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U.S. Department of Labor

Assistant Secretary for Policy
Washington, D.C. 20210



August 18, 1986

MEMORANDUM FOR: DRUG-USE PREVENTION WORKING GROUP
FROM: DRUG-FREE WORKPLACE TASK FORCE
SUBJECT: MODEL PLAN FOR A DRUG-FREE FEDERAL WORKFORCE

Introduction

In drafting a suggested plan for a drug-free federal workplace, we have sought to emulate successful programs which were crafted in conjunction with affected employees, programs which have withstood legal challenges. Much of the following plan follows the Department of Defense model, although some nuances have been borrowed from proposed Federal Railway Administration and Federal Protective Service systems.

A parallel can be drawn to the issue of drunk driving. It is clearly illegal and until recently enjoyed a degree of social acceptability. Recent education and awareness-raising about the issue has reversed the direction of peer pressure to where it has become unacceptable societal behavior. The issue of drug use should follow a similar course. It, too, is illegal, but until its "utter unacceptability" is conveyed clearly to all corners of society, peer pressure and social trends will not discourage the use of drugs. Ideally, clear policy and education will one day overtake the need for testing.

Policy/Education

In this light, the importance of a clear statement of policy and concomitant education cannot be diminished. Prior to promulgating any programs, the message needs to be conveyed loudly and clearly that drug use is reprehensible and will not be tolerated in the federal workforce.

The focus must be constructive, i.e., toward encouraging the non-productive to become productive members of society. The approach must also be flexible, reflecting the mission and needs of each agency. The emphasis must be rehabilitative, not punitive. As the President has said, "There should be an offer of help." These must be the watchwords for his program.

During the education phase, care should also be taken to make certain that any health insurer who wants to do business with the Federal Government must carry a drug rehabilitation component as an option. The insurer should only be required to pay for one rehabilitation per employee. Blue Cross/Blue Shield currently charges approximately \$2 per pay period for their rehabilitation. Managers must also be trained to deal with the problem. In short, the federal system should be prepared to help.

Survey

In 1980, shortly after the disaster on board the USS Nimitz, the Department of Defense undertook a worldwide survey of their military personnel. In an atmosphere rife with rumors of impending drug testing, DOD found that 27 percent of the military personnel had used drugs in the 30 days prior to the test. In 1982, that number dropped to 19 percent and to 9 percent by 1985. This survey was conducted by anonymous questionnaire. Some of the services conducted simultaneous anonymous urinalysis testing. Their results approximated those of the questionnaire. Cost of the questionnaire was \$600,000. Much of this figure represents the foreign travel necessary to complete the questionnaires due to worldwide dispersal of the military force. A similar survey should be duplicated for our purposes government-wide. It would provide guidance in preparation of programs and budgets, and would be essential to gauge results.

"Critical Jobs"

To date, DOD testing has focused only on employees in critical jobs. These are determined as falling within one of the following categories:

1. Law enforcement.
2. Positions involving the national security or the internal security of the Department of Defense in which drug abuse could cause disruption of operations, destruction of property, threats to the safety of personnel, or the potential for unwarranted disclosure of classified information.
3. Jobs involving protection of property or persons from harm.

Each branch of the service has compiled a list of such positions. These are reviewed by DOD. Some branches have pared their original lists after DOD scrutiny. At present, approximately 10 percent of civilian military personnel fall under this classification.

For government-wide purposes, each agency would compile its own list of critical positions. These lists would be reviewed for reasonableness and uniformity by OPM.

Once a position is classified as "critically sensitive," it would be written into the position description and the person in that position would be notified of the classification. The appropriate Employee Assistance Program (EAP) would also be identified.

Employees in critical jobs would be subject to pre-employment screening as well as to random and probable cause testing. Typically, random testing occurs, unannounced, once a year. However, frequency would be left to the agency.

Probable Cause Testing

The Department of Defense at present has no probable cause testing. However, the Federal Railway Administration (FRA) experience in this area is illustrative: the current FRA system comes after discussion with employee representatives. Probable cause testing would cover all employees not in critical jobs. This type of testing is legally more defensible if tied to job performance.

Government-wide probable cause testing would come after phase-in of critically sensitive testing.

Following the FRA model, probable cause testing would be at the request of a supervisor. The probable cause would require the corroboration of a second supervisor. To safeguard against harassment, no employee who tests negative twice in a one-year span can be retested for three years.

Pre-Employment Testing

On a shorter time frame, applicants for employment in the Federal Government would be tested for drug use. Those testing positive would be referred to an appropriate rehabilitation center. After thirty days, the applicant could retest and reapply.

Phase-In "Window"

Prior to the phase-in of testing, a ninety-day "window" period would allow an employee to take action. A critically sensitive employee could attempt to transfer to another job if they objected to the possibility of testing. Any employee should also be able to cease drug use during this period or to come forward for help.

Testing and Enforcement

There are necessary safeguards required before testing can begin:

- o Laboratories need to be identified, certified as eligible for Federal use, and made subject to Government-wide quality control standards.
- o "State-of-art" testing methods and equipment should be used. At present, no portable equipment should be used.
- o Agency health clinics should prepare to become collection points (with forensic protocol), and agencies should establish a process for collection from applicants and employees at remote sites.
- o A "chain of custody" with integrity must be established for handling of tests. (A forensic protocol needs to be articulated.)

As for steps taken once an employee tests positive (and after appropriate verification), the following is suggested:

- o Employees in critical jobs should be reassigned, if possible, to noncritical positions and referred for rehabilitation.
- o An employee can be offered rehabilitation. The insurer would pay the first, the employee the second. A third offense would result in termination.
- o Rehabilitation which occurs during the "window" period would count toward an employee's total.
- o An employee could refuse rehabilitation. However, they would be on notice that after one more positive test, they would be subject to termination.

Costs

OPM estimates the cost of one test for all employees per annum to be \$70 million. This is based on initial screening and confirmation testing cost of approximately \$20 - \$30 per employee. Obviously, the costs of the program outlined above would be substantially less. Assuming the high end of the 10-20 percent range of "critical" DOD employees, costs of tests alone would be \$14 million. The more important costs--rehabilitation--would be borne by employees, the employer and insurers jointly. Non-DOD employees represent only 48 percent of the federal workforce. DOD is already testing critical

employees and has surveyed all employees. Thus, a government-wide approach would assume the cost of surveying 48 percent of the federal workforce, critical testing of that same 48 percent and probable cause testing of the entire workforce.

Conclusion

Drug use and abuse is a scourge on society. Our mission is to eradicate it, and to do so in a manner that shows our efficiency and the President's compassion.

We must make our message clear: drug use will not be tolerated. To be sure, anyone caught actually using drugs in the federal workplace would be terminated. However, for those who are ridden with this cancer, who satisfy this dark appetite away from the workplace, we "Stand by" as the President said, "ready to help them take the treatment that would free them from this habit." If we purge first offenders, we dump them out into the street, to already-overcrowded rehab centers and ultimately to an equally overcrowded welfare system. We need not sap hope, but instill it. Let our action and our help be the stitch that saves the fabric of our society.

PRIVATE SECTOR TASK FORCE
Report
to the
DRUG USE PREVENTION WORKING GROUP

August 18, 1986

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PRIVATE SECTOR TASK FORCE
DRUG USE PREVENTION WORKING GROUP

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PRIVATE SECTOR TASK FORCE
Report
to the
DRUG USE PREVENTION WORKING GROUP
August 18, 1986

The Private Sector Task Force of the Drug Use Prevention Working Group was assigned responsibility to develop an "action plan for expanding drug abuse prevention, with emphasis on community-based programs and initiatives" and to design creative and effective mechanisms for supporting private sector efforts. The following report includes the Task Force recommendations for the enhancement of private sector initiatives and the improved use of government resources in public/private partnerships.

Additionally, the Task Force has briefly examined regulatory and legislative restrictions encountered by various federal agencies which inhibit private sector initiatives.

This report is divided into five basic categories:

- o General recommendations
- o Presidential Involvement
- o Corporate private sector initiatives
- o Community-based voluntarism and private sector initiatives
- o Regulatory restrictions/legislative initiatives

Also included in this report is a brief list of drug use prevention projects which are recommended for development or expansion.

This Private Sector Task Force report supports the President's major goals for a national effort to "eradicate drug abuse." The Task Force has prepared a strategy which emphasizes the use of government programs as a catalyst for developing cooperative efforts with the private sector to assist in the development of drug prevention programs especially at the grass roots level. This strategy has been designed for implementation by all levels of government including local, state and federal programs and for the involvement of all levels of business from the independent businessman to the multi-national corporation.

The Private Sector Task Force believes that these cooperative and cost effective efforts will be an essential component in the President's national drug initiative and will ultimately result in a savings of great proportions for the American taxpayer.

These recommendations are submitted with the sincere hope that they will serve to assist the President in his efforts to eliminate the problem of illegal drug use in America and other countries around the world.

GENERAL RECOMMENDATIONS

A major concern addressed by this Task Force is the need for a consistent message on the prevalence of drug use, the health consequences, and the latest research. In view of this concern, the following recommendations are made:

1. The White House Office of Drug Abuse Policy continuously prepare talking points and general information on current and newly developing administration policies for dissemination to all agencies.
2. Each agency inform the White House Office of Drug Abuse Policy of current programs and their intentions to launch new initiatives.
3. The Alcohol, Drug Abuse and Mental Health Administration review all materials developed by the various agencies for accuracy, credibility and consistency in message.
4. The Alcohol, Drug Abuse and Mental Health Administration prepare talking points, sample speeches and general information for distribution among the agencies.

Proposal for the Involvement of President Reagan

The following recommendations by the Task Force are for the involvement of the President in national drug use prevention efforts.

1. Request each agency designate a private sector drug prevention representative to evaluate the agency's drug programs for potential private sector support and/or transfer to, or replication in the private sector. The private sector representative would assist each program and division within the agency in determining the potential use of corporate, state and community support for such programs. Additionally, this designated person would work to assure that the federal government is in no way in competition with the private sector in its efforts, but rather, work to assure successful cooperative efforts with the private sector.
2. Address a letter to the Chief Executive Officers of the Fortune 500 companies and selected foundations requesting their assistance in supporting drug prevention activities.
3. In conjunction with the release of the letter, launch a major media campaign of public service announcements featuring the President, First Lady, Cabinet Officers, national celebrities and athletes. The President could tape two separate spots, one targeting the general public and calling for support for an overall "War on Drugs," the other aimed at the corporate community, highlighting productivity rates, accidents on the job, absenteeism and general community problems. This spot would encourage corporations to get involved in the program to prevent drug use in the workplace, in their communities, and across the country. In addition, a PSA with both the President and Mrs. Reagan could be produced to emphasize the "family's" role in drug use prevention.
4. Request the White House Office of Private Sector Initiatives develop an incentive program for companies that contribute significant dollars or "in-kind" contributions in the area of drug use prevention. This could be along the lines of a "Presidential Honor Roll" which models the "Eagle" program of the Republican party.
5. Present a Presidential message to the general public on drug abuse on all three television networks. This would include film clips and statistics and a general call to arms.
6. Conduct a national drug prevention essay and poster contest with the nation's students.
7. Host, with Mrs. Reagan, a series of White House conferences and briefings in Washington and around the country, targeting specific networks of individuals such as religious leaders, corporate leaders, youth group leaders, etc.

