

2. Searches to Curb Drug Use

National Treasury Employees Union v. Von Raab
[489 U.S. 656 \(1989\)](#)

JUSTICE KENNEDY DELIVERED THE OPINION OF THE COURT.

We granted certiorari to decide whether it violates the Fourth Amendment for the United States Customs Service to require a urinalysis test from employees who seek transfer or promotion to certain positions.

I

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In December 1985, respondent, the Commissioner of Customs, established a Drug Screening Task Force to explore the possibility of implementing a drug-screening program within the Service. After extensive research and consultation with experts in the field, the task force concluded that “drug screening through urinalysis is technologically reliable, valid and accurate.” Citing this conclusion, the Commissioner announced his intention to require drug tests of employees who applied for, or occupied, certain positions within the Service. The Commissioner stated his belief that “Customs is largely drug-free,” but noted also that “unfortunately no segment of society is immune from the threat of illegal drug use.” Drug interdiction has become the agency’s primary enforcement mission, and the Commissioner stressed that “there is no room in the Customs Service for those who break the laws prohibiting the possession and use of illegal drugs.”

In May 1986, the Commissioner announced implementation of the drug-testing program. Drug tests were made a condition of placement or employment for positions that meet one or more of three criteria. The first is direct involvement in drug interdiction or enforcement of related laws, an activity the Commissioner deemed fraught with obvious dangers to the mission of the agency and the lives of Customs agents. The second criterion is a requirement that the incumbent carry firearms, as the Commissioner concluded that “[p]ublic safety demands that employees who carry deadly arms and are prepared to make instant life or death decisions be drug free.” The third criterion is a requirement for the incumbent to handle “classified” material, which the Commissioner determined might fall into the hands of smugglers if accessible to employees who, by reason of their own illegal drug use, are susceptible to bribery or blackmail.

After an employee qualifies for a position covered by the Customs testing program, the Service advises him by letter that his final selection is contingent upon successful completion of drug screening. An independent contractor contacts the employee to fix the time and place for collecting the sample. On reporting for the test, the employee must produce photographic identification and remove any outer garments, such as a coat or a jacket, and personal belongings. The employee may produce the sample

behind a partition, or in the privacy of a bathroom stall if he so chooses. To ensure against adulteration of the specimen, or substitution of a sample from another person, a monitor of the same sex as the employee remains close at hand to listen for the normal sounds of urination. Dye is added to the toilet water to prevent the employee from using the water to adulterate the sample.

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Customs employees who test positive for drugs and who can offer no satisfactory explanation are subject to dismissal from the Service. Test results may not, however, be turned over to any other agency, including criminal prosecutors, without the employee's written consent.

B

Petitioners, a union of federal employees and a union official, commenced this suit in the United States District Court for the Eastern District of Louisiana on behalf of current Customs Service employees who seek covered positions. Petitioners alleged that the Custom Service drug-testing program violated, *inter alia*, the Fourth Amendment. . . .

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II

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It is clear that the Customs Service's drug-testing program is not designed to serve the ordinary needs of law enforcement. Test results may not be used in a criminal prosecution of the employee without the employee's consent. The purposes of the program are to deter drug use among those eligible for promotion to sensitive positions within the Service and to prevent the promotion of drug users to those positions. These substantial interests, no less than the Government's concern for safe rail transportation at issue in *Railway Labor Executives*, present a special need that may justify departure from the ordinary warrant and probable-cause requirements.

A

Petitioners do not contend that a warrant is required by the balance of privacy and governmental interests in this context, nor could any such contention withstand scrutiny. We have recognized before that requiring the Government to procure a warrant for every work-related intrusion "would conflict with 'the common-sense realization that government offices could not function if every employment decision became a constitutional matter.'" *O'Connor v. Ortega, supra*, 480 U.S., at 722, quoting *Connick v. Myers*, 461 U.S. 138, 143 (1983). Even if Customs Service employees are more likely to be familiar with the procedures required to obtain a warrant than most other Government workers, requiring a warrant in this context would serve only to divert valuable agency resources from the Service's primary mission. The Customs Service has been entrusted

with pressing responsibilities, and its mission would be compromised if it were required to seek search warrants in connection with routine, yet sensitive, employment decisions.

Furthermore, a warrant would provide little or nothing in the way of additional protection of personal privacy. A warrant serves primarily to advise the citizen that an intrusion is authorized by law and limited in its permissible scope and to interpose a neutral magistrate between the citizen and the law enforcement officer “engaged in the often competitive enterprise of ferreting out crime.” *Johnson v. United States*, 333 U.S. 10, 14 (1948). But in the present context, “the circumstances justifying toxicological testing and the permissible limits of such intrusions are defined narrowly and specifically . . . , and doubtless are well known to covered employees.” Under the Customs program, every employee who seeks a transfer to a covered position knows that he must take a drug test, and is likewise aware of the procedures the Service must follow in administering the test. A covered employee is simply not subject “to the discretion of the official in the field.” *Camara v. Municipal Court of San Francisco*, 387 U.S. 523, 532 (1967). The process becomes automatic when the employee elects to apply for, and thereafter pursue, a covered position. Because the Service does not make a discretionary determination to search based on a judgment that certain conditions are present, there are simply “no special facts for a neutral magistrate to evaluate.” *South Dakota v. Opperman*, 428 U.S. 364, 383 (1976) (Powell, J., concurring).

B

Even where it is reasonable to dispense with the warrant requirement in the particular circumstances, a search ordinarily must be based on probable cause. Our cases teach, however, that the probable-cause standard “‘is peculiarly related to criminal investigations.’” *Colorado v. Bertine*, 479 U.S. 367, 371 (1987), quoting *South Dakota v. Opperman*, *supra*, 428 U.S., at 370, n. 5. In particular, the traditional probable-cause standard may be unhelpful in analyzing the reasonableness of routine administrative functions especially where the Government seeks to *prevent* the development of hazardous conditions or to detect violations that rarely generate articulable grounds for searching any particular place or person. Our precedents have settled that, in certain limited circumstances, the Government’s need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion. We think the Government’s need to conduct the suspicionless searches required by the Customs program outweighs the privacy interests of employees engaged directly in drug interdiction, and of those who otherwise are required to carry firearms.

The Customs Service is our Nation’s first line of defense against one of the greatest problems affecting the health and welfare of our population. We have adverted before to “the veritable national crisis in law enforcement caused by smuggling of illicit narcotics.” *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985). Our cases also reflect the traffickers’ seemingly inexhaustible repertoire of deceptive practices and elaborate schemes for importing narcotics. The record in this case confirms that, through the adroit selection of source locations, smuggling routes, and increasingly elaborate

methods of concealment, drug traffickers have managed to bring into this country increasingly large quantities of illegal drugs. The record also indicates, and it is well known, that drug smugglers do not hesitate to use violence to protect their lucrative trade and avoid apprehension.

Many of the Service's employees are often exposed to this criminal element and to the controlled substances it seeks to smuggle into the country. The physical safety of these employees may be threatened, and many may be tempted not only by bribes from the traffickers with whom they deal, but also by their own access to vast sources of valuable contraband seized and controlled by the Service. The Commissioner indicated below that "Customs [o]fficers have been shot, stabbed, run over, dragged by automobiles, and assaulted with blunt objects while performing their duties." At least nine officers have died in the line of duty since 1974. He also noted that Customs officers have been the targets of bribery by drug smugglers on numerous occasions, and several have been removed from the Service for accepting bribes and for other integrity violations.

It is readily apparent that the Government has a compelling interest in ensuring that front-line interdiction personnel are physically fit, and have unimpeachable integrity and judgment. Indeed, the Government's interest here is at least as important as its interest in searching travelers entering the country. We have long held that travelers seeking to enter the country may be stopped and required to submit to a routine search without probable cause, or even founded suspicion, "because of national self protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in." *Carroll v. United States*, 267 U.S. 132, 154 (1925). This national interest in self-protection could be irreparably damaged if those charged with safeguarding it were, because of their own drug use, unsympathetic to their mission of interdicting narcotics. A drug user's indifference to the Service's basic mission or, even worse, his active complicity with the malefactors, can facilitate importation of sizable drug shipments or block apprehension of dangerous criminals. The public interest demands effective measures to bar drug users from positions directly involving the interdiction of illegal drugs.

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Without disparaging the importance of the governmental interests that support the suspicionless searches of these employees, petitioners nevertheless contend that the Service's drug-testing program is unreasonable in two particulars. First, petitioners argue that the program is unjustified because it is not based on a belief that testing will reveal any drug use by covered employees. In pressing this argument, petitioners point out that the Service's testing scheme was not implemented in response to any perceived drug problem among Customs employees, and that the program actually has not led to the discovery of a significant number of drug users. Counsel for petitioners informed us at oral argument that no more than 5 employees out of 3,600 have tested positive for drugs. Second, petitioners contend that the Service's scheme is not a "sufficiently productive mechanism to justify [its] intrusion upon Fourth Amendment interests," *Delaware v. Prouse*, 440 U.S. 648, 658-659 (1979), because illegal drug users can avoid detection

with ease by temporary abstinence or by surreptitious adulteration of their urine specimens. These contentions are unpersuasive.

