, see 32 CFR 213.1 et seq.

Library References

Armed Services ⇐3. C.J.S. Armed Services §§ 7 to 10, 31, 33, 41.

§ 377. Reimbursement

The Secretary of Defense shall issue regulations providing that reimbursement may be a condition of assistance to a civilian law enforcement official under this chapter.

(Added Pub.L. 97–86, Title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97–86, see 1981 U.S. Code Cong. and Adm.News, p. 1781.

Code of Federal Regulations

Waiver of reimbursement, see 32 CFR 213.11.

§ 378. Nonpreemption of other law

Nothing in this chapter shall be construed to limit the authority of the executive branch in the use of military personnel or equipment for civilian law enforcement purposes beyond that provided by law prior to the enactment of this chapter.

(Added Pub.L. 97–86, Title IX, § 905(a)(1), Dec. 1, 1981, 95 Stat. 1116.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97–86, see 1981 U.S. Code Cong. and Adm.News, p. 1781.

Accordingly this Court adheres to the same analysis as *Thomas*. It also finds persuasive, as did Chief Judge Haden, the special consideration applicable where (as here) jurisdictional considerations are present. Without ascribing any sandbagging motive to Westinghouse, this Court is mindful of the possibility that a court's mistaken decision in favor of retention of a remandable case could result in a judgment subject to later attack for want of subject matter jurisdiction. See, e.g., *Ross v. Inter-Ocean Insurance Co.*, 693 F.2d 659, 663 (7th Cir.1982). Conversely remand can pose no such risk of judicial (and litigants') diseconomy. As Judge Schwarzer put it in *Rosack v. Volvo of America Corp.*, 421 F.Supp. 933, 937 (N.D.Cal.1976):

> Even if there were reason to doubt the correctness of this disposition, any doubt should be resolved in favor of remand to spare the parties proceedings which might later be nullified should jurisdiction be found to be lacking.

That approach is wholly consistent with the concept that "the policy of the successive acts of Congress regulating the jurisdiction of federal courts is one calling for the strict construction of [removal] legislation." *Shamrock Oil Corp. v. Sheets*, 313 U.S. 100, 108, 61 S.Ct. 868, 872, 85 L.Ed. 1214 (1941).

This Court therefore finds Section 1445(c) applies, so "that the case was removed improvidently and without jurisdiction" (Section 1447(c)). This action is remanded to the Circuit Court of Cook County.

Alan F. McDONELL, et al., Plaintiffs

v.

Susan HUNTER, et al., Defendants

Civ. No. 84-71-B.

United States District Court, S.D. Iowa, C.D.

July 9, 1985.

Department of Corrections employees brought action challenging constitutionality of Department policy subjecting employees to searches of vehicles and persons, seeking declaratory and injunctive relief. The District Court, Vietor, Chief Judge, held that: (1) strip search of correctional facility employee may constitutionally be made only on basis of reasonable suspicion, based on specific objective facts and rational inferences that may be drawn from those facts in light of experience; (2) it is unreasonable to search employees' automobile parked outside confines within which inmates are kept, even if parking lot is on ground owned by correctional facility; (3) Fourth Amendment allows Department of Corrections to demand of an employee a urine, blood or breath specimen for chemical analysis only on basis of reasonable suspicion, based on specific objective facts and reasonable inferences drawn from those facts in light of experience, that employee is then under influence of alcoholic beverages or controlled substances; and (4) demand that employee submit urine specimen for chemical testing did not have reasonable suspicion basis, and was a demand for a seizure not permissible under the Fourth Amendment.

Ordered accordingly.

1. Searches and Seizures ⇐7(2.10)

The Fourth Amendment is intended to protect privacy of individuals from invasion by unreasonable searches of person and those places and things where an individual has reasonable expectation of privacy; only

unreasonable searches are prohibited. U.S. C.A. Const.Amend. 4.

1. Searches and Seizures ⇐7(1)

Everyone is protected from unreasonable searches by the Fourth Amendment all the time, not just when police suspect someone of criminal conduct. U.S.C.A. Const.Amend. 4.

2. Searches and Seizures ⇐7(10)

One's person and one's automobile are places where one has reasonable or legitimate expectations of privacy, and government intrusions into those areas are searches within meaning of Fourth Amendment. U.S.C.A. Const.Amend. 4.

3. Searches and Seizures ⇐7(10)

Although there are significant limits to Fourth Amendment rights in an automobile, automobile is not an area totally devoid of one's reasonable expectation of privacy and Fourth Amendment protection. U.S.C.A. Const.Amend. 4.

4. Searches and Seizures ⇐1

Taking blood from body is a search and seizure within meaning of the Fourth Amendment. U.S.C.A. Const.Amend. 4.

5. Searches and Seizures ⇐1, 7(25)

Individual has reasonable and legitimate expectation of privacy in personal information contained in body fluids, and thus, governmental taking of a urine specimen is a seizure within meaning of the Fourth Amendment. U.S.C.A. Const. Amend. 4.

