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THE WHITE HOUSE

WASHINGTON

September 26, 1986

MEMORANDUM FOR PETER J. WALLISON
COUNSEL TO THE PRESIDENT

FROM: RALPH C. BLEDSOE *Ralph Bledsoe*
SUBJECT: Presidential Memorandum to Heads of Executive
Departments and Agencies Regarding Drugs

Thank you for your comments on the previous draft memo to department and agency heads on implementation of the President's drug abuse policies. I have attempted to incorporate them into the attached copy being sent to David Chew. The only other comments were received by OMB and OPD, and these were also included in the new copy. OMB's comment about agencies using resources from lower priority programs where possible is in the final paragraph.

I have referenced the major actions specified by Richard Willard, by having the President direct that agency heads develop a plan for implementing the Executive Order. Also outlined are the support responsibilities of HHS, OPM, and Justice.

The references to developing and promulgating guidance to government contractors have been removed, and replaced with a general statement about communicating our philosophy and goals. It is pointed out that the Drug Abuse Policy Office will provide further guidance. The Task Force now working on this will forward its recommendations to Carlton Turner. Also removed are references to broadening of Employee Assistance Plans. This is replaced by references to OPM and HHS responsibilities for providing technical assistance in this area.

Carlton Turner's office suggested that this memo is needed to reflect the President's personal and managerial intent to have departments and agencies become active in this program. An attempt has been made not to conflict with the Executive Order, but instead to cover those actions approved by the President which include and which go beyond the Executive Order, i.e. communication with labor leaders, private sector initiatives, "helplines", community drug treatment programs, and many others.

I believe this Presidential memorandum is improved because of your and other comments, and that it will clarify the President's wishes for all departments and agencies to join in this effort.

cc Alfred Kingon
Carlton Turner
David Chew

THE WHITE HOUSE

WASHINGTON

September 26, 1986

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Federal Initiatives for a Drug-Free America

As you know, I have approved several new initiatives to achieve a drug-free America. They require the support and commitment of all department and agency heads and senior staff.

One of our goals is a drug-free workplace in the Federal government, in states and local governments, and in private companies, including those that contract with the government. To help achieve this goal, you should:

- o Develop a plan for implementing Executive Order 12564, which I signed on September 15, 1986. Your plan should consider the rights of the government, the employee, and the public, and address each section of the Executive Order. It should include steps for expanding drug abuse awareness and prevention among Federal employees, identifying illegal drug users, rehabilitating employees who use illegal drugs, and preventing the hiring of people who use illegal drugs.
- o Make each employee aware of the health, economic, and social costs of illegal drug use; assist employees in identifying and combatting illegal drug use in the workplace and in homes and communities, and ensure that each employee is aware that unauthorized possession of a controlled substance is a crime.
- o Encourage your counterpart leaders in state and local governments to free their workplaces from illegal drug use.
- o Communicate to contractors our philosophy and goal to create a drug-free Federal government. The Drug Abuse Policy Office will provide further guidance on this.

To assist you in these, the Secretary of Health and Human Services and the Director of the Office of Personnel Management will provide credible materials about the effects of drug abuse; guidelines for drug testing and treatment; training of supervisory personnel; and technical assistance in support of Employee Assistance Programs.

The Attorney General will render any required legal advice.

The Secretary of Health and Human Services will establish a "Drug-free Workplace Helpline" to answer questions government and private sector organizations may have about drug abuse.

o The Secretary of Labor will encourage labor leaders to support our goal of drug-free workplaces; develop and disseminate a "what works" booklet on Workplaces Without Drugs; and make available a team of experts to assist businesses and unions in establishing drug prevention programs.

Another of our goals is drug-free schools. To achieve this goal:

- o The Secretary of Education will continue his role as national advocate for drug-free schools, both through the dissemination of drug-related educational materials such as Schools Without Drugs, and interactions with educators, parents, students, and others to ensure that everything possible is done to protect our children from the dangers to which illegal drugs can lead.
- o The Attorney General and the Secretary of Education will work together to ensure that local law enforcement officials and school authorities cooperate in discouraging illegal drug use, and in prosecuting the so-called "schoolyard laws" against distribution or manufacture of drugs around school property.
- o The Secretary of Defense and the Secretary of Education will work together to develop a model drug prevention program in Department of Defense schools.
- o You should emphasize this goal in the course of any of your interactions with schools.

