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TESTING OUR FUTURE

A wall of denial is being torn down, the wall of denial about the seriousness of the drug abuse situation in this country. Simply put, drug abuse affects every U.S. citizen. If we are to solve our drug problem, every individual must take a firm stand against drug abuse .

Last week following the release of the final report by the President's Commission on Organized Crime, much of the media attention focused on the fact that the Commission dared to recommend a strong and consistent policy against drugs in the workplace, including "suitable" and "appropriate" drug testing. Urinalysis is a diagnostic tool to identify drug users, to assist the drug users in getting help and to keep drug users from contaminating the workplace.

There is nothing particularly new about urine testing for drugs. And as long as heroin was the target of the tests, few objected. But when similar testing is proposed for marijuana and cocaine users, the outcry is deafening. The question is why?

The answer is that drug testing makes it difficult for a drug user to deny that he or she uses drugs and forces them to be held responsible for their actions. When used with a few common sense rules, drug testing adds an important element-honesty.

Drug abuse reached a crisis level in the U.S. military in the early 1980's, although the military had used urinalysis to test for heroin abuse for years. In 1981, the military began to focus on the marijuana user. At that time, over half of the personnel in some units of the Navy were using drugs. Today, the Navy reports this to be less than 3 percent. The success of the program has overcome any initial objections.

Just as the military set the example, I believe that those people paid by the taxpayer to fight drug abuse should be among the first tested. I and members of my staff have already undergone testing. The Drug Enforcement Administration, U.S. Customs Service, the National Institute on Drug Abuse, and others are planning appropriate testing programs.

Private sector employers are well aware of the results of drug abuse in the workplace. They know that the drug user is only about two-thirds as productive as other employees. They have learned by hard experience that the drug-user is over three times as likely to be involved in an on-the-job accident; absent from work more than twice as often; and incurs three times the average level of sickness costs. You and I are paying the costs for sloppy workmanship, accidents and sickness.

We must also be concerned about public safety. Each of us has the right to feel safe. Drug use and its obvious dangers are unacceptable among air traffic controllers, pilots, bus drivers, train operators, doctors, security guards, and others responsible for our safety and well-being.

Employers, quite simply, are fed up with the problems and fears that drug abuse brings. They are doing something about it. Small businesses and large corporations alike are instituting strong "no drug use" policies which include urinalysis testing.

The recent debate has largely revolved around drug testing as a threat to the privacy and individual rights of the drug user. There is a more fundamental aspect of individual rights which is at the heart of the Commission's recommendations. The Constitution grants no citizen the right to break the law, to jeopardize the safety of co-workers and the public, or to force other individuals, including employers, co-workers, consumers and taxpayers, to pay the exorbitant social and economic "price tag" for another's drug abuse.

Few Americans recognize that when a user buys marijuana or cocaine, they are financing our nation's suicide. Drug dollars go to criminals who are determined to destroy our country--criminals who have publicly stated that their weapons are drugs. They have killed one of our agents in Mexico and vowed to kill our Ambassadors. This is not a rights issue, this is a survival issue.

The American worker, by supporting strong anti-drug programs, can improve the productivity of co-workers, decrease accidents, cut health-care costs, improve our security, and reduce on-the-job crime. It is a simple way for each American to make a significant contribution to his or her own quality of life, as well to a stronger future for our children and the Nation.

Carlton E. Turner, PhD
Director, White House Drug Abuse Policy Office
March 12, 1986

**THE 1984 NATIONAL STRATEGY
FOR PREVENTION OF DRUG ABUSE AND DRUG TRAFFICKING**

ACTION ITEMS

President Reagan's National Strategy for Prevention of Drug Abuse and Drug Trafficking is a comprehensive, long-term approach to eliminate drug abuse and its effects in the United States. The five-point program includes drug abuse prevention, drug law enforcement, international cooperation, medical detoxification and treatment, and research. The Strategy goes beyond the Federal responsibilities and establishes a "national" strategy, recognizing that real success is achieved when those people most affected by drug and alcohol abuse are directly involved in solving their own problems.

The responsibility for the successful implementation of the Strategy to eliminate drug abuse is shared by government and the private sector. The National Strategy calls upon Federal government officials to take the following actions:

- To encourage and support the actions of parents and other concerned citizens in combating drug abuse in their homes, neighborhoods, schools, businesses and communities;
- To pursue those anti-drug activities which lie beyond the jurisdictions and capabilities of the individual states, including primary responsibility for enforcing Federal laws, for international cooperation and for certain research activities;
- To ensure that Federal drug programs effectively meet the specific needs which exist within communities throughout the United States, with priorities established on a local or regional basis; and
- To continue improvements in the use of Federal resources, with an emphasis on coordination and cooperation among officials at all levels of government and use of government resources as a catalyst for grassroots action.

In addition, the Strategy calls on each American to learn what needs to be done to eliminate drug abuse and to get involved in doing it. All individuals; all business, civic and social organizations; all levels of government and all agencies, departments and activities within each level of government are called upon to lead, direct, sponsor and support efforts to eliminate drug abuse in families, businesses and communities.

Drug Abuse Prevention

Drug abuse prevention -- through awareness, education and action -- is fundamental to long-term success in stopping drug abuse and drug-related crime in our society. Priority must be given to motivating our young children, before they become involved with drugs, to never use drugs, including alcohol; and we must also convince current users to stop drug use.

The drug abuse prevention strategy continues the partnership between government and the private sector to bring the full range of this country's resources to bear on reducing existing drug and alcohol abuse and ultimately to provide a drug-free environment for all Americans, especially our young people. The National Strategy calls for the following action by responsible Federal government officials, recognizing that success will not be achieved without the direct involvement and support of state and local government officials and the private sector:

- To provide all possible encouragement and support to a vigorous national drug abuse prevention and education effort;
- To ensure that accurate and credible information about drug and alcohol abuse is made widely and readily available to individuals and groups through nationwide public awareness campaigns, publications and technical assistance;
- To encourage and support prevention programs for young children which teach positive behavior, such as constructive handling of feelings and responsibilities;
- To support prevention activities which stimulate the participation of volunteers and the private sector;
- To encourage and assist the continued involvement in drug abuse prevention and education by private business, which has a unique capability to communicate accurate information about drug abuse in a credible way to large segments of the population;
- To integrate drug abuse education into the school system, and encourage its integration into private school programs, with emphasis on the destructive effects of drug use, including alcohol, on excellence in education, health and overall well-being;
- To encourage and assist adults in meeting their responsibility of providing youth with positive leadership and a sound role model;

- To discourage activities which deliberately promote drug use, such as the commercial exploitation of drugs of abuse and the associated "drug culture;" the artificial glamorization of mind-altering and mood-changing drugs, including alcohol; and the sensationalized reporting by the mass media of drug and alcohol use by contemporary sports and entertainment figures;
- To discourage use of terms which foster misconceptions and hinder understanding of the nature of drug problems, including "recreational use" of drugs, "responsible use" of drugs and alcohol, "substance abuse," "decriminalization," "getting high," and defining drugs as "hard" or "soft;"
- To encourage and support a nationwide, comprehensive, community-based effort to eliminate drunk driving;
- To provide strong support for efforts to stop alcohol use by school-age children by increasing the awareness of the significant hazards posed to children by alcohol and by increasing the involvement of adults in reducing these risks;
- To reduce the practice of encouraging drinking among youth as a marketing technique by increasing public awareness and visibility, including identification of the sponsors and holding them responsible;
- To encourage the alcoholic beverage produces and distributors to police their own industry in developing and marketing their products;
- To encourage all states to establish 21 as the minimum age at which individuals may purchase, possess or consume alcoholic beverages; and
- To encourage and assist the continued involvement by physicians, pharmacists and other health care professionals in finding ways to reduce the dangers of misuse of prescription drugs, in making people more aware of the risks involved in combining alcohol with prescription drugs, and in making full use of available information on drug abuse research, treatment and prevention.