6. Searches and Seizures ⇐7(10)

Intrusions authorized by Department of Corrections' policy, which subjects employees to searches of vehicles, urinalysis, and blood tests, upon request of Department officials were intrusions into areas in which employees normally had reasonable and legitimate expectation of privacy protected by the Fourth Amendment, thus presenting question as to whether such intrusions were nevertheless reasonable and not violative of the Fourth Amendment. U.S.C.A. Const.Amend. 4.

8. Searches and Seizures ⇐7(10, 14)

Correctional facility security considerations reduce scope of reasonable expectations of privacy that one normally holds and makes reasonable some intrusions which would not be reasonable outside of facility; however, security considerations do not cause prisoners, visitors, or prison employees to lose all their Fourth Amendment rights at prison gates. U.S.C.A. Const.Amend. 4.

9. Searches and Seizures ⇐7(10)

Department of Corrections can constitutionally conduct such regulatory searches of persons entering correctional facilities, including employees, as are reasonably necessary to serve security considerations, but searches must be guided by some appropriate standards, and must be no more intrusive than is reasonably necessary. U.S. C.A. Const.Amend. 4.

10. Searches and Seizures ⇐7(10)

Routine search of all persons, including employees, entering correctional institution sufficiently intrusive to discover any hidden weapons is reasonable; such search can be accomplished by a magnetometer or pat-down search by person of same sex and inspection of contents of packages, purses, handbags and pockets. U.S.C.A. Const. Amend. 4.

11. Searches and Seizures ⇐3.3(2)

Strip search of correctional facility employee may constitutionally be made only on basis of reasonable suspicion, based on specific objective facts and rational inferences that may be drawn from those facts in light of experience; inchoate, unspecified suspicions are insufficient. U.S.C.A. Const.Amend. 4.

12. Drugs and Narcotics ⇐184

Generalized suspicion of drug smuggling activity by correctional facility employee is insufficient to justify strip search of employee; there must be reasonable grounds, based on objective facts, to believe that at time of strip search employee is concealing drugs on his or her person.

13. Drugs and Narcotics ⇐184

Correctional facility employee's mere association with another individual suspected of drug dealing does not provide independent basis for strip search of employee.

14. Searches and Seizures ⇐3.3(2)

Although bare anonymous tip that completely lacks any indicia of reliability will not satisfy reasonable suspicion standard necessary for strip search of correctional institution employee, if information in anonymous tip is linked to other objective facts, standard may be satisfied.

15. Searches and Seizures ⇐3.3(3)

If a tip is not anonymous, identity of informant, his reliability, and detail of information supplied may establish reasonable suspicion necessary for strip search of correctional facility employee.

16. Searches and Seizures ⇐7(10)

Although search of all automobiles brought within confines of correctional facility where they may be reached by inmates is reasonable, it is unreasonable to search a correctional facility employee's automobile that is parked outside confines within which inmates are kept, even if parking lot is on ground owned by correctional facility, and such a search violates the Fourth Amendment. U.S.C.A. Const. Amend. 4.

17. Searches and Seizures ⇐3.3(8)

Constitutionality of a search cannot rest on its fruits.

18. Searches and Seizures ⇐7(10)

Possibility of discovering which correctional institution employees might be using drugs and therefore might be likely to smuggle drugs to prisoners is far too attenuated to make seizures of employees' body fluids, pursuant to required taking of blood and urine samples of employees, constitutionally reasonable. U.S.C.A. Const. Amend. 4.

19. Searches and Seizures ⇐7(10)

Fourth Amendment allows Department of Corrections to demand of an employee a urine, blood or breath specimen for chemical analysis only on basis of reasonable suspicion, based on specific objective facts and reasonable inferences drawn from those facts in light of experience, that employee is then under influence of alcoholic beverages or controlled substances. U.S.C.A. Const.Amend. 14.

20. Searches and Seizures ⇐7(10)

Fourth Amendment does not preclude taking body fluid specimen as part of preemployment physical examination or as part of any routine periodic physical examination that may be required of employees, nor does it prohibit taking a specimen of blood, urine or breath on periodic basis as condition of continued employment under a disciplinary disposition if such condition is reasonably related to underlying basis for disciplinary action and duration of condition is specified and is reasonable in length. U.S.C.A. Const.Amend. 4.

21. Searches and Seizures ⇐7(28)

Search conducted pursuant to voluntary consent does not violate Fourth Amendment. U.S.C.A. Const.Amend. 4.

22. Searches and Seizures ⇐7(28)

In class action brought by employees of Department of Corrections challenging policy dealing with employee searches, District Court could not rest its decision as to reasonableness of searches on assumption that employees who signed consents voluntarily consented in advance to any search made under the policy, absent any evidence concerning circumstances of signing from which court could determine voluntariness. U.S.C.A. Const.Amend. 4.

23. Searches and Seizures ⇐7(27)

Consent form signed by some Department of Corrections employees as condition of employment served to alert employees to fact that their Fourth Amendment rights were more limited inside correctional institution, but was not a valid consent to any search other than one that was, under circumstances, reasonable and, therefore, permissible under the Fourth Amendment. U.S.C.A. Const.Amend. 4.