Petitioners' first contention evinces an unduly narrow view of the context in which the Service's testing program was implemented. Petitioners do not dispute, nor can there be doubt, that drug abuse is one of the most serious problems confronting our society today. There is little reason to believe that American workplaces are immune from this pervasive social problem, as is amply illustrated by our decision in *Railway Labor Executives*. Detecting drug impairment on the part of employees can be a difficult task, especially where, as here, it is not feasible to subject employees and their work product to the kind of day-to-day scrutiny that is the norm in more traditional office environments. Indeed, the almost unique mission of the Service gives the Government a compelling interest in ensuring that many of these covered employees do not use drugs even off duty, for such use creates risks of bribery and blackmail against which the Government is entitled to guard. In light of the extraordinary safety and national security hazards that would attend the promotion of drug users to positions that require the carrying of firearms or the interdiction of controlled substances, the Service's policy of deterring drug users from seeking such promotions cannot be deemed unreasonable.

The mere circumstance that all but a few of the employees tested are entirely innocent of wrongdoing does not impugn the program's validity. The same is likely to be true of householders who are required to submit to suspicionless housing code inspections and of motorists who are stopped at the checkpoints we approved in *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976). The Service's program is designed to prevent the promotion of drug users to sensitive positions as much as it is designed to detect those employees who use drugs. Where, as here, the possible harm against which the Government seeks to guard is substantial, the need to prevent its occurrence furnishes an ample justification for reasonable searches calculated to advance the Government's goal.³

³ The point is well illustrated also by the Federal Government's practice of requiring the search of all passengers seeking to board commercial airliners, as well as the search of their carry-on luggage, without any basis for suspecting any particular passenger of an untoward motive. Applying our precedents dealing with administrative searches, the lower courts that have considered the question have consistently concluded that such searches are reasonable under the Fourth Amendment. As Judge Friendly explained in a leading case upholding such searches:

When the risk is the jeopardy to hundreds of human lives and millions of dollars of property inherent in the pirating or blowing up of a large airplane, that danger *alone* meets the test of reasonableness, so long as the search is conducted in good faith for the purpose of preventing hijacking or like damage and with reasonable scope and the passenger has been given advance notice

We think petitioners' second argument—that the Service's testing program is ineffective because employees may attempt to deceive the test by a brief abstention before the test date, or by adulterating their urine specimens—overstates the case. As the Court of Appeals noted, addicts may be unable to abstain even for a limited period of time, or may be unaware of the “fade-away effect” of certain drugs. More importantly, the avoidance techniques suggested by petitioners are fraught with uncertainty and risks for those employees who venture to attempt them. A particular employee's pattern of elimination for a given drug cannot be predicted with perfect accuracy, and, in any event, this information is not likely to be known or available to the employee. Petitioners' own expert indicated below that the time it takes for particular drugs to become undetectable in urine can vary widely depending on the individual, and may extend for as long as 22 days. Thus, contrary to petitioners' suggestion, no employee reasonably can expect to deceive the test by the simple expedient of abstaining after the test date is assigned. Nor can he expect attempts at adulteration to succeed, in view of the precautions taken by the sample collector to ensure the integrity of the sample. In all the circumstances, we are persuaded that the program bears a close and substantial relation to the Service's goal of deterring drug users from seeking promotion to sensitive positions.

of his liability to such a search so that he can avoid it by choosing not to travel by air. *United States v. Edwards*, 498 F.2d 496, 500 (CA2 1974) (emphasis in original).

It is true, as counsel for petitioners pointed out at oral argument, that these air piracy precautions were adopted in response to an observable national and international hijacking crisis. Yet we would not suppose that, if the validity of these searches be conceded, the Government would be precluded from conducting them absent a demonstration of danger as to any particular airport or airline. It is sufficient that the Government have a compelling interest in preventing an otherwise pervasive societal problem from spreading to the particular context.

Nor would we think, in view of the obvious deterrent purpose of these searches, that the validity of the Government's airport screening program necessarily turns on whether significant numbers of putative air pirates are actually discovered by the searches conducted under the program. In the 15 years the program has been in effect, more than 9.5 *billion* persons have been screened, and over 10 *billion* pieces of luggage have been inspected. By far the overwhelming majority of those persons who have been searched, like Customs employees who have been tested under the Service's drug-screening scheme, have proved entirely innocent—only 42,000 firearms have been detected during the same period. When the Government's interest lies in deterring highly hazardous conduct, a low incidence of such conduct, far from impugning the validity of the scheme for implementing this interest, is more logically viewed as a hallmark of success.

In sum, we believe the Government has demonstrated that its compelling interests in safeguarding our borders and the public safety outweigh the privacy expectations of employees who seek to be promoted to positions that directly involve the interdiction of illegal drugs or that require the incumbent to carry a firearm. We hold that the testing of these employees is reasonable under the Fourth Amendment.

C

We are unable, on the present record, to assess the reasonableness of the Government's testing program insofar as it covers employees who are required "to handle classified material." We readily agree that the Government has a compelling interest in protecting truly sensitive information from those who, "under compulsion of circumstances or for other reasons, . . . might compromise [such] information." *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988). We also agree that employees who seek promotions to positions where they would handle sensitive information can be required to submit to a urine test under the Service's screening program, especially if the positions covered under this category require background investigations, medical examinations, or other intrusions that may be expected to diminish their expectations of privacy in respect of a urinalysis test.

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III

Where the Government requires its employees to produce urine samples to be analyzed for evidence of illegal drug use, the collection and subsequent chemical analysis of such samples are searches that must meet the reasonableness requirement of the Fourth Amendment. Because the testing program adopted by the Customs Service is not designed to serve the ordinary needs of law enforcement, we have balanced the public interest in the Service's testing program against the privacy concerns implicated by the tests, without reference to our usual presumption in favor of the procedures specified in the Warrant Clause, to assess whether the tests required by Customs are reasonable.

We hold that the suspicionless testing of employees who apply for promotion to positions directly involving the interdiction of illegal drugs, or to positions that require the incumbent to carry a firearm, is reasonable. The Government's compelling interests in preventing the promotion of drug users to positions where they might endanger the integrity of our Nation's borders or the life of the citizenry outweigh the privacy interests of those who seek promotion to these positions, who enjoy a diminished expectation of privacy by virtue of the special, and obvious, physical and ethical demands of those positions. We do not decide whether testing those who apply for promotion to positions where they would handle "classified" information is reasonable because we find the record inadequate for this purpose.

The judgment of the Court of Appeals for the Fifth Circuit is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE MARSHALL, WITH WHOM JUSTICE BRENNAN JOINS, DISSENTING.

For the reasons stated in my dissenting opinion in *Skinner v. Railway Labor Executives' Assn.*, 489 U.S., at 635, I also dissent from the Court's decision in this case. Here, as in *Skinner*, the Court's abandonment of the Fourth Amendment's express requirement that searches of the person rest on probable cause is unprincipled and unjustifiable. But even if I believed that balancing analysis was appropriate under the Fourth Amendment, I would still dissent from today's judgment for the reasons stated by Justice SCALIA in his dissenting opinion and for the reasons noted by the dissenting judge below relating to the inadequate tailoring of the Customs Service's drug-testing plan.

JUSTICE SCALIA, WITH WHOM JUSTICE STEVENS JOINS, DISSENTING.

The issue in this case is not whether Customs Service employees can constitutionally be denied promotion, or even dismissed, for a single instance of unlawful drug use, at home or at work. They assuredly can. The issue here is what steps can constitutionally be taken to *detect* such drug use. The Government asserts it can demand that employees perform "an excretory function traditionally shielded by great privacy," *Skinner v. Railway Labor Executives' Assn.*, 489 U.S., at 626, while "a monitor of the same sex . . . remains close at hand to listen for the normal sounds," and that the excretion thus produced be turned over to the Government for chemical analysis. The Court agrees that this constitutes a search for purposes of the Fourth Amendment—and I think it obvious that it is a type of search particularly destructive of privacy and offensive to personal dignity.

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. Today, in *Skinner*, we allow a less intrusive bodily search of railroad employees involved in train accidents. I joined the Court's opinion there because the demonstrated frequency of drug and alcohol use by the targeted class of employees, and the demonstrated connection between such use and grave harm, rendered the search a reasonable means of protecting society. I decline to join the Court's opinion in the present case because neither frequency of use nor connection to harm is demonstrated or even likely. In my view the Customs Service rules are a kind of immolation of privacy and human dignity in symbolic opposition to drug use.