CORPORATE PRIVATE SECTOR INITIATIVES

President Reagan has issued a general call to the country to share in the responsibility of implementing a national strategy for prevention of drug abuse. Many within the corporate community have rallied to the cause and have contributed funds, manpower or "in-kind" services in support of specific causes or programs. Some government agencies have entered into "public/private partnerships" in cooperation with private industry in an effort to expand or create new programs.

An example of the value and cost effectiveness of such ventures is the "Pharmacists Against Drug Abuse" (PADA) program designed by ACTION, the national volunteer agency, in conjunction with the White House Office of Drug Abuse Policy. The federal government designed the concept and the materials for the program which include free brochures for distribution to the general public in every pharmacy across the country and a detailed manual and a training program for pharmacists, posters, public service announcements, etc. McNeil Pharmaceuticals and the Johnson and Johnson Family of Companies has paid for the reproduction, promotion and distribution of the materials. To date, this multi-million dollar program has distributed over 50 million free brochures, trained over 5000 pharmacists as volunteers to their community and utilizes the services of 65,000 pharmacies. The cost to the federal government was less than \$15,000 for the development of the camera-ready materials.

There are numerous other examples of the value of public/private partnerships. The following recommendations are based on the premise that these activities are indeed cost effective, productive and extremely effective in mobilizing manpower, increasing available funding sources and raising awareness in industry.

Clearly technical assistance provided by government to the private sector is crucial in order to assure accuracy and consistency in the message being conveyed through these programs.

Recommendations:

1. A Presidential business task force should be established and charged with specific responsibilities. This Presidential task force would assist in identifying opportunities for private sector initiatives and potential sources of support within the private sector for drug prevention activities. This group would report their findings, recommendations and accomplishments to the President on a quarterly basis. Each federal agency should prepare and submit a list of projects and activities recommended for funding by the private sector to the business task force.

2. Each federal agency should develop a catalog of corporate private sector programs to be submitted to either the White House PSI or the newly formed Presidential task force for publication; thus, offering further incentive to the private sector and greater information for consumers regarding model programs.
3. Each federal agency should develop a list of corporations, organizations and foundations with whom they have contact and develop strategies for encouraging drug prevention support among these contacts. Additionally, each agency should develop its own incentive and recognition programs for corporations who support such activities.
4. Every private sector initiative or public/private partnership which involves a U.S. based, multi-national corporation should encourage programmatic assistance in other countries in which they operate, particularly source countries.
5. Foreign corporations operating in the U.S. should be approached and encouraged to launch or support private sector initiatives in drug use prevention both within the U.S. and their countries of origin.
6. An annual drug prevention symposium should be held for community affairs/public affairs representatives from major corporations and their foundation counterparts in an effort to share the materials, films, goals and objectives of drug prevention programs, thus stimulating awareness and support.
7. Drug prevention experts should be scheduled to address major business conferences, trade association meetings, national conventions, etc.
8. National corporations specializing in children's services such as Mattel, Walt Disney Productions, Shakey's, Wendys, etc. should be encouraged to review their available resources and assist in launching programs for young people.
9. Each agency should develop incentive and recognition programs for its employees who work with the private sector in the development of new and innovative programs.
10. Employee Assistance Programs (EAP) should be encouraged to broaden counseling programs to include prevention/education for their employees, their families and their communities.
11. The Nancy Reagan Fund, previously established, has traditionally served to assist low income children in receiving proper treatment services. There is a need for another fund specifically for prevention purposes... the "Nancy Reagan Drug Prevention Fund."

COMMUNITY-BASED VOLUNTARISM AND PRIVATE SECTOR INITIATIVES

In the spirit of neighbor helping neighbor, individuals around the country have rallied to help make their communities a better place to live... a better place to raise their children. It is in this spirit that many thousands of volunteer parent and youth groups have formed across our nation to prevent the use of illegal drugs by young people. The National Federation of Parents for Drug-Free Youth, the Parents' Resource Institute for Drug Education (PRIDE), Reach America, America's PRIDE, and Just Say No are a few of the outstanding groups that have organized to help raise awareness about and prevent drug abuse.

In many cases these groups have organized with no federal money but with technical assistance, information and guidance from various agencies. In some cases, the federal government has offered a small amount of grant money to the organizations to help establish their programs. Consistently, the use of volunteers to expand federal programs and the support of volunteer groups have been extremely successful and cost effective.

An example of the value of such efforts is seen in the "Elks Drug Awareness Program," a program involving the 1.6 million members of the Benevolent and Protective Order of the Elks nationwide. A government agency designed a training manual for the Elks and conducted several regional training seminars for their membership. The program cost the agency virtually nothing, but to date the Elks have contributed over \$3 million to the campaign. Additionally, all members of the Elks are volunteering through their Elk Lodges, located in most communities across the country, to help in the fight against drug abuse.

The value of this campaign can be measured not only in dollars spent but also in the large amount of voluntary manpower mobilized.

The following recommendations are for the purpose of expanding voluntarism and community-based private sector initiatives in partnership with the government and ultimately for the private sector to assume this role independently. As with the corporate programs, it is important that the value of the technical assistance offered by the agencies not be underestimated in order to assure credibility and accuracy of the drug information and effectiveness of the program.

Recommendations:

1. White House conferences and briefings could be held to share information, ideas and model programs in drug use prevention with target groups such as religious leaders, youth group leaders, civic group leaders, etc.

2. Each agency should hold follow up mini-conferences or workshops on the local and regional levels.
3. Each agency should examine its own constituency groups and determine opportunities to train members of these groups in drug use prevention through workshops, already scheduled meetings, special events and material distributions.
4. Establish a centralized location with a toll-free number for the private sector to contact for technical assistance, information and general referrals. This would in no way become a resource center which would be in competition with the private sector groups.
5. Establish a Presidential or Nancy Reagan Speakers' Bureau which consists of expert government speakers on a variety of specific subject areas (i.e. urinalysis, health research, voluntarism, etc.) for the purpose of addressing conferences, meetings and general media requests. A separate list of private sector speakers could also be developed (i.e. business leaders who have launched model programs, physicians, celebrities, etc.). It is important that this speakers' bureau not be in conflict with the previously established Nancy Reagan Speakers' Bureau established by the National Federation of Parents for Drug-Free Youth, consisting of volunteer parent group leaders. This new speakers' bureau would coordinate its assignments with the existing bureau.
6. The White House Office of Public Liaison should include in each of its upcoming events presentations regarding drug use prevention.
7. Training and educational materials specifically geared towards targeted groups (i.e. ethnic groups, physicians, parents, teachers, etc.) should be developed and distributed.

REGULATORY RESTRICTIONS/LEGISLATIVE INITIATIVES

In order to successfully embark upon a more pro-active role in seeking out and encouraging private sector support for various initiatives, it is important to examine the regulatory restrictions of such activities. Agencies interpret the various restrictions regarding solicitation for funds and program support differently. Oftentimes, it is easier for an agency or federal official to simply not seek private assistance than to sift through, interpret or maneuver around the bureaucratic red tape and technical restrictions to this activity. While the law appears to clearly prohibit a federal employee from soliciting for funds in order to 1) increase their agency or program's budget or 2) gain personally, it is unclear regarding a federal employee's ability to seek private support for various private sector groups and programs and public/private partnerships. This is an extremely important issue to resolve. Realistically, it is rare that corporations seek out government agencies or programs to support; thus, regulatory and legislative restrictions affect each agency's ability to encourage corporate private sector initiatives.

Additionally, there are numerous restrictions and regulatory problems confronting the agencies relating to the "Competition and Contracting Act." For instance, a company that will donate its services in order to produce a major program but wishes the government to pay the "out of pocket" expenses, apparently has to wait for the agency to advertise its ideas for this project to the general public and compete for the award of a contract. More importantly, they have to be listed on the Department of Defense's approved list of contractors before they can bid on a government contract. Some major firms (i.e. film producers, etc.) would not be on such a list and therefore could not donate their services to the federal government.

Finally, both the Department of Defense (DOD) and the United States Information Agency (USIA) have certain restrictions on the domestic use of educational materials developed for the Armed Services Network and for international consumption. DOD may develop some public service announcements (PSAs) which would be appropriate for use by the general public or might agree to enter into an interagency agreement to share expenses with another agency in production of PSAs and documentaries if these restrictions were lifted. Similarly, USIA materials cannot be utilized domestically. USIA can be of great value in developing materials for Spanish speaking audiences abroad but these same materials cannot be used in the U.S., even though they were paid for with U.S. taxpayers' dollars.

Recommendations:

In order to address these issues and concerns, the Private Sector Prevention Task Force recommends the following:

1. The White House prepare and issue government-wide guidelines which clarify the federal employee's limitations in seeking corporate support and funds for various programs.
2. The White House request that GSA reevaluate the "Competition and Contracting Act of 1984," specifically the exceptions to full and open competition and request any necessary legislative changes or exemptions in order to facilitate a more conducive environment for corporate private sector initiatives. One suggestion might be to consider that any project where more than 50% of the "actual, reasonable costs" are being donated would be exempt from the competitive process.
3. The restrictions for limited use of materials developed by DOD and USIA be reexamined and reconsidered and any legislative changes or exemptions be considered.

SPECIAL PROJECTS

The following is a list of special projects in the private sector in need of expansion or development.

1. PRIDE National Resource Center- an Atlanta-based, nationwide resource center with toll-free number, is organizing an international youth movement, conducts school surveys and conducts an annual international conference.
2. National Federation of Parents for Drug-Free Youth- operates as an umbrella organization for networks of volunteer parent groups, nationwide; has a toll-free number; offers technical assistance to concerned parents and supports a youth movement.
3. State Parent Group Networks- groups of concerned volunteer citizens who have organized to establish coordinated statewide drug prevention programs.
4. Local Parent Groups- groups of concerned volunteer citizens who have organized to establish effective drug prevention programs, locally.
5. National Youth Movement
 - a. College Challenge- a youth group dedicated to organizing volunteer college students on every college campus.
 - b. High School Groups and Just Say No Clubs- various local and national volunteer youth groups who are organizing drug prevention programs.
6. Dissemination and development of materials and films for targeted audiences such as parents, physicians, students, pharmacists, teachers, etc.
7. State, regional and national prevention conferences.
8. National Media Campaign- consisting of public service announcements for radio, television and print media; documentaries; etc.
9. Provide experts to all major talk shows.
10. Conduct media training conferences (to educate journalists).
11. Statewide toll-free numbers in conjunction with volunteer parent groups featuring taped messages for after hours.
12. Workshops on self-sufficiency and private sector initiatives for volunteer parent groups in each state (Note: this could be a SWAT team approach).
13. School text books on drug use prevention and the health

consequences of illegal drug use.

14. Resource centers for libraries including films, books, articles, and brochures on drug abuse.
15. Send speakers and trainers for Legislators' and Governors' conferences.
16. Launch educational/informational program through the churches with particular emphasis on the Christian Broadcast Network and its constituency.
17. National fundraising campaigns such as the 7-Eleven campaign for muscular dystrophy.
18. Provide drug prevention comic books to elementary schools.
19. Conduct PRIDE survey on prevalence of drug use in every school.
20. Computerize PRIDE, NFP and Families in Action.
21. Establish Nancy Reagan scholarships for medical students who wish to follow a career in drug abuse prevention.
22. Encourage civic group activities in drug use prevention.
23. Eliminate paraphernalia and magazines promoting drug use from places of business.
24. Promote campaign with nationwide distribution of T-shirts, bumper stickers, posters, etc.
25. Support and assist in expanding the Drug Enforcement Administration's program to educate all coaches.
26. Support international youth conference at PRIDE.
27. Comic Relief Day- encourage the writers of newspaper comic strips to produce a day of drug-free and anti-drug messages through their comic strips.