Drug Law Enforcement

Vigorous drug law enforcement reduces the availability of illicit drugs in the United States, deters drug-related crime and creates an environment favorable to reducing the production and abuse of illicit drugs. The Strategy continues the goal of bringing to bear the full range of Federal, state and local government resources on stopping the drugs, wherever they are grown, processed, transported and used, and apprehending and prosecuting those responsible for transporting and distributing illicit drugs, as well as the financiers and organizers.

The National Strategy calls upon each involved Federal official to work toward achieving the following objectives:

- Continued expansion of the involvement of every Federal enforcement agency which has any capability for contributing to the fight against drug abuse;
- Continued improvements in cooperation between law enforcement officials and prosecutors at all levels of government to achieve prompt and certain justice in prosecuting drug traffickers, seizing their assets, and destroying their criminal organizations; and
- Continued innovation in expanding the use and enhancing the effectiveness of all available government resources and jurisdictions in investigating and prosecuting illegal drug activities, deterring crime and preventing drug abuse.

Fundamental to the overall Strategy is the investigation and prosecution of drug traffickers and the destruction of their criminal organizations.

- The Strategy calls for Federal, state and local law enforcement officers and prosecutors to pursue aggressive investigation and prosecution of the full range of criminal activities associated with drug trafficking organizations.
- The Drug Enforcement Administration, the Federal Bureau of Investigation, the Internal Revenue Service, other Federal investigative agencies, and the U.S. Attorneys will continue to ensure the investigation and prosecution of high level drug traffickers and the destruction of their criminal organizations through all possible means, including Federal action, intergovernmental action, or assisting action by state, local and foreign officials.
- The Drug Enforcement Administration and the Federal Bureau of Investigation, with involvement by other appropriate Federal agencies and state and local law enforcement officials, will continue to place emphasis on criminal

investigation of health care professionals who are trafficking in drugs.

- A high priority is established for pursuing the financial aspects of drug trafficking, including use of criminal and civil forfeiture laws, currency laws, tax laws and international agreements against tax evasion and money laundering.
- State and local governments are encouraged to adopt and use powerful criminal and civil forfeiture laws to combat organized crime and the drug traffic. States are also encouraged to use the money derived from asset forfeiture to construct and operate prisons to handle the increase in prisoner population.

The border program emphasizes major cooperative interdiction efforts which utilize all available resources, including enhanced intelligence and military support, to detect and intercept illicit drugs before they are smuggled into the United States. In addition to continued improvements in the coordination of the massive effort, which is the responsibility of the National Narcotics Border Interdiction System (NNBIS), the Strategy calls for the following actions by Federal agencies to improve the existing border program.

- The U.S. Customs Service will continue to improve detection of illegal drug shipments in legitimate cargo;
- The Drug Enforcement Administration, Federal Aviation Administration and U.S. Customs Service should work together, with the support of other agencies as necessary, to implement added deterrents to smuggling by general aviation aircraft, including stronger penalties for violators.
- The Department of State, the Immigration and Naturalization Service, and the Customs Service will enhance the screening process of foreign visitors to the United States to preclude those with prior drug smuggling involvement from entering the country. This includes denying entry visas to any foreign national who has a drug violation or is involved in drug trafficking.
- The Drug Enforcement Administration will work with other appropriate Federal agencies and with state, local and foreign government law enforcement officials to ensure use of all potential sources of interdiction intelligence, both in foreign countries and within the United States.

- NNBIS and all involved Federal departments and agencies will work to improve the detection capability throughout our border areas against attempted intrusions by air, land and sea.
- NNBIS will work with the Drug Enforcement Administration to develop and implement an expanded coordinating role for the El Paso Intelligence Center (EPIC).
- In addition to border operations, the Strategy calls for Federal agencies to work with state and local officials whenever possible to assist them in developing innovative programs to detect and intercept illicit drug shipments in transit within the United States.

The National Strategy calls for elimination of the production of illicit drugs in the United States.

- The Drug Enforcement Administration, with the assistance of other appropriate government agencies, will continue to improve the national cannabis (marijuana) eradication program through training, technical assistance and intelligence support.
- The Strategy calls for concerned private citizens to report the location of suspected marijuana production to their local law enforcement agency.
- The Strategy also calls for strong penalties for those who are producing or selling marijuana.
- The Drug Enforcement Administration will encourage and coordinate increased Federal, state and local law enforcement action against clandestine laboratories, including sharing information and technical assistance, as well as continued cooperation in the investigation and prosecution of major violators.

As lead agency, the Drug Enforcement Administration is required provide central leadership, management and coordination in the following areas which are essential to strong drug law enforcement and other efforts to reduce the availability of drugs.

- Federal, state and local agencies must continue to work together, and with the international, pharmaceutical and health care communities, to reduce the diversion of pharmaceutical drugs from legitimate uses into the illicit drug traffic and the illegal manufacture and distribution of such substances.

- Continued refinement must be made in the intelligence necessary to support investigative and interdiction priorities, diplomatic initiatives and international drug control programs, policy formulation, management and the development of future national strategies against drug abuse and drug trafficking.
- The Drug Enforcement Administration will develop objective statistical means for central reporting of the accomplishments of the Federal government in drug law enforcement and prosecution, including establishing a central system for maintenance and timely dissemination of statistics regarding drug seizures by Federal agencies.

The Strategy calls for swift and just punishment of individuals involved in drug trafficking and related criminal activities.

- Prosecutors at all levels of government are encouraged to aggressively prosecute drug criminals and to present drug cases in the Federal, state or local judicial system best suited to provide swift and certain justice.
- The full support of our citizens and the cooperation of the Congress in reforming our criminal justice laws will greatly enhance the effectiveness of drug law enforcement.
- Judges, probation officers and parole boards are encouraged to give full recognition to the seriousness of drug offenses. Judges are encouraged to provide for strict sentencing, including just punishment for first offenders in drug trafficking cases.

The Strategy calls for full involvement by all levels of law enforcement in contributing to drug abuse awareness and prevention and in encouraging and facilitating the involvement of private citizens in supporting strong law enforcement, including the reporting of illegal drug production, sales or use to their local law enforcement agency and supporting just punishment of drug criminals.

International Cooperation

Drug abuse is an international problem requiring international cooperation to reduce the availability of illicit drugs in the United States by eliminating illegal drugs as close to their source as possible. The Strategy for international cooperation continues a multi-faceted approach directed at the cultivation, production and distribution of licit and illicit drugs; the flow of profits associated with illicit drugs; and the effects of the drug trade and drug abuse on other countries as well as the United States.