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The Court's opinion in the present case . . . will be searched in vain for real evidence of a real problem that will be solved by urine testing of Customs Service employees. Instead, there are assurances that "[t]he Customs Service is our Nation's first line of defense against one of the greatest problems affecting the health and welfare of our population," that "[m]any of the Service's employees are often exposed to [drug smugglers] and to the controlled substances [they seek] to smuggle into the country," that

“Customs officers have been the targets of bribery by drug smugglers on numerous occasions, and several have been removed from the Service for accepting bribes and other integrity violations,” that “the Government has a compelling interest in ensuring that front-line interdiction personnel are physically fit, and have unimpeachable integrity and judgment,” that the “national interest in self-protection could be irreparably damaged if those charged with safeguarding it were, because of their own drug use, unsympathetic to their mission of interdicting narcotics,” and that “the public should not bear the risk that employees who may suffer from impaired perception and judgment will be promoted to positions where they may need to employ deadly force.” To paraphrase Churchill, all this contains much that is obviously true, and much that is relevant; unfortunately, what is obviously true is not relevant, and what is relevant is not obviously true. The only pertinent points, it seems to me, are supported by nothing but speculation, and not very plausible speculation at that. It is not apparent to me that a Customs Service employee who uses drugs is significantly more likely to be bribed by a drug smuggler, any more than a Customs Service employee who wears diamonds is significantly more likely to be bribed by a diamond smuggler—unless, perhaps, the addiction to drugs is so severe, and requires so much money to maintain, that it would be detectable even without benefit of a urine test. Nor is it apparent to me that Customs officers who use drugs will be appreciably less “sympathetic” to their drug-interdiction mission, any more than police officers who exceed the speed limit in their private cars are appreciably less sympathetic to their mission of enforcing the traffic laws. (The only difference is that the Customs officer’s individual efforts, if they are irreplaceable, can theoretically affect the availability of his own drug supply—a prospect so remote as to be an absurd basis of motivation.) Nor, finally, is it apparent to me that urine tests will be even marginally more effective in preventing gun-carrying agents from risking “impaired perception and judgment” than is their current knowledge that, if impaired, they may be shot dead in unequal combat with unimpaired smugglers—unless, again, their addiction is so severe that no urine test is needed for detection.

What is absent in the Government’s justifications—notably absent, revealingly absent, and as far as I am concerned dispositively absent—is the recitation of *even a single instance* in which any of the speculated horrors actually occurred: an instance, that is, in which the cause of bribe-taking, or of poor aim, or of unsympathetic law enforcement, or of compromise of classified information, was drug use. Although the Court points out that several employees have in the past been removed from the Service for accepting bribes and other integrity violations, and that at least nine officers have died in the line of duty since 1974, there is no indication whatever that these incidents were related to drug use by Service employees. Perhaps concrete evidence of the severity of a problem is unnecessary when it is so well known that courts can almost take judicial notice of it; but that is surely not the case here. The Commissioner of Customs himself has stated that he “believe[s] that Customs is largely drug-free,” that “[t]he extent of illegal drug use by Customs employees was not the reason for establishing this program,” and that he “hope[s] and expect[s] to receive reports of very few positive findings through drug screening.” The test results have fulfilled those hopes and expectations. According to the Service’s counsel, out of 3,600 employees tested, no more than 5 tested positive for drugs.

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Today's decision would be wrong, but at least of more limited effect, if its approval of drug testing were confined to that category of employees assigned specifically to drug interdiction duties. Relatively few public employees fit that description. But in extending approval of drug testing to that category consisting of employees who carry firearms, the Court exposes vast numbers of public employees to this needless indignity. Logically, of course, if those who carry guns can be treated in this fashion, so can all others whose work, if performed under the influence of drugs, may endanger others—automobile drivers, operators of other potentially dangerous equipment, construction workers, school crossing guards. A similarly broad scope attaches to the Court's approval of drug testing for those with access to "sensitive information." Since this category is not limited to Service employees with drug interdiction duties, nor to "sensitive information" specifically relating to drug traffic, today's holding apparently approves drug testing for all federal employees with security clearances—or, indeed, for all federal employees with valuable confidential information to impart. Since drug use is not a particular problem in the Customs Service, employees throughout the Government are no less likely to violate the public trust by taking bribes to feed their drug habit, or by yielding to blackmail. Moreover, there is no reason why this super-protection against harms arising from drug use must be limited to public employees; a law requiring similar testing of private citizens who use dangerous instruments such as guns or cars, or who have access to classified information, would also be constitutional.

There is only one apparent basis that sets the testing at issue here apart from all these other situations—but it is not a basis upon which the Court is willing to rely. I do not believe for a minute that the driving force behind these drug-testing rules was any of the feeble justifications put forward by counsel here and accepted by the Court. The only plausible explanation, in my view, is what the Commissioner himself offered in the concluding sentence of his memorandum to Customs Service employees announcing the program: "Implementation of the drug screening program would set an important example in our country's struggle with this most serious threat to our national health and security." Or as respondent's brief to this Court asserted: "[I]f a law enforcement agency and its employees do not take the law seriously, neither will the public on which the agency's effectiveness depends." What better way to show that the Government is serious about its "war on drugs" than to subject its employees on the front line of that war to this invasion of their privacy and affront to their dignity? To be sure, there is only a slight chance that it will prevent some serious public harm resulting from Service employee drug use, but it will show to the world that the Service is "clean," and—most important of all—will demonstrate the determination of the Government to eliminate this scourge of our society! I think it obvious that this justification is unacceptable; that the impairment of individual liberties cannot be the means of making a point; that symbolism, even symbolism for so worthy a cause as the abolition of unlawful drugs, cannot validate an otherwise unreasonable search.

There is irony in the Government's citation, in support of its position, of Justice Brandeis' statement in *Olmstead v. United States*, 277 U.S. 438, 485 (1928) that "[f]or

good or for ill, [our Government] teaches the whole people by its example.” Brandeis was there *dissenting* from the Court’s admission of evidence obtained through an unlawful Government wiretap. He was not praising the Government’s example of vigor and enthusiasm in combatting crime, but condemning its example that “the end justifies the means.” An even more apt quotation from that famous Brandeis dissent would have been the following:

[I]t is . . . immaterial that the intrusion was in aid of law enforcement. Experience should teach us to be most on our guard to protect liberty when the Government’s purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.

Those who lose because of the lack of understanding that begot the present exercise in symbolism are not just the Customs Service employees, whose dignity is thus offended, but all of us—who suffer a coarsening of our national manners that ultimately give the Fourth Amendment its content, and who become subject to the administration of federal officials whose respect for our privacy can hardly be greater than the small respect they have been taught to have for their own.

Points for Discussion

1. In *Von Raab* the Court approves the suspicionless drug testing of certain federal employees. Why does the balancing of the government interests and the privacy interests of employees come out in this way?

2. Can’t these cases simply be understood as consent cases? The federal employees here and the railway employees in *Skinner v. Railway Labor Executives Association*, 489 U.S. 602 (1989) consent to suspicionless drug testing as a condition of their employment. Why is the Fourth Amendment even implicated by the government conduct here since it was consented to by those being searched?

Indianapolis v. Edmond [531 U.S. 32 \(2000\)](#)

JUSTICE O’CONNOR DELIVERED THE OPINION OF THE COURT.

In *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990), and *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), we held that brief, suspicionless seizures at highway checkpoints for the purposes of combating drunk driving and intercepting illegal immigrants were constitutional. We now consider the constitutionality of a highway checkpoint program whose primary purpose is the discovery and interdiction of illegal narcotics.

In August 1998, the city of Indianapolis began to operate vehicle checkpoints on Indianapolis roads in an effort to interdict unlawful drugs. The city conducted six such roadblocks between August and November that year, stopping 1,161 vehicles and arresting 104 motorists. Fifty-five arrests were for drug-related crimes, while 49 were for offenses unrelated to drugs. The overall “hit rate” of the program was thus approximately nine percent.

The parties stipulated to the facts concerning the operation of the checkpoints by the Indianapolis Police Department (IPD) for purposes of the preliminary injunction proceedings instituted below. At each checkpoint location, the police stop a predetermined number of vehicles. Approximately 30 officers are stationed at the checkpoint. Pursuant to written directives issued by the chief of police, at least one officer approaches the vehicle, advises the driver that he or she is being stopped briefly at a drug checkpoint, and asks the driver to produce a license and registration. The officer also looks for signs of impairment and conducts an open-view examination of the vehicle from the outside. A narcotics-detection dog walks around the outside of each stopped vehicle.

The directives instruct the officers that they may conduct a search only by consent or based on the appropriate quantum of particularized suspicion. The officers must conduct each stop in the same manner until particularized suspicion develops, and the officers have no discretion to stop any vehicle out of sequence. The city agreed in the stipulation to operate the checkpoints in such a way as to ensure that the total duration of each stop, absent reasonable suspicion or probable cause, would be five minutes or less.

The affidavit of Indianapolis Police Sergeant Marshall DePew, although it is technically outside the parties’ stipulation, provides further insight concerning the operation of the checkpoints. According to Sergeant DePew, checkpoint locations are selected weeks in advance based on such considerations as area crime statistics and traffic flow. The checkpoints are generally operated during daylight hours and are identified with lighted signs reading, “NARCOTICS CHECKPOINT ___ MILE AHEAD, NARCOTICS K-9 IN USE, BE PREPARED TO STOP.” Once a group of cars has been stopped, other traffic proceeds without interruption until all the stopped cars have been processed or diverted for further processing. Sergeant DePew also stated that the average stop for a vehicle not subject to further processing lasts two to three minutes or less.

Respondents James Edmond and Joell Palmer were each stopped at a narcotics checkpoint in late September 1998. Respondents then filed a lawsuit on behalf of themselves and the class of all motorists who had been stopped or were subject to being stopped in the future at the Indianapolis drug checkpoints. Respondents claimed that the roadblocks violated the Fourth Amendment of the United States Constitution and the search and seizure provision of the Indiana Constitution. Respondents requested declaratory and injunctive relief for the class, as well as damages and attorney’s fees for themselves.