MISCELLANEOUS RECOMMENDATIONS

1. Withdraw federal funding if the state does not require the school system to have an adequate drug prevention program.
2. Withdraw federal funding if the state enacts legislation which allows for decriminalization, cultivation or possession of any controlled substance which otherwise is deemed an illegal activity by federal law.

18 AUG 1986

Toward A Drug Free Society: Drug Abuse Research, Education, and Intervention
OVERVIEW

Goal: Reduce Demand

- o Zero tolerance for drug use in society
- o No drug use in schools or workplace
- o Encourage (force) drug users out of market and keep them there. [Goal: 50 percent reduction in users]
- o Societal attitude of "utter unacceptability" of drug use

Epidemic vs. Endemic Drug Use

- o Epidemic
 - Rapid increase in drug use over the past 25 years
 - Entry of drugs into schools, workplace, social activity with fairly general tolerance of use ("a victimless crime")
- o Endemic
 - Hard core layer of addiction that predated current epidemic and which is closely associated with social, economic, psychological, educational, and medical factors. Much more difficult and expensive to treat. May require long term (or permanent) institutionalization (incarceration) for some.

Intervention: Focus on Prevention and Cessation of Early Use

- o Primary Prevention
 - No alcohol, tobacco, or drug use by children and adolescents
- o Cessation of Early Use — (see "minimal demand," Table II)
 - to avoid progression to advanced levels of use
 - to eliminate contagion. New users are usually introduced to drug use by peers in early stages of use who seem to be functioning well and showing no signs of difficulty. Key to stopping epidemic is to deal firmly with these seemingly casual users.
 - to intervene when demands on resources are minimal or modest (see Tables III and IV)
 - to take advantage of private sector cost offsets: personal finances; Employee Assistance Programs; private insurance
 - easiest return to fully productive tax paying lives
- o Associated Considerations
 - AIDS 115,000 IV drug users sexual-positive for AIDS
 - Waiting Lists for Treatment

Magnitude of Effort

o Research	\$ 33 million
o Primary Prevention and Epidemiology	28 million
o Secondary Prevention (pushing users into abstinence)	<u>60 million</u>
Subtotal	\$121 million
o Support other Federal Efforts	
- HHS/DED	4 million
- HHS/DoL/OPM	<u>5 million</u>
Total	<u>\$130 million</u>

Target group I
large numbers, small amount
leg for black grants likely to assist states

offset 30 m / 100 m new money
How to get 70 m

TABLE I

ESTIMATED NUMBERS OF CURRENT USERS (within past 30 days)*

AGE	≤12	12-17	18-25	26-40	≥40
<u>DRUG GROUP</u>					
Primarily Opioids	2,500	10,000	190,000	200,000	100,000
Cocaine					
Non-Freebase	(50%)120,000	(55%)380,000	(65%)1,560,000	(78%)655,000	(80%)400,000
Freebase, Including					
"Crack"	(50%)120,000	(45%)310,000	(35%) 840,000	(22%)185,000	(20%)100,000
<u>Total</u>	<u>240,000</u>	<u>690,000</u>	<u>2,400,000</u>	<u>840,000</u>	<u>500,000</u>
Opioids Complicated by Cocaine	These Individuals are Included in the Two Categories Above				
Primarily Marijuana	886,000	2,660,000	8,990,000	5,859,000	2,511,000
Primarily Alcohol	2,068,000	6,210,000	22,250,000	28,704,000	43,056,000
Primarily Sedatives/ Stimulants/Other	300,000	900,000	2,380,000	1,064,000	116,000
Opioid/Alcohol/Poly-drug	These are Included Among Category IV Opioid/Cocaine Users				

* Because many individuals use more than one substance, there is great overlap and the total shown here far exceeds the number of unduplicated individuals who have used various drug categories.

TABLE II

RESOURCE DEMAND DISTRIBUTION WITH DRUG USE
CATEGORIES FOR RECENT USERS (last 30 days)

(Resource demand is a higher order category that incorporate co-existing pathology, social disability, and severity of dependence)

<u>Category</u>	<u>Description of Syndrome and Likely Resource Demand</u>
I	<u>Minimal demand</u> - responds to threat of urine testing, admonitions of employer, wife, etc., some counseling, modest supervision.
II	<u>Modest demand</u> - requires range of drug-related treatment, inpatient, outpatient, detoxification, therapeutic community, oral methadone, drug counseling, private therapy, naltrexone or pharmacological supports for cocaine, etc.
III	<u>Extrordinary demand</u> - severe dependence or psychopathology requiring special services (e.g., psychotherapy beyond that available in clinic settings, but ultimately when such services are provided these individuals respond by improving).
IV	<u>Maximal demand/minimal response</u> - social impairment/psychopathology exceeds the level that can be successfully addressed by current methods - requires chronic care, compulsory confinement.

TABLE III

**EXPECTED RESOURCE DEMANDS AMONG INDIVIDUALS USING THIS DRUG CATEGORY OVER LAST 30 DAYS
PRIMARILY COCAINE**

Resource Demand Categories

<u>67%</u> <u>I</u>	<u>17%</u> <u>II</u>	<u>8%</u> <u>III</u>	<u>8%</u> <u>IV</u>	<u>Intervention Resource</u> <u>Description</u>	<u>Cost/Slot/</u> <u>Year</u>	<u>Days/Episode</u>	<u>Throughput</u>	<u>Cost/Episode</u>
20	5	2	1	Self Help	N/A	180	2	N/A
5	30	15	8	Outpatient Psychotherapy	7500	60	6	1250
0	30	25	17	Outpatient Psychotherapy plus Pharmacotherapy	8500	90	4	2125
0	25	30	30	Non-medical Residential (e.g., Hazelton)	75,000- 100,000	21	16	4688-6250
0	6	10	15	Non-medical Residential - Concept House	13000	120	3	4333
0	3	18	29	Medical/Psychiatric Inpatient	120,000	21	16	7500
75	0	0	0	Employee Assistance Programs Urine Screening/ Minimal Counseling	3000 (6 people 500/person)	60	6	500

* Total cocaine use consists of both free-base (including "crack") and non-free-base forms. Our very rough estimates are that at present about 2/3 of users are still involved with non-free-base forms and about 1/3 are being exposed to free-base, including "crack." The estimates of resource demand shown in this Table are for non-free-base forms. We estimate that for free-base and cocaine, the percentage of those users in category I would drop to 30% and those in categories II, III and IV requiring more extensive services would rise to 70%. The distribution of resource categories also differs by age group and education; thus among Federal workers, we would expect more than 90% of recent users to be in category I.

TABLE IV

**EXPECTED RESOURCE DEMANDS AMONG INDIVIDUALS USING THIS DRUG CATEGORY OVER LAST 30 DAYS
PRIMARILY OPIOIDS**

Resource Demand Categories

<u>15%</u> <u>I</u>	<u>30%</u> <u>II</u>	<u>30%</u> <u>III</u>	<u>25%</u> <u>IV</u>	<u>Intervention Resource</u> <u>Description</u>	<u>Cost/Slot/</u> <u>Year</u>	<u>Days/Episode</u>	<u>Throughput</u>	<u>Cost/Episode</u>
0	35	10	5	Methadone Outpatient Category II	2500	180	2	1250
0	0	30	50	Methadone Category III & IV	7500	180	2	3750
0	15	20	20	Outpatient Detoxification (with or without methadone)	3000	30	12	250
0	10	10	10	Non-medical Therapeutic Community or Concept House	10,000	120	3-4	2500-3333
0	2	5	5	Hospital Inpatient Detoxification (approx. \$265/day)	120,000	7	52	2308
5	10	10	10	Outpatient Post-withdrawal Treatment (e.g., naltrexone)	3500	90	4	875
0	4	5	3	Medically Augmented Concept House (e.g., Second genesis)	15,000	120	3	5000
5	10	5	5	Outpatient - Drug Free (primarily non-medical)	2000	60	6	333
5	1	2	0	Other - Private Psychotherapy (psychologist, social worker, etc.)	N/A	90	4	N/A
10	3	3	2	Other - Self Help	N/A	180	2	N/A
75	10	0	0	Employee Assistance/Urine Testing, On-job Counseling, School Counseling	3000	60	6	500

Assumptions about distributions within resource demand categories. Category I, 15% (75,000); Category II, 30% (150,000); Category III, 30% (150,000); Category IV, 25% (125,000).

TABLE V

PRIMARILY COCAINE

Cumulative

	No.	%	Amount		No.	%	Amount
Self Help	676,683	14%	0		676,683	14%	0
Employee Assistance Programs	2,346,675	50%	1,173,337,500		3,023,358	65%	1,173,337,500
Outpatient Psychotherapy	480,543	10%	600,678,750		3,503,901	75%	1,774,016,250
Outpat. Psycho. + Pharmacotherapy	395,082	8%	839,549,250		3,898,983	83%	2,613,565,500
Non-med. Res. Concept House	141,034	3%	611,100,322		4,040,017	87%	3,224,665,822
Non-medical Residential	422,635	9%	2,311,390,815		4,462,652	96%	5,536,056,637
Medical/Psychiatric Inpatient	199,409	4%	1,495,567,500		4,662,061	100%	7,031,624,137
Subtotal, Cocaine	4,662,061	100%	7,031,624,137				
Category I	3,128,900	67%	1,368,893,750		3,128,900	67%	1,368,893,750
Category II	785,961	17%	2,274,309,147		3,914,861	84%	3,643,202,897
Category III	373,600	8%	1,547,731,400		4,288,461	92%	5,190,934,297
Category IV	373,600	8%	1,840,689,840		4,662,061	100%	7,031,624,137
Subtotal, Cocaine	4,662,061	100%	7,031,624,137				

PRIMARILY OPIOIDS

Cumulative

	No.	%	Amount		No.	%	Amount
Other - Private Psychotherapy	8,291	2%	0		8,291	2%	0
Other - Self Help	19,095	4%	0		27,386	5%	0
Outpatient Detoxification	77,888	15%	19,471,875		105,274	20%	19,471,875
Outpatient - Free Drug	32,663	6%	10,876,613		137,936	27%	30,348,488
Employee Assistance	71,606	14%	35,803,125		209,543	41%	66,151,613
Outpatient Post-withdrawl	46,481	9%	40,671,094		256,024	50%	106,822,706
Methadone Outpatient Cat. II	74,119	14%	92,648,438		330,143	64%	199,471,144
Hospital Inpatient	16,834	3%	38,852,295		346,976	67%	238,323,439
Non-Medical Therapeutic	42,713	8%	124,571,006		389,689	76%	362,894,445
Methadone Categories III, IV	108,038	21%	405,140,625		497,726	97%	768,035,070
Medically Augmented Concept	17,336	3%	86,681,250		515,063	100%	854,716,320
Subtotal, Opioids	515,063	100%	854,716,320				
Category I	75,375	15%	32,818,275		75,375	15%	32,818,275
Category II	150,750	29%	178,429,208		226,125	44%	211,247,483
Category III	150,750	29%	310,725,900		376,875	73%	521,973,383
Category IV	138,188	27%	332,742,938		515,063	100%	854,716,320
Subtotal, Opioids	515,063	100%	854,716,320				

Activities

1. Community Systems Development Projects (\$70 Million)

- o Provide short-term financial assistance (on a matching basis with a declining Federal share) to communities to assist them in mobilizing comprehensive, integrated efforts to reduce drug use. Build on existing public and private sector institutions. Develop a permanent capability which can be sustained by the States and communities themselves. Anticipated outcomes: integration of alcohol and drug abuse into the mainstream of health care; involvement of all segments of society--the school, the workplace, the church, the health care system, the criminal justice system, civic and voluntary associations, the media, and all levels of Government--to enhance local systems capacity and capability; establishment of coordinated alcohol and drug abuse prevention and treatment systems nationwide.