24. Officers and Public Employees ⇐110

Public employees cannot be bound by unreasonable conditions of employment.

25. Searches and Seizures ⇐7(27)

Advance consent to future unreasonable searches is not a reasonable condition of employment, and public employees cannot be bound to such consent. U.S.C.A. Const.Amend. 4.

26. Searches and Seizures ⇐7(10)

Demand that Department of Corrections employees submit urine specimen for chemical testing did not have a reasonable suspicion basis, and therefore was a demand for a seizure not permissible under the Fourth Amendment. U.S.C.A. Const. Amend. 4.

27. Searches and Seizures ⇐3.3(1)

Pat-down search of Department of Corrections employees entering correctional institution may be conducted without cause, but must be done uniformly or by systematic random selection, and not by discriminatory or arbitrary selection of persons to be searched.

28. Searches and Seizures ⇐3.3(3)

Searches of motor vehicles of Department of Corrections employees within confines of institution where vehicles are accessible to inmates, other than uniformly or by systematic random selection, may be made only on basis of reasonable suspicion, based on specific objective facts and reasonable inferences drawn from those facts in light of experience, that there is weapon or drugs or other contraband in motor vehicle to be searched.

Mark W. Bennett, Staff Counsel, Iowa Civil Liberties Union, Des Moines, Iowa, for plaintiffs.

Gordon Allen, Sp. Asst. Atty. Gen., Mark Hunacek, John Parmeter, Asst. Attys. Gen., Des Moines, Iowa, for defendants.

MEMORANDUM OPINION, FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

VIETOR, Chief Judge.

This is a 42 U.S.C. § 1983 class action brought by three correctional institution employees challenging the constitutionality of an Iowa Department of Corrections policy (hereafter "the Department's policy" or "the policy") which subjects the Department's correctional institution employees to searches of their vehicles and persons, including urinalysis and blood tests, upon the request of Department officials.

The court previously entered an order, pursuant to Fed.R.Civ.P. 23(c)(3), certifying the class consisting of all individuals employed by the Iowa Department of Corrections at its various institutions throughout the state of Iowa who are covered by the Department's policies which may subject employees to searches of their personal motor vehicles and their persons, including strip-searches, and which allows Department of Corrections officials to demand urine, blood or breath specimens for chemical analysis.

Plaintiffs seek declaratory and injunctive relief on behalf of themselves and the class they represent that the Department's policy (a copy of which is attached hereto as Appendix A) violates the Fourth Amendment to the United States Constitution and plaintiffs' constitutional right to privacy.[1] Plaintiff McDonell also seeks back pay for earnings lost during his perioa of discharge.

Jurisdiction and venue are predicated upon 28 U.S.C. § 1343(3). Venue is proper in this district pursuant to 28 U.S.C. § 1392(a).

A preliminary injunction was issued in February of 1984, from which appeal was taken. The preliminary injunction order was affirmed. *McDonell v. Hunter*, 746 F.2d 785 (8th Cir.1984).

1. Although the Department's policy as written does not expressly mention submission of blood, urine and breath samples, there is no dispute that the policy is considered to include submission of such samples.

On June 6, 1985, the parties reported to the court that they have no further evidence to offer and no further briefing to present, so the case is now submitted for final decision on the evidence and briefs received by the court in conjunction with the preliminary injunction matter.

FINDINGS OF FACT

Plaintiff McDonell was employed as a correctional officer at the Men's Reformatory at Anamosa (hereinafter "Anamosa") until he was discharged on January 19, 1984. Shortly after that he was reinstated but transferred to a different institution. He lost ten days pay. Plaintiffs Curran and Phipps, at all times material to this action, were and continue to be employed at the Iowa Correctional Institution for Women at Mitchellville (hereinafter "Mitchellville").

There are approximately 1750 correctional institution employees of the Iowa Department of Corrections who are within the certified class.

Defendant Hunter is the Superintendent and chief executive officer of Mitchellville. Defendant Sebek is the Security Director of Mitchellville, and is responsible for the implementation and enforcement of the Department's policy. Defendant Behrends is the Acting Deputy Warden of Anamosa, and is responsible for the implementation of the Department's policy. Defendant Farrier is Director and chief administrative officer of the Iowa Department of Corrections, and is responsible for the supervision and operations of Anamosa, Mitchellville, and other correctional facilities.

It is, of course, necessary to maintain security at each correctional facility, and a necessary part of security is prevention of distribution of weapons, drugs and other contraband to inmates. The Department's policy challenged in this suit is designed to serve security requirements at the state's correctional facilities.

The motor vehicle parking lot for employees at Mitchellville is within the gates of the facility, that is, within the area where inmates are confined. At all other correctional facilities the employee parking lot is on facility property outside of the confines within which inmates are confined.

