John B. Dilworth's Commentary on "Drinking in the Workplace"

Commentary On
Drinking in the Workplace

This case gives the initial impression of involving several distinct (though related) issues about drug use, with each requiring a separate discussion based on a variety of considerations. Nevertheless, a central common theme is provided by the issue of the privacy rights of workers. Our discussion will concentrate on this all-important aspect of the situations described in the case.

In terms of privacy rights, the critical issues of the present case concern whether Branch, Inc. has a right to know specific items of information concerning the property or behavior of their workers. One useful clear case is provided by the following example. Suppose workers may rent private lockers from Branch Inc., in which they could keep any personal items they might want to use at work (lunchboxes, coats, radios, etc.) Suppose that John Crane happens to see that Andy Pullman regularly has a bottle of whiskey in his locker, with a fluctuating level suggesting a pattern of frequent consumption.

Should John talk to Andy about this (as a concerned employee of Branch, Inc. rather than as a friend), or even tell the company about what he has seen? No he shouldn't, because what Andy has in his locker and the use he makes of it is nobody's business but his own. If Branch Inc. is concerned about this possibility, they should stop renting private lockers, or issue a specific regulation forbidding use of them to store alcohol, or forbidding consumption of alcohol so stored. Workers could then conform to or challenge these regulations in court. If Branch does neither of these things, (stopping renting, or issuing regulations) then they have no right to know the information. Hence John as an employee has no business to be nosing around discovering such items of information on behalf of Branch Inc.

We can extract the following general principle from this 'locker' example. A worker has privacy rights in all information about their property and actions on the job,

except for those items which are specifically provided for or specified as non-private in the contract under which they work (which contract includes any ongoing changes in regulations etc.).

The initial situation actually described in the present case is quite similar to the 'locker' case. It differs only in how John acquires information about Andy's alcohol use: he detects alcohol on Andy's breath at various times in the day. Our question is, does Branch Inc. have a right to know this information? Branch has a right to it only if Andy does not have a right to privacy with respect to the information.

In terms of our general principle stated above, the question becomes whether Andy's contract with Branch Inc. specifically provides that Branch is entitled to acquire or make use of information about what Andy's breath smells like. Almost certainly there is no such specification or implication in the contract, and therefore Branch has no right to the information. Thus as before, John shouldn't try to acquire for Branch information which they have no right to know. So he shouldn't pass on or reveal such information (or implications from it which he might draw) to other employees of Branch, whether or not they are in higher management positions. If Branch wants to detect alcohol use through breath tests, they should do so by proposing specific regulations, and re-negotiating the employment contracts of all affected workers.

This leads us to the issue of mandatory random drug testing, proposed by Branch and mentioned at the end of the present case. Is this, as in the union's view, an "unwarranted invasion of the privacy of workers"?

Well, at least Branch Inc. is going about this the right way, by proposing a regulation rather than by \relying on an ad hoc network of spies or informants to achieve their goals. Also, if one accepts the account given here of individual privacy in the workplace, the question of which issues are privacy rights and which are not is generally open to negotiation between management and workers. Those objecting to the ethics of mandatory drug testing would have to give compelling reasons why this issue should not be settled by negotiation.

In the U.S. constitution, the only available "compelling reasons" for non-negotiation are provided by the provisions regarding 'unalienable rights'. These are rights which legally cannot be voluntarily given up by a person, and which hence are not subject to negotiation. Examples are the right not to be enslaved, or the right not to be

medically experimented upon with hazardous substances. However, there are no explicit provisions regarding privacy rights in the constitution, so each proposed case has to be legally established through a long and arduous process. In the present case, there is no current provision saying that one cannot give up a right not to be tested for drug use. So the burden of proof is on those who find mandatory testing morally objectionable. They need to make their case strongly enough to produce a corresponding change in constitutional law on the topic. (Analogous points would apply in other, non-U.S. legal systems).

Finally, is Branch, Inc.'s proposed testing discriminatory and unjust, in that professionals are exempted from it? Clearly there are various moral objections which one might make to this. But are any so compelling that it should be illegal to institute or freely negotiate such a policy? No, because if we agree that workers and management have the right to negotiate working conditions as they see fit, then society shouldn't interfere in the process (other than on constitutional grounds, as discussed above). We may agree that Branch's proposal is stupid and short-sighted, in that it would create resentment and damage the morale of the workforce. But the proper remedies are such things as worker demands that the whole policy should be withdrawn, or that professionals and managers should be included in any testing.