2. National Center (\$15 million)

- o Establish a National Center for Prevention, Education, and Early Intervention Services to strengthen coordination of Federal activities with public and volunteer efforts and to disseminate knowledge gained from prevention research and treatment through a statewide prevention network. Provide immediate aid to communities in drug crisis through rapid response technical assistance, needs assessment, and advice on effective prevention strategies.

3. Epidemiology and Surveillance (\$3 million)

- o Develop enhanced epidemiology and surveillance systems to assure comprehensive tracking of the incidence and prevalence of alcohol and drug use and improved identification of risk factors and risk groups

4. Research (\$33 million)

- o Develop better and more effective methods of preventing, detecting, diagnosing, and treating illicit drug use and intervening with high risk children and adolescents
- o Develop alternative, improved, and less costly drug detection mechanisms. Develop national accreditation system for laboratory testing

5. Support for Other Department Efforts

- o Department of Education/HHS develop national demonstration projects and an integrative plan to establish and maintain drug-free schools, colleges, and universities in order to maximize the potential for students to become productive citizens
- o Department of Labor/OPM/HHS activities to facilitate the development of Employee Assistance Programs and to implement model drug and alcohol demonstration efforts at the workplace

COMMUNITY SYSTEMS DEVELOPMENT PROJECTS

- Goals:
- o Enhance public awareness and understanding of the problems of drug and alcohol use.
 - o Foster attitude changes that deglamorize drug and alcohol use.
 - o Make illicit drug use utterly unacceptable.
 - o Create drug free communities

Population Focus: Non-user and early initiator populations

Objective: Support model community systems development projects that feature:

- a) coordination of community-wide activities relevant to prevention, education, and early intervention services, including integrative early identification, referral, and services delivery systems
- b) linkage of all relevant social and familial institutions (i.e., criminal justice, business and industry, religious, educational, social services)
- c) innovative community coalitions of public and private organizations (i.e., community recreational facilities, public housing, volunteer organizations, health care systems, welfare units)
- d) focused activities on at-risk populations who exhibit high-risk behaviors. Such targetting has the highest potential for cost-offset and cost-benefit to society.
- e) surveillance and monitoring systems to rapidly identify changes in incidence and prevalence rates
- f) programs that address the needs of school-age youth who are not in traditional public or private school settings. Specific at-risk groups include runaways, ethnic minority youth, youth in the juvenile justice system, and youth in alternative schools or state training schools.
- g) development of community model standards and community intervention guides. This includes adoption of specific local level goals, objectives, and activities according to a community needs assessment profile.

Budget: \$70.0 M
14 FTEs

NATIONAL CENTER FOR PREVENTION, EDUCATION, AND EARLY INTERVENTION SERVICES

Goal: Establish within DHHS (ADAMHA) a National Center for Prevention, Education, and Early Intervention Services as the lead Departmental unit for the collection and dissemination of accurate and timely information, model programs, and resources to address alcohol and drug issues. The Center will be responsible for developing and implementing national training programs, prevention and intervention materials development and dissemination, and clearinghouse functions. This Center will liaison with other Federal units responsible for elements of the enhanced demand reduction strategy (The President's Initiative on Drug Abuse).

Population Focus: Non-users and early initiator populations

Objective: Develop programs to bring alcohol and drug problem awareness, recognition, and early intervention services into the mainstream of primary health care.

Objective: Disseminate information to State and local organizations in support of their efforts to develop and implement prevention, education, and early intervention programs. Innovative early intervention and prevention programs developed through the research and evaluation component of the initiative will be rapidly disseminated.

Objective: Ensure that accurate programs and messages reach citizens through public print and electronic media (TV, radio, newspapers, magazines).

Objective: Ensure that every State has a broad-based system for coordination of focused alcohol and drug programs. This is to include support of existing networks and organizations (i.e., NPN, NFP) as well as fostering the development of needed coalitions and task forces where gaps exist.

Objective: Establish a national prevention training center to ensure the training of "gatekeepers" at the community level (i.e., police, teachers, probation officers, social workers, judges, parents, clergy, primary care professionals, etc.). This unit will be responsible for developing and disseminating manuals, handbooks, and training materials.

Objective: Provision of rapid response/crisis response technical assistance teams to State and local organizations in support of their immediate needs to develop and implement prevention, education, and early intervention programs. This approach is based on the CDC Epidemic Intelligence Services (EIS) model.

Budget: \$15.0 M
18 FTEs

EPIDEMIOLOGY AND SURVEILLANCE

- Goal: Improve and expand epidemiologic surveillance systems and investigation capability to ensure comprehensive tracking of the prevalence of alcohol and drug use and related behaviors at the national, State, and local levels.
- Objective: Establish new epidemiologic surveillance systems to monitor drug abuse in populations, such as schools and colleges; juvenile and adult criminal justice; military; the workplace; life transition points, such as at time of birth and marriage; and hidden populations, such as high school dropouts, runaways, and the homeless. Evaluate the use of sentinel health events to measure the impact of drug abuse (i.e., criminal activity, motor vehicle accidents, intentional and unintentional injuries).
- Objective: Establish rapid turn-around survey methodologies, such as telephone surveys and public opinion polls to measure the impact of drug issues. Work with CDC to enhance drug abuse components of the behavioral risk factor surveillance system (BRFS).
- Objective: Establish a demonstration project to test surveillance and other data gathering techniques to permit identification of at risk groups for drug and alcohol use as well as early experimenters with drugs and alcohol.
- Objective: Develop an ongoing epidemiologic surveillance and investigation capability to identify new and emerging drugs of abuse by establishing a national reporting database from treatment programs, health facilities, hot lines and crisis centers, and law enforcement offices based on toxicology screenings, urinalysis, street drug analysis, intelligence reports, and ethnographic research.
- Objective: Establish the capability to conduct field investigations of acute drug-related outbreaks which threaten public health in the communities and improve epidemiologic surveillance at the State and local community level, by expanding technical assistance and collaboration with State and local officials (rapid deployment mechanisms), providing epidemiology training to community-based drug abuse researchers and other professionals, and encouraging the establishment of a State drug abuse epidemiologist in each State.
- Budget: \$3.0 M
8 FTEs

RESEARCH

Goal: TO DEVELOP INNOVATIVE, COST-EFFECTIVE TREATMENT PROGRAMS.

Current treatment research has been concentrated on the evaluation of established narcotic treatment techniques. Relatively little research is being conducted on innovative treatments for newer drug problems (cocaine dependence, adolescent drug dependence, AIDS risk reduction). We propose to establish at NIDA's intramural research program (ARC) a model adult and adolescent in- and out-patient treatment research program focusing on cocaine and IV drug users. Extramural research capacity will be increased to develop and evaluate innovative treatment techniques for cocaine and heroin abusers based on new knowledge of the biological and behavioral bases of drug abuse. This will include an emphasis on alternatives to methadone maintenance such as depot naltrexone and buprenorphine. Further expansion of extramural research on cocaine and controlled substance analogs and their toxic effects will also be initiated.

BUDGET: \$11,400,000 FTE: (27)

Goal: TO DEVELOP A PROGRAM TO EVALUATE THE EFFICACY OF CURRENT TREATMENT

A variety of treatments, including the use (alone and in combination) of drugs such as bromocriptine, amantadine, imipramine, and behavioral therapy and psychotherapy are currently being used to treat cocaine addiction. Specialized treatment research laboratories will be established to evaluate the efficacy of these treatment approaches. The results of this research will provide a rational basis for choosing the most cost-effective treatment for specific clients.

BUDGET: \$8,100,000 FTE: (2)

Goal: TO DETERMINE THE EFFICACY OF PREVENTION PROGRAMS

In collaboration with state and local agencies, programs funded under the Community Systems Development Project will be identified for evaluation. These programs will emphasize the school, the family, and the worksite as points of contact, and the preadolescent, adolescent and young adult as the focus of concern. The efforts will involve both evaluation of efforts to prevent the initiation of drug and alcohol use and the development of early intervention strategies targeted at the potential drug user and his or her family.

BUDGET: \$5,700,000 FTE: (3)

Goal: TO IDENTIFY CHILDREN AT RISK FOR DRUG AND ALCOHOL ABUSE

Recent studies have shown that the way children respond to the first year in school is predictive of teenage and adult problems. Aggressiveness, such as not obeying rules, truancy, and fighting with classmates often is associated with problems such as drug and alcohol abuse and delinquency later in life.

We propose to fund research to improve and determine the validity of identification criteria and the effectiveness of various interventions to avert the development of drug and alcohol problems in such high risk children. Further, we propose to expand our current extramural research on the biological and behavioral bases of illicit drug use with special emphasis on investigations of the social, behavioral, genetic, and biomedical factors underlying "invulnerability" to drug abuse.

BUDGET: \$4,100,000 FTE: (3)

Goal: DEVELOP VALID AND RELIABLE DRUG SCREENING METHODS AND PROGRAMS

HHS will develop standardized procedures for monitoring quality control for drug testing of urine. Working with the private sector, we will develop procedures to certify the proficiency of laboratories to perform these analyses. Further research will be conducted to develop more sensitive systems of analysis that may be useful as a diagnostic methodology for drug abuse. In addition, non-invasive technologies, designed to assess specific motor and cognitive performance effects of abused drugs, will be developed.

BUDGET: \$3,700,000 FTE: (3)

ADAMHA CONSULTATION/TECHNICAL ASSISTANCE WITH OTHER DEPARTMENTS

Department of Education

ADAMHA will provide technical assistance, consultation, and support for the development of a school-based element that focuses on the enhancement of student competencies as well as the development of school climates and support systems (e.g., peers/faculties/teachers) that make children more resistant to drugs and more committed to positive school/social adjustment.

Such efforts will include development and dissemination of 1) a comprehensive program of school health for all children (including instruction in the health and social dangers associated with tobacco, alcohol and drug use) designed to develop self efficacy as a way of making children resistant to social forces that lead to drug and alcohol use (i.e., make children capable of identifying and resisting peer pressure); 2) specific intervention programs designed for youth who present a profile of antecedent risk factors for substance abuse; and 3) specific programs for youth who are early initiators (experimenters).

Budget

\$4 M

Department of Labor/Office of Personnel Management

ADAMHA will provide technical assistance, consultation, and support for the development of public health - business/industry partnerships. ADAMHA will encourage specific expansion of the role of EAPs into preventive activities. Support will be provided for the development of prevention-oriented EAPs in industries that historically have been resistant to developing such programs (e.g., small business).

Such endeavors will encourage worksites to develop support programs for the maintenance of no-use drugs/non-abuse alcohol behaviors of employees who may previously have engaged in casual to moderate use of drugs or alcohol abuse. Model worksite drug and alcohol demonstration projects will be encouraged and supported by this activity.

Budget

\$5 M

August 18, 1986

DOMESTIC POLICY COUNCIL WORKING GROUP ON DRUG ABUSE POLICY

Tentative Schedule*

WEEK 1 - AUGUST 11- 15, 1986

Monday, 8/11/86 1:30 pm, OEOB 208. MEETING OF WORKING GROUP ON DRUG ABUSE POLICY to set up task forces and outline requirements.

