Employment law (testing and privacy rights)

The FAA prevailed (Question with its comprehensive, random drug testing program when the 9th U. S. Circuit Court ruled in Bluestein v. Skinner, 908F. 2d 451 (9th Cir. 1990), that the agency could conduct drug testing on air traffic controllers even without any prior evidence of abuse. Public employers may conduct these tests under the " special need" standard, meaning when there is an important public safety concern. These rulings affect public employers only, because private employers are not directly covered under the U. S. Constitution. They could be covered by state laws affecting who may or may not be tested.

Related rulings include approving testing for railroad operators, police officers and medical professionals who care for patients. Generally, where " a position has a direct affect on safety, random testing has been allowed" (National Workrights Institute). Attempts to spread drug testing to non-safety positions like janitors and clerical workers have been unsuccessful.

The U. S. Supreme Court, in Washington v. Davis, 426 U. S. 229 (1976), ruled that the District of Columbia's Test 21 (Question 2) was not discriminatory, even though it screened out many more black police force applicants than whites and had not been proved relevant to on-the-job performance. The test itself could not be blamed for the low black population on the police force. There had been no direct evidence that the D. C. police force was actively excluding black recruits, and the test was widely used for other government jobs. The Supreme Court stated in the ruling that a statute is not discriminatory " if in practice it benefits or burdens one race more than another" when it is designed to serve race-neutral goals such as a verbally competent work force, unless there is compelling evidence to the contrary. The high court feared that such a standard could be used to invalidate a

wide range of laws that affect different groups disproportionately.

The Louisiana Court of Appeals ruled in Lambert v. Dow Chemical Co., 215 So. 2d 673 (La. 1968), that the company violated the privacy of John Lambert, a pipefitter injured on the job, when it widely used gruesome pictures of his injuries as safety education for other employees (Question 3). Lambert's name was used in connection with the pictures, but the company asserted it was not doing so with malice. However, the company's safety director, Robert Vaughn, did not get Lambert's permission. While he could argue that he did not mean to humiliate Lambert, it is reasonable to think that someone would not want such private photos from a painful and stressful injury to be shown to all his coworkers.

Purdue University professor George E. Stevens (103) argued in 1978 that employee privacy rights were largely restricted by the courts because they feared that wider protections might mean too many lawsuits clogging the dockets. Lambert's case is an example, however, of a clear invasion of privacy.

In Naragon v. Wharton, 572 F. Supp 117 (1983), the Louisiana courts ruled, and the 5th U. S. Circuit Court affirmed, that Louisiana State University at Baton Rouge was within its rights to reassign a female graduate music student who was found to be having an affair with a female undergraduate student (Question 4). The university was able to protect its decision because this relationship was viewed as unprofessional by the courts. The courts claimed the fact that this was a lesbian relationship had no bearing on the case, despite evidence presented at trial that a similar heterosexual relationship had not been punished (Sanger 1881). This makes it hard to believe that LSU was thinking solely of the implications of the graduate

assistant-student relationship.

In another case involving consensual relationships at universities, Korf v Ball State University, 726 F. 2d 1222 (7th Cir. 1984), the courts ruled that universities can consider the possibility that they could be held liable, such as when a once-consensual relationship goes bad. While universities might be right in their concern about liability, it could be seen as very intrusive to ban amorous relationships where the two adult parties are never involved in the teacher/student relationship.

Works Cited

National Workrights Institute. Public Employee Drug Testing: A Legal Guide. 17 February 2006 Sanger, Carol. " The erotics of torts." Michigan Law Review 96. 6 (1998): 1852-1883. ProQuest. 17 February 2006.