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III

It is well established that a vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment. The fact that officers walk a narcotics-detection dog around the exterior of each car at the Indianapolis checkpoints does not transform the seizure into a search. See *United States v. Place*, 462 U.S. 696, 707 (1983). Just as in *Place*, an exterior sniff of an automobile does not require entry into the car and is not designed to disclose any information other than the presence or absence of narcotics. Like the dog sniff in *Place*, a sniff by a dog that simply walks around a car is “much less intrusive than a typical search.” *Ibid.* Rather, what principally distinguishes these checkpoints from those we have previously approved is their primary purpose.

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We have never approved a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing. Rather, our checkpoint cases have recognized only limited exceptions to the general rule that a seizure must be accompanied by some measure of individualized suspicion. We suggested in *Prouse* that we would not credit the “general interest in crime control” as justification for a regime of suspicionless stops. 440 U.S., at 659, n. 18. Consistent with this suggestion, each of the checkpoint programs that we have approved was designed primarily to serve purposes closely related to the problems of policing the border or the necessity of ensuring roadway safety. Because the primary purpose of the Indianapolis narcotics checkpoint program is to uncover evidence of ordinary criminal wrongdoing, the program contravenes the Fourth Amendment.

Petitioners propose several ways in which the narcotics-detection purpose of the instant checkpoint program may instead resemble the primary purposes of the checkpoints in *Sitz* and *Martinez-Fuerte*. Petitioners state that the checkpoints in those cases had the same ultimate purpose of arresting those suspected of committing crimes. Securing the border and apprehending drunk drivers are, of course, law enforcement activities, and law enforcement officers employ arrests and criminal prosecutions in pursuit of these goals. See *Sitz*, 496 U.S., at 447, 450; *Martinez-Fuerte*, 428 U.S., at 545-550. If we were to rest the case at this high level of generality, there would be little check on the ability of the authorities to construct roadblocks for almost any conceivable law enforcement purpose. Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life.

Petitioners also emphasize the severe and intractable nature of the drug problem as justification for the checkpoint program. There is no doubt that traffic in illegal narcotics creates social harms of the first magnitude. The law enforcement problems that the drug trade creates likewise remain daunting and complex, particularly in light of the myriad forms of spin-off crime that it spawns. The same can be said of various other illegal activities, if only to a lesser degree. But the gravity of the threat alone cannot be

dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose. Rather, in determining whether individualized suspicion is required, we must consider the nature of the interests threatened and their connection to the particular law enforcement practices at issue. We are particularly reluctant to recognize exceptions to the general rule of individualized suspicion where governmental authorities primarily pursue their general crime control ends.

Nor can the narcotics-interdiction purpose of the checkpoints be rationalized in terms of a highway safety concern similar to that present in *Sitz*. The detection and punishment of almost any criminal offense serves broadly the safety of the community, and our streets would no doubt be safer but for the scourge of illegal drugs. Only with respect to a smaller class of offenses, however, is society confronted with the type of immediate, vehicle-bound threat to life and limb that the sobriety checkpoint in *Sitz* was designed to eliminate.

Petitioners also liken the anticontraband agenda of the Indianapolis checkpoints to the antimuggling purpose of the checkpoints in *Martinez-Fuerte*. Petitioners cite this Court's conclusion in *Martinez-Fuerte* that the flow of traffic was too heavy to permit "particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens," 428 U.S., at 557, and claim that this logic has even more force here. The problem with this argument is that the same logic prevails any time a vehicle is employed to conceal contraband or other evidence of a crime. This type of connection to the roadway is very different from the close connection to roadway safety that was present in *Sitz* and *Prouse*. Further, the Indianapolis checkpoints are far removed from the border context that was crucial in *Martinez-Fuerte*. While the difficulty of examining each passing car was an important factor in validating the law enforcement technique employed in *Martinez-Fuerte*, this factor alone cannot justify a regime of suspicionless searches or seizures. Rather, we must look more closely at the nature of the public interests that such a regime is designed principally to serve.

The primary purpose of the Indianapolis narcotics checkpoints is in the end to advance "the general interest in crime control," *Prouse*, 440 U.S., at 659, n. 18. We decline to suspend the usual requirement of individualized suspicion where the police seek to employ a checkpoint primarily for the ordinary enterprise of investigating crimes. We cannot sanction stops justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime.

Of course, there are circumstances that may justify a law enforcement checkpoint where the primary purpose would otherwise, but for some emergency, relate to ordinary crime control. For example, as the Court of Appeals noted, the Fourth Amendment would almost certainly permit an appropriately tailored roadblock set up to thwart an imminent terrorist attack or to catch a dangerous criminal who is likely to flee by way of a particular route. The exigencies created by these scenarios are far removed from the circumstances under which authorities might simply stop cars as a matter of course to see if there just happens to be a felon leaving the jurisdiction. While we do not limit the purposes that may justify a checkpoint program to any rigid set of categories, we decline

to approve a program whose primary purpose is ultimately indistinguishable from the general interest in crime control.

[BEGIN FOOTNOTE 1]

THE CHIEF JUSTICE’S dissent erroneously characterizes our opinion as resting on the application of a “non-law-enforcement primary purpose test.” Our opinion nowhere describes the purposes of the *Sitz* and *Martinez-Fuerte* checkpoints as being “not primarily related to criminal law enforcement.” Rather, our judgment turns on the fact that the primary purpose of the Indianapolis checkpoints is to advance the general interest in crime control.

THE CHIEF JUSTICE’S dissent also erroneously characterizes our opinion as holding that the “use of a drug-sniffing dog . . . annuls what is otherwise plainly constitutional under our Fourth Amendment jurisprudence.” Again, the constitutional defect of the program is that its primary purpose is to advance the general interest in crime control.

[END FOOTNOTE 1]

Petitioners argue that our prior cases preclude an inquiry into the purposes of the checkpoint program. For example, they cite *Whren v. United States*, 517 U.S. 806 (1996), and *Bond v. United States*, 529 U.S. 334 (2000), to support the proposition that “where the government articulates and pursues a legitimate interest for a suspicionless stop, courts should not look behind that interest to determine whether the government’s ‘primary purpose’ is valid.” These cases, however, do not control the instant situation.

In *Whren*, we held that an individual officer’s subjective intentions are irrelevant to the Fourth Amendment validity of a traffic stop that is justified objectively by probable cause to believe that a traffic violation has occurred. We observed that our prior cases “foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved.” In so holding, we expressly distinguished cases where we had addressed the validity of searches conducted in the absence of probable cause.

Whren therefore reinforces the principle that, while “[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis,” 517 U.S., at 813, programmatic purposes may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion. Accordingly, *Whren* does not preclude an inquiry into programmatic purpose in such contexts. It likewise does not preclude an inquiry into programmatic purpose here.

Last Term in *Bond*, we addressed the question whether a law enforcement officer violated a reasonable expectation of privacy in conducting a tactile examination of carry-on luggage in the overhead compartment of a bus. In doing so, we simply noted that the principle of *Whren* rendered the subjective intent of an officer irrelevant to this analysis. 529 U.S., at 338, n. 2. While, as petitioners correctly observe, the analytical rubric of *Bond* was not “ordinary, probable-cause Fourth Amendment analysis,” *Whren*, *supra*, at

813, nothing in *Bond* suggests that we would extend the principle of *Whren* to all situations where individualized suspicion was lacking. Rather, subjective intent was irrelevant in *Bond* because the inquiry that our precedents required focused on the objective effects of the actions of an individual officer. By contrast, our cases dealing with intrusions that occur pursuant to a general scheme absent individualized suspicion have often required an inquiry into purpose at the programmatic level.

Petitioners argue that the Indianapolis checkpoint program is justified by its lawful secondary purposes of keeping impaired motorists off the road and verifying licenses and registrations. If this were the case, however, law enforcement authorities would be able to establish checkpoints for virtually any purpose so long as they also included a license or sobriety check. For this reason, we examine the available evidence to determine the primary purpose of the checkpoint program. While we recognize the challenges inherent in a purpose inquiry, courts routinely engage in this enterprise in many areas of constitutional jurisprudence as a means of sifting abusive governmental conduct from that which is lawful. As a result, a program driven by an impermissible purpose may be proscribed while a program impelled by licit purposes is permitted, even though the challenged conduct may be outwardly similar. While reasonableness under the Fourth Amendment is predominantly an objective inquiry, our special needs and administrative search cases demonstrate that purpose is often relevant when suspicionless intrusions pursuant to a general scheme are at issue.²

It goes without saying that our holding today does nothing to alter the constitutional status of the sobriety and border checkpoints that we approved in *Sitz* and *Martinez-Fuerte*, or of the type of traffic checkpoint that we suggested would be lawful in *Prouse*. The constitutionality of such checkpoint programs still depends on a balancing of the competing interests at stake and the effectiveness of the program. When law enforcement authorities pursue primarily general crime control purposes at checkpoints such as here, however, stops can only be justified by some quantum of individualized suspicion.