WEEK 2 - AUGUST 18-22, 1986

Monday, 8/18/86 1:30 pm, OEOB Room 324. MEETING OF WORKING GROUP ON DRUG ABUSE POLICY, presentation of preliminary task force reports.

Tuesday, 8/19/86 10:00 am, OEOB 220. Meeting of Chairman/Task Force on Legislative Review with Working Group Chairman for discussion of status of draft Executive Order.

Wednesday, 8/20/86 10:00 am. Meeting of Task Force on Treatment with DAPO et al. for discussion of preliminary report and follow-up action.**

Thursday, 8/21/86 10:00 am. Meeting of Task Force on Private Sector Initiatives with DAPO et al. for discussion of preliminary report and follow-up action.**

1:00 am. Meeting of Task Force on Drug-Free Schools with DAPO et al. for discussion of preliminary report and follow-up action.**

3:00 pm. Meeting of Task Force on Drug-Free Workplace with DAPO et al. for discussion of preliminary report and follow-up action.**

Friday, 8/22/86 10:00 am. Meeting of Task Force on Legislative Review with DAPO et al. for discussion of preliminary report and follow-up action.**

WEEK 3 - AUGUST 25-29, 1986

Tuesday, 8/26/86 1:30 pm, OEOB, MEETING OF WORKING GROUP ON DRUG ABUSE POLICY to review task force status and discuss further action, etc.

Wednesday, 8/27/86 Task force meetings as needed (to be
- Friday, 8/29/86 determined at Working Group meeting on 8/25/86)

WEEK 4 - SEPTEMBER 1-5, 1986

Monday, 9/1/86 Labor Day

Tuesday, 9/2/86 1:30 pm, OEOB. MEETING OF WORKING GROUP ON DRUG ABUSE POLICY for discussion of report to Domestic Policy Council.

TO BE ANNOUNCED: MEETING OF DOMESTIC POLICY COUNCIL for presentation of Working Group report.

* Task Force composition and/or meeting times may be changed by the Working Group Chairman based upon requirements.

** Location and other details of meeting to be coordinated by Task Force chairman with Sharyn Lumpkins, DAPO, 456-2761.

Drug Log / E.O.

① OPM log.

1 element to protect
of nature to job performance - if using drugs
- don't need to show
means.

2 element to address on

handling protected category - ∴ not entitled to rehab.

3/ 1

E.O.

1. Overt agency who are in sensitive position

2. Create trusty program

3. If using - what the

counseling.

if refuse - what

if fail - what

when does rehab attach.

If in sensitive position - no protection under

42 § 2901(a) Drug Abuse Rehabilitation Act.

CTA / FBI / NSA - Nat. Sec.

Req. by head of agency.

Rehabilitation Act - May have some scope (DOJ)

54 USC § 2302 (b)(10) Issues Civil Service rules re: use
(but does not address drug issue specifically.)

Drug use dangerous of drugs in sensitive position.

Do subsequent E.O. after get new Stat authority
to make modification.

Prior drug use - meaning in Drug Abuse Act

Rehab Act - if refused or unsuccessful

Means - evidence that drug use makes you less effective.

OPM - (Jim Green) case law on drugs - means.

Does Drug Abuse Act supplement Rehab Act - RK will

check w/DOJ

E.O. Drug Testing

① DOJ just looking at Wynn issue

② Drug Abuse Act -

no case law on signat- of "prior"

③ Categories of covered persons
would pick up 3 million people

What happens if fail to conform or
fail at rehabilitation

Legislat for non-sensitive?

OPM -

Rehab Act.

Sensitive - Air Traffic Cont.

law enforce

crane operator in navy yard

May not be required or could to
go thru rehab under Rehab Act.

8-9-86 4:00 p.m.

Executive Order No. _____ of September __, 1986

Drug Free Federal Workplace

WHEREAS the use of illegal drugs, on or off duty, by federal employees sets a bad example in the federal workplace, and creates suspicion and distrust within an agency or department that disrupts its smooth and efficient functioning;

WHEREAS the use of illegal drugs, on or off duty, by ^{any} federal employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust given to such employees as servants of the public;

WHEREAS federal employees who use illegal drugs, on or off duty, are less productive, less reliable, and prone to greater absenteeism than their fellow employees who do not use illegal drugs;

WHEREAS the use of illegal drugs, on or off duty, by federal employees impairs the efficiency of federal departments and agencies by undermining public confidence in them, and thereby making it more difficult for other employees who do not use illegal drugs to perform their jobs effectively;

WHEREAS the use of illegal drugs, on or off duty, by federal employees can pose a serious health or safety threat to members of the public and to other federal employees;

WHEREAS the use of illegal drugs, on or off duty, by ^a federal employees evidences a lack of personal integrity and a willful disregard for the law;

WHEREAS the use of illegal drugs, on or off duty, by federal employees in certain positions evidences an unreliability, an instability, and a lack of judgment that is inconsistent with access to sensitive information, and renders such employees susceptible to coercion, influence, and irresponsible action under pressure so as to pose a serious risk to national security, the public safety, and the effective enforcement of the law;

WHEREAS federal employees who use illegal drugs must ~~themselves~~ be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves, and will only take such steps if made accountable for their unsuitable and illegal use of drugs;

WHEREAS, for these reasons, the use of illegal drugs by individuals in federal service undermines the efficiency of the

service and renders such individuals unsuitable for such service;
and

WHEREAS standards and procedures should be put in place to ensure fairness in achieving a drug-free federal workplace, to allow an appropriate response to be made to the use of illegal drugs by a federal employee, and to protect the privacy of federal employees:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including Section 3301 (2) of Title 5 of the United States Code; Section 7301 of Title 5 of the United States Code; [Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632, et. seq.); Section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j); and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22-1, et. seq.)] and as President of the United States, and deeming such action in the best interests of national security, public safety, law enforcement and the efficiency of the federal service, it is hereby ordered as follows:

Section 1: Drug Free Workplace

No federal employee is permitted to use illegal drugs.

- Section 1 should be defined*
- (a) ~~All federal employees are required to refrain from the use of illegal drugs.~~
 - (b) The use of illegal drugs by ^{any} federal employees whether on duty or off duty is *per se* contrary to the efficiency of the service.
 - (c) Employees and applicants who are ~~found to be~~ using illegal drugs are not suitable for employment or continued employment with an agency.
 - (d) ^{Federal} An agency shall deny employment to applicants who are using illegal drugs.
 - (e) An agency shall initiate action to remove from employment federal employees who are found to use illegal drugs, *provided that*, removal is not required if the employee comes forward and requests rehabilitation assistance as set forth in Sections 2 and 3 of this order, prior to the agency learning that the employee is using illegal drugs.

Section 2: Federal Drug Testing Program

42 USC § 290ee(i)
Direct agency to prepare reg. OPM model reg.?
The head of each agency ^{MAY} shall establish a drug testing program to identify employees or applicants who use illegal drugs under the following criteria.

- (a) Drug testing is appropriate for covered employees and applicants for covered positions:
- (1) Before appointment or selection;
 - (2) Periodically after appointment when selection for testing is based on the application of neutral criteria such as random selection.
- (b) Drug testing is appropriate for any employee:
- (1) When there is a reasonable suspicion that the employee is using illegal drugs; or
 - (2) In an examination authorized by the agency regarding an accident or safety investigation.
- (c) Before conducting a drug test, the agency shall inform the employee to be tested of:
- (1) The opportunity to submit supplemental medical documentation that may support a legitimate use for a specific drug; and
 - (2) The availability of drug abuse counselling for those employees who request such prior to the first administration of the test for that employee.
- (d) An applicant's refusal to take a drug test authorized by this order shall be grounds for the agency not to hire the applicant. An employee's refusal to take a drug test authorized by this order shall be grounds to remove the employee from his position.
- (e) The results of a drug test and information developed by the agency in the course of the drug testing of the employee shall be admissible in evidence in processing the adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in administrative or disciplinary proceedings. Positive test results are preliminary results until confirmed as positive (by both initial and confirmatory testing) or by an admission of the employee.
- (f) Programs should contain procedures for timely submission of requests for retention of records and

specimens; procedures for retesting, and procedures to protect the confidentiality of test results.

- (g) Programs should be conducted in accordance with procedural guidelines promulgated by the Secretary of Health and Human Services after consultation with the Director of the National Institute on Drug Abuse.

Section 3: Rehabilitation

~~Any~~
~~All~~ employees currently using illegal drugs who cannot voluntarily cease such activity on their own must seek rehabilitation services from their agency prior to the agency learning that they are using illegal drugs, or be subject to removal in accordance with the terms of this Order. Employees who come forward and seek rehabilitation prior to the agency learning that they are using illegal drugs will not be removed from the service but may, in the discretion of the agency head, be reassigned to a position not covered by section 6(d) of this order.

Section 4: Voluntary Drug Testing

Agency heads may establish programs which enable any employee to voluntarily submit to drug testing.

Section 5: Coordination of Agency Programs

- (a) The Office of Personnel Management may promulgate government wide regulations to guide agencies in the implementation of the terms of this order.
- (b) The Attorney General is requested to render to the heads of departments and agencies such advice as may be required to enable them to establish drug testing programs.

Section 6: Definitions

- (a) This order applies to all agencies of the Executive Branch.
- (b) For the purposes of this order, the term "agency" means an Executive agency, as defined in 5 U.S.C. § 105; the Uniformed Services as defined in 5 U.S.C. § 2101(3); or any employing unit or authority of the Federal government, other than those of the judicial and legislative branches.
- (c) For the purpose of this order, the term "illegal drugs" means a controlled substance, as defined by section

802(6) of Title 21, United States Code, the possession of which is unlawful under chapter 13 of title 21, United States Code.

- (d) For the purpose of this order, the term "employee in a covered position" means:
- (i) an employee in a position which an agency has designated Special Sensitive, Critical-Sensitive or Noncritical-sensitive under Chapter 731 of the Federal Personnel Manual or an employee in a position which an agency head has designated or in the future designates as sensitive in accordance with Executive Order 10450 of April 27, 1953 as amended;
 - (ii) an employee who has been granted access to classified information or in the future is granted access to classified information pursuant to a determination of trustworthiness by an agency head under Section 4 of Executive Order 12356 of April 2, 1982;
 - (iii) individuals serving under Presidential appointments;
 - (iv) members of the Senior Executive Service as defined in Subchapter II of Chapter 31 of Title 5, United States Code;
 - (v) law enforcement officers as defined in 5 U.S.C. § 3321(20);
 - (vi) individuals employed under Schedule C in the excepted service under the authority of section 213.3301 of Title 5, Code of Federal Regulations and Executive Order 10577;
 - (vii) individuals serving in positions covered by the Performance Management and Recognition System of Chapter 54 of Title 5, United States Code;
 - (viii) members of the uniformed services as defined in 5 U.S.C. § 2101(3);
 - (ix) air traffic controllers as defined in 5 U.S.C. § 2109; and

- (x) other positions that the agency head determines involve law enforcement, national security information, public safety, or other similar functions.

Section 7: *Effective Date*

This Order shall become effective on the date of its issuance.

RONALD REAGAN

THE WHITE HOUSE

September __, 1986

[right side of packet]

① Health Task Force - see memo & sheet

Target group / treatment / funding / Block grants

② Drug-free schools -

Req for demonstration projects - fed. issue.

