

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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*San Nilo Koyan*

(415) 556-8011

FEB 29 1988

# Appeals Court Rejects Mandatory Tests Of Rail Workers for Drugs and Alcohol

*12 Feb 88*

By PETER WALDMAN  
Staff Reporter of THE WALL STREET JOURNAL  
SAN FRANCISCO - A U.S. appeals court here struck down mandatory drug and alcohol testing of railroad workers involved in accidents or rule violations. The decision clouds a Reagan administration order for mandatory drug testing of certain workers employed or regulated by the federal government.

In a 2-to-1 ruling, the Ninth Circuit Court of Appeals reversed a lower-court decision and ruled that railroad companies may not require employees to submit to a drug or alcohol test without a warrant. The court based its reasoning on a decision by the U.S. Supreme Court in which a mandatory blood test in a criminal investigation was found to violate constitutional protections against unreasonable searches.

The Supreme Court has yet to rule on the issue of mandatory drug testing, and the issue remains unresolved by conflicting appeals court decisions.

"Because people have reasonable expectations of privacy in the personal information body fluids contain," the ninth circuit appeals court's majority opinion said, "the governmental taking of a urine specimen constitutes a search and seizure within the meaning of the Fourth Amendment" and therefore subject to a warrant.

In 1986, the Reagan administration issued an executive order requiring all federal agencies to prepare plans for mandatory drug testing of selected workers with sensitive jobs. Last spring, the Fifth Circuit Court of Appeals in New Orleans upheld required drug testing by the U.S. Customs Service of its prospective border agents, ruling that a urinalysis "is not as intrusive as an invasion of bodily integrity or of the home."

The National Treasury Employees Union appealed that decision to the Supreme Court in September, but the court hasn't decided yet whether to hear the case. The same union is also challenging President Reagan's blanket executive order in New Orleans district court, where a decision is expected soon.

Li Washington, Transportation Secre-

tary James Burnley said the department would appeal the decision. "Other appeals courts have upheld mandatory drug testing programs for customs officials, prison guards, bus drivers and jockeys," he said. "We are convinced of the constitutionality of the FRA (Federal Railroad Administration) drug and alcohol testing program."

James Burnett, chairman of the National Transportation Safety Board, an independent agency that investigates transportation accidents, said that post-accident drug and alcohol testing of all employees in safety-sensitive railroad jobs is critical to accident investigations and "remains justified." He said the safety board "has been concerned for many years about the threat to transportation safety posed by alcohol and drug-impaired individuals in the rail industry."

Last month, the safety board found that marijuana use by a Consolidated Rail Corp. engineer was a prime factor in the 1987 collision of an Amtrak passenger train and a string of Conrail locomotives near Baltimore, Md. Sixteen people were killed.

In the Ninth Circuit case, four railway unions sued the Transportation Department to invalidate the government's requirement that railroads administer mandatory drug and alcohol tests to employees involved in major accidents or safety violations. In addition to the requirement of a warrant, the court's ruling also struck down the department's drug-testing program on the ground that the tests themselves don't reliably measure intoxication at a particular time before their administration.

"The state of the art of drug tests currently used can discover only the metabolites of various drugs, which are not evidence of current intoxication and may remain in the body for days or weeks after ingestion of the drug," the majority opinion said.

The Ninth Circuit ruling deals the sharpest legal blow to date to the government's drug-testing plans. The court, however, often takes aggressive stands that are overruled by the Supreme Court.

*Docket #85-2891*

*Feb 11*

*\$2 - PO Box 547 SF 94101*

*Railway Labor Executives' Ass'n v. Burnley (C.A. 9 Cal) Federal Reporter*

# Drug Testing: A Constitutional Question

*Proposals to test employees for drug use, although excluded from the new federal anti-drug abuse law, are gaining momentum nationwide. But such plans pose a serious challenge to the Fourth Amendment prohibition against unreasonable search and seizure.*

By Jon Felde



While drug testing is absent from the government's major new legislative assault on drug abuse, it remains a controversial weapon in the crusade against drug abuse.