Our holding also does not affect the validity of border searches or searches at places like airports and government buildings, where the need for such measures to ensure public safety can be particularly acute. Nor does our opinion speak to other intrusions aimed primarily at purposes beyond the general interest in crime control. Our holding also does not impair the ability of police officers to act appropriately upon information that they properly learn during a checkpoint stop justified by a lawful primary purpose, even where such action may result in the arrest of a motorist for an

² Because petitioners concede that the primary purpose of the Indianapolis checkpoints is narcotics detection, we need not decide whether the State may establish a checkpoint program with the primary purpose of checking licenses or driver sobriety and a secondary purpose of interdicting narcotics. Specifically, we express no view on the question whether police may expand the scope of a license or sobriety checkpoint seizure in order to detect the presence of drugs in a stopped car.

offense unrelated to that purpose. Finally, we caution that the purpose inquiry in this context is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene.

Because the primary purpose of the Indianapolis checkpoint program is ultimately indistinguishable from the general interest in crime control, the checkpoints violate the Fourth Amendment. The judgment of the Court of Appeals is, accordingly, affirmed.

It is so ordered.

CHIEF JUSTICE REHNQUIST, WITH WHOM JUSTICE THOMAS JOINS, AND WITH WHOM JUSTICE SCALIA JOINS AS TO PART I, DISSENTING.

The State's use of a drug-sniffing dog, according to the Court's holding, annuls what is otherwise plainly constitutional under our Fourth Amendment jurisprudence: brief, standardized, discretionless, roadblock seizures of automobiles, seizures which effectively serve a weighty state interest with only minimal intrusion on the privacy of their occupants. Because these seizures serve the State's accepted and significant interests of preventing drunken driving and checking for driver's licenses and vehicle registrations, and because there is nothing in the record to indicate that the addition of the dog sniff lengthens these otherwise legitimate seizures, I dissent.

I

As it is nowhere to be found in the Court's opinion, I begin with blackletter roadblock seizure law. "The principal protection of Fourth Amendment rights at checkpoints lies in appropriate limitations on the scope of the stop." *United States v. Martinez-Fuerte*, 428 U.S. 543, 566-567 (1976). Roadblock seizures are consistent with the Fourth Amendment if they are "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." *Brown v. Texas*, 443 U.S. 47, 51 (1979). Specifically, the constitutionality of a seizure turns upon "a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Id.*, at 50-51.

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This case follows naturally from *Martinez-Fuerte* and *Sitz*. Petitioners acknowledge that the "primary purpose" of these roadblocks is to interdict illegal drugs, but this fact should not be controlling. Even accepting the Court's conclusion that the checkpoints at issue in *Martinez-Fuerte* and *Sitz* were not primarily related to criminal law enforcement,² the question whether a law enforcement purpose could support a

² This gloss is not at all obvious. The respondents in *Martinez-Fuerte* were criminally prosecuted for illegally transporting aliens, and the Court expressly noted that "[i]nterdicting the flow of illegal entrants from Mexico poses formidable law enforcement problems." 428 U.S., at 552. And the *Sitz* Court recognized that if an

roadblock seizure is not presented in this case. The District Court found that another “purpose of the checkpoints is to check driver’s licenses and vehicle registrations,” and the written directives state that the police officers are to “[l]ook for signs of impairment.” The use of roadblocks to look for signs of impairment was validated by *Sitz*, and the use of roadblocks to check for driver’s licenses and vehicle registrations was expressly recognized in *Delaware v. Prouse*, 440 U.S. 648, 663 (1979). That the roadblocks serve these legitimate state interests cannot be seriously disputed, as the 49 people arrested for offenses unrelated to drugs can attest. And it would be speculative to conclude—given the District Court’s findings, the written directives, and the actual arrests—that petitioners would not have operated these roadblocks but for the State’s interest in interdicting drugs.

Because of the valid reasons for conducting these roadblock seizures, it is constitutionally irrelevant that petitioners also hoped to interdict drugs. In *Whren v. United States*, 517 U.S. 806 (1996), we held that an officer’s subjective intent would not invalidate an otherwise objectively justifiable stop of an automobile. The reasonableness of an officer’s discretionary decision to stop an automobile, at issue in *Whren*, turns on whether there is probable cause to believe that a traffic violation has occurred. The reasonableness of highway checkpoints, at issue here, turns on whether they effectively serve a significant state interest with minimal intrusion on motorists. The stop in *Whren* was objectively reasonable because the police officers had witnessed traffic violations; so too the roadblocks here are objectively reasonable because they serve the substantial interests of preventing drunken driving and checking for driver’s licenses and vehicle registrations with minimal intrusion on motorists.

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With these checkpoints serving two important state interests, the remaining prongs of the *Brown v. Texas* balancing test are easily met. The seizure is objectively reasonable as it lasts, on average, two to three minutes and does not involve a search. The subjective intrusion is likewise limited as the checkpoints are clearly marked and operated by uniformed officers who are directed to stop every vehicle in the same manner. The only difference between this case and *Sitz* is the presence of the dog. We have already held, however, that a “sniff test” by a trained narcotics dog is not a “search” within the meaning of the Fourth Amendment because it does not require physical intrusion of the object being sniffed and it does not expose anything other than the contraband items. *United States v. Place*, 462 U.S. 696, 706-707 (1983). And there is nothing in the record to indicate that the dog sniff lengthens the stop. Finally, the checkpoints’ success rate—49 arrests for offenses unrelated to drugs—only confirms the State’s legitimate interests in preventing drunken driving and ensuring the proper licensing of drivers and registration of their vehicles.

“officer’s observations suggest that the driver was intoxicated, an arrest would be made.” 496 U.S., at 447. But however persuasive the distinction, the Court’s opinion does not impugn the continuing validity of *Martinez-Fuerte* and *Sitz*.

These stops effectively serve the State’s legitimate interests; they are executed in a regularized and neutral manner; and they only minimally intrude upon the privacy of the motorists. They should therefore be constitutional.

II

The Court, unwilling to adopt the straightforward analysis that these precedents dictate, adds a new non-law-enforcement primary purpose test lifted from a distinct area of Fourth Amendment jurisprudence relating to the *searches* of homes and businesses. As discussed above, the question that the Court answers is not even posed in this case given the accepted reasons for the seizures. But more fundamentally, whatever sense a non-law-enforcement primary purpose test may make in the search setting, it is ill suited to brief roadblock seizures, where we have consistently looked at “the scope of the stop” in assessing a program’s constitutionality.

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The “special needs” doctrine, which has been used to uphold certain suspicionless searches performed for reasons unrelated to law enforcement, is an exception to the general rule that a search must be based on individualized suspicion of wrongdoing. The doctrine permits intrusions into a person’s body and home, areas afforded the greatest Fourth Amendment protection. But there were no such intrusions here.

“[O]ne’s expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one’s residence.” *Martinez-Fuerte, supra*, at 561. This is because “[a]utomobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls.” *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976). The lowered expectation of privacy in one’s automobile is coupled with the limited nature of the intrusion: a brief, standardized, nonintrusive seizure. The brief seizure of an automobile can hardly be compared to the intrusive search of the body or the home. Thus, just as the “special needs” inquiry serves to both define and limit the permissible scope of those searches, the *Brown v. Texas* balancing test serves to define and limit the permissible scope of automobile seizures.

Because of these extrinsic limitations upon roadblock seizures, the Court’s newfound non-law-enforcement primary purpose test is both unnecessary to secure Fourth Amendment rights and bound to produce wide-ranging litigation over the “purpose” of any given seizure. Police designing highway roadblocks can never be sure of their validity, since a jury might later determine that a forbidden purpose exists. Roadblock stops identical to the one that we upheld in *Sitz* 10 years ago, or to the one that we upheld 24 years ago in *Martinez-Fuerte*, may now be challenged on the grounds that they have some concealed forbidden purpose.

Efforts to enforce the law on public highways used by millions of motorists are obviously necessary to our society. The Court’s opinion today casts a shadow over what had been assumed, on the basis of *stare decisis*, to be a perfectly lawful activity.

Conversely, if the Indianapolis police had assigned a different purpose to their activity here, but in no way changed what was done on the ground to individual motorists, it might well be valid. See *ante*, at 457, n. 2. The Court’s non-law-enforcement primary purpose test simply does not serve as a proxy for anything that the Fourth Amendment is, or should be, concerned about in the automobile seizure context.

Petitioners’ program complies with our decisions regarding roadblock seizures of automobiles, and the addition of a dog sniff does not add to the length or the intrusion of the stop. Because such stops are consistent with the Fourth Amendment, I would reverse the decision of the Court of Appeals.

JUSTICE THOMAS, DISSENTING.

Taken together, our decisions in *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444 (1990), and *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), stand for the proposition that suspicionless roadblock seizures are constitutionally permissible if conducted according to a plan that limits the discretion of the officers conducting the stops. I am not convinced that *Sitz* and *Martinez-Fuerte* were correctly decided. Indeed, I rather doubt that the Framers of the Fourth Amendment would have considered “reasonable” a program of indiscriminate stops of individuals not suspected of wrongdoing.

Respondents did not, however, advocate the overruling of *Sitz* and *Martinez-Fuerte*, and I am reluctant to consider such a step without the benefit of briefing and argument. For the reasons given by THE CHIEF JUSTICE, I believe that those cases compel upholding the program at issue here. I, therefore, join his opinion.

Points for Discussion

1. Is the Court saying that the problem of drug abuse is not as important as the problem of drunk driving? If not, how does the Court distinguish this case from *Sitz*? Isn’t the case for intervening to prevent or deter the transport of illegal drugs at least as important as preventing or deterring drunk driving?