Strong diplomatic initiatives by the President, the Vice President, the Secretary of State, other Cabinet officers, Ambassadors, and by the senior officers of Federal departments and agencies are fundamental to raising international awareness of the illicit drug problem and encouraging increased action by affected governments -- producer nations, transit nations and consumer nations. Diplomatic initiatives are directed toward the following objectives:

- To improve and strengthen the relationships between the United States and the primary drug producing and transit countries; and
- To spur mutual concern and shared responsibility that will provide long-term improvement, both in the availability of a wider range of resources from a greater number of donor nations and in diplomatic initiatives which promote the political will necessary to control drugs.

The United States will continue to take the following actions to encourage and assist governments of producer countries to undertake crop control programs as the most effective means of curbing production:

- Pursuing diplomatic means to heighten the awareness of the governments of producer countries of not only the international effects of their country's drug cultivation and production, but also the effects on their own people;
- Encouraging the governments of producer countries to demonstrate their commitment to crop control through scheduled reduction in cultivation and production; and
- Encouraging and supporting foreign government programs to control drug production through bans on illicit cultivation and containing licit production to remain within legitimate needs, reinforced where appropriate by destruction of illicit crops including eradication by chemical spraying and other means.

The Strategy includes development assistance, when necessary, to produce alternative sources of income for the farmers and also increase a host government's ability to institute measures against illicit drugs.

- To ensure the effectiveness of development assistance, U.S. decisions on foreign aid and other matters, such as refinancing of debt, should be tied, where necessary and appropriate, to the willingness of the recipient country to execute a vigorous enforcement program against narcotics traffickers, including the people associated with producing, transporting or profiting from illegal drugs.
- The United States will encourage other developed nations to support international narcotics control programs, financially and with other resources, including developmental assistance linked with crop control and cooperative law enforcement efforts.
- The United States will encourage international organizations and development banks to link their assistance with narcotics control objectives, where appropriate.

The Strategy encourages concurrent, strong criminal legislation and aggressive drug law enforcement by the host government in all source and transit countries. To ensure strong drug law enforcement on an international basis, the United States will pursue the following activities:

- The United States will encourage and support the interdiction of illicit drugs at every opportunity, within the source countries, in transit countries along the trafficking routes and at any border crossing while being transported.
- U.S. investigative agencies will continue a high level of cooperation with foreign drug control agencies including multinational investigations and prosecutions of drug criminals, and the collection and sharing of intelligence on illicit drug production and trafficking.
- The United States will provide assistance to host government law enforcement agencies in the form of equipment, training and technical services, when necessary, appropriate and tied to a demonstrated commitment to drug law enforcement by the host government.
- U.S. law enforcement agencies will continue to be actively involved in and support international and regional organizations concerned with drug law enforcement.

- The United States will encourage governments to give illegal financial activities associated with drug trafficking a high level of attention and a priority for cooperative action by law enforcement agencies and by the regulators of the banking industry, nationally and internationally.
- The United States will promote the establishment of innovative mutual assistance treaties with foreign governments, directed at facilitating judicial actions against the drug trade, seizing assets derived from drug trafficking, eliminating banking procedures which hide illicit drug transactions, and extradition and other legal arrangements.

The United States will continue to work with other nations and with the international community to curtail the diversion of pharmaceuticals and chemicals from legitimate international commerce.

The United States will continue to take the following actions to reduce the international demand for illicit drugs, thereby reinforcing long-range efforts to eliminate the production of illicit drugs:

- Encourage the governments of producing and transiting countries to recognize that their populations can also be victims of drug abuse, and thereby enlisting their cooperation in international drug control;
- Encourage recognition of the social and economic effects of the immense sums of illegal money that challenge the legitimate economies of some nations;
- Foster an increased awareness on the part of other industrialized nations and their governments of their domestic drug abuse problems, both to stimulate internal prevention efforts and to encourage their participation in international drug control efforts;
- Provide technical assistance in planning and developing demand reduction programs; and
- Achieve active participation in demand reduction by international organizations and non-government groups, where appropriate.

In support of the international program, the United States must fulfill the same treaty obligations which the U.S. Government urges other nations to meet. This will be accomplished by controlling production and trafficking of illicit substances within U.S. borders. The Strategy calls upon all citizens and government officials to support this important objective.

Medical Detoxification and Treatment

Medical detoxification and treatment is essential if millions of Americans are to overcome the physical, psychological and social problems of drug abuse.

Federal agencies should encourage and assist all efforts to achieve more effective use of the existing national treatment system, including development of treatment programs which are more responsive to local priorities and the specific needs of a varied user population.

The Federal government will continue to place a high priority on providing information and guidance for drug abuse treatment based on the results of biomedical, clinical and epidemiological research, including the dissemination of research findings and general information to health professionals and their educators and to the general public.

The Federal government will continue to actively seek less expensive, more effective treatment alternatives and make these alternatives available to the national treatment system.

The Federal government will continue to support treatment and prevention activities through the block grant program, along with programs in the Bureau of Prisons and Social Security Administration, and through continued provision of services in the military establishment and the Veterans Administration. The U.S. Parole Commission will continue to provide drug and alcohol treatment through the U.S. Probation System, including early detection of abuse and provision for a quick return to custody if an individual poses a danger to the community.

The Strategy encourages states to support programs directed at youngsters who have just started using drugs and alcohol and who have not yet established a total lifestyle around drug use.

The Strategy calls for each local community to support treatment facilities and approaches appropriate to the special needs of the local community, including responding to immediate

and acute medical treatment and of longer-term support in a non-drug environment.

The Strategy continues to call for the integration of drug and alcohol abuse treatment into general health care.

The Strategy encourages treatment facilities to promote drug-free treatment programs whenever possible.

The Strategy continues to call for efforts to educate health care professionals about drug and alcohol problems.

The Strategy calls for the National Institute of Mental Health and mental health specialists to seek active involvement in alcohol and drug issues, recognizing that alcohol and drugs are reported to be the number one and number two causes of mental health problems. NIMH should also sponsor research to study mechanisms by which alcohol and drug abuse create mental health problems.

A high priority must be given to the development and implementation of programs and procedures to identify, remove and treat individuals who are in jobs where their drug abuse endangers the public safety.

The Strategy sets a high priority for the establishment and operation of employee assistance programs in both the private and public sectors to save lives and reduce the health and economic costs of alcohol and drug-related problems.

The Strategy encourages private industry, religious groups, private organizations and state agencies to work together to support treatment programs.

The Strategy encourages the expansion of alcohol and drug abuse treatment services throughout the private sector, including the expansion of third-party payments for the treatment of alcoholism and drug abuse.

The Strategy emphasizes the need for state and private treatment programs to ensure that youthful drug and alcohol abusers are receiving appropriate treatment services.

Research

Research, carefully planned and widely undertaken, can reinforce all efforts to prevent, treat and control drug problem by expanding our knowledge concerning drug abuse.

The Strategy supports the development of new knowledge about drug use patterns, risk factors and the long-term effects of drugs, including interdisciplinary research integrating data from the criminal justice system, social sciences, biochemistry, etc. The Strategy calls for a balanced program between basic and applied research.

The Strategy objectives for research emphasize producing accurate and clearly written information about drugs and alcohol and making this information widely available in an understandable form for use in education and prevention efforts.

The Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) will continue to support longitudinal and other epidemiological research to expand knowledge of alcohol and drug use patterns, risk factors and the long-term health effects of alcohol and drug abuse.

ADAMHA, with input from other involved agencies, will critically review each component of the epidemiology program to maintain the quality and credibility of the methods and findings and to determine if there are more efficient and economical approaches which would increase their utility.

Other national epidemiological data systems operated by various government agencies will be used to augment the information needed for answering questions about alcohol and drug abuse whenever appropriate.

The Strategy calls for the development of an effective system to monitor the composition, potency and probable source of illicit drugs. The Department of Justice has responsibility for the project.

ADAMHA will continue its efforts at the Federal level to gain new knowledge of the basic mechanisms underlying drug and alcohol abuse and to develop new biomedical behavioral and pharmacological methodologies for the prevention, diagnosis and treatment of drug and alcohol abuse. Specific research activities in support of the Strategy include:

- Investigating the biological interactions between the combination of alcohol and marijuana, between alcohol and other drugs, and in the development of alcoholism;

- Continuing the study of brain receptor mechanisms such as those identified for naturally occurring opiate-like peptides and those associated with reward sensations related to cocaine and heroin;
- Investigating the effects of alcohol consumption on neurotransmitters and their receptors;
- Continuing to investigate the basic biological and behavioral processes affected by alcohol, marijuana, cocaine, heroin and other psychoactive drugs;
- Studying the efficacy and cost effectiveness of different drug and alcohol abuse treatment approaches;
- Studying the adverse medical consequences of alcohol abuse and alcoholism and the genetic factors that may help explain why individuals seem to differ in their vulnerabilities to the medical problems associated with alcohol and drug consumption;
- Continuing efforts to determine the abuse and addiction potential of drugs;
- Developing testing methods which will identify persons under the influence of various drugs with at least the same degree of accuracy as present methods of testing to identify persons under the influence of alcohol;
- Developing techniques for effectively preventing alcohol-related and drug-related problems within various age groups; and
- Continuing to examine the biological and behavioral factors which may predispose some individuals to drug and alcohol addiction and tend to make others resistant.

One of the highest priorities for research efforts is the development of agonist/antagonist or antagonist drugs which reduce patient treatment costs and improve the success of rehabilitation efforts.

ADAMHA will enhance the effectiveness of scientists and research projects by regularly reviewing, aggregating and assessing new information and knowledge and by ensuring that the results are widely available within the research community.

The National Institute on Drug Abuse will be responsible for the development and general availability of comprehensive annotated bibliographic sources designed to provide practitioners, researchers and the general public with readily available subject-indexed information on principal drugs of abuse.

The Strategy encourages the pharmaceutical community, colleges, universities and professional health care organizations to undertake extensive drug research, including increased research on orphan drugs.

The Strategy supports the expansion of research directed at basic knowledge and the associated applications of the findings in drug and alcohol abuse prevention, treatment and rehabilitation. A high priority will be assigned to basic work on the interrelationships between marijuana and alcohol and between alcohol and other drugs.

The Strategy also supports the recognition by the mental health community of the destructive role that drug and alcohol abuse play in mental health and calls for full recognition of the interrelationship and increasingly close cooperation between the three related Federal health institutes, particularly in the area of research.

Copies of the complete strategy may be obtained from the White House Drug Abuse Policy Office--(202) 456-6554

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LEGAL ISSUES OF A DRUG-FREE ENVIRONMENT:
TESTING FOR SUBSTANCE ABUSE IN THE WORKPLACE

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I. THE CONFLICT BETWEEN SOCIAL ATTITUDES AND LAW

In 1982, less than 5 percent of the Fortune 500 companies were screening employees for drug abuse. Today, about 25 percent of those companies are doing it in one form or another. A recent article in the Philadelphia Inquirer reported that last January, IBM, which employs almost a quarter of a million workers in the United States, began screening every job applicant for drug use. That article also stated that Ford Motor Co., Alcoa, Boise-Cascade, American Airlines and the New York Times were using urinalysis for drug detection.^{1/}

Private industry is not alone in using this technique to reduce drug abuse in the workplace. Drug screening of government employees also continues to increase. The military began testing for drugs using urinalysis 14 years ago. The services have been joined by such federal agencies as the United States Postal Service and the Federal Railroad Administration. Local fire fighters and police officers are being screened. Operators of

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city and school buses, trains, and subways are being tested. Prison facilities all over the country are screening prisoners as well as correctional officers.

Perhaps Baseball Commissioner Peter Ueberroth's proposal to screen everyone connected with baseball -- except the players -- has done the most to bring drug testing into the public spotlight. Of course, Ueberroth had a positive experience with testing athletes when he was in charge of staging the 1984 Olympics.

"This may be the ultimate prevention device," according to Dr. Michael Walsh, Chief of Clinical and Behavioral Pharmacology at the National Institute of Drug Abuse. He predicts that "[w]ithin a year or two, in order to get a good job, you are going to have to be drug-free."^{2/}

This paper will discuss the kinds of legal challenges being brought against employers using urine testing for substance abuse, and the possible motives behind those challenges. It will also suggest ways for a private employer to defend these legal challenges or, better yet, to avoid them altogether. While most of the cases discussed concern urine testing, the issues they address extend beyond the tests themselves into all aspects of an employee substance abuse program. Any company with a drug abuse prevention program -- and that should be every company -- needs to follow the principles that these cases put forward for dealing with employees having drug and alcohol problems.

As the statistics show, drug screening is becoming a fact of employment. And employers using the tests in a reasonable manner

are not having serious difficulties in overcoming the legal challenges being brought against them. But why are employees filing these legal challenges?

The controversy surrounding drug screening results in large measure from a clash between changing social attitudes and law. The public is uneasy about drug screening. People are concerned that the testing will somehow be used against them and that, in a broader sense, it will be a starting point for increasing intrusions into their private lives.

Many workers themselves are aware of the serious problem of employee drug abuse afflicting this country. The more informed recognize that employers have limited alternatives to urine testing and that in many situations it is the most effective technique for detecting and preventing drug abuse. Nevertheless, a sizeable segment of the public does not want to accept the use of the tests in the employment context. People often argue that the tests are an unwarranted intrusion into their private lives, that they are "unconstitutional."

Are these people correct? The courts have usually said no. Judicial opinions tend to side with the employer on constitutionality issues. This is because the parties claiming that drug screening encroaches upon the boundaries of right to privacy, fairness, or due process are reflecting more their social attitudes than an understanding of the law as courts have interpreted it.

Why is this? Use of marijuana and so-called "soft" drugs is widespread in this country. Several states have decriminalized

possession of small amounts of marijuana for solely personal use. Users at one extreme believe that these legislative acts justify protecting such drug taking as a personal decision approaching a civil right. They are convinced that employer interference in this decision infringes upon their liberty and their right to privacy. A larger number of Americans are less tolerant of drug use but cannot justify the analysis of an individual's urine, breath or blood, or searches of his person or possessions by fellow humans or trained dogs, to identify the problem of drug use in the workplace for specific action. Drug use is somehow their own business and nobody else's. Everyone can identify with this feeling to some degree -- but can employers accept it as valid?