When plaintiff McDonell became employed at Anamosa in 1979, he signed a consent to search, a copy of which is attached hereto as Appendix B. On January 17, 1984, plaintiff McDonell was informed by supervisory personnel at Anamosa that they had received confidential information indicating that he had been seen the previous weekend with individuals who were "being looked at" by law enforcement officials regarding drug related activities. Based on this information, the supervisory personnel requested plaintiff McDonell to undergo urinalysis. He refused and as a result his employment was terminated on January 19. Shortly thereafter he was reinstated with loss of ten days pay and transferred to another institution.

In August of 1983, employees at Mitchellville were presented a search consent form to sign, a copy of which is attached hereto as Appendix C. Plaintiffs Curran and Phipps refused to sign. There is disputed evidence that they were initially told that they would not receive their paychecks if they did not sign. In any event, they did receive their paychecks and all paychecks since then, and they have not been discharged or disciplined in any way for refusing to sign.

The Department's policy does not identify who has the authority to require an employee to submit to a search or to provide a blood or urine sample, nor does the policy articulate any standards for its implementation. No separate written standards have been promulgated governing implementation of the Department's policy. In his affidavit, defendant Farrier states: "As a practical matter, correctional officers are not asked to submit to a urinalysis or blood test unless there is some articulable reason to believe that there may be a problem."

CONCLUSIONS OF LAW AND DISCUSSION

The Fourth Amendment to the United States Constitution states:

> 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 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment applies to the states through the Fourteenth Amendment. *Wolf v. Colorado*, 338 U.S. 25, 27–28, 69 S.Ct. 1359, 1361, 93 L.Ed. 1782 (1949).

[1] The Supreme Court has rejected the notion of "constitutionally protected areas" and has said: "The fourth amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967). The Fourth Amendment is intended to protect the privacy of individuals from invasion by unreasonable searches of the person and those places and things wherein the individual has a reasonable expectation of privacy. *Terry v. Ohio*, 392 U.S. 1, 9, 88 S.Ct. 1868, 1873, 20 L.Ed.2d 889 (1968). Only "unreasonable" searches are prohibited. *Carroll v. United States*, 267 U.S. 132, 147, 45 S.Ct. 280, 283, 69 L.Ed. 543 (1925).

[2] Defendants suggest that Fourth Amendment considerations are not involved in this case because any searches made pursuant to the Department's policy would not be for criminal investigation purposes.[2] That contention is without merit. "It is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara v. Municipal Court*, 387 U.S. 523, 530, 87 S.Ct. 1727, 1731, 18 L.Ed.2d 930 (1967). *See Wyman v. James*, 400 U.S. 309, 317, 91 S.Ct. 381, 385, 27 L.Ed.2d 408 (1971). All of us are protected by the Fourth Amendment all of the time, not just when police suspect us of criminal conduct.

[3–6] There is no question that one's person and one's automobile are places where one has a reasonable or legitimate expectation of privacy, and that government intrusions into those areas are searches.[3] Taking blood from the body is a search and seizure within the meaning of the Fourth Amendment. *Schmerber v. California*, 384 U.S. 757, 767, 86 S.Ct. 1826, 1834, 16 L.Ed.2d 908 (1966). Urine, unlike blood, is routinely discharged from the body, so no governmental intrusion into the body is required to seize urine. However, urine is discharged and disposed of under circumstances where the person certainly has a reasonable and legitimate expectation of privacy. One does not reasonably expect to discharge urine under circumstances making it available to others to collect and analyze in order to discover the personal physiological secrets it holds, except as part of a medical examination. It is significant that both blood and urine can be analyzed in a medical laboratory to discover numerous physiological facts about the person from whom it came, including but hardly limited to recent ingestion of alcohol or drugs. One clearly has a reasonable and legitimate expectation of privacy in such personal information contained in his body fluids. Therefore, governmental taking of a urine specimen is a seizure within the meaning of the Fourth Amendment. *Allen v. City of Marietta*, 601 F.Supp. 482, 488–89 (N.D.Ga.1985); *Storms v. Coughlin*, 600 F.Supp. 1214, 1217–18 (S.D.N.Y.1984); *Murray v. Haldeman*, 16 M.J. 74, 81 (C.M.A.1983).

2. It may well be that the primary purpose of a search made under the Department's policy would be to serve the facility's security needs. However, if the search yielded drugs or an illegal weapon or illegal possession of a lawful weapon, a criminal prosecution could follow and the evidence uncovered, if constitutionally obtained, could be used in the prosecution. *United States v. Skipwith*, 482 F.2d 1272, 1277–79 (5th Cir.1973).

3. There are significant limits to Fourth Amendment rights in an automobile. However, an automobile is not an area totally devoid of one's reasonable expectation of privacy and Fourth Amendment protection, as suggested by defendants.

[7] It is this court's conclusion that all of the intrusions authorized by the Department's policy are intrusions into areas where plaintiffs and their class normally have a reasonable and legitimate expectation of privacy protected by the Fourth Amendment. The question then becomes whether the intrusions authorized by the policy are nevertheless reasonable and therefore not violative of the Fourth Amendment.