Since rehabilitation of illegal drug users is a cornerstone of our policy, another goal is expansion of drug treatment and research. To achieve this:

- o The Secretary of Health and Human Services will take the lead in encouraging states and communities to develop programs to treat specific drug-related health problems, by seeking an emergency expansion of services in facilities that treat drug-related health problems, and by establishing community systems development projects.
- o The Secretary of Health and Human Services will also expand research in health-related areas such as drug testing, and bolster medical and health programs aimed at prevention, by establishing a Center for Substance Abuse Prevention.
- o The Secretary of Health and Human Services and the Director of the Office of Personnel Management will provide appropriate information and technical assistance to department and agency heads to support the drug-free Federal workplace initiative.

We also have a goal to increase public awareness and prevention of drug abuse. To achieve this goal:

- o Each of you should encourage all citizens and private sector organizations to join the First Lady's drug abuse awareness

and prevention campaign.

- o You should encourage corporations, service organizations and the media with which you interact to stimulate development of innovative community-based prevention programs, and to develop prevention programs within their organizations. To support this, I will establish a private sector initiative for a drug-free America, with leaders from advertising, the media, business, entertainment, education, labor, youth, sports, and other active groups.
- o You should be working to provide leadership to ensure that Americans have access to accurate and effective information about illegal drugs and strategies for getting drugs out of their homes, schools, workplaces, communities and the nation. The proposed Center for Substance Abuse Prevention, in the Department of Health and Human Services, will provide a toll-free number for technical assistance and referrals, and will manage a speakers' bureau of experts on illegal drug use prevention.
- o The Secretary of Housing and Urban Development will take the lead in an effort to reduce the level of illegal drug activity in public housing authorities. He will work with the Secretary of Health and Human Services, the Secretary of Labor and the Attorney General to achieve drug-free housing in housing developments that have major drug problems.
- o The White House will follow-up our nationally-televised call for participation in this nation crusade, by encouraging appropriate private sector initiatives. You will be given the opportunity to participate in these as appropriate.

Through the above actions, I expect the few Federal employees and the other workers now using illegal drugs to be rehabilitated into productive workers again, and all workplaces and schools to be drug-free. I also expect the expanded drug treatment and research to lead to restoration of large numbers of Americans to full and clear-minded lives, free from illegal drugs.

Please institute actions on these initiatives immediately, using resources from lower priority efforts where possible. I will ask for periodic progress reports through the Domestic Policy Council.



U.S. Department of Justice

Civil Division

File
Drugs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 25 1986

MEMORANDUM TO GENERAL COUNSEL OF DEPARTMENTS AND AGENCIES

FROM: Richard K. Willard *RKC*
Assistant Attorney General
Civil Division

RE: Drug Prevention Litigation Report

With the issuance of the Executive Order 12564, the President has commanded the head of each agency to develop a plan for achieving a drug-free workplace. There are many important legal issues that must be considered in developing such a plan, especially in establishing a drug testing program. As you may know, the law dealing with these issues is relatively undeveloped. However, because of our experience in litigation challenging drug testing programs that were put in place before the recent Executive Order, the Civil Division has developed a certain expertise in this relatively new area. We expect additional litigation as the President's new initiative is implemented.

To assist you in your responsibility to provide legal advice on drug prevention plans, the Civil Division has prepared a Drug Prevention Litigation Report, the first issue of which is enclosed. In the Report, we will periodically describe developments in litigation to which we are a party and in other cases involving issues relating to drug testing or other drug prevention efforts. The Report is intended to provide you with a handy, succinct reference to keep you informed of fast moving litigation and developments in the case law.

We plan to distribute issues of the Report as action in the courts warrants. If you have questions about any case or issue, feel free to call me (633-3301) or my Deputy, Robert Cynkar (633-3309).

We hope the relatively informal device of this Report will be of service to you.