Drug testing—used widely in the private sector—proved too controversial to be included in the federal Anti-Drug Abuse Act of 1986, signed into law by President Reagan last October. The new law sets up stiffer penalties for drug offenses, creates new methods of attacking money laundering, intensifies interdiction programs and adds funds for law enforcement, education and treatment. But it avoids the issue of drug testing.

The private sector, however, pushes ahead with employee drug testing programs over the objections of some unions and civil libertarians. The Reagan administration continues to seek, under an executive order, the testing of nearly half of the 2.7 million federal civil employees, while congressional opponents have introduced legislation barring expenditures to implement that order.

Congress renewed its interest in employee drug testing when urine tests on Conrail crew members involved in the fatal train accident near Baltimore earlier this year showed evidence of marijuana use. On March 10, the Senate Commerce Committee ap-

proved a bill that would authorize the Department of Transportation to initiate mandatory testing in the transportation industry.

Drug abuse is a problem of national proportions. At least 30 percent of the Fortune 500 companies cite drug abuse as a serious and costly problem. Some researchers estimate that drug use in 1986 cost the U.S. economy \$70 billion to \$100 billion in lost productivity. New York Mayor Edward Koch said his city's police department "made more than 100,000 drug arrests over the past two years." And even small towns confront serious problems of illegal use of controlled substances. In Franklin, Ky., a town of 8,000, for instance, the problem was perceived to be so destructive that the school board introduced a plan for voluntary testing of athletes and cheerleaders last fall.

Nearly half of the state legislatures have introduced bills relating to drug tests. Some of those measures would support testing, others would limit testing.

But is drug testing constitutional? Does drug testing violate the Fourth Amendment rights of the people "to be secure in their persons, houses, papers and effects, against unreasonable searches?"

"There is nothing new in the realization that the Constitution sometimes insulates the criminality of a few in order to protect the privacy of us all," wrote Justice Antonin Scalia in his

March 5, 1987 opinion in *Arizona vs. Hicks*, interpreting the Fourth Amendment to the Constitution. This idea now faces a serious challenge in an era when urine sampling is seen as a powerful weapon to control illegal drug use.

"There may be constitutional questions," says Kansas state Senator Ross Doyen, who heads the NCSL Task Force on Drug Abuse, "and perhaps the only way to get around them is to limit the blanket testing to areas of public safety."

But, he adds, "drug testing might prove a useful tool, because it could serve as a deterrent."

Yet even as testing programs are proposed, they are challenged. Government employees can make constitutional challenges because the Fourth Amendment limits unreasonable searches and seizures by the government as an employer. Although the rule does not apply to searches conducted by private employers, a legislative commission report in Maine cautioned that testing by private employers for illegal use of controlled substances, in effect, "deputized" employers to "use their economic leverage to force compliance with laws through methods unavailable to proper law enforcement agencies under the Constitution."

The Maine Commission concluded that "the use of substance abuse tests in the workplace essentially reversed the venerable rule of Anglo-American

*Jon Felde is a senior staff associate in NCSL's Fiscal and Governmental Affairs program.*

jurisprudence that an accused is presumed innocent until proven guilty. Testing programs require the accused employee to 'prove' that he is actually innocent by passing a substance abuse test."

Another argument that the tests are constitutionally unsound is based on questions of whether the likelihood of error in the tests undercuts the reasonableness of the search. John Grabowski and Louis Lasagna note in a recent issue of *Issues in Science and Technology* that while existing tests can be scientifically reliable, the implementation of the tests can result in frequent errors, particularly when companies are competing for business. A study of drug testing laboratories by the Centers for Disease Control uncovered an error rate for detecting some drugs as high as 100 percent by some commercial companies.

Most courts considering the question have ruled that mandatory testing is unconstitutional based upon a reasonable expectation of privacy, unless the demand for the test is based upon a reasonable suspicion. In finding drug testing of U.S. Treasury employees unconstitutional, the federal district court in New Orleans noted that urination was normally a private act and, in fact, under many municipal ordinances "urination in public is unlawful."