Whether the authorized intrusions are reasonable must be evaluated in the context of the places of employment—penal institutions where security is a paramount consideration. The United States Court of Appeals for the Eighth Circuit, in a case involving the constitutionality of strip searching a prison inmate's visitor, stated:

> The penal environment is fraught with serious security dangers. Incidents in which inmates have obtained drugs, weapons, and other contraband are well-documented in case law and regularly receive the attention of the news media. Within prison walls, a central objective of prison administrators is to safeguard institutional security. To effectuate this goal prison officials are charged with the duty to intercept and exclude by all reasonable means all contraband smuggled into the facility. Indeed, Iowa correctional officials recognize their duty to constrict the flow of contraband into the prison. They consider both clothed and unclothed body searches an effective means of controlling contraband and "a basic implement of the institutions['] overall security."
>
> Although the preservation of security and order within the prison in unquestionably a weighty state interest, prison officials are not unlimited in ferreting out contraband. Certainly, as has been observed, one's anatomy is draped with constitutional protection. *United States v. Afanador*, 567 F.2d 1325, 1331 (5th Cir.1978). And the state's interest must be balanced against the significant invasion of privacy occasioned by a strip search. Indeed, a strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience. *See United States v. Sandler*, 644 F.2d 1163, 1167 (5th Cir. en banc 1981); *United States v. Dorsey*, 641 F.2d 1213, 1217 (7th Cir.1981); *cf. Terry v. Ohio*, 392 U.S. at 24–25, 88 S.Ct. at 1881–1882 (limited search of outer clothing for weapons is likely to be an annoying, frightening, and perhaps humiliating experience).

Hunter v. Auger, 672 F.2d 668, 674 (8th Cir.1982).

[8] Correctional facility security considerations reduce the scope of reasonable expectations of privacy that one normally holds and makes reasonable some intrusions that would not be reasonable outside of the facility. However, security considerations do not cause prisoners to lose *all* of their constitutional rights at the prison gates. *Bell v. Wolfish*, 441 U.S. 520, 558–59, 99 S.Ct. 1861, 1884–85, 60 L.Ed.2d 447 (1979); *Wolff v. McDonnell*, 418 U.S. 539, 555–56, 94 S.Ct. 2963, 2974–75, 41 L.Ed.2d 935 (1974). Visitors do not lose *all* of their Fourth Amendment rights at the prison gates. *Hunter v. Auger*, *supra*. And prison employees do not lose *all* of their Fourth Amendment rights at the prison gates. *Armstrong v. New York State Commissioner of Correction*, 545 F.Supp. 728, 730 (N.D.N.Y.1982).

[9] There is no doubt that defendants can constitutionally conduct such "regulatory" searches of persons entering Iowa's correctional facilities, including employees, as are reasonably necessary to serve security considerations, but the searches must be guided by some appropriate standards,[4]

4. A fundamental problem with the Department's policy is that it lacks any standards whatsoever for its implementation. Who can authorize or make a search or a demand for a blood or urine sample? Without any standards, it appears that any institutional officer may authorize or make a search or demand for blood or urine at his or her own unfettered discretion, and that the procedures followed will be another matter within the unfettered discretion of the officer implementing the Department's policy. The only

and must be no more intrusive than is reasonably necessary. *Hunter v. Auger, supra; McMorris v. Alioto*, 567 F.2d 897 (9th Cir.1978). The lack of any standards is noted in footnote 4. The court now turns to the questions of the reasonable necessity for the searches authorized by the Department's policy, the reasonableness of the extent of the intrusions authorized, and purported consents to the searches.

Searches of the Person

[10] A routine search of all persons, including employees, entering a correctional institution sufficiently intrusive to discover any hidden weapons is certainly reasonable. This can be accomplished by a magnetometer or a pat-down search by a person of the same sex and an inspection of the contents of packages, purses, handbags and pockets. A strip search is another matter. The "reasonable suspicion" standard for strip searching an inmate's visitor was established in *Hunter v. Auger, supra*, and the same standard has been held to apply to searches of prison employees. *Security & Law Enforcement Employees District Council 82 v. Carey*, 737 F.2d 187 (2d Cir.1984).

[11–13] This court concludes that a strip search of a correctional facility employee may constitutionally be made only on the basis of reasonable suspicion, based on specific objective facts and rational inferences that may be drawn from those facts in light of experience. *Hunter v. Auger, supra*, 672 F.2d at 674. Inchoate, unspecified suspicions are insufficient. *Id.* Furthermore, a generalized suspicion of drug smuggling activity is insufficient—there must be reasonable grounds, based on objective facts, to believe that at the time of the strip search the employee is concealing drugs on his or her person. *Id.* at 675. Also, mere association with another individual suspected of drug dealing does not provide an independent basis for a strip search. *Id.*