Need to have Dept of Ed program comparable:

state funding to Health Program

2 page write-up - (now Wednesday)

③ Private sector -

No additional funds

all levels of gov. & private sector

Private sector designed from each agency
go to contact.

Corp - public - establish div. task force

Multi-national corp - for program?

community-based programs - Technical assistance

Telephone hot line for assistance

→ Regulatory restrictions on pursuing program

Work w/ existing programs - DEA reports etc

Withdrawal of fed funds if inadequate private
program - plan of 55 MHA

Reg. recommend: private donations seem to be
precluded by contracting reqs. - Willard of look at.

④ Drug-free work place -

short-term: fed. work force / long-term: private

DOO - mandatory testing for initial jobs

notice - transfer out of job - announcement

mandatory - window for voluntary

test - 1 bit of appl - retest - if 2nd pos. t. vs

test, then discipline.

E.O. - use permissive approach of broad
delegation of authority, but leave to agency head
to decide who he wants tested.

(OVER)

5. Legislative task report

A) 2 Draft E.O. All / Sensitive

B) who in sensitive category -

- took out merit pay employees from latest draft

C) Rehab. / penalty

fired or disciplined

Transfer / fired - Sensitive

if come forward during window, not disciplined

but would be reassigned if sensitive. (At option of agency)

use is operative issue - test is only one item of evidence

Need
pos
to print

Summary of current leg in congress -

new leg. needs - from task force reports

8-15-86 2:00 p.m.

Executive Order No. _____ of August __, 1986

Drug Free Federal Workplace

WHEREAS the use of illegal drugs, on or off duty, by federal employees is unacceptable in the federal workplace, and creates suspicion and distrust within an agency or department that disrupts its smooth and efficient functioning;

WHEREAS the use of illegal drugs, on or off duty, by federal employees is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special trust given to such employees as servants of the public;

WHEREAS federal employees who use illegal drugs, on or off duty, are less productive, less reliable, and prone to greater absenteeism than their fellow employees who do not use illegal drugs;

WHEREAS the use of illegal drugs, on or off duty, by federal employees impairs the efficiency of federal departments and agencies by undermining public confidence in them, and thereby making it more difficult for other employees who do not use illegal drugs to perform their jobs effectively;

WHEREAS the use of illegal drugs, on or off duty, by federal employees can pose a serious health or safety threat to members of the public and to other federal employees;

WHEREAS the use of illegal drugs, on or off duty, by federal employees evidences a willful disregard for the law;

WHEREAS the use of illegal drugs, on or off duty, by federal employees in certain positions evidences an unreliability, an instability, and a lack of judgment that is inconsistent with access to sensitive information, and renders such employees susceptible to coercion, influence, and irresponsible action under pressure so as to pose a serious risk to national security, the public safety, and the effective enforcement of the law;

WHEREAS federal employees who use illegal drugs must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves, and will only take such steps if made accountable for their unsuitable and illegal use of drugs;

WHEREAS, for these reasons, the use of illegal drugs by individuals in federal service undermines the efficiency of the service and renders such individuals unsuitable for such service; and

*William
wants
preamble
stating intent of
pres. to summarize
theory.*

WHEREAS standards and procedures should be put in place to ensure fairness in achieving a drug-free federal workplace, to allow an appropriate response to be made to the use of illegal drugs by a federal employee, and to protect the privacy of federal employees:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including Section 3301 (2) of Title 5 of the United States Code; Section 7301 of Title 5 of the United States Code; [Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631); the Civil Service Act of 1883 (22 Stat. 403; 5 U.S.C. 632, et. seq.); Section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 U.S.C. 118j); and the act of August 26, 1950, 64 Stat. 476 (5 U.S.C. 22-1, et. seq.)] and as President of the United States, and deeming such action in the best interests of national security, public health and safety, law enforcement and the efficiency of the federal service, it is hereby ordered as follows:

Section 1: *Drug Free Workplace*

- (a) All federal employees are required to refrain from the use of illegal drugs.
- (b) The use of illegal drugs by federal employees whether on duty or off duty is *per se* contrary to the efficiency of the service.
- (c) Employees and applicants who use illegal drugs are not suitable for employment or continued employment with an agency.
- (d) An agency shall deny employment to applicants who use illegal drugs.

Section 2: *Drug Testing For All Employees*

- (a) The head of each agency shall establish a drug testing program to identify any employee who uses illegal drugs:
 - (i) When there is a reasonable suspicion that the employee uses illegal drugs;
 - (ii) In an examination authorized by the agency regarding an accident or safety investigation; or
 - (iii) During or after admission into a rehabilitation program as described in Section 5 of this order.

- (b) The head of each agency may establish a drug testing program to identify any applicant who uses illegal drugs.
- (c) Agency heads may establish programs which enable any employee to voluntarily submit to drug testing. An employee who voluntarily submits to drug testing before being required to do so pursuant to this order and is determined to need rehabilitation shall be eligible for rehabilitation services under Section 5 of this order.

Section 3: *Additional Drug Testing for Employees in Sensitive Positions*

- (a) The head of each agency shall establish a drug testing program to identify employees in, and applicants for, sensitive positions who use illegal drugs:
 - (i) Before appointment or selection; and
 - (ii) Periodically after appointment when selection for testing is based on the application of neutral criteria such as random selection.
- (b) For the purpose of this order, the term "employee in a sensitive position" refers to:
 - (i) an employee in a position which an agency has designated Special Sensitive, Critical-Sensitive or Noncritical-sensitive under Chapter 731 of the Federal Personnel Manual or an employee in a position which an agency head has designated or in the future designates as sensitive in accordance with Executive Order 10450 of April 27, 1953 as amended;
 - (ii) an employee who has been granted access to classified information or may be granted access to classified information pursuant to a determination of trustworthiness by an agency head under Section 4 of Executive Order 12356 of April 2, 1982;
 - (iii) individuals serving under Presidential appointments;
 - (iv) members of the Senior Executive Service as defined in Subchapter II of Chapter 31 of Title 5, United States Code;

- career
GM 3-15*
- 7
- (v) law enforcement officers as defined in 5 U.S.C. § 8331(20);
 - (vi) individuals employed under Schedule C in the excepted service under the authority of section 213.3301 of Title 5, Code of Federal Regulations and Executive Order 10577;
 - (vii) individuals serving in positions covered by the Performance Management and Recognition System of Chapter 54 of Title 5, United States Code;
 - (viii) members of the uniformed services as defined in 5 U.S.C. § 2101(3);
 - (ix) air traffic controllers as defined in 5 U.S.C. § 2109; and
 - (x) other positions that the agency head determines involve law enforcement, national security information, the protection of life and property, public health or safety, or other similar functions.

Section 4: Drug Testing Procedures

- insert prior notice
provision*
- (a) Before conducting a drug test, the agency shall inform the employee to be tested of:
 - (1) The opportunity to submit supplemental medical documentation that may support a legitimate use for a specific drug; and
 - (2) The availability of drug abuse counselling for those employees who request such prior to the first administration of the test for that employee.
 - (b) The results of a drug test and information developed by the agency in the course of the drug testing of the employee shall be admissible in evidence in processing the adverse action against the employee or for other administrative purposes. Preliminary test results may not be used in administrative or disciplinary proceedings. Positive test results are preliminary results until confirmed as positive (by both initial and confirmatory testing) or by an admission of the employee.

- (c) Programs shall contain procedures for timely submission of requests for retention of records and specimens; procedures for retesting, and procedures to protect the confidentiality of test results.
- (d) Programs shall be conducted in accordance with procedural guidelines promulgated by the Secretary of Health and Human Services after consultation with the Director of the National Institute on Drug Abuse.

Section 5: Rehabilitation

All employees currently using illegal drugs who cannot voluntarily cease such activity on their own must seek rehabilitation services from their agency prior to the agency learning that they are using illegal drugs, or be subject to removal in accordance with the terms of this Order. Employees who come forward, request rehabilitation from the agency prior to the agency learning that they are using illegal drugs, and thereafter refrain from using illegal drugs are not required by this order to be removed from employment, nor is removal required for employees identified as illegal drug users in voluntary testing under Section 2(c) of this order.

Section 6. Personnel Actions

- (a) An agency shall initiate action to remove from employment federal employees who are found to use illegal drugs, *provided that*, removal is not required if the employee comes forward and requests rehabilitation assistance as set forth in Section 5 of this order, prior to the agency learning that the employee is using illegal drugs, or for an employee identified as an illegal drug user pursuant to voluntary testing conducted under Section 2(c) of this order.
- (b) The determination of an agency that an employee uses illegal drugs can be made on the basis of any appropriate evidence, including direct observation, conviction of a criminal offense, administrative inquiry, or the results of an authorized testing program.
- (c) Any action to remove a federal employee who is using illegal drugs shall be taken in compliance with otherwise applicable procedures including the Civil Service Reform Act.

- (d) An applicant's refusal to take a drug test authorized by this order shall be grounds for the agency not to hire the applicant. An employee's refusal to take a drug test authorized by this order shall be grounds to remove the employee from his position.

Section 7: *Coordination of Agency Programs*

(a) The Office of Personnel Management may promulgate government wide regulations to guide agencies in the implementation of the terms of this order.

(b) The Attorney General shall render to the heads of departments and agencies such advice as may be required to enable them to establish drug testing programs and shall give final approval to all such programs before they are put into operation.

Section 8: *Scope*

- (a) This order applies to all agencies of the Executive Branch.
- (b) For the purposes of this order, the term "agency" means an Executive agency, as defined in 5 U.S.C. § 105; the Uniformed Services as defined in 5 U.S.C. § 2101(3); the United States Postal Service; or any employing unit or authority of the Federal government, other than those of the judicial and legislative branches.
- (c) For the purpose of this order, the term "illegal drugs" means a controlled substance, as defined by section 802(6) of Title 21, United States Code, the possession of which is unlawful under chapter 13 of title 21, United States Code. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

Section 9: *Effective Date*

This Order shall become effective on the date of its issuance.

RONALD REAGAN

THE WHITE HOUSE

August __, 1986



1. E.O. or NO - yes
2. Sensitive only
OR ALL - Sensitive only
3. Broad categories
with discretion to
agency heads or
more definitive categories

U.S. Department of Justice

Civil Division

DRAFT

Recommendations -
- fast track E.O.
- slower track for leg.

4. What is the rehab program

Office of the Assistant Attorney General

- Abstinence / counseling

Washington, D.C. 20530

5. Sensitive positions - if come forward
- notice - 3 months
- one strike & you're out

Revised E.O.

2 sets of criteria

LABOR - E.O. does not comport w/ policy

OPM - problems w/ E.O.

To: Carlton Turner
Chairman, Drug Use Prevention Working Group
Domestic Policy Council

From: Richard K. Willard
Chairman
Legislative Review Task Force

Re: Preliminary Report of the Legislative Review Task Force

On Thursday, August 14, the Legislative Review Task Force met to consider legislative and regulatory options to implement the mandate of the Domestic Policy Council to identify steps to achieve drug-free schools and workplaces. Our initial focus was on the federal workplace. We conclude that the President has the authority to issue an executive order prohibiting drug use by federal employees and instituting a drug testing program to ensure compliance with this goal. At the same time, we believe that it would be advisable to present Congress with legislation to eliminate possible statutory impediments to programs for achieving a drug-free workplace. Such legislation could also eliminate possible federal statutory barriers to programs for achieving drug-free schools and private workplaces.