Elaine Kaplan, an attorney repre-

senting the National Treasury Employees Union in its challenge to random testing, stated that the accuracy and validity of a urine test depended on direct observation of the act of urination and that the "high degree of intrusiveness" meant that the employer would need to have a particular reason to be suspicious of an individual before requiring a test. "Going into the body of a person to discover what they've been doing is a tremendous invasion of privacy," Kaplan said.

In an effort to overcome objections to the invasion of privacy, the Department of Health and Human Services spent five months drafting regulations specifying how the test should be administered by the government. Blue dye would be placed in the toilet bowl to insure that the sample would not be diluted with water, and the sample would have to be presented within a specified period of time. The urine would have to be near body temperature to assure that it had not been altered. Monitors would be stationed outside toilet stalls to ensure accuracy of the tests.

"Physical examinations have become commonplace and expected when one is seeking insurance and applying for most jobs," according to the minority on the Maine Commission. "To argue that it is appropriate to examine individuals for diseases of the heart and eyes, for example, and neglect the equally tragic diseases

of alcoholism and drug addiction is an irresponsible position for Maine to take."

More important than the privacy of the act of urination is the question of whether the information revealed by urinalysis is subject to the expectation of privacy; information about private behavior can be determined by chemical traces in the urine. Ira Glasser of the American Civil Liberties Union argues that smoking a marijuana joint is not the employer's business if job performance is not affected. But, he adds, every employer "has the right to expect his employees not to be drunk or stoned or high on the job." Glasser argues that such a right does not allow employers to monitor conduct off the job.

Others argue that what one does off-duty can affect the work place and job performance and therefore becomes the interest of the employer. Assistant U.S. Attorney General Richard Willard represents the government in challenges to the state's drug testing initiative. Speaking to business leaders last fall, he reminded them that on the average, compared to their non-addicted counterparts, "substance abusers consume three times the medical benefits, are five times as likely to file workers' compensation claims, experience seven times as many garnishments and are repeatedly involved in grievance procedures."

According to Willard, both public and private employers should be con-



# KLUKWAN, INC.

P.O. Box 2077, Juneau, Alaska 99803 (907) 789-7361



May 11, 1987

Representative, Dave Donley, Chairman  
Labor & Commerce Committee  
P.O. Box V  
Juneau, Alaska 99811

RE: HB-283 An Act Prohibiting Drug Testing

Dear Chairman Donley and Members of the Committee:

During the past twelve months, Klukwan, Inc. and its subsidiaries have instituted a drug and alcohol policy that we feel has been very successful. The spirit of the policy is set forth in the following two paragraphs, an excerpt from our Employee Handbook.

"To help insure a safe, healthy and productive work environment for the employees of Klukwan, Inc. and its subsidiaries, (hereinafter refer to collectively as "Company") and others on Company property, to protect Company property and assets, and to assure efficient operations, the Company has adopted a Policy on drugs and alcohol."

"It is the Policy of the Company to maintain its property and provide a working environment that is both safe for our employees, including others having business with the Company or on Company property, and is conducive to high and productive work standards. This policy restricts certain items and substances from being brought on or being present on Company property, and prohibits Company employees from having in there systems detectable levels or identifiable traces of certain drug or other substances."

Part of our policy is to require a drug screen urinalysis as part of the pre-employment procedure. If an applicant should fail the test a second test may be taken after thirty days.

Another area that requires a drug screen test and a blood alcohol test is if an employee is injured on the job to the extent that medical attention is required or

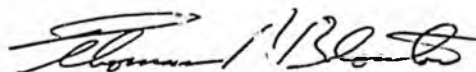
Representative, Dave Donley, Chairman  
Labor & Commerce Committee  
May 11, 1987  
Page 2

in the event that an accident results in the  
destruction or loss of company property.

Klukwan, Inc. and its subsidiaries has nearly five  
hundred employees in Southeast Alaska. Our employees  
have accepted the drug and alcohol Policy. The work  
they perform can be hazardous and each employee is  
entitled to the safest working conditions that can be  
provided.