II. THE LEGAL ISSUES

The clash between changing social attitudes and law as it affects employee drug testing has led to several legal attacks on the tests. These challenges have centered in five areas: the right to privacy, the right to be free from unreasonable searches, the right to due process, negligence law, and contract law.

A. Right to Privacy

There are two common notions of "right to privacy." One encompasses each individual's personal belief concerning those aspects of his life that are private and that should not be subjected, involuntarily, to intrusion by others. Social attitudes are reflected in the lines we draw around our private lives; when we think these lines are crossed, there will be an outcry. "Don't tell me I have to wear seatbelts!"

But the constitutional "right to privacy" -- the right to privacy that is legally enforceable -- protects far fewer activities.

Surprisingly, there is no specific constitutional provision guaranteeing a right to privacy. The United States Supreme Court has held, however, that such a right is implied in the Constitution by reading several of its provisions together.^{3/} This constitutional right to privacy has been held to protect individual decisions on matters such as marriage, family and childrearing. While the use of marijuana, cocaine, and other abusable drugs has unfortunately become commonplace -- and even socially accepted in some circles -- it has never been held to come within that zone of activities protected by the constitutional right to privacy.^{4/} Moreover, this constitutional right to privacy protects people only against governmental intrusion. Individuals acting as private citizens are not bound by these constitutional restraints. And this applies to private employers.

This dichotomy between private and government actions explains why Norma Rollins, acting director of the New York Civil Liberties Union, when commenting on Baseball Commissioner Ueberroth's proposal to institute mandatory drug screening, is quoted as saying, "You're forcing, coercing people to accept an intrusive act. It's not justifiable. But it's not illegal because it's being done by a private employer -- not the government. I'm not saying [Ueberroth] has the right; I'm saying there's no law to prevent it."^{5/} The testing may violate

Ms. Rollins' personal attitudes of privacy, but it does not violate an employee's legally protected privacy zone.

B. Freedom from Unreasonable Searches

The words "right to privacy" often appear in lawsuits challenging employee drug screening, but in fact, most court claims of invasion of privacy have been based on the fourth amendment prohibition against unreasonable searches and seizures.^{6/} Plaintiffs are asserting that urine testing intrudes so far into an employee's sense of privacy that it constitutes an unreasonable search in violation of the fourth amendment. Workers raise this argument not only against government employers, but also against private employers. Once again, however, the fourth amendment's protection against unreasonable searches protects only against unreasonable governmental interference. When a private business is screening for drugs, there is no government involvement, and therefore no violation of this constitutional guarantee against unreasonable searches.

Indeed, urine testing by government employers also has withstood recent challenges that it violates the fourth amendment. In a case decided in a federal court in Georgia this year, city employees working around high voltage electric wires argued that urine testing violated their fourth amendment rights.^{7/} The court agreed with the terminated employees that the testing was a search, but said that because "the government has the same right as any private employer to oversee its employees and investigate potential misconduct relevant to the employee's performance of his

duties, ... the employee cannot really claim a legitimate expectation of privacy from searches of that nature."^{8/} The court balanced the intrusion of an employment-context urinalysis against the employer's need to determine whether employees engaged in extremely hazardous work are using drugs. It found that the constitution was not violated because the search was a reasonable one.

Because the fourth amendment does not constrain the private employer, he or she has more freedom to conduct searches in an effort to detect and deal with substance abuse in the company. For example, when investigations linked several tragic Burlington Northern train accidents to employee alcohol or drug abuse last year, the railroad unilaterally implemented a surveillance and search program, using dogs trained to detect drugs, in order to stop on-the-job alcohol and drug use. The union protested this action and argued that the dog surveillance program was an unconstitutional search.

A federal court specifically held that the search was not unconstitutional, since the railroad, a private entity, was not bound by the fourth amendment.^{9/} The court stated that there was "nothing prohibiting a private entity from requiring any person, including an employee, to submit to a 'search' by such a dog as a condition of entering that entity's premises, or refusing entry to any person believed to be in possession of an illicit substance."^{10/}

Arbitrators similarly recognize that the private employer's right to search is broad. A recent decision approved a company

search of employees' lunch boxes, trousers, shoes, socks, lockers and vehicles after reports that employees were bringing drugs and handguns onto company property.^{11/} The arbitrator explained:

Arbitrators have consistently held that the employer has a right to conduct a search of lunch boxes, lockers and persons and that [penalties for] refusal to permit a search may include discharge. These arbitrators have been attentive to the motivation for the search and the circumstances under which it was conducted, attempting to balance the legitimate interest of the employer and the personal dignity of the employee.^{12/}

The arbitrator found that the search was motivated by the company's justifiable alarm at reports that employees were carrying drugs and handguns onto company premises. The company hired a professional security consultant, who conducted the search with as much regard for personal privacy as the legitimate ends of the search permitted. This may have been reflected in the fact that only two employees had objected to the search. Although the timing of the search was unannounced, advance notice of the company's policy was posted on the company bulletin board, the production office, the change room and the gates to the plant.

The arbitrator upheld this search because the employer was justifiably concerned about the health and safety of all his employees and conducted the search with reasonable regard to the personal privacy and dignity of the worker. The arbitrator recognized that informing employees of the search immediately before it was conducted would destroy the effectiveness of the search. He acknowledged, however, that the employer could accommodate both his own and his workers' needs by notifying them that he would conduct such searches in the future.

This case illustrates an important concept. An employer often can implement many needed drug abuse prevention, identification and intervention programs without undue employee resistance if he clearly communicates what he intends to do, explains why a search program is necessary, and consistently enforces the policy that he has adopted.

C. Due Process

The fifth and fourteenth amendments of the Constitution require the government to provide a person with due process before depriving him "of life, liberty, or property."^{13/} This is a requirement that the government engage in a fair decision-making process before taking measures that affect an individual's basic rights.

The courts therefore have held that the actions a government employer takes toward its employees must be reasonably related to their jobs. When the government plans to penalize employees, it generally must notify them in advance and provide them with an opportunity to defend themselves. The requirements of due process will, of course, vary depending upon the situation.

Due process arguments made against government employers using drug testing generally claim that the tests are inaccurate, that the results are insufficiently related to work performance, or that the employee was punished as a result of a urinalysis without being afforded an adequate opportunity to contest the test results. Again, while private employers are not bound by the constitutional guarantee of due process, wise employers take into consideration workers' notions of what is fair and allow an

opportunity to discuss alleged drug use. Therefore, although the next few cases will deal with government workers, they have relevance to private industry.

1. Accuracy and Reliability

Courts that have passed on government employees' challenges of urine testing have consistently confirmed the accuracy and reliability of the tests. In a case decided in a Georgia federal court in 1984,^{14/} municipal fire fighters and police officers argued that both urine testing and polygraph examinations were so unreliable that their use violated protected constitutional rights. The court examined the polygraph issue in detail and agreed that, in spite of the city's need to maintain safe police and fire services, the tests were impermissibly unreliable. The urinalysis challenge, however, was presented, discussed, and dismissed in a brief footnote, with the explanation that "the court is not persuaded that use of such testing procedures will violate plaintiffs' constitutional rights."^{15/}

The court did not find the lack of perfect accuracy in urine testing to be significant enough to serve as the basis for a constitutional challenge. Indeed, in an analogous situation, the U.S. Supreme Court has accepted the reliability and accuracy of breath testing equipment.^{16/} The Court held last year that due process does not require state police to retain the breath samples of suspected drunk drivers tested on a medical device called an Intoxilyzer. The Intoxilyzer measures the alcohol level of the breath of the person tested. Although, like urine testing, it may not be perfectly accurate, the Court found that the possibility of

a false positive (registering the presence of alcohol when none was there) was so slim that the preserved sample would have virtually no exculpatory value to the drunk-driving defendant. Therefore, the California police, though technically capable of preserving breath samples, were not required to do so because of the accuracy of the testing equipment.