[14, 15] Defendants argue that "mere suspicion" rather than "reasonable suspicion" should be the standard for permitting strip searches of employees. They contend that the reasonable suspicion standard established for strip searches of inmate visitors in *Hunter v. Auger, supra*, should not apply to employees because employees, unlike inmate visitors, cannot be limited to non-contact association with inmates. This position is arguable, but I do not find it persuasive. As the court observed in *Hunter*: "[T]he state's interest must be balanced against the significant intrusion of privacy occasioned by a strip search. Indeed, a strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience." *Id.* at 674. The intrusion of a strip search is the most extreme intrusion of personal physical privacy that can be made. Concededly, the state's interest that is to be balanced against that extreme intrusion of privacy is a weighty interest. However, I believe that the state's interest will not be significantly impaired by the reasonable suspicion standard. The standard is not unreasonably burdensome.[5] If an employee is suspected of smuggling drugs into an institution, but the suspicion falls short of being a reasonable suspicion, surveillance and investigation would often either dispel the suspicion as unfounded or elevate it to the quality of reasonable suspicion. Furthermore, the state has means other than strip searches to discourage and guard against smuggling of contraband to in-

standard is that an after-the-fact written report be made to the institution's manager.

5. *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), and *Hunter v. Auger*, 672 F.2d 668 (8th Cir.1982), should provide guidance to defendants. Although a bare anonymous tip—one that completely lacks any indicia of reliability—will not satisfy the reasonable suspicion standard, if the information in the anonymous tip is linked to other objective facts the reasonable suspicion standard may be satisfied. Indeed, depending on the totality of the circumstances, even "probable cause" may be established. Of course, if a tip is not anonymous, the identity of the informant, his reliability, and the detail of the information he supplies may establish reasonable suspicion.

mates by institution employees. For instance, the state can, and certainly should, carefully screen and investigate the backgrounds of employment applicants. Also, drug smuggling by employees could no doubt be substantially deterred by criminal prosecution of any who are found bringing drugs into an institution. Iowa Criminal Code § 719.8. Lastly, if on a particular day an employee is the object of only mere suspicion, he could be directed to leave for the day and thereby not be given the opportunity for any contact with inmates. A balancing of the state's interest against the significant invasion of privacy occasioned by a strip search supports the constitutionality of a reasonable suspicion standard for strip searches of institution employees, but does not support the constitutionality of a mere suspicion standard.

Searches of Automobiles

[16, 17] A search of all automobiles brought within the confines of the facility where they may be reached by inmates is reasonable. However, it is unreasonable to search an employee's automobile that is parked outside the confines within which inmates are kept, even if the parking lot is on ground owned by the correctional facility. Defendants argue that if a search of an employee's automobile yields drugs, that would show that the employee probably uses drugs and might, therefore, be likely to smuggle drugs to inmates. Perhaps, but that reasoning is far too attenuated to make such a search a constitutionally reasonable one. Furthermore, the constitutionality of a search cannot rest on its fruits. The institutional security need for searching employees' cars parked outside the confines of the institution has not been shown.

Blood and Urine Samples

[18] Defendants urge in support of taking blood and urine samples of employees the same reasons urged for searching employees' cars parked outside the gates—identifying possible drug smugglers. So might searches of employees' homes and taps on their telephones. The possibility of discovering who might be using drugs and therefore might be more likely than others to smuggle drugs to prisoners is far too attenuated to make seizures of body fluids constitutionally reasonable. Defendants also argue that taking body fluids is reasonable because it is undesirable to have drug users employed at a correctional institution, even if they do not smuggle drugs to inmates. No doubt most employers consider it undesirable for employees to use drugs, and would like to be able to identify any who use drugs. Taking and testing body fluid specimens, as well as conducting searches and seizures of other kinds, would help the employer discover drug use and other useful information about employees. There is no doubt about it—searches and seizures can yield a wealth of information useful to the searcher. (That is why King George III's men so frequently searched the colonists.) That potential, however, does not make a governmental employer's search of an employee a constitutionally reasonable one.

[19, 20] It is this court's conclusion that the Fourth Amendment allows defendants to demand of an employee a urine, blood, or breath specimen for chemical analysis only on the basis of a reasonable suspicion, based on specific objective facts and reasonable inferences drawn from those facts in light of experience, that the employee is then under the influence of alcoholic beverages or controlled substances.[6] *See Division 241 Amalgamated Transit Union (AFL–CIO) v. Suscy*, 538 F.2d 1264, 1267 (7th Cir.1976). *But see Allen v. City of Marietta, supra*, 601 F.Supp. at 491.

6. The Fourth Amendment, however, does not preclude taking a body fluid specimen as part of a pre-employment physical examination or as part of any routine periodic physical examination that may be required of employees, nor does it prohibit taking a specimen of blood, urine, or breath on a periodic basis as a condition of continued employment under a disciplinary disposition if such a condition is reasonably related to the underlying basis for the disciplinary action and the duration of the condition is specified and is reasonable in length.

Consent

Defendants contend that plaintiff McDonell and other class members who signed a written consent (Appendixes B and C) have validly consented to searches under the Department's policy.