ISSUE 1
September 19, 1986

DRUG PREVENTION LITIGATION REPORT

U.S. Department of Justice
Civil Division

HIGHLIGHTS

New Cases

Page

- o NTEU sues to enjoin implementation of drug prevention executive order 1
- o Oil, Chemical, and Atomic Workers Union challenges constitutionality of government contractor's drug testing in lawsuits against the contractor and the Department of the Army 1
- o NTEU refiles a suit challenging a U.S. Customs Service drug testing program initiated before the drug prevention executive order 2

Pending Cases

- o United States, as amicus in suit challenging Boston Police Department drug testing program, argues that Fourth Amendment not implicated in drug testing to assure fitness for duty 2
- o Local New York school board moves for reconsideration of appellate court decision, holding testing program for teachers unlawful, on ground that, as such testing is covered by a collective bargaining agreement, this dispute is subject to arbitration 2

Decisions

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- o New Jersey city's drug testing of police officers and firefighters enjoined by federal district court on Fourth Amendment grounds 3
- o National Federation of Federal Employees' challenge to Army drug testing program for civilian employees dismissed on jurisdictional grounds 3
- o American Federation of Government Employees' challenge to Army civilian drug testing program dismissed on grounds of comity since NFFE suit more advanced 4

NEW CASES

o *National Treasury Employees Union v. Reagan*, No. 86-2559 (originally D.D.C. Sept. 16, 1986).

NTEU brought this action to challenge implementation of President Reagan's drug prevention executive order which, *inter alia*, requires agency heads to establish plans for achieving a drug-free workforce through drug testing and other means. NTEU claimed (i) that the executive order violates the Administrative Procedure Act because it was not promulgated after public notice and comment; (ii) that the random drug testing program contemplated by the order would constitute a warrantless search, undertaken without probable cause of drug use, in violation of the Fourth Amendment; and (iii) that the program would violate the Civil Service Reform Act because there is no nexus between off-duty drug use and on-the-job performance.

After the case was assigned to Judge Thomas Hogan, who had earlier dismissed a challenge to the Army's civilian testing program (see *American Federation of Government Employees v. Weinberger* below), NTEU voluntarily dismissed their action and plans to refile in New Orleans.

* * *

o *Oil, Chemical, and Atomic Workers Union v. U.S. Department of the Army and Day & Zimmermann, Inc.*, No.86-2399-S (D.Kan. Sept. 5, 1986)

Oil, Chemical, and Atomic Workers Union v. U.S. Department of the Army, Caspar Weinberger, and John Marsh, No.86-2483 (D.D.C. Sept. 5, 1986)

These two suits were brought by the OCAWU to challenge the drug testing program of a munitions manufacturer. Though neither the Department of the Army nor the Department of Defense has an official program requiring private contractors to institute drug testing, plaintiff alleges that certain Army generals had in effect required the involved contractor to establish such testing.

The action filed in Kansas, where the munitions plant is located, though alleging that drug and alcohol screening is "constitutionally impermissible," essentially claims that the Department of the Army interfered with the collective bargaining agreement between the contractor and its employees' union.

In the District of Columbia suit, plaintiff claims that the drug testing programs of various contractors were required by the Army and (i) violate the Fourth Amendment as an unreasonable search and seizure; (ii) violate the Fifth Amendment by depriving individuals of property and liberty without due process of law;

and (iii) constitutes an unreasonable invasion of privacy. Plaintiff has moved for a preliminary injunction in this action.

* * *

o *National Treasury Employees Union v. Von Raab* (E.D.La. August 12, 1986)

This action alleges that a U.S. Customs Service drug testing program covering applicants for certain Customs positions violates the Fourth Amendment as an unreasonable search and seizure. This suit is similar to one filed by NTEU in the District of Columbia in May; NTEU voluntarily dismissed that action in June after it was assigned to Judge Hogan.

PENDING CASES

o *Guiney v. Roache*, No. 86-1346-K (D.Mass. April 29, 1986)

This action by the President of the Boston Police Patrolmen's Association challenges on Fourth Amendment grounds a random drug testing program established by the Boston Police Department. The City has moved to dismiss the action, and the United States was granted leave to file an *amicus curiae* brief supporting that motion.

In its brief (filed Sept. 19, 1986), the United States argues (i) that reasonable conditions of employment used to assure the fitness of employees limit the legitimate expectations of privacy of employees, and therefore do not implicate the Fourth Amendment; (ii) that Boston's unobserved testing program does not constitute a "search" or "seizure"; (iii) that the program is a condition of employment to which employees consent; and (iv) that, if the program does involve a Fourth Amendment search, it is reasonable in light of the minimal intrusion into personal privacy and the significant governmental interests underlying the program.