2. The Court in *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) permitted the use of fixed roadblocks near the nation’s borders. How is that case distinguishable from this one? (The Supreme Court had previously rejected roving, suspicionless patrols near the border. See, *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973).)

Ferguson v. City of Charleston
[532 U.S. 67 \(2001\)](#)

JUSTICE STEVENS DELIVERED THE OPINION OF THE COURT.

In this case, we must decide whether a state hospital's performance of a diagnostic test to obtain evidence of a patient's criminal conduct for law enforcement purposes is an unreasonable search if the patient has not consented to the procedure. More narrowly, the question is whether the interest in using the threat of criminal sanctions to deter pregnant women from using cocaine can justify a departure from the general rule that an official nonconsensual search is unconstitutional if not authorized by a valid warrant.

I

In the fall of 1988, staff members at the public hospital operated in the city of Charleston by the Medical University of South Carolina (MUSC) became concerned about an apparent increase in the use of cocaine by patients who were receiving prenatal treatment.¹ In response to this perceived increase, as of April 1989, MUSC began to order drug screens to be performed on urine samples from maternity patients who were suspected of using cocaine. If a patient tested positive, she was then referred by MUSC staff to the county substance abuse commission for counseling and treatment. However, despite the referrals, the incidence of cocaine use among the patients at MUSC did not appear to change.

Some four months later, Nurse Shirley Brown, the case manager for the MUSC obstetrics department, heard a news broadcast reporting that the police in Greenville, South Carolina, were arresting pregnant users of cocaine on the theory that such use harmed the fetus and was therefore child abuse.² Nurse Brown discussed the story with MUSC's general counsel, Joseph C. Good, Jr., who then contacted Charleston Solicitor Charles Condon in order to offer MUSC's cooperation in prosecuting mothers whose children tested positive for drugs at birth.

After receiving Good's letter, Solicitor Condon took the first steps in developing the policy at issue in this case. He organized the initial meetings, decided who would participate, and issued the invitations, in which he described his plan to prosecute women who tested positive for cocaine while pregnant. The task force that Condon formed included representatives of MUSC, the police, the County Substance Abuse Commission and the Department of Social Services. Their deliberations led to MUSC's adoption of a

¹ As several witnesses testified at trial, the problem of "crack babies" was widely perceived in the late 1980's as a national epidemic, prompting considerable concern both in the medical community and among the general populace.

² Under South Carolina law, a viable fetus has historically been regarded as a person; in 1995, the South Carolina Supreme Court held that the ingestion of cocaine during the third trimester of pregnancy constitutes criminal child neglect. *Whitner v. South Carolina*, 328 S.C. 1, 492 S.E.2d 777 (1997), cert. denied, 523 U.S. 1145 (1998).

12-page document entitled “POLICY M-7,” dealing with the subject of “Management of Drug Abuse During Pregnancy.”

The first three pages of Policy M-7 set forth the procedure to be followed by the hospital staff to “identify/assist pregnant patients suspected of drug abuse.” The first section, entitled the “Identification of Drug Abusers,” provided that a patient should be tested for cocaine through a urine drug screen if she met one or more of nine criteria. It also stated that a chain of custody should be followed when obtaining and testing urine samples, pr⁴esumably to make sure that the results could be used in subsequent criminal proceedings. The policy also provided for education and referral to a substance abuse clinic for patients who tested positive. Most important, it added the threat of law enforcement intervention that “provided the necessary ‘leverage’ to make the [p]olicy effective.” That threat was, as respondents candidly acknowledge, essential to the program’s success in getting women into treatment and keeping them there.

The threat of law enforcement involvement was set forth in two protocols, the first dealing with the identification of drug use during pregnancy, and the second with identification of drug use after labor. Under the latter protocol, the police were to be notified without delay and the patient promptly arrested. Under the former, after the initial positive drug test, the police were to be notified (and the patient arrested) only if the patient tested positive for cocaine a second time or if she missed an appointment with a substance abuse counselor. In 1990, however, the policy was modified at the behest of the solicitor’s office to give the patient who tested positive during labor, like the patient who tested positive during a prenatal care visit, an opportunity to avoid arrest by consenting to substance abuse treatment.

The last six pages of the policy contained forms for the patients to sign, as well as procedures for the police to follow when a patient was arrested. The policy also prescribed in detail the precise offenses with which a woman could be charged, depending on the stage of her pregnancy. If the pregnancy was 27 weeks or less, the patient was to be charged with simple possession. If it was 28 weeks or more, she was to be charged with possession and distribution to a person under the age of 18—in this case,

⁴ Those criteria were as follows:

1. No prenatal care
2. Late prenatal care after 24 weeks gestation
3. Incomplete prenatal care
4. Abruptio placentae
5. Intrauterine fetal death
6. Preterm labor ‘of no obvious cause’
7. IUGR [intrauterine growth retardation] ‘of no obvious cause’
8. Previously known drug or alcohol abuse
9. Unexplained congenital anomalies.

the fetus. If she delivered “while testing positive for illegal drugs,” she was also to be charged with unlawful neglect of a child. Under the policy, the police were instructed to interrogate the arrestee in order “to ascertain the identity of the subject who provided illegal drugs to the suspect.” Other than the provisions describing the substance abuse treatment to be offered to women who tested positive, the policy made no mention of any change in the prenatal care of such patients, nor did it prescribe any special treatment for the newborns.

II

Petitioners are 10 women who received obstetrical care at MUSC and who were arrested after testing positive for cocaine. Four of them were arrested during the initial implementation of the policy; they were not offered the opportunity to receive drug treatment as an alternative to arrest. The others were arrested after the policy was modified in 1990; they either failed to comply with the terms of the drug treatment program or tested positive for a second time. Respondents include the city of Charleston, law enforcement officials who helped develop and enforce the policy, and representatives of MUSC.

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III

Because MUSC is a state hospital, the members of its staff are government actors, subject to the strictures of the Fourth Amendment. *New Jersey v. T.L.O.*, 469 U.S. 325, 335-337 (1985). Moreover, the urine tests conducted by those staff members were indisputably searches within the meaning of the Fourth Amendment. *Skinner v. Railway Labor Executives’ Assn.*, 489 U.S. 602 (1989). Neither the District Court nor the Court of Appeals concluded that any of the nine criteria used to identify the women to be searched provided either probable cause to believe that they were using cocaine, or even the basis for a reasonable suspicion of such use. Rather, the District Court and the Court of Appeals viewed the case as one involving MUSC’s right to conduct searches without warrants or probable cause. Furthermore, given the posture in which the case comes to us, we must assume for purposes of our decision that the tests were performed without the informed consent of the patients.¹¹

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¹¹ The dissent would have us do otherwise and resolve the issue of consent in favor of respondents. Because the Court of Appeals did not discuss this issue, we think it more prudent to allow that court to resolve the legal and factual issues in the first instance, and we express no view on those issues.

In looking to the programmatic purpose, we consider all the available evidence in order to determine the relevant primary purpose. In this case, as Judge Blake put it in her dissent below, “it . . . is clear from the record that an initial and continuing focus of the policy was on the arrest and prosecution of drug-abusing mothers. . . .” 186 F.3d, at 484. Tellingly, the document codifying the policy incorporates the police’s operational guidelines. It devotes its attention to the chain of custody, the range of possible criminal charges, and the logistics of police notification and arrests. Nowhere, however, does the document discuss different courses of medical treatment for either mother or infant, aside from treatment for the mother’s addiction.

Moreover, throughout the development and application of the policy, the Charleston prosecutors and police were extensively involved in the day-to-day administration of the policy. Police and prosecutors decided who would receive the reports of positive drug screens and what information would be included with those reports. Law enforcement officials also helped determine the procedures to be followed when performing the screens. In the course of the policy’s administration, they had access to Nurse Brown’s medical files on the women who tested positive, routinely attended the substance abuse team’s meetings, and regularly received copies of team documents discussing the women’s progress. Police took pains to coordinate the timing and circumstances of the arrests with MUSC staff, and, in particular, Nurse Brown.

While the ultimate goal of the program may well have been to get the women in question into substance abuse treatment and off of drugs, the immediate objective of the searches was to generate evidence *for law enforcement purposes* in order to reach that goal. The threat of law enforcement may ultimately have been intended as a means to an end, but the direct and primary purpose of MUSC’s policy was to ensure the use of those means. In our opinion, this distinction is critical. Because law enforcement involvement always serves some broader social purpose or objective, under respondents’ view, virtually any nonconsensual suspicionless search could be immunized under the special needs doctrine by defining the search solely in terms of its ultimate, rather than immediate, purpose. Such an approach is inconsistent with the Fourth Amendment. Given the primary purpose of the Charleston program, which was to use the threat of arrest and prosecution in order to force women into treatment, and given the extensive involvement of law enforcement officials at every stage of the policy, this case simply does not fit within the closely guarded category of “special needs.”

The fact that positive test results were turned over to the police does not merely provide a basis for distinguishing our prior cases applying the “special needs” balancing approach to the determination of drug use. It also provides an affirmative reason for enforcing the strictures of the Fourth Amendment. While state hospital employees, like other citizens, may have a duty to provide the police with evidence of criminal conduct that they inadvertently acquire in the course of routine treatment, when they undertake to obtain such evidence from their patients *for the specific purpose of incriminating those patients*, they have a special obligation to make sure that the patients are fully informed about their constitutional rights, as standards of knowing waiver require.