"The materiality of breath samples," the Court reasoned, "is directly related to the reliability of the Intoxilyzer itself." The Court continued, "... if the Intoxilyzer were truly prone to erroneous readings, then Intoxilyzer results without more might be insufficient to establish guilt beyond a reasonable doubt."^{17/} However, the justices believed that the testing device results were sufficient to establish guilt beyond a reasonable doubt because they found that the test was not prone to erroneous results.

A Supreme Court decision on urine testing would probably support the accuracy and reliability of that test as well. Like the Intoxilyzer, the accuracy of the urine tests themselves is nearly perfect. Inaccuracies in test results are also almost exclusively due to operator error.

In contrast to breath-alcohol testing and urine testing, courts and legislatures have found polygraph examinations -- lie detector tests -- too unreliable to use even to support employment-related decisions. Recall the fire fighters' and police officers' challenge of lie detectors and urine tests. The court ruled that the city could not use lie detector tests to combat drug use among

its police officers and fire fighters -- but it could use urine testing. One-third of the states have laws prohibiting private employers from requiring employees to take lie detector tests.^{18/} Results of lie detector tests are generally inadmissible in court.^{19/} Arbitrators also refuse to consider results of lie detector tests as proof of the truth of the tested person's response.^{20/}

2. Relationship to Work Performance

The relationship between test results and work performance presents a more difficult legal question than does the accuracy of the test itself. At present, urine screening detects the presence of substances in the body. Test results will be positive when a recently ingested substance is detected in the sample, even though the person tested may not presently be "impaired" or "intoxicated." Current technology cannot yet measure impairment. The courts are not, however, dismissing urine testing in its present state simply because it is not able to measure physical impairment perfectly. They recognize that it is probably the best tool we have today to spot drug abuse.

Opponents of the test have argued that ingestion of the tested substances does not necessarily cause impairment at the workplace or long-term intoxication. Employers, on the other hand, know that theft and drug dealing in the workplace, absenteeism due to substance abuse, accidents, worker's compensation claims, health care costs and employee morale are connected with employees who use drugs on and off the job. Nevertheless, the

relationship between test results and work performance at times presents difficult legal questions, both because of the oftentimes intangible, immeasurable nature of adequate performance and the inability of the tests to measure impairment.

Consider, for example, a recent Louisiana state court case involving a city van driver's disqualification for unemployment benefits due to misconduct on the job.^{21/} A co-worker had admitted leaving the company building to smoke marijuana in the company van, and was fired. The van driver, however, denied smoking marijuana on the job. When his urine test came up positive for marijuana, the city fired the driver for being under the influence of marijuana during working hours. The driver had testified that while he had not smoked marijuana on the job, he had smoked marijuana at 1:00 a.m. the day he was tested. He successfully argued at the administrative and trial court levels that the city had failed to prove that he was "intoxicated" on the job or that he was unable to perform his work in a safe manner because of his off-the-job behavior.

The state court of appeal reversed, ruling that it was an error to require the agency to prove intoxication or inability to work. "Merely smoking marijuana, or drinking alcohol or taking any other 'recreational' drug that may impair one's driving, while one is supposed to be working as a driver," the court explained, "is misconduct connected with the employment."^{22/}

The appellate court balanced the public interest against the employee's rights and found the test to present an acceptable

answer to a serious employment issue. Nevertheless, the two lower tribunals did hold against the city. An employer should therefore attempt to show that any drug use will affect job performance.

3. Opportunity to Contest Results

The due process guarantee of fair decision-making also means a government employer must provide an employee with a reasonable opportunity to contest charges against him before he is punished.

While an employer can rely upon statistics proving the accuracy of urine testing and its validity as a measure of job performance, this third area is one where an employee can prevail against an employer who has not been careful to weigh employee rights before taking action.

In a 1982 federal court case, the Federal Aviation Administration had fired several air traffic controllers based solely upon positive urine test results.^{23/} The agency had allowed the laboratory to throw away the urine samples before the controllers could independently inspect and test them. The court held that the agency had violated due process by destroying the samples before the controllers could conduct an analysis of them, and ordered the controllers' reinstatement.

In contrast, in a 1984 case a Chicago bus driver argued that the Transit Authority denied him due process by failing to give him a hearing to contest the results of a positive urine test before removing him from behind the wheel.^{24/} The court determined that a hearing after the bus driver was removed from driving would satisfy due process.

The principle behind these decisions is that the due process to be afforded the government employee must be a reasonable one -- reasonable based on all of the circumstances. Considering the ease in preserving a urine sample, the court found that the FAA had a duty to allow the controllers to defend themselves. Even the most rudimentary standards of due process required that the controllers be permitted to rebut the sole piece of evidence against them. On the other hand, the Chicago bus driver's due process rights had to be balanced against the public safety.

The same considerations of reasonableness and a balancing of factors should enter into any disciplinary decision based on drug testing. Private employers are not bound by the constitutional requirement of due process, but, as in other areas, they should act reasonably when they have evidence that an employee is abusing alcohol or drugs.

Good personnel practices, good public relations and most labor contracts require that an employee be given some notice of the reason for any disciplinary action and some opportunity to discuss that action with a superior. The private employer's best insurance against charges of unfairness in disciplinary actions is to advise employees in advance what will happen if they test positive for drug use or are otherwise identified as substance abusers. Supervisory personnel should offer to meet with an employee to discuss his work-related problems before discipline is instituted. (Caution: Supervisors should not discuss an individual's personal drug problems or accuse anyone of drug use -- this should be handled by trained personnel.) Employers should

consider re-testing any worker who presents plausible objections to the results of a single positive urine test.

D. Negligence Law

Unlike the constitutional claims just discussed, negligence claims can be brought against the private employer as well as government entities. Employee negligence actions against employers are generally of three types. First, an employer may be liable for negligence in hiring a substance abuser who harms another of his employees. Second, an employer may be liable for negligence if he fails to conduct the drug screening procedure with due care. Third, while an employer has a qualified privilege to communicate test results to those in the company who need to know about them, an employer who maliciously spreads untrue reports of positive test results will not be protected from his employees' charges of libel and slander.

1. Negligent Hiring

A 1984 New Mexico case involved a boy who was sexually assaulted by an intoxicated hotel employee.^{25/} The boy's parents sued the hotel, claiming that the hotel was negligent in hiring and retaining the employee. The employee had previously been fired from his job as a dishwasher because of drinking. The hotel later rehired him, even though other hotel employees knew that he regularly drank on the job.

The appellate court found that there was enough evidence for a jury to decide whether the hotel should have foreseen, and

therefore should be held responsible for, the employee's behavior. It sent the case back for a new trial so that a jury could decide on the hotel's liability and the amount of damages.