* * *

o *Patchogue-Medford Congress of Teachers v. Board of Education of the Patchogue-Medford Union Free School* (N.Y. App. Div. August 11, 1986)

The Appellate Division of the New York State courts has upheld a lower court ruling barring random drug testing of public teachers as a condition of employment for obtaining tenure. The court found that, as conceded by the School Board, drug testing was not covered by a provision of the collective bargaining agreement permitting medical examinations of teachers, and

determined that drug testing constituted a search within the meaning of the Fourth Amendment. The Court further found that, absent reasonable suspicion, drug testing was not "reasonable" under the Fourth Amendment.

The School Board has moved for reconsideration of this ruling, alleging that the Board did not concede that a drug test was not a medical examination within the meaning of the collective bargaining agreement, and that this was a matter to be decided by arbitration. If true, the court would lack jurisdiction to review the matter.

DECISIONS

o *Capua v. City of Plainfield*, No.86-2993 (D.N.J. Sept. 18, 1986)

In this action, originally filed on July 30, 1986, the district court has entered an injunction barring random drug testing for the City's police officers and firefighters. A temporary restraining order had been initially entered when testing was to be commenced without notice and without any written guidelines having been established by the City. The Court's latest decision enjoining the testing reflected continuing concern with the lack of any advance notice to employees and the lack of any prescribed standards for the program, as well as the absence of protections for confidentiality. In addition, the court found that such testing violated the Fourth Amendment unless the City had "reasonable suspicion" to justify the testing in a particular case.

* * *

o *National Federation of Federal Employees v. Weinberger*, No. 86-681 (D.D.C. June 23, 1986)

In this action, NFFE challenged a mandatory, random drug testing program for civilian employees who work for the Army in critical job categories. Plaintiff claimed that (i) the program is arbitrary and capricious under the Administrative Procedure Act; (ii) the program violates various Civil Service laws; (iii) it violates the Fourth Amendment's prohibition against unreasonable searches and seizures; and (iv) the program deprives employees of property without due process of law in violation of the Fifth Amendment.

Judge Hogan denied plaintiff's motion for a preliminary injunction and dismissed the case for lack of jurisdiction. The court held that government employees challenging this program had

to exhaust their administrative remedies before the Federal Labor Relations Authority or the Merit Systems Protection Board.

* * *

o *American Federation of Government Employees v. Weinberger*,
No.86-242T (W.D.Wash. Aug. 5, 1986)

AFGE brought this action against the same Army drug testing program attacked by NTEU in the District of Columbia, advancing similar arguments. The court dismissed this action without prejudice, noting that judicial economy and convenience would not be served by permitting this litigation to go forward when the identical District of Columbia litigation was at a more advanced stage.

NOV 26 30 AM 13:22

THE WHITE HOUSE
WASHINGTON

September 23, 1986

MEMORANDUM FOR DAVID L. CHEW
STAFF SECRETARY AND DEPUTY ASSISTANT TO THE
PRESIDENT

FROM: PETER J. WALLISON
COUNSEL TO THE PRESIDENT **ORIGINAL SIGNED BY PJW**

SUBJECT: Revised Presidential Memorandum to Executive
Branch Employees

Counsel's office has reviewed the above-referenced Presidential memorandum and subject to the minor stylistic edits indicated on the attached draft has no objections to it from a legal perspective.

Attachment

PJW:RMK:dmh 9/23/86
cc: PJWallison✓
RMKruger
chron.

THE WHITE HOUSE

WASHINGTON

September 23, 1986

MEMORANDUM FOR ALL EXECUTIVE BRANCH EMPLOYEES

As you know, I recently approved several new initiatives with an overriding goal of a drug-free America. This is no easy task, requiring as it does the commitment and support of all Americans. I am asking you, as citizens, parents, friends and colleagues, to play a leading role.

As members of the nation's largest workforce, you can ~~continue to~~ set an example for other American workers. ~~The large majority of~~ Federal employees have never had trouble with illegal drugs, but our goal is a safe and drug-free workplace for all employees and the American public. ~~I know the issue of drug testing has caused some concern, but I want to assure you that any testing program~~ will be fair and will protect your rights as citizens. ~~Our~~ intention is not to punish users of illegal drugs, but to help rehabilitate them. When you see colleagues or friends struggling with a drug problem, encourage them to seek help from your agency's Employee Assistance Program or from some other organization or person skilled in drug counseling and treatment. Together we can send a message that illegal drug use in every office, shop and laboratory simply will not be tolerated. ~~We should encourage healthy peer pressure that will make it easier for workers to take~~ Nancy's advice and "Just Say No."