As respondents have repeatedly insisted, their motive was benign rather than punitive. Such a motive, however, cannot justify a departure from Fourth Amendment protections, given the pervasive involvement of law enforcement with the development and application of the MUSC policy. The stark and unique fact that characterizes this case is that Policy M-7 was designed to obtain evidence of criminal conduct by the tested patients that would be turned over to the police and that could be admissible in subsequent criminal prosecutions. While respondents are correct that drug abuse both was and is a serious problem, “the gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose.” *Indianapolis v. Edmond*, 531 U.S., at 42-43. The Fourth Amendment’s general prohibition against nonconsensual, warrantless, and suspicionless searches necessarily applies to such a policy.

Accordingly, the judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE KENNEDY, CONCURRING IN THE JUDGMENT.

I agree that the search procedure in issue cannot be sustained under the Fourth Amendment. My reasons for this conclusion differ somewhat from those set forth by the Court, however, leading to this separate opinion.

I

The Court does not dispute that the search policy at some level serves special needs, beyond those of ordinary law enforcement, such as the need to protect the health of mother and child when a pregnant mother uses cocaine. Instead, the majority characterizes these special needs as the “ultimate goal[s]” of the policy, as distinguished from the policy’s “immediate purpose,” the collection of evidence of drug use, which, the Court reasons, is the appropriate inquiry for the special needs analysis.

The majority views its distinction between the ultimate goal and immediate purpose of the policy as critical to its analysis. The distinction the Court makes, however, lacks foundation in our special needs cases. All of our special needs cases have turned upon what the majority terms the policy’s ultimate goal. For example, in *Skinner v. Railway Labor Executives’ Assn.*, 489 U.S. 602 (1989), had we employed the majority’s distinction, we would have identified as the relevant need the collection of evidence of drug and alcohol use by railway employees. Instead, we identified the relevant need as “[t]he Government’s interest in regulating the conduct of railroad employees to ensure [railroad] safety.” In *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989), the majority’s distinction should have compelled us to isolate the relevant need as the gathering of evidence of drug abuse by would-be drug interdiction officers. Instead, the special needs the Court identified were the necessities “to deter drug use among those eligible for promotion to sensitive positions within the [United States Customs] Service and to prevent the promotion of drug users to those positions.” In *Vernonia School Dist.*

47J v. Acton, 515 U.S. 646 (1995), the majority’s distinction would have required us to identify the immediate purpose of gathering evidence of drug use by student-athletes as the relevant “need” for purposes of the special needs analysis. Instead, we sustained the policy as furthering what today’s majority would have termed the policy’s ultimate goal: “[d]eterring drug use by our Nation’s schoolchildren,” and particularly by student-athletes, because “the risk of immediate physical harm to the drug user or those with whom he is playing his sport is particularly high.”

It is unsurprising that in our prior cases we have concentrated on what the majority terms a policy’s ultimate goal, rather than its proximate purpose. By very definition, in almost every case the immediate purpose of a search policy will be to obtain evidence. The circumstance that a particular search, like all searches, is designed to collect evidence of some sort reveals nothing about the need it serves. Put a different way, although procuring evidence is the immediate result of a successful search, until today that procurement has not been identified as the special need which justifies the search.

II

While the majority’s reasoning seems incorrect in the respects just discussed, I agree with the Court that the search policy cannot be sustained. As the majority demonstrates and well explains, there was substantial law enforcement involvement in the policy from its inception. None of our special needs precedents has sanctioned the routine inclusion of law enforcement, both in the design of the policy and in using arrests, either threatened or real, to implement the system designed for the special needs objectives. The special needs cases we have decided do not sustain the active use of law enforcement, including arrest and prosecutions, as an integral part of a program which seeks to achieve legitimate, civil objectives. The traditional warrant and probable-cause requirements are waived in our previous cases on the explicit assumption that the evidence obtained in the search is not intended to be used for law enforcement purposes. Most of those tested for drug use under the policy at issue here were not brought into direct contact with law enforcement. This does not change the fact, however, that, as a systemic matter, law enforcement was a part of the implementation of the search policy in each of its applications. Every individual who tested positive was given a letter explaining the policy not from the hospital but from the solicitor’s office. Everyone who tested positive was told a second positive test or failure to undergo substance abuse treatment would result in arrest and prosecution. As the Court holds, the hospital acted, in some respects, as an institutional arm of law enforcement for purposes of the policy. Under these circumstances, while the policy may well have served legitimate needs unrelated to law enforcement, it had as well a penal character with a far greater connection to law enforcement than other searches sustained under our special needs rationale.

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III

An essential, distinguishing feature of the special needs cases is that the person searched has consented, though the usual voluntariness analysis is altered because adverse consequences (*e.g.*, dismissal from employment or disqualification from playing on a high school sports team) will follow from refusal. The person searched has given consent, as defined to take into account that the consent was not voluntary in the full sense of the word. The consent, and the circumstances in which it was given, bear upon the reasonableness of the whole special needs program.

Here, on the other hand, the question of consent, even with the special connotation used in the special needs cases, has yet to be decided. Indeed, the Court finds it necessary to take the unreal step of assuming there was no voluntary consent at all. Thus, we have erected a strange world for deciding the case.

My discussion has endeavored to address the permissibility of a law enforcement purpose in this artificial context. The role played by consent might have affected our assessment of the issues. My concurrence in the judgment, furthermore, should not be interpreted as having considered or resolved the important questions raised by Justice SCALIA with reference to whether limits might be imposed on the use of the evidence if in fact it were obtained with the patient's consent and in the context of the special needs program. Had we the prerogative to discuss the role played by consent, the case might have been quite a different one. All are in agreement, of course, that the Court of Appeals will address these issues in further proceedings on remand.

With these remarks, I concur in the judgment.

JUSTICE SCALIA, WITH WHOM THE CHIEF JUSTICE AND JUSTICE THOMAS JOIN AS TO PART II, DISSENTING.

There is always an unappealing aspect to the use of doctors and nurses, ministers of mercy, to obtain incriminating evidence against the supposed objects of their ministrations—although here, it is correctly pointed out, the doctors and nurses were ministering not just to the mothers but also to the children whom their cooperation with the police was meant to protect. But whatever may be the correct social judgment concerning the desirability of what occurred here, that is not the issue in the present case. The Constitution does not resolve all difficult social questions, but leaves the vast majority of them to resolution by debate and the democratic process—which would produce a decision by the citizens of Charleston, through their elected representatives, to forbid or permit the police action at issue here. The question before us is a narrower one: whether, whatever the desirability of this police conduct, it violates the Fourth Amendment's prohibition of unreasonable searches and seizures. In my view, it plainly does not.

I

The first step in Fourth Amendment analysis is to identify the search or seizure at issue. What petitioners, the Court, and to a lesser extent the concurrence really object to is not the urine testing, but the hospital's reporting of positive drug-test results to police.

But the latter is obviously not a search. At most it may be a “derivative use of the product of a past unlawful search,” which, of course, “work[s] no new Fourth Amendment wrong” and “presents a question, not of rights, but of remedies.” *United States v. Calandra*, 414 U.S. 338, 354 (1974). There is only one act that could conceivably be regarded as a search of petitioners in the present case: the *taking* of the urine sample. I suppose the *testing* of that urine for traces of unlawful drugs could be considered a search of sorts, but the Fourth Amendment protects only against searches of citizens’ “persons, houses, papers, and effects”; and it is entirely unrealistic to regard urine as one of the “effects” (*i.e.*, part of the property) of the person who has passed and abandoned it. Cf. *California v. Greenwood*, 486 U.S. 35 (1988) (garbage left at curb is not property protected by the Fourth Amendment). Some would argue, I suppose, that testing of the urine is prohibited by some generalized privacy right “emanating” from the “penumbras” of the Constitution (a question that is not before us); but it is not even arguable that the testing of urine that has been lawfully obtained is a Fourth Amendment search. (I may add that, even if it were, the factors legitimizing the taking of the sample, which I discuss below, would likewise legitimize the testing of it.)

It is rudimentary Fourth Amendment law that a search which has been consented to is not unreasonable. There is no contention in the present case that the urine samples were extracted forcibly. The only conceivable bases for saying that they were obtained without consent are the contentions (1) that the consent was coerced by the patients’ need for medical treatment, (2) that the consent was uninformed because the patients were not told that the tests would include testing for drugs, and (3) that the consent was uninformed because the patients were not told that the results of the tests would be provided to the police.¹ (When the court below said that it was reserving the factual issue of consent, it was referring at most to these three—and perhaps just to the last two.)