This case illustrates the importance of controlling substance abuse in the workplace. An employer has a duty to foresee the dangers presented by an impaired employee, and he can be held liable for substantial damages if he fails to do so.

This duty does not extend only to visitors or guests of the company, however. Every employer has an obligation to maintain a safe workplace for his employees.^{26/} This obligation is not met when an employer hires an individual who injures co-workers as a result of a substance abuse problem an employer carelessly failed to detect.

An established company policy and program against employee substance abuse, consistently enforced, could serve as an effective defense to a negligent hiring claim. An employer who has made clear that substance abuse on the job will not be tolerated, who has followed through with testing and other means of detection, and who has imposed sanctions and/or offered rehabilitative assistance to substance abusers will have a better chance of identifying and dealing with the impaired employee before he causes harm. Furthermore, the employer who has instituted and consistently enforced such a policy is also less likely to be held responsible for injuries caused by an employee who, without detection, violates the company's rules on substance abuse.

2. Negligent Testing

In 1982, two Michigan job applicants were refused employment after positive urine tests. They filed suit against the laboratory that performed the tests.^{27/} To support their claim that the laboratory was liable for negligent testing, they introduced into evidence the device manufacturer's instructions which suggested that results be confirmed by alternate testing methods. Because of its failure to follow the manufacturer's labeling, the laboratory agreed to a settlement with the two job applicants.

Also in Michigan, two applicants for fire fighting positions sued the City of Detroit and the laboratory that had returned positive test results for marijuana.^{28/} Based on these results, the city had revoked the applicants' certifications of eligibility for fire fighting positions. The city had confirmed the test results as suggested by the manufacturer. The federal court dismissed the negligent testing claims before the case reached trial.

These cases show the importance of following manufacturer's instructions in testing. But an employer's duty to test with care encompasses more than simply adhering to the instructions provided by a test manufacturer. It also includes proper training of employees who will administer the tests, assuring that the tests will be performed fairly and correctly and taking adequate care to protect the chain of custody over the urine samples.

3. Libel and Slander

A bus driver for a major private transportation company was suspended from work after a drug test given as part of the

required company physical was reported as positive for marijuana. News of his suspension and the test results spread to the bus driver's family, co-workers and acquaintances. Two weeks after the first urinalysis, the bus driver was tested again. The results were negative and the company reinstated him.

A state trial court awarded the bus driver \$5,000 damages for libel and slander.^{29/} The court held that the laboratory and the company physician, knowing the purpose of the test and the consequences of an erroneous report, showed reckless disregard for the truth by communicating the test results without having ensured that they were correct. The Tennessee court of appeals, however, reversed this decision, holding that there was no libel or slander because the plaintiff could not prove actual malice.^{30/}

On the other hand, in a Texas case, a railroad switchman sued his employer for libel and slander after urine test results falsely indicated the presence of methadone.^{31/} The company physician who administered the urine test had explained to the company that further investigation would be required before he could draw any conclusions on drug use. Without further investigation, however, the company instituted disciplinary proceedings. A second urinalysis, performed at the employee's request, indicated that a compound was present in the urine sample which had characteristics of methadone but was not in fact methadone or any other commonly abused drug. The company nonetheless issued a statement that the switchman had been using methadone, and that this justified his dismissal. This statement was circulated

throughout the company. The switchman collected \$150,000 for damage to his reputation and an additional \$50,000 in punitive damages from the railroad.

These cases demonstrate that employers should confirm test results and should not publicize results beyond those people who absolutely need to know. As the Texas decision proves, errors in this area can cost many thousands of dollars.

E. Contract Law

An employer who plans to institute a drug screening program or other means of detecting illegal drug use should determine whether the plan complies with employment or union contracts, and first renegotiate those contracts if it does not.

This paper earlier discussed, in the context of a private employer's right to conduct searches, a union's suit against the Burlington Northern Railroad. That case also raised a second issue of contract law. The union argued that the detector-dog program, unilaterally implemented by the railroad, was in violation of the Railway Labor Act because it was a major change in employment conditions, made without required union consultation.

The railroad had a safety rule prohibiting on-the-job use or possession of drugs or alcohol; employees were well aware of that rule. The railroad argued that use of a detector-dog search program was within its managerial discretion to enforce the no-alcohol, no-drugs rule.

The court halted the program, agreeing with the union that the employer had changed the employment contract without the

legally required union consultation. Even though there was already a rule banning drugs and alcohol on the job, a program to enforce that rule could be instituted only through collective bargaining between the railroad and the union.

The language in an employment or union contract binds an employer and must be carefully drafted. One arbitrator held that a clause in a union contract prohibiting the "sales or use of intoxicants or drugs" did not prohibit a union member's possession of marijuana.^{32/} Obviously that employer did not condone employees bringing drugs into the company as long as they did not sell or use them. He simply lacked the foresight to consider that the phrase he was using could technically be interpreted to exclude drug activity involving possession alone.

Whether judge or jury, a judicial decisionmaker is required to be objective. Labor arbitration cases often differ from court cases in this respect: the arbitrator's decisions may reflect conscious or unconscious bias in favor of allowing an employee to keep his job.^{33/} Companies should therefore be alert to the existence of any careless terminology in the employment contract that might permit an arbitrator to find a way to excuse instances of substance abuse.

III. PRIVATE EMPLOYERS CAN MEET -- OR, BETTER, AVOID -- THESE LEGAL CHALLENGES

The private employer is not bound by all of the legal restraints imposed upon the government employer. Nevertheless, private companies will be held accountable for failing to act

reasonably in conducting employee urine testing or other drug detecting programs. This paper began by pointing out the clash between changing social attitudes and law concerning drug testing. The private employer is legally entitled to do a great deal more than what may be socially accepted. Because social attitudes, however, can and do shape law -- and employee-employer relations -- a wise employer will be sensitive to these attitudes in structuring a testing program. A drug testing program, if carried out with reasonableness and discretion, can satisfy both social and legal standards.

There are two key threshold questions that a company considering a drug testing program should address. If a company can do so persuasively, its workers will in all probability accept the company's testing program and policy, and the company will be able to avoid most legal challenges.

The first question an employer must answer is "Why do I want to test?" A company should be able to justify the decision to test by clearly showing employees why drug use cannot be tolerated. Would drug use cause an employee to be unfit for his job? Would drug use endanger either the safety of co-workers or the safety of the public which depends on the company's product? Does an employee hold a position of public trust? Private companies are successfully testing across-the-board. But keep in mind that some employees -- the night janitor, the boy bagging groceries -- may be able to prove that they can perform their jobs, and perform them without endangering anyone's safety, after smoking

marijuana or taking so-called "soft" drugs. Both the courts and arbitrators will be more supportive of testing if employees concerned are working around high-voltage wires than if they are bagging groceries.

The second question an employer must answer is "What do I do when I find that someone is using drugs?" Before beginning testing, a company must develop clear procedures, based upon a fully articulated, written policy, for dealing with employees who test positive. These procedures must be clearly communicated, consistently enforced and fairly applied.

The principles of reasonableness that an employer should follow in establishing an employee substance abuse program have remained consistent over the past several years, and they have generally been sustained in court.