Attached is a draft executive order and two draft bills. Prior versions of these drafts have been distributed to the task force and were discussed at our August 14 meeting. However, because of the shortness of time, we have not been able to obtain final agreement on these drafts from agencies participating in the task force.

I. Existing Legal Constraints on a Drug Testing Program

A. Constitutional Issues

As an initial matter we are confident that there is no federal constitutional limitation on a carefully devised program of drug testing. The Fourth Amendment is probably not implicated by a wide variety of drug testing programs that can be devised. For example, pre-employment physical testing for applicants to certain federal jobs has been required for years without any successful Fourth Amendment challenge. Moreover, drug tests,

undertaken pursuant to a condition of employment that employees be drug-free, may be voluntary searches not violating the Fourth Amendment or permissible reasonable searches. Even if a court concludes that the Fourth Amendment applies, the analysis would then involve a balancing of the government's interest in conducting testing against the intrusion on the employees' reasonable expectation of privacy. We believe that a program focusing on "sensitive" jobs, involving national security and public health and safety, meets this balancing test.

The Fifth Amendment is not implicated by drug testing to ensure compliance with a "drug-free" workplace requirement. The Fifth Amendment privilege against self-incrimination does not apply in the civil context, and has been held not to bar a coerced blood test, since the privilege prohibits only compelled "communications" or "testimony," not physical or real evidence. Schmerber v. California, 384 U.S. 757 (1966).

Finally, there is no substantive due process or privacy right to use illegal drugs. Cf. Bowers v. Hardwick, 54 U.S.L.W. 4919 (U.S. June 30, 1986).

B. Statutory Issues

Existing federal statutory constraints are more troublesome, but upon reflection, we do not believe they would provide employees or applicants who are found to use drugs with the basis for suit. The Civil Service Reform Act, 5 U.S.C. § 2302(b)(10), prohibits discrimination against any employee or applicant on the basis of conduct that does not impair the efficiency of the service. The Merit Systems Protection Board frequently has sustained the removal of federal employees due to the possession or use of illegal drugs. If remaining drug-free were made an express condition of employment the nexus between off-duty conduct and service efficiency would not have to be proven in each case.¹

The Drug Abuse Office and Treatment Act, 42 U.S.C. § 290ee-1, provides that "[n]o person may be denied or deprived of

¹ However a 1980 decision of the Merit Systems Protection Board indicates the difficulty which the government can have in establishing the nexus requirement. In, Elijah Merritt, 6 M.S.P.R. 585 (1981), a guard employed by the Bureau of Prisons was found to be smoking marijuana off duty. Despite the serious problem of drug smuggling in federal prisons, the Board concluded that there was not a sufficient connection with the "efficiency of the service" to justify removal. As noted above, we believe that an executive order, with an elaborate statement of findings, will make it significantly easier to establish the requisite nexus in such cases.

Federal civilian employment ... solely on the ground of prior drug abuse," except for certain national security and sensitive positions. While this might be cited by a rejected job applicant, we believe that drug testing programs designed to identify current drug abuse do not contravene the Act. Moreover, the Act does not prohibit the dismissal of an employee "who cannot properly function in his employment." 42 U.S.C. § 290ee-1(d).

The Rehabilitation Act of 1974, 29 U.S.C. §§ 791 et. seq., prohibits discrimination against, and requires accommodation of, persons who are "handicapped," which under current interpretation includes drug addicts. However, we think the law may be satisfied if employee drug addicts are given the opportunity for treatment before suffering adverse employment action. Most importantly, the Act offers no protection for "recreational" users and requires no tolerance for continued drug use after an opportunity for rehabilitation is provided.

Finally, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et. seq. some courts have invalidated facially neutral employment practices on the ground that they have a "disparate impact" on a particular group. However, the Supreme Court has recognized that, even where evidence establishes a prima facie case that a business practice has such impact, it may be rebutted by a showing that the practice is job related. See New York City Transit Authority v. Beazer, 440 U.S. 568 (1979) (rejecting challenge to transit authority's refusal to hire persons in methadone maintenance program as transit police). Apart from the difficulty plaintiffs would have in showing that a "drug-free" requirement has a statistically significant adverse impact on a particular group, a persuasive argument can be made that the requirement is per se a valid condition of government employment.

II. Proposed Legislation

As noted above, we believe that the President could implement a mandatory drug testing program for employees in sensitive positions without the need for legislation. While there will undoubtedly be legal challenges, we are reasonably confident of our ability to defend a carefully designed program of drug testing. While legislation would be helpful, we do not recommend waiting for Congress to act.

At the same time, we recognize that all quarters in Congress are anxious to enact legislation to combat the drug problem, and may legislate in this area even without an administration bill. Since the issue is going to be joined in any event, we do recommend that the administration have a bill ready for transmittal to Congress at the same time that we issue any executive order. Eventually, we have to be prepared for our

opponents to attempt to block any drug testing program through riders on appropriations bills or other must-pass legislation. An administration bill would put our opponents on the defensive as well as set the terms of debate on the issue.

Attached to this memo are the two bills which have been discussed by our task force: the OPM draft and the Justice bill. The OPM bill amends two statutory provisions which might be used to challenge a drug testing program, the nexus requirement in the Civil Service Reform Act, and the Rehabilitation Act. In addition, it expressly provides that an individual who uses drugs may not be employed in the executive branch. The Justice proposal is a more elaborate statute, which contains an express authorization for drug testing, amends another arguably relevant statute, the Drug Abuse Office and Treatment Act, and provides that no federal statute would bar drug testing in the private work-place and in educational institutions.

III. Proposed Executive Order

The Executive Order we propose invokes the President's authority (explicitly recognized by Congress in 5 U.S.C. § 3301), to determine which persons are suitable to become or remain federal employees. The order is designed to mandate that federal employees not use illegal drugs and it imposes a penalty of removal from federal service if the employee is identified (whether by testing or by other means) as an illegal drug user except in cases where the employee voluntarily applies to the agency's drug rehabilitation program before his or her drug use has been discovered.

As drafted the recommended order decides several controversial policy questions including: (a) the existence and coverage of a drug testing program; and (b) penalties for discovered drug users and the extent to which rehabilitation programs will be available.

A. Scope of Drug Testing

The order requires mandatory drug testing programs for applicants or employees in sensitive positions. These are the employees who if impaired or compromised because of illegal drug use are likely to do the most serious harm to the government. Determining which positions are to be considered sensitive is a policy matter open to some discussion. Our proposal will allow a significant number of employees to be covered by an agency drug testing program. We have endeavored to include all employees whose positions are considered to be of substantial importance to the government's mission. The categories, to some extent, may overlap. This will maximize the sensitive employees covered and will in the case of an employee who fits several categories enhance our chances of prevailing in litigation. The common

thread to the covered positions is the substantial potential for harm to the public, coworkers and the nation's security if an employee in one of these positions is permitted to be an illegal drug user.

In addition to mandatory testing of sensitive employees, the order permits more limited testing programs for non-sensitive employees. Such employees are required to refrain from illegal drug use but may only be tested voluntarily, if involved in an accident, if there is a reasonable suspicion of drug use, or as a follow-up to a rehabilitation program.

B. Penalties and Rehabilitation

We recommend that federal employees identified as illegal drug users be removed from their positions because of the substantial deterrent effect of such a requirement and because of the lenience which is prevalent in society about the so called "recreational" use of illegal drugs. If employees are allowed to seek rehabilitation or counseling after being caught using illegal drugs, they will not be deterred from their illegal actions and will continue until they are caught. Such behavior is directly in conflict with the goal of obtaining a drug free federal workplace. Additionally, unless federal managers are given guidance, we believe that they will attempt to ignore the problem of "recreational" violations of our criminal laws.

The order allows an exception to the penalty of removal for employees volunteer for testing or come forward and identify themselves prior to being caught. These employees are to be referred to existing employee assistance coordinators and channelled to treatment or counselling, depending on the employees medical condition. These employees will be subject to follow-up testing, and removal is authorized if they are later found to be using illegal drugs. We have crafted the provisions in this way to assure the availability of rehabilitation efforts for those employees who are ready to become accountable for their actions, but to avoid providing a loophole for those employees who continue their illegal use of drugs hoping they will not be caught.

It is important to keep in mind that most illegal drug users in the workplace are not yet addicts and do not need rehabilitation or medical treatment. Thus it is misleading to design a program on the assumption that illegal drug users are "victims" who need "treatment" rather than lawbreakers who need punishment. The best way to achieve a drug free federal workplace is to stop drug users before they become addicts or need treatment. Prevention--not rehabilitation-- is the best goal.

A BILL

To prevent the use of, and reduce the demand for, illegal drugs in schools and workplaces by identifying users and holding them accountable for their use of illegal drugs through non-criminal sanctions; to ensure that federal law does not prohibit state and local governments, educational institutions, and private employers from conducting drug testing; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SEC. 1. This Act may be cited as the "Illegal Drug Use Prevention Act of 1986."

FINDINGS

SEC. 2. The Congress finds and declares that --

- (a) The United States has a compelling interest in eradicating the use of illegal drugs not only through criminal law enforcement efforts, but also by preventing the use of illegal drugs and reducing the demand for them through action that makes individuals accountable for their use of illegal drugs.
- (b) The use of illegal drugs evidences a lack of personal integrity and a willful disregard for the law.
- (c) The use of illegal drugs by federal employees on or off duty is inconsistent not only with the law-abiding behavior expected of all citizens, but also with the special public trust given to such employees as servants of the public.
- (d) An individual who uses illegal drugs on or off the job is less productive, less reliable, prone to greater absenteeism, more likely to be involved in on the job accidents, and incurs a higher level of health care costs than those who do not use illegal drugs.
- (e) The use of illegal drugs by employees on or off the job can pose a serious health or safety threat to members of the public and to other employees.
- (f) The use of illegal drugs by federal employees on or off duty impairs the efficiency of federal departments and

agencies by undermining public confidence in them, and thereby making it more difficult for other employees who do not use illegal drugs to perform their jobs effectively.

(g) The use of illegal drugs on or off duty by federal or private employees in certain positions evidences an unreliability, an instability, and a lack of judgment that is inconsistent with access to sensitive information, and renders such employees susceptible to coercion, influence, and irresponsible action under pressure so as to pose a serious risk to national security, public safety, and the effective enforcement of the law.

(h) The demand for illegal drugs encourages and supports the interstate trafficking in illegal drugs, and generates a range of serious criminal activity that threatens public peace and order and can corrupt public officials.

(i) Considered in the aggregate, the use of illegal drugs by employees reduces the productivity of the economy, undermining the ability of American industry to compete internationally, and causing the loss of jobs and productive capital.

(j) Individuals who use illegal drugs are not victims of forces beyond their control, and must themselves be primarily responsible for changing their behavior and, if necessary, begin the process of rehabilitating themselves. Such individuals will only take such steps if made accountable for their irresponsible and illegal use of drugs.

(k) Reducing the demand for illegal drugs will discourage interstate and foreign commerce in illegal drugs.

(l) Employers and educational institutions should establish clear policies to ensure that illegal drug users will be held accountable for their actions.

(m) Drug testing in appropriate circumstances is a diagnostic tool designed to create a healthier work environment, increase productivity, improve public safety, and protect national security.

(n) Experience with drug testing has shown that it can significantly contribute to reducing the demand for illegal drugs while protecting non drug-using coemployees and the public from the harms caused by illegal drug users.