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Until today, we have *never* held—or even suggested—that material which a person voluntarily entrusts to someone else cannot be given by that person to the police, and used for whatever evidence it may contain. Without so much as discussing the point, the Court today opens a hole in our Fourth Amendment jurisprudence, the size and shape

¹ The Court asserts that it is improper to “disaggregate the taking and testing of the urine sample from the reporting of the results to the police,” because “in our special needs cases, we have routinely treated urine screens taken by state agents as searches within the meaning of the Fourth Amendment.” But in all of those cases, the urine was obtained involuntarily. Where the taking of the urine sample is unconsented (and thus a Fourth Amendment search), the subsequent testing and reporting of the results to the police are obviously part of (or infected by) the same search; but where, as here, the taking of the sample was not a Fourth Amendment search, it is necessary to consider separately whether the testing and reporting were.

of which is entirely indeterminate. Today's holding would be remarkable enough if the confidential relationship violated by the police conduct were at least one protected by state law. It would be surprising to learn, for example, that in a State which recognizes a spousal evidentiary privilege the police cannot use evidence obtained from a cooperating husband or wife. But today's holding goes even beyond that, since there does not exist any physician-patient privilege in South Carolina. Since the Court declines even to discuss the issue, it leaves law enforcement officials entirely in the dark as to when they can use incriminating evidence obtained from "trusted" sources. Presumably the lines will be drawn in the case-by-case development of a whole new branch of Fourth Amendment jurisprudence, taking yet another social judgment (which confidential relationships ought not be invaded by the police) out of democratic control, and confiding it to the uncontrolled judgment of this Court—uncontrolled because there is no common-law precedent to guide it. I would adhere to our established law, which says that information obtained through violation of a relationship of trust is obtained consensually, and is hence not a search.

There remains to be considered the first possible basis for invalidating this search, which is that the patients were coerced to produce their urine samples by their necessitous circumstances, to wit, their need for medical treatment of their pregnancy. If that was coercion, it was not coercion applied by the government—and if such nongovernmental coercion sufficed, the police would never be permitted to use the ballistic evidence obtained from treatment of a patient with a bullet wound. And the Fourth Amendment would invalidate those many state laws that require physicians to report gunshot wounds, evidence of spousal abuse, and (like the South Carolina law relevant here) evidence of child abuse.

II

I think it clear, therefore, that there is no basis for saying that obtaining of the urine sample was unconstitutional. The special-needs doctrine is thus quite irrelevant, since it operates only to validate searches and seizures that are otherwise unlawful. In the ensuing discussion, however, I shall assume (contrary to legal precedent) that the taking of the urine sample was (either because of the patients' necessitous circumstances, or because of failure to disclose that the urine would be tested for drugs, or because of failure to disclose that the results of the test would be given to the police) coerced. Indeed, I shall even assume (contrary to common sense) that the testing of the urine constituted an unconsented search of the patients' effects. On those assumptions, the special-needs doctrine *would* become relevant; and, properly applied, would validate what was done here.

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The cocaine tests started in April 1989, *neither at police suggestion nor with police involvement*. Expectant mothers who tested positive were referred by hospital staff for substance-abuse treatment—an obvious health benefit to both mother and child. And, since “[i]nfants whose mothers abuse cocaine during pregnancy are born with a wide variety of physical and neurological abnormalities,” which require medical attention, the

tests were of additional medical benefit in predicting needed postnatal treatment for the child. Thus, in their origin—before the police were in any way involved—the tests had an immediate, not merely an “ultimate,” purpose of improving maternal and infant health. Several months after the testing had been initiated, a nurse discovered that local police were arresting pregnant users of cocaine for child abuse, the hospital’s general counsel wrote the county solicitor to ask “what, if anything, our Medical Center needs to do to assist you in this matter,” the police suggested ways to avoid tainting evidence, and the hospital and police in conjunction used the testing program as a means of securing what the Court calls the “ultimate” health benefit of coercing drug-abusing mothers into drug treatment. Why would there be any reason to believe that, once this policy of using the drug tests for their “ultimate” health benefits had been adopted, use of them for their original, *immediate*, benefits somehow disappeared, and testing somehow became in its entirety nothing more than a “pretext” for obtaining grounds for arrest? On the face of it, this is incredible. The only evidence of the exclusively arrest-related purpose of the testing adduced by the Court is that the police-cooperation policy *itself* does not describe how to care for cocaine-exposed infants. But *of course* it does not, since that policy, adopted months after the cocaine testing was initiated, had as its only health object the “ultimate” goal of inducing drug treatment through threat of arrest. Does the Court really believe (or even *hope*) that, once invalidation of the program challenged here has been decreed, drug testing will cease?

In sum, there can be no basis for the Court’s purported ability to “distinguis[h] this case from circumstances in which physicians or psychologists, in the course of ordinary medical procedures aimed at helping the patient herself, come across information that . . . is subject to reporting requirements,” unless it is this: That the *addition* of a law-enforcement-related purpose *to* a legitimate medical purpose destroys applicability of the “special-needs” doctrine. But that is quite impossible, since the special-needs doctrine was developed, and is ordinarily employed, precisely to enable searches *by law enforcement officials* who, of course, ordinarily have a law enforcement objective. Thus, in *Griffin v. Wisconsin*, 483 U.S. 868 (1987), a probation officer received a tip from a detective that petitioner, a felon on probation, possessed a firearm. Accompanied by police, he conducted a warrantless search of petitioner’s home. The weapon was found and used as evidence in the probationer’s trial for unlawful possession of a firearm. Affirming denial of a motion to suppress, we concluded that the “special need” of assuring compliance with terms of release justified a warrantless search of petitioner’s home. Notably, we observed that a probation officer is not

the police officer who normally conducts searches against the ordinary citizen. He is an employee of the State Department of Health and Social Services who, while assuredly charged with protecting the public interest, is also supposed to have in mind the welfare of the probationer. . . . In such a setting, we think it reasonable to dispense with the warrant requirement. *Id.*, at 876-877.

Like the probation officer, the doctors here do not “ordinarily conduc[t] searches against the ordinary citizen,” and they are “supposed to have in mind the welfare of the [mother and child].” That they have in mind in addition the provision of evidence to the

police should make no difference. The Court suggests that if police involvement in this case was in some way incidental and after-the-fact, that would make a difference in the outcome. But in *Griffin*, even more than here, police were involved in the search from the very beginning; indeed, the initial tip about the gun came from a detective. Under the factors relied upon by the Court, the use of evidence approved in *Griffin* would have been permitted only if the parole officer had been untrained in chain-of-custody procedures, had not known of the possibility a gun was present, and had been unaccompanied by police when he simply happened upon the weapon. Why any or all of these is constitutionally significant is baffling.

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The concurrence makes essentially the same basic error as the Court, though it puts the point somewhat differently: “The special needs cases we have decided,” it says, “do not sustain the active use of law enforcement . . . as an integral part of a program which seeks to achieve legitimate, civil objectives.” *Griffin* shows that is not true. Indeed, *Griffin* shows that there is not even any truth in the more limited proposition that our cases do not support application of the special-needs exception where the “legitimate, civil objectives” are sought only *through* the use of law enforcement means. (Surely the parole officer in *Griffin* was using threat of reincarceration to assure compliance with parole.) But even if this latter proposition *were* true, it would invalidate what occurred here only if the drug testing sought exclusively the “ultimate” health benefits achieved by coercing the mothers into drug treatment through threat of prosecution. But in fact the drug testing sought, independently of law enforcement involvement, the “immediate” health benefits of identifying drug-impaired mother and child for necessary medical treatment. The concurrence concedes that if the testing is conducted for medical reasons, the fact that “prosecuting authorities *then* adopt legitimate procedures to discover this information and prosecution follows . . . ought not to invalidate the testing.” But here the police involvement in each case did *take place after* the testing was conducted for independent reasons. Surely the concurrence cannot mean that no police-suggested procedures (such as preserving the chain of custody of the urine sample) can be applied until *after* the testing; or that the police-suggested procedures must have been *designed* after the testing. The facts in *Griffin* (and common sense) show that this cannot be so. It seems to me that the only real distinction between what the concurrence must reasonably be thought to be approving, and what we have here, is that here the police took the lesser step of initially *threatening* prosecution rather than bringing it.

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As I indicated at the outset, it is not the function of this Court—at least not in Fourth Amendment cases—to weigh petitioners’ privacy interest against the State’s interest in meeting the crisis of “crack babies” that developed in the late 1980’s. I cannot refrain from observing, however, that the outcome of a wise weighing of those interests is by no means clear. The initial goal of the doctors and nurses who conducted cocaine testing in this case was to refer pregnant drug addicts to treatment centers, and to prepare for necessary treatment of their possibly affected children. When the doctors and nurses agreed to the program providing test results to the police, they did so because (in addition

to the fact that child abuse was required by law to be reported) they wanted to use the sanction of arrest as a strong incentive for their addicted patients to undertake drug-addiction treatment. And the police themselves used it for that benign purpose, as is shown by the fact that only 30 of 253 women testing positive for cocaine were ever arrested, and only 2 of those prosecuted. It would not be unreasonable to conclude that today's judgment, authorizing the assessment of damages against the county solicitor and individual doctors and nurses who participated in the program, proves once again that no good deed goes unpunished.

But as far as the Fourth Amendment is concerned: There was no unconsented search in this case. And if there was, it would have been validated by the special-needs doctrine. For these reasons, I respectfully dissent.

Points for Discussion

1. Is the Court's attempt to distinguish *Vernonia*, *Von Raab*, and the like persuasive? Does the mere possibility of criminal prosecution make this case something other than a "special needs" search?

2. What do you make of the dissent's argument that this case, like *Vernonia* and *Von Raab*, is principally one about consent? Reflect back on the consent cases earlier in this chapter. Was the consent in this case voluntarily given?