1. Demonstrate the need for drug testing in the company; document a relationship between job performance and substance abuse.

2. Develop a specific substance abuse policy and program in consultation with all parts of the company that may be affected. Union representatives, occupational health and safety personnel, security staff, personnel managers, legal advisors and, most importantly, top management all must be involved. Often companies have found it useful to bring in outside consultants to help identify problems and adopt a workable policy.

3. If necessary, modify private employment contracts and union contracts to reflect the company's substance abuse policy.

4. Notify employees of the policy. Tell them in advance the penalties that will be imposed for specified violations.

5. Follow through. Do not let a substance abuse program become a "paper" policy.

6. Test for substance abuse carefully. Follow the manufacturer's instructions. Make sure that persons who administer the tests and perform laboratory analyses are qualified to do so.

7. Notify employees of positive test results and provide them an opportunity to contest disciplinary actions taken on the basis of those results.

8. Keep test results confidential. Do not release positive test results until their accuracy has been verified by a confirmatory test and, if possible, by corroborating evidence of substance abuse. Do not let anyone who does not need to know have the results.

9. Consider setting up an employee assistance program or improving an existing one.

Statistics abound on what employee substance abuse is costing companies in decreased productivity, increased absenteeism, accidents at work, theft, higher health care premiums, and more union grievances. There are also costs that cannot be measured in dollars: the negative publicity suffered by affected companies; the damage to positions of public trust when a police officer or a corrections guard is using, or even rumored to be using, drugs; the lowered morale of nonabusers forced to work beside co-workers

who are not pulling their own weight, who are endangering others' safety, and who are committing crimes right in front of them -- stealing from the company, stealing from co-workers, dealing drugs. These realities make it relatively easy for most companies to answer the question, "Why do I need to test for drugs?" The more difficult question is the second one, "What do I do when I find out that someone is using drugs?"

Without a detection program, only the most obvious drug problems will be spotted -- and only if an alert supervisor is lucky to enough to be in the right place at the right time and has been trained to handle the situation properly. A drug screening program is just one of many ways of detecting drug problems. Undercover surveillance, use of drug-detector dogs, and searches of employees' lockers, lunch-pails, automobiles, and even their persons, can be used instead of -- or to supplement -- a drug screening program. But whatever the method or combination of methods a company decides to employ, the consequences remain the same. The company will be forced to adopt a program to deal with the abusing employee, either by firing him or by helping him to obtain treatment.

Helping the employee to obtain treatment is almost always a wiser course of action than firing him. The wise employer recognizes the need to provide health assistance to his impaired employees for morale, humane, and, perhaps most importantly, economic reasons. While private employers have no legal obligations to rehabilitate their employees, it is often better, and less expensive, to keep a worker working than to find

and train a replacement -- who may turn out to be a substance abuser himself.

There are several services available to industry today, including training programs, that can help companies handle drug and alcohol problems in a way that allows early intervention and effective treatment. This reduces absenteeism, prevents accidents and makes for a healthier and safer workplace. Working with trained counselors, employers can improve the health of their fellow employees -- and improve their job performance.

A substance abuse policy carefully planned and implemented will help a company avoid both the problems of employee substance abuse and the employee dissatisfaction that results in legal action against the company.

FOOTNOTES

1. Philadelphia Inquirer, April 7, 1985 (Fortune 500 statistics reported from interview with Peter B. Bensinger).
2. Id.
3. Griswold v. Connecticut, 381 U.S. 479, 483 (1965) ("the First Amendment has a penumbra where privacy is protected from governmental intrusion"); Roe v. Wade, 410 U.S. 113, 153 (1973) ("a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment, in the Fourth and Fifth Amendments, in the penumbras of the Bill of Rights, in the Ninth Amendment, or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment." (citations omitted)).
4. "The right to possess and use marijuana in one's home is not and cannot be classified as a fundamental right protected by a constitutional zone of privacy." Louisiana Affiliate of the Nat'l Org. For the Reform of Marijuana Laws v. Guste, 380 F.Supp. 404, 409 (E.D. La. 1974), aff'd, 511 F.2d 1400 (5th Cir. 1975), cert. denied, 423 U.S. 867 (1975).
5. Washington Post, May 9, 1985, p. D1.
6. "The right of the people to secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be searched. U.S. CONST. AM. IV.
7. Allen v. City of Marietta, No. C83-1878A, slip op. (N.D. Ga. 1985).
8. Id.
9. Engineers v. Burlington Northern R.R., 117 LLRM 2739 (D. Mont. 1984).
10. Id. at 2740.
11. Shell Oil Co. v. Oil, Chemical and Atomic Workers, 84-1 Lab. Arb. Awards (CCH) 3101 (1983) (Brisco, Arb.).

12. Id. at 3104.
13. The federal government is bound by the fifth amendment, which provides: "No person ... shall be deprived of life, liberty, or property, without due process of law." U.S. CONST. AM. V. "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. CONST. AM. XIV § 1.
14. Hester v. City of Milledgeville, 598 F.Supp. 1456 (M.D. Ga. 1984).
15. Id. at 1457 n.2.
16. California v. Trombetta, _____ U.S. _____, 104 S.Ct. 2528 (1984).
17. Id. at 2534 n.10.
18. See Carr, Employer Use of the "Lie Detector": The Arbitration Experience, 1984 LAB. L.J. 701, 702-3.
19. See id.; see also 3 J. WEINSTEIN, EVIDENCE ¶ 607[04] for case survey.
20. See, e.g., Glen Manor Home for the Jewish Aged v. Union of Hosp. and Health Care Employees, 85-1 LAB. ARB. AWARDS (CCH) 3139, 3141-2 (1984).
21. New Orleans Public Service v. Masaracchia, 464 So. 2d 866 (La. Ct. App. 1985).
22. Id. at 868.
23. Banks v. Federal Aviation Admin., 687 F.2d 92 (5th Cir. 1982).
24. Harvey v. Chicago Transit Auth., No. 83-C-9074, slip op. (N.D. Ill. 1984).
25. Pittard v. Four Seasons Motor Inn, 688 P.2d 333 (N.M. Ct. App. 1984).
26. Breach of this duty may not only constitute negligence, but may also violate statutory law. For example, the Occupational Safety and Health Act requires that an employer "shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees." 29 U.S.C. § 654. A substance-impaired co-worker operating heavy and/or dangerous machinery could present such a hazard.

27. Triblo v. Quality Clinical Laboratories, No. 82-226166-CZ (Mich. Ct. App. filed July 15, 1982; plaintiffs Chase and Medina withdrew after settlement reached).
28. McLeod v. City of Detroit, No. 83/CV/2163/DT (E.D. Mich. jury verdict April 10, 1985).
29. Unreported decision.
30. Ivy v. Damon Clinical Laboratory, Shelby Law No. 41, slip op. (Tenn. Ct. App. 1984).
31. Houston Belt & Terminal Ry. Co. v. Wherry, 548 S.W. 2d 743 (Tex. Civ. App. 1976).
32. B. Green & Co. v. Warehouse Employers Union, 71 Lab. Arb. (BNA) 685 (1978) (Cushman, Arb.).
33. See, e.g., Dufek, Underhill, "Arbitration Can Thwart Employer No-Drug Policy," Legal Times, March 18, 1985, p. 21.