DEFINITIONS

SEC. 3. As used in this Act --

(a) "federal employee" includes all members of the Civil Service, the Armed Forces, the Uniformed Services, and other employees as defined by sections 2101, 2105, and 2107 of title 5, United States Code;

(b) "illegal drugs" means controlled substances, as defined by section 802(6) of title 21, United States Code, the possession of which is unlawful under chapter 13 of title 21, United States Code;

(c) "drug testing" means any drug testing conducted in accordance with procedural guidelines promulgated by the Secretary of Health and Human Services after consultation with the Director of the National Institute on Drug Abuse.

DRUG PROGRAM

SEC. 4. Drug Free Federal Workforce

(a) All federal employees are required to refrain from the use of illegal drugs.

(b) Drug testing may be conducted of all applicants for employment and of the following federal employees to determine if they use illegal drugs:

(1) federal employees who have been or may be granted access to classified information;

(2) federal employees performing tasks relating to, or that may have an effect on, the national security, public safety, the protection of life or property, or the investigation of possible violations of federal law;

(3) federal employees serving under Presidential appointments, appointed to the Senior Executive Service as defined in Subchapter II of Chapter 31 of Title 5, United States Code, or appointed to Schedule C positions in the excepted service under the authority of section 213.3301 of Title 5, Code of Federal Regulations and Executive Order 10577; and

(4) federal employees in any other position determined by the head of the federal agency or by the appointing authority within the legislative or judicial branches to promote the efficiency of the service or position.

(c) Federal employers are authorized to conduct drug testing of any federal employee to determine if that employee uses illegal drugs:

(1) whenever there is a reasonable suspicion that a federal employee uses illegal drugs; and

(2) following an accident in which a federal employee was involved, or in the course of a safety investigation that relates to tasks or responsibilities of a federal employee.

(d) Federal employment shall be refused to all applicants who use illegal drugs.

(e) If it is determined that a federal employee uses illegal drugs on or off duty, or if a federal employee refuses to participate in drug testing, the federal employer shall remove the employee.

SEC. 5. Drug Free Private Workforce

(a). It shall not be unlawful under federal law for an employer to require as a condition of hiring or continued employment that employees refrain from the use of illegal drugs.

(b). It shall not be unlawful under federal law for any employer to conduct drug testing of its employees or applicants to determine if they use illegal drugs.

(c). It shall not be unlawful under federal law for an employer to refuse employment to applicants who use illegal drugs.

(d). It shall not be unlawful under federal law for an employer to take disciplinary action against an employee, including removal from employment, who use illegal drugs on or off the job, or who refuses to participate in a drug testing program.

SEC. 6. Drug Free Educational Institutions

(a). It shall not be unlawful under federal law for any educational institution to require as a condition of admission or continued enrollment that students refrain from the use of illegal drugs.

(b). It shall not be unlawful under federal law for any educational institution to conduct drug testing of its students or applicants for admission to determine if they use illegal drugs.

(c). It shall not be unlawful under federal law for an

educational institution to refuse enrollment to applicants for admission who use illegal drugs.

(d). It shall not be unlawful under federal law for an educational institution to take disciplinary action against a student, including suspension or expulsion, who use illegal drugs whether or not committed at the educational institution, or who refuses to participate in drug testing.

SEC. 7. Judicial Review

(a). The promulgation of procedural guidelines by the Secretary of Health and Human Services pursuant to section 3(d) of this Act is committed to the exclusive discretion of the Secretary and shall not be subject to judicial review.

(b). The decision to require drug testing of federal employees pursuant to sections 4(b) or (c) of this Act shall not be subject to judicial review.

SEC. 8. Severability

If any provision of this Act or the application of any provision to any person or circumstance is held invalid, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected by such invalidation.

SEC. 9. Technical and Conforming Amendments

(a)(1) Subsection (c) of section 290ee-1 of title 42, United States Code, is amended by striking out paragraph (1) and inserting in lieu thereof the following:

"A person who formerly used, or was addicted to, illegal drugs, but who does not use such drugs, may not be denied or deprived of Federal civilian employment or a Federal professional license or right solely on the ground of that prior drug addiction or use."

(2) Subsection (c)(2) of section 290ee-1 of title 42, United States Code, is amended by inserting between "apply" and "to employment" the following: "to persons who use illegal drugs, or".

(b) Subsection (7)(B) of section 706 of title 29, United States Code, is amended:

(i) by striking out "Subject to the second sentence of this subparagraph, the" in the first sentence and inserting in lieu thereof "The", and

(ii) by striking out the second sentence and inserting in lieu thereof the following:

"The term 'handicapped individual' does not include any individual who uses, or is addicted to, illegal drugs. For purposes of sections 793 and 794 of this title as such sections relate to employment, the term 'handicapped individual' does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others."

(c) Section 706 of title 29, United State Code, is further amended by adding the following new subsection to the end thereof:

"(16) The term 'illegal drugs' means controlled substances, as defined by section 802(6) of title 21, United State Code, the possession or distribution of which is unlawful under chapter 13 of title 21, United States Code."

(d) The provisions of this Act shall supersede any inconsistent federal law, rule or regulation.

SEC. 10. Effective Date

This Act shall become effective on its date of enactment and shall apply to any pending litigation.

U.S. Department of Justice
Office of Legislative Affairs

Legislative Report Assignment

B 434

Date

August 12, 1986

Deliver to:

Subject:

OPM draft bill, Federal Employee Drug Abuse Prevention
Act of 1986

Reporting Unit:

OLA

Referred to:

Advisory Units:

CRM, DAG (Blau)

ORAL COMMENTS BY 8/12/86

Reporting Unit please prepare report addressed to:

☐ Budget

☐ H. Jud.

☐ S. Jud.

☐ H.I. & F.C.

☐ S. Comm.

☐ H. G.O.

☐ S. G.O.

Advisory Unit please prepare memorandum to:

☐ Reporting Unit, copy to J.E. Perkins, Rm. 1139, Main Justice Bldg.

☐ Attn. J.E. Perkins, Rm. 1139, Main Justice Bldg.

Advisory Units please respond in time to permit Reporting Unit to comply with deadline of:

☐ 30 days

☐ 15 days

☐ other

Department File No:

☐ Return Attachments

Miscellaneous Information:

Kimberly Allan, 633-4047



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
August 6, 1986

LEGISLATIVE REFERRAL MEMORANDUM

TO: **Legislative Liaison Officer -**
Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
✓ Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury
Equal Employment Opportunity Commission
Environmental Protection Agency
National Aeronautics and Space Administration
Small Business Administration
U.S. Information Agency
Veterans Administration
U.S. Postal Service

SUBJECT: OPM draft bill "Federal Employee Drug Abuse Prevention Act of 1986."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than Wednesday, August 13, 1986.

Questions should be referred to Hilda Schreiber (395-7362), the legislative analyst in this office.

Naomi R Sweeney

Naomi R. Sweeney for
Assistant Director for
Legislative Reference

Enclosures

OFFICE OF
LEGISLATIVE REFERENCE
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CHC for
JEP

Crim. - > oral comments by 8/12.
DAG



United States
**Office of
Personnel Management**

Washington, D.C. 20415

In Reply Refer To

Your Reference

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The Office of Personnel Management submits herewith a legislative proposal, "To amend title 5, United States Code, to exclude individuals who illegally use controlled substances from employment in the executive branch, and for other purposes." We request that this proposal be referred to the appropriate committee for early consideration.

The President's Commission on Organized Crime, in its report to the President and the Attorney General, has found that a concerted nationwide campaign to reduce the demand for narcotics must be a national goal of the highest priority, and as a part of this effort, the Commission has urged that action be taken to make clear the utter unacceptability of drug use by Federal employees. This concern with Federal employees is not, of course, in any way a suggestion that drug abuse problems are any worse in the Federal work force than elsewhere, but is simply a recognition that the Federal Government should ensure that its own house is clean as a part of our effort to change national attitudes towards drug abuse.

This legislative proposal is designed to meet this objective by making it absolutely clear that illegal drug use is impermissible conduct by any Federal employees. Applicants for Federal jobs who abuse drugs should not be hired, and employees who abuse drugs should be separated. Procedural safeguards should not be able to be misused to frustrate this basic objective, and the provisions of this proposal will prevent this.

Under the regulatory authority that would be granted OPM by this proposal, we would ensure that individuals are given a reasonable opportunity to rehabilitate themselves from a dependence on illegal drugs. Where national security and the public safety permit, we would consider for employment former drug abusers who have successfully rehabilitated themselves, and when active employees are discovered to be

Honorable George Bush

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drug abusers, they would, except when inconsistent with national security or the public safety, be given the opportunity for rehabilitation. While drug abuse is and must be completely incompatible with Federal employment, we recognize that the problem of drug abuse has been so widespread in our society that we must approach the task of ridding our Nation of drugs in a positive fashion, encouraging rehabilitation whenever possible.

The Office of Management and Budget advises that the enactment of this legislative proposal would be in accord with the program of the President.

A similar letter is being sent to the Speaker of the House of Representatives.

Sincerely,

Constance Horner
Director

Explanation

"Federal Employee Drug Abuse Prevention Act of 1986"

- This proposal is designed to give the Government the necessary statutory support to enforce a policy of "utter unacceptability" of drug abuse in the Federal work force.
- Nexus. Under current law, the Government can exclude a drug abusing applicant from consideration for employment or take action against a drug abusing employee only if it can be shown that the drug abuse adversely affects job performance. This is called the "nexus" concept.
- Under this proposal, drug abuse would be excluded from the protection of the nexus concept. Drug use alone would be sufficient reason to refuse to consider an applicant, or to remove an employee, without any need to show an adverse effect on job performance.
- Misconduct. Nowhere in current law is it specifically stated that drug abuse by Federal employees is unacceptable conduct, although there is such a provision for excessive and habitual use of alcohol.
- Under this proposal, drug abusers would be barred from employment in the executive branch and OPM would have the responsibility for implementing this bar through regulations. These regulations would prevent the hiring of drug abusing applicants, and would require the separation of drug abusing employees if they do not successfully complete rehabilitation.
- Handicapping Condition. Under current law, drug abusers have resisted separation by claiming to be handicapped under the Rehabilitation Act, allowing them to delay removal with claims to be undergoing rehabilitation.
- Under this proposal, drug abuse would not be considered a handicapping condition for Federal employees.

A BILL

To amend title 5, United States Code, to exclude individuals who illegally use controlled substances from employment in the executive branch, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Employee Drug Abuse Prevention Act of 1986".

Sec. 2. (a) Section 2302(b)(10) of title 5, United States Code, is amended by striking out "United States" and inserting in lieu thereof "United States; and nothing in this paragraph shall be construed to permit or require the employment of an applicant or employee who illegally uses a controlled substance".

(b)(1) Subchapter V of chapter 73 of title 5, United States Code, is amended by inserting after section 7352 the following new section:

"§7353. Illegal use of controlled substances

"An individual who illegally uses a controlled substance, as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), may not be employed in the executive branch. The Office of Personnel Management shall prescribe regulations to implement this section."

(2) The analysis for chapter 73 is amended by inserting

after the item relating to section 7352 the following new item:

"7353. Illegal use of controlled substances."

Sec. 3. Section 7(7)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(7)(B)) is amended--

(1) by striking out "second sentence" and inserting in

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lieu thereof "second and third sentences"; and

(2) by adding at the end thereof the following new sentence: "For the purposes of section 501 of this Act, such term does not include an individual who illegally uses a controlled substance under section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)).".

Sec. 4. The amendments made by this Act are effective on the date of enactment of this Act.