Your efforts to increase public awareness and prevention of drug abuse are also crucial. Illegal drug use is not a "victimless crime," nor is it glamorous or a matter of personal choice. Drug abuse victimizes everyone in productive time lost, lives shattered and families and communities torn apart. We must ~~also~~ send this message beyond the workplace to friends and neighbors and especially to our young people.

I have called upon you many times in the past, and your support and dedication have already helped us achieve so much. Now I am asking you to get personally involved in ridding our offices, schools and homes of drugs and making them better places to live and work. I know I can count on your personal help.

Certainly
The Executive
Order
dealing
in part
with this
subject
contains
provisions
to assure
this

I know that

Concurrence

The ~~efforts~~ combined efforts of all of us

Federal
as well
as
private
sector
employers

THE WHITE HOUSE

WASHINGTON

September 23, 1986

MEMORANDUM FOR ALL EXECUTIVE BRANCH EMPLOYEES

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As members of the nation's largest workforce, you can ~~continue to~~ set an example for other American workers. The large majority of Federal employees have never had trouble with illegal drugs, but our goal is a safe and drug-free workplace for all employees and the American public. I know the issue of drug testing has caused some concern, but I want to assure you that any testing program will be fair and will protect your rights as citizens. Our intention is not to punish users of illegal drugs, but to help rehabilitate them. When you see colleagues or friends struggling with a drug problem, encourage them to seek help from your agency's Employee Assistance Program or from some other organization or person skilled in drug counseling and treatment. Together we can send a message that illegal drug use in every office, shop and laboratory simply will not be tolerated. ~~We should encourage~~ healthy peer pressure that will make it easier for workers to take ~~Nancy's advice and~~ "Just Say No."

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THE WHITE HOUSE

WASHINGTON

September 23, 1986

MEMORANDUM FOR PETER J. WALLISON

FROM: ROBERT M. KRUGER *RMK*

SUBJECT: Revised Presidential Memorandum to Executive
Branch Employees

At my request, David Chew's office is holding the attached memorandum for our review. Apparently, we contributed the only substantive comments during the original clearance process.

I think the revised memorandum is an improvement and have indicated but a few stylistic edits on the attached draft.

The only possible controversial issue is the insertion of a sentence regarding drug testing. As I mentioned, Richard Willard argued forcefully for such a reference at yesterday's Working Group meeting. Apparently, Ralph Bledsoe and Carlton Turner decided after the meeting that there was sufficient support for Willard's view and made the change. I did not see any clear consensus on this issue emerge at the meeting and suspect that Bledsoe and Turner were strong-armed by Willard afterwards.

Personally, I think the reference to drug testing is fairly innocuous and unobjectionable. In Willard's defense, I would point out that a reference to drug testing is likely to be as conspicuous by its absence as its presence. I have prepared a memorandum to Chew's office for your review and signature, noting only our stylistic edits. Should you decide that the reference to drug testing is better deleted, we will need to advise Chew's office to hold the memorandum while we discuss the matter further with Bledsoe and Turner.

Attachment

THE WHITE HOUSE

WASHINGTON

September 18, 1986

MEMORANDUM FOR RALPH C. BLEDSOE
SPECIAL ASSISTANT TO THE PRESIDENT FOR
POLICY DEVELOPMENT

FROM: PETER J. WALLISON
COUNSEL TO THE PRESIDENT, ORIGINAL SIGNED BY PJW

SUBJECT: Presidential Memorandum to the Executive Branch
Employees re Drugs

Counsel's office has reviewed the above-referenced memorandum, and has no objections to it from a legal perspective, but it is not a very good statement in substance.

Whatever the substance, you may wish to consider whether the President's message would be more effectively conveyed in the form of a letter signed by the President. Such a letter would better command the attention of federal employees and communicate the President's personal commitment to the drug abuse program.