[21] A search conducted pursuant to a voluntary consent does not violate the Fourth Amendment. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). "We hold only that when the subject of a search is not in custody and the State attempts to justify a search on the basis of his consent, the Fourth and Fourteenth Amendments require that it demonstrate that the consent was in fact voluntarily given, and not the result of duress or coercion, express or implied. Voluntariness is a question of fact to be determined from all the circumstances * * *." *Id.* at 248–49, 93 S.Ct. at 2058–59.

[22] Plaintiff McDonell signed a consent form several years ago when he took employment at Anamosa. There is no evidence concerning the circumstances of that signing from which the court can determine voluntariness. Plaintiffs Curran and Phipps did not sign consents. There is no evidence concerning the circumstances of signing by class members who did sign. Under this record, the court cannot rest its decision on an assumption that plaintiff McDonell and class members who signed consents voluntarily consented in advance to any search made under the Department's policy.

[23–25] Furthermore, it is this court's conclusion that the consent form does not constitute a blanket waiver of all Fourth Amendment rights. Within a correctional institution everybody's Fourth Amendment rights are necessarily more limited than they are outside of the institution, but as discussed at page 7 of this memorandum opinion, Fourth Amendment rights are not totally lost. The consent form, which it appears plaintiff McDonell and others signed as a condition of employment when they became employed, served to alert employees to the fact that their Fourth Amendment rights are more limited inside the correctional institution, but the consent cannot be construed to be a valid consent to any search other than one that is, under the circumstances, reasonable and, therefore, permissible under the Fourth Amendment. Public employees cannot be bound by unreasonable conditions of employment. *Pickering v. Board of Education*, 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968). Advance consent to future *unreasonable* searches is not a reasonable condition of employment.

Defendants' reliance on *Wyman v. James*, *supra*, is misplaced. *Wyman* involved a state statutorily authorized home visit by a caseworker to the home of a recipient of Aid to Families with Dependent Children. The court, assuming without holding that such a home visit was a search, concluded that it was reasonable and therefore not violative of the Fourth Amendment. The numerous factors relied on in *Wyman* clearly distinguish it from the instant case.

[26] The January 1984 demand on plaintiff McDonell that he submit a urine specimen for chemical testing did not have a reasonable suspicion basis, and therefore it was a demand for a seizure not permissible under the Fourth Amendment.

JUDGMENT AND INJUNCTION ORDER

It is the declaratory judgment of the court that the Department's policy, Appendix A attached hereto, violates the Fourth Amendment rights of plaintiffs and the certified class insofar as it permits searches and seizures prohibited by the following injunction.

[27] Defendants and their officers, agents, servants and employees are hereby enjoined from conducting searches of the persons of plaintiffs and members of the certified class (employees) pursuant to the Department's policy, except as follows:

(1) Employees entering, or who have entered, a correctional institution may be

searched by use of a magnetometer or similar device, by a pat-down search by a person of the same sex, and by an examination of the contents of pockets, bags, purses, packages and other containers. Such a search may be conducted without cause, but must be done uniformly or by systematic random selection, and not by discriminatory or arbitrary selection of persons to be searched.

(2) Any strip search or any other body search that is more intrusive than the type allowed by subparagraph (1) above may be made only on the basis of a reasonable suspicion, based on specific objective facts and reasonable inferences drawn from those facts in light of experience, that the employee to be searched is then in possession of a weapon or drugs or other contraband. Such a search is to be made only on the express authority of the highest officer present in the institution, made by one of the same sex in a private setting, and the specific objective facts shall be disclosed to the employee before the search is conducted and shall be reduced to writing and preserved.

Defendants and their officers, agents, servants and employees are hereby further enjoined from demanding from plaintiffs and members of the certified class (employees), pursuant to the Department's policy, any urine, blood or breath specimen for chemical analysis, except that they are not enjoined from:

(1) Demanding of an employee who has entered a correctional institution a urine, blood, or breath specimen for chemical analysis on the basis of a reasonable suspicion, based on specific objective facts and reasonable inferences drawn from those facts in light of experience, that the employee is then under the influence of alcoholic beverages or controlled substances. Such a demand is to be made only on the express authority of the highest officer present in the institution, and the specific objective facts shall be disclosed to the employee at the time the demand is made and shall be reduced to writing and preserved.

(2) Requiring an employee-applicant or an employee to provide blood and urine specimens as part of a pre-employment physical examination or as part of any routine periodic physical examination that may be required of employees.

(3) Requiring an employee to periodically submit a specimen of blood, urine or breath as a condition of continued employment under a disciplinary disposition if such a condition is reasonably related to the underlying basis for the disciplinary action and the duration of the condition is specified and is reasonable in length.