For over a year industry has made significant progress  
to eradicate drugs from the work place. House Bill-283  
is a substantial step backwards. Legislation that  
prohibits drug testing will significantly impair  
industries fight against illegal drugs, and makes it  
more difficult to provide our employees with safe  
working conditions. We ask that this proposed  
legislation not be approved.

Very truly yours,



Thomas P. Blanton  
Vice President,  
General Counsel

TPB:skl



## GREATER SITKA

## Chamber of Commerce, Inc.

DATE: May 7, 1987

TO: ~~Chairman~~  
House Labor & Commerce Committee  
Alaska State Legislature

Committee Members:

Koponen  
Boucher  
Davidson  
Ellis  
Furnace  
Menard

RE: HB 283 -- Employee Drug Testing

FROM: Roger L. Hames, President  
Greater Sitka Chamber of Commerce

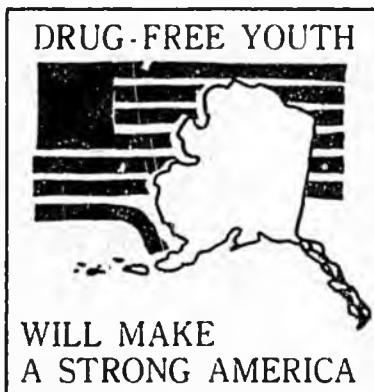
The Greater Sitka Chamber of Commerce Board of Directors opposes HB 283 and urges you to drop this bill from consideration. Due to the excessive costs to the employer from lost production (from physical and functional absenteeism and premature mortality from accidents at the workplace, particularly in industrial operations) and due to the skyrocketing costs of employee medical, we believe the employer has the right to exercise prehire physical testing which includes screening for alcohol and drug abuse. Many of the companies in business today have contractual or moral obligations to provide employees with rehabilitation for alcohol and drug abuse. Because of this significant cost, both in dollars for insurance fees and lost time, we believe the employer has the right to protect himself from these excessive costs by requiring prehire physical testing if he so desires.

We also believe that it is an employee's right to be assured that individuals working alongside of him are in good health and of clear mind.

cc: Senator Dick Eliason  
Representative Ben Grussendorf

# ALASKANS

## for Drug-Free Youth



VOL. 1 NO. 1

Newsletter

November 1987



First Lady Nancy Reagan hugs Lynda Adams, our Alaska State Networker, after her address at the National Federation of Parents for Drug-Free Youth Conference Oct. 10-14, 1982 in Washington D. C.. To our First Lady we extend our continued "thanks" and appreciation!

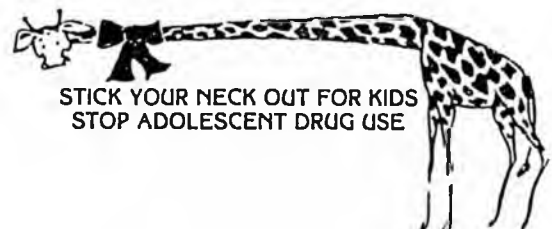
With a grant from Action, ALASKANS FOR DRUG-FREE YOUTH rented an office, hired a secretary, obtained an 800 phone number and opened for business on September 1.

The goal of ALASKANS FOR DRUG-FREE YOUTH is to form a network of parents and other caring people across Alaska who are willing to work together through every facet of their community to send a clear message to our youth of No drug use, including alcohol, and to be appropriate role models for this goal.

The office will provide current information on drugs in the form of books, pamphlets, videos and tapes; work with schools to update the education of children concerning drugs; provide assistance with updating libraries statewide with current drug information; provide important contacts on National and State level for information, and help provide local referral support for parents whose children are involved with drugs.

The pleasant voice on our end of the phone is Judy Crellin, our able secretary. Judy is our only paid employee, but she has quickly joined after hours in volunteering her time and talents. We really do appreciate her especially since she is the only person in our office to master our computer!