THE WHITE HOUSE

WASHINGTON

DRAFT

September 15, 1986

MEMORANDUM FOR ALL EXECUTIVE BRANCH EMPLOYEES

As you know, I recently approved a comprehensive drug abuse program that has as its overriding goal a drug-free America. This is no easy task, requiring as it does the commitment and support of all Americans. I hope I can count on you, ~~the members of our elite Federal workforce, to play a leading role in this crusade against drug abuse by setting an example for other American workers to follow.~~

One of our major goals is a drug-free ~~American workplace. To achieve this goal I am counting on every one of you to send a firm message that drug use within every Federal office, shop and laboratory simply isn't tolerable. We need the kind of healthy peer pressure that will help your colleagues follow Nancy's advice and "Just Say No."~~ Our intention is not to punish illegal drug users, but to help them kick the habit. When you see colleagues struggling with a drug habit, I hope you will encourage them to seek help from their Employee Assistance Program or from some other organization or person skilled in drug counseling and treatment. The concern and moral support of colleagues and friends can often mean the difference between rehabilitation of a valuable individual or a worsening spiral of drug abuse and despair.

Another of our goals is to increase public awareness and prevention of drug abuse. This too requires your active support. ~~I am counting on Federal employees to help spread the word about the dangers of drug abuse. Illegal drug use is not a "victimless crime," nor is it glamorous or trendy. It victimizes all of use in productive time lost, lives shattered and families torn apart. We need to spread that message, your agencies will soon be suggesting ways in which you can help, whether by passing out educational materials, talking to children and students, or simply sharing your own experiences and knowledge with co-workers.~~

~~My goal--our goal--is a drug-free America, and there is no better place to start than by making America's largest workforce, the Federal workforce, drug-free. By balancing intolerance for drug abuse with fair and caring treatment for individuals with a drug problem, we can take a giant step toward that goal. I hope I can count on your personal help.~~

as parents, friends
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And we
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Americans "just say no".

WHITE HOUSE STAFFING MEMORANDUMDATE: 9/23/86 ACTION/CONCURRENCE/COMMENT DUE BY: 9/24/86 at NOONSUBJECT: REVISED PRESIDENTIAL MEMORANDUM TO EXECUTIVE BRANCH EMPLOYEES ON DRUG

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	MILLER - ADMIN.	☐	☐
REGAN	☐	☐	POINDEXTER	☐	☐
MILLER - OMB	☐	☐	RYAN	☐	☐
BALL	☐	☐	SPEAKES	☐	☐
BARBOUR	☐	☐	SPRINKEL	☐	☐
BUCHANAN	☐	☐	SVAHN	☐	☐
CHEW	☐	☒ ^P ^{SS}	THOMAS	☐	☐
DANIELS	☐	☐	TUTTLE	☐	☐
HENKEL	☐	☐	WALLISON	☒	☐
KING	☐	☐	_____	☐	☐
KINGON	☐	☐	_____	☐	☐
MASENG	☐	☐	_____	☐	☐

REMARKS: Do you have any objection to the attached memorandum? ⁰

RESPONSE: _____

1986 SEP 23 PM 1:47

David L. Chew
Staff Secretary
Ext. 2702

THE WHITE HOUSE

WASHINGTON

September 23, 1986

MEMORANDUM FOR THE PRESIDENT

FROM: Alfred H. Kingon 
SUBJECT: Memorandum to All Executive Branch Employees

Attached for your signature is a memorandum to all federal employees asking for cooperation in achieving a drug-free America.

Attachment

THE WHITE HOUSE

WASHINGTON

September 23, 1986

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

Enclosed is a message for Executive Branch employees about our new drug abuse initiatives. Please ensure that all employees in your organization receive a copy, and feel free to communicate an additional personal message of your choosing.

THE WHITE HOUSE
WASHINGTON

September 23, 1986

MEMORANDUM FOR RALPH C. BLEDSOE
SPECIAL ASSISTANT TO THE PRESIDENT FOR POLICY
DEVELOPMENT

FROM: PETER J. WALLISON **ORIGINAL SIGNED BY PJW**
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Memorandum to Head of Departments
and Agencies Regarding Drugs

Counsel's office has reviewed the above-referenced memorandum and has the following comments.

In his memorandum to Carlton Turner of September 22, 1986, Richard Willard set out a number of specific actions required for implementation of the Executive Order. We believe the memorandum should make reference to these actions, particularly the responsibilities of HHS and OPM and the components of the agency plans and the testing programs required by the Executive Order.

On the other hand, we do not believe the memorandum should call for the development and promulgation of guidance to government contractors. We understand that the nature of such guidance is still being considered by the Working Group. Nor do we believe it is appropriate to call for a broadening of Employee Assistance Plans at the same time as OPM is developing a model Employee Assistance Plan.

These difficulties suggest that it may be too early to send out a memorandum of this sort. This is especially true in the current atmosphere; anything in the memorandum which seems to go beyond the Executive Order will be viewed with suspicion, while any omissions will be seen as retreats. We have also indicated several stylistic revisions on the attached draft.

Attachment

PJW:RMK:dmh 9/23/86
cc: PJWallison✓
RMKruger
chron.

THE WHITE HOUSE
WASHINGTON

DRAFT

September 19, 1986

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Federal Initiatives for a Drug-Free America

As you know, I have approved several major new initiatives to achieve a drug-free America. These require the support and commitment of department and agency heads and senior staff.

One of our goals is a drug-free workplace, both for the Federal government and for private companies that work with the government. To achieve that goal, all Federal department and agency heads should:

- o Expand drug abuse awareness and prevention programs for the Federal workforce. The aim is to:
 - Increase each employee's awareness of the health, economic, and social costs of illegal drug use;
 - Ensure that each employee is aware that unauthorized possession of a controlled substance is a crime; and
 - Increase each employee's awareness of what can be done to identify and combat illegal drug use, not only in the workplace but also in homes and communities.
- o Develop a plan for achieving the goal of a drug-free workplace, in accordance with Executive Order 12564, which I signed on September 15, 1986.
- o ~~Reach beyond the Federal workforce by developing and promulgating guidance to government contractors concerning our philosophy and procedures for achieving a drug-free workplace.~~
- o Send letters to the state and local leaders of your counterpart ~~organizations~~ ^{agencies} encouraging them to ~~purge drug abuse from their workplaces.~~ ^{free their workplaces from drug abuse}

THE WHITE HOUSE

WASHINGTON

DRAFT

A second major goal is to increase public awareness and prevention of drug abuse. To reach that goal, you should:

- o ~~Broaden your Employee Assistance Program to include drug prevention and education for employees and their families.~~
- o Provide incentives and recognition for your agency employees who work with the private sector in developing new and innovative awareness and prevention programs.
- o Pursue opportunities to increase drug abuse prevention activities among the private sector groups with which your agency works, through workshops, meetings, special events and the distribution of educational material.

You should proceed on these initiatives as soon as possible. The Departments of Justice and Health and Human Services and the Office of Personnel Management will be prepared to provide assistance as needed. Please report progress on these important initiatives to me through the Domestic Policy Council.

THE WHITE HOUSE

WASHINGTON

September 23, 1986

MEMORANDUM FOR PETER J. WALLISON

FROM: ROBERT M. KRUGER *Rmk*

SUBJECT: Presidential Memorandum to Head of Departments
and Agencies Regarding Drugs

Ralph Bledsoe's office has circulated the above-referenced memorandum for comments. It is another in a series of memoranda to be prepared for the President's signature by the Drug Use Prevention Working Group of the Domestic Policy Council, as part of its program for implementing the President's Drug Policy. (Incidentally, I am retrieving from Chew's office the memorandum to be sent to all federal employees. Apparently, changes to that memorandum were made but the memorandum was not slated for recirculation.)

The "agency head memo," like the "all employees memo," speaks in generalities. I am more concerned with such an approach in this context, however, since there is specific information which may be imparted to agency and department heads. As set out in the attached memorandum from Richard Willard, a number of specific actions are required for implementation of the Executive Order alone. HHS, OPM and the Attorney General have distinct responsibilities. Agency heads must establish drug prevention plans containing specific measures, as well as programs to test employees for illegal drugs.

The memorandum being circulated by Bledsoe's office does not mention these specific actions and contains no reference whatsoever to drug testing. I find this latter omission incomprehensible in view of the clear mandate of the Executive Order and the confusing message that a memorandum without such a reference would send.

The memorandum is also overinclusive in some respects, calling for the development and promulgation of guidance to government contractors, when the nature of that guidance is still being considered by the Working Group, and calling for a broadening of Employee Assistance Programs when OPM is presumably in the process of developing a model EAP.