[28] Defendants and their officers, agents, servants and employees are hereby further enjoined from searching privately owned motor vehicles belonging to or used by plaintiffs and members of the certified class (employees) pursuant to the Department's policy, except that motor vehicles that are parked within the institution's confines where they are accessible to inmates[7] may be searched without cause, but such searches must be done uniformly or by systematic random selection, and not by discriminatory or arbitrary selection of employees whose motor vehicles are to be searched. Searches of employees' motor vehicles within the institution's confines where they are accessible to inmates, other than uniformly or by systematic random selection, may be made only on the basis of a reasonable suspicion, based on specific objective facts and reasonable inferences drawn from those facts in light of experience, that there is a weapon or drugs or other contraband in the motor vehicle to be searched. Such a "reasonable suspicion" search is to be made only on the express authority of the highest officer present in the institution, and the specific objective facts shall be disclosed to the employee

7. The term "within the institution's confines where they are accessible to inmates" means within confines within which the general inmate population is kept. The term does not mean within some outer perimeter where low security risk inmates are sometimes allowed to go on work details.

whose motor vehicle is searched before the search is conducted and shall be reduced to writing and preserved.[8]

It is the further judgment of the court that plaintiff McDonell shall be paid the ten days' salary that he lost in conjunction with his temporary discharge.

APPENDIX A

INSTITUTIONS—PERSONNEL

SEARCHES OF EMPLOYEES AND AUTOMOBILES AND PERMISSION TO INSPECT EMPLOYEE LIVING QUARTERS

Policy

Any employee or vehicle entering the grounds of an adult institution or facility may be inspected at any time for security reasons. Employees must be advised in writing by the institutional manager that such inspections of the person or vehicle are a condition of coming onto the grounds of an adult institution or facility to work. A written report of such an inspection shall be made to the institutional manager.

If an employee refuses to cooperate in such an inspection, the institutional manager is to immediately be notified. He, in turn, will render a decision as to whether or not the employee refusing to be inspected is to be relieved of duty pending disposition of the matter.

All institutions and facilities having employees living on State property shall prepare forms—and have said form signed by all employees living on State-owned or leased property. (See Appendix)

APPENDIX B

STATE OF IOWA
DEPARTMENT OF SOCIAL SERVICES
BUREAU OF INSTITUTIONS
DIVISION OF ADULT CORRECTIONS

SEARCHES OF EMPLOYEES AND PERMISSION TO INSPECT EMPLOYEE LIVING QUARTERS

Any employee or vehicle entering the grounds of an adult institution or facility may be inspected at any time for security reasons. Employees must be advised in writing by the Institution Manager that such inspections of the person or vehicle are a condition of coming onto the grounds of an adult institution or facility to work. A written report of such an inspection shall be made to the Institution Manager.

If an employee refuses to cooperate in such an inspection, the Institution Manager is to immediately be notified. He, in turn, will render a decision as to whether or not the employee refusing to be inspected, is to be relieved of duty pending disposition of the matter.

All institutions and facilitites having employees living on state property shall prepare forms—a copy of which is attached—and have said form signed by all employees living on state owned or leased property.

Revised 2-22-77

I, /s/ Alan McDonell, have read and understand Section II-A-6 of the Bureau of Corrections Manual and realize that due to the nature of work, type of institution, and attitudes of some of the residents confined herein, a personal search of all persons coming into and going out of the Men's Reformatory is of benefit to the administration to curtail the movement of contraband in the institution.

8. None of the injunctive relief granted herein precludes any search and seizure authorized by a judicially issued search warrant, or a search and seizure without a warrant made on the basis of "probable cause" within the meaning of the Fourth Amendment if made under one of the established exceptions to the Fourth Amendment's warrant requirement, or a search made pursuant to a valid and voluntary consent given immediately before the search is conducted.

APPENDIX B—Continued

My signature on this page constitutes my permission to be searched at any time while on State property by a staff member of the same sex that I am, when the staff member is directed to do so by the Warden, person acting in that capacity, or his designated representative. I, also, agree to submit to a urinalysis or blood test when requested by the administration of the Reformatory. I further agree to cooperate and assist in any and all investigations of a security or possible criminal nature when requested to do so. I hereby affix my signature knowingly and voluntarily, absent of any duress or coercion.

/s/ Alan McDonell — 3/2/79

Signature — Date

/s/ D. Williams

Witnessed by

APPENDIX C

Department of Social Services
Des Moines

SEARCHES OF EMPLOYEES AND PERMISSION TO INSPECT EMPLOYEE LIVING QUARTERS FORM

I, _____, have read and understand Section II–C–5 of the Divison of Adult Corrections Manual and realize that due to the nature of work, type of institution, and attitudes of some of the residents confined herein, a personal search of all persons coming into and going out of the institution is of benefit to the administration to curtail the movement of contraband in the institution.

My signature on this page constitutes my permission to be searched at any time while on State property by a staff member of the same sex that I am, when the staff member is directed to do so by the Warden, person acting in that capacity, or his designated representative. I, also, agree to submit to a urinalysis or blood test when requested by the administration of the institution. I further agree to cooperate and assist in any and all investigations of a security or possible criminal nature when requested to do so. I hereby affix my signature knowingly and voluntarily, absent of any duress or coercion.

_____ _____

Signature Date

_____

Witnessed by

AC–1201 (5/80)