Anyone interested in volunteering for the center, or in learning more about ALASKANS FOR DRUG-FREE YOUTH may call 247-CARE in Ketchikan, or toll-free 800-478-CARE from anywhere in Alaska; or may write in C/O P.O. Box 8515 Ketchikan, Alaska 99901.



Dear Concerned Alaskans,

For the past six years, Ketchikan Families in Action has been in existence as a group of volunteer parents who endorse and encourage drug-free youth through community awareness and education. We are non-profit, tax-exempt volunteer parent group organization under the umbrella of the National Federation of Parents for Drug-Free Youth.

We are currently the recipient of a grant from ACTION, the National Volunteer Agency to develop other volunteer drug education and awareness parent groups in the state of Alaska and to form a network of concerned parents for drug-free youth across the state.

We have established a statewide office called "Alaskans for Drug-Free Youth which is located in Ketchikan and is serving all Alaskans through an 800 statewide toll-free number. Parents with concerns for drug-free youth and those wishing to form a community group such as ours may call us toll-free within the state of Alaska at 800-478-CARE (2273). We are able to send you a packet of information and will also be able to do training workshops for those wishing to form a parent volunteer community groups. In the Ketchikan area only, our phone number is 247-CARE (2273). Our office is open from 10:00 AM to 4:00 PM Monday through Friday. Our phone line will be operable 24 hours a day manned by volunteers.

With this grant we will be producing a quarterly newsletter sharing the latest information as well as events and ideas happening in other Alaskan communities. Our office is developing a library of resource information which will consist of books, pamphlets, videos and audio tapes. Information on National initiatives can also be obtained through our office on such programs as Safe Homes, Operation Prom/Graduation, Just Say No Clubs, Youth to Youth, NFP Reach Training, and the Red Ribbon Campaign.

Parents are a vital part of the prevention process. Please contact our office for more information either at 800-478-CARE or by writing to Alaskans for Drug-Free Youth at P.O. Box 8515, Ketchikan, Alaska 99901. Let us know if you would like to receive our newsletter. We are anxious to work with you for our Alaskan youth.

Sincerely,

*Lynda Adams*  
Lynda Adams  
Executive Director  
Alaskans for Drug-Free Youth

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If you like our newsletter send in your membership soon to get the next issue.

ALASKANS FOR DRUG-FREE YOUTH  
Box 8515  
Ketchikan, Alaska 99901

A tax exempt non-profit organization  
We welcome contributions in any amount

Name \_\_\_\_\_

Phone \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Dues (per year) INDIVIDUAL \$20 FAMILY \$25 GROUP \$35 SENIOR CITIZEN/YOUTH \$7.50

When you join AFDFY by sending in your membership/donation, you are supporting the work we are doing to promote drug-free ideals for our youth. With your membership, AFDFY can offer you: newsletters, networking information, legislation updates, resource materials, speakers, and our 24 hour toll-free help line.

# Parents From Across the Country Meet in Nation's Capitol to Fight Drugs

Washington, D.C. - Parent Group Leaders from all 50 states and Guam recently came together for a three and a half day training seminar sponsored by the National Federation of Parents for Drug-Free Youth (NFP) in Washington, D. C. Attendees included the NFP's State Networkers, Legislative Liaisons and Youth Board. Key officials from the Office of Substance Abuse Prevention, the U.S. Department of Education, the Drug Enforcement Administration, ACTION, Congress and numerous state groups presented workshops for the participants. The workshops provided valuable information on a wide range of topics including lobbying, legislation, networking, fundraising and communications.

A coalition luncheon brought together over twenty organizations in the field of drug abuse prevention. Dr. Donald Ian Macdonald, Special Assistant to President Reagan for Drug Abuse Policy, gave the lunchtime address.

A highlight of the seminar was the performance by the group Randy James and Northwind of their song "You Don't Have to Get High in America to Get By in America." The song has been adopted as the anthem of the NFP.

Founded in 1980, the NFP is a non-profit organization committed to raising a generation of drug-free youth. Its principal objective is to assist in the formation and support of parent and youth groups in communities across America to eliminate drug and alcohol use among children and adolescents. First Lady Nancy