These problems, as well as some stylistic comments, are noted in the attached memorandum to Ralph Bledsoe for your review and signature.

Attachments

22 SEP 1986

3774

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 22 1986

TO: Carlton E. Turner
Chairman, Drug Use Prevention Working Group
Domestic Policy Council

FROM: Richard K. Willard
RKW Chairman
Legislative Review Task Force

RE: Implementation of Executive Order 12564

The President's Executive Order establishing a drug-free federal workplace requires the head of each Executive agency to develop certain plans, programs and procedures for achieving the objective of a drug-free workforce at his or her agency. Below, I have summarized the actions required for implementation of the order.

a. The Secretary of Health and Human Services is to promulgate "scientific and technical guidelines for drug testing programs." Section 4(d) of the order allows agencies to implement drug testing programs even though HHS has not yet promulgated guidelines.

b. The Director of the Office of Personnel Management is required to provide government-wide guidance on implementation of the order including:

- Providing Federal Employee Health Benefit Plan coverage for drug users;
- Developing a model Employee Assistance Program;
- Developing training programs for supervisors in conjunction with HHS; and
- Developing a drug awareness campaign for the federal workforce in conjunction with HHS.

c. The Attorney General is to render legal advice to agencies in connection with the mandatory consultation process of the order.

d. Agency heads are required to establish plans to reach the goal of a drug free workplace which are to include the following:

- A general policy statement;
- Employee Assistance Programs for rehabilitation;
- Supervisory training to assist managers in identifying drug users; and
- Referral mechanisms for self-identified drug users and referral mechanisms for employees identified as drug users by management.

e. Agency heads are required to establish a program to test employees for illegal drug use. These programs are to include:

- testing for sensitive employees, with the scope and extent to be determined by the agency head;
- voluntary testing;
- testing for any employee upon reasonable suspicion, in connection with an accident or as part of or as a follow-up to a rehabilitation program;
- applicant testing if the agency head desires;
- 60-days notice for the initiation of a new drug testing program; and
- Other procedural protections such as recordkeeping and privacy.

It has been suggested that the Domestic Policy Council may wish to remain involved in monitoring the implementation of the Executive Order. If this recommendation is accepted, we are ready to assist the DPC process in any way you feel would be helpful.

WHITE HOUSE STAFFING MEMORANDUMDATE: 9/19/86 ACTION/CONCURRENCE/COMMENT DUE BY: 9/23/86SUBJECT: PRESIDENTIAL MEMORANDUM TO HEADS OF DEPARTMENTS AND AGENCIES RE DRUGS

	ACTION FYI			ACTION FYI	
VICE PRESIDENT	☐	☐	MILLER - ADMIN.	☒	☐
REGAN	☐	☒	POINDEXTER	☐	☐
MILLER - OMB	☒	☐	RYAN	☐	☐
BALL	☒	☐	SPEAKES	☐	☒
BARBOUR	☐	☐	SPRINKEL	☐	☐
BUCHANAN	☒	☐	SVAHN	☒	☐
CHEW	☐	☒	THOMAS	☒	☐
DANIELS	☒	☐	TUTTLE	☐	☐
HENKEL	☐	☐	WALLISON	☒	☐
KING		☐	CLERK	☐	☒
KINGON		☒	TURNER	☒	☐
MASENG	☒	☐	COURTEMANCHE	☒	☐

REMARKS: Please provide any comments/recommendations on the attached directly to Ralph Bledsoe (x6640) by close of business Tuesday, September 23rd, with an info copy to my office. Thank you.

RESPONSE:

1986 SEP 19 PM 2:49

David L. Chew
Staff Secretary
Ext. 2702

THE WHITE HOUSE

WASHINGTON

September 19, 1986

MEMORANDUM FOR THE PRESIDENT

FROM: ALFRED H. KINGON 

SUBJECT: Memorandum to Heads of Executive Departments
and Agencies Regarding a Drug-Free America

As a result of the various policies and programs you have approved concerning the Administration's drug abuse program, a series of memoranda to different people are being prepared for your signature. This is one of them and it goes to the heads of all departments and agencies concerning a drug-free workplace, helping employees to obtain assistance when needed, and working with the private sector and state and local governments.

I recommend that you sign this memo.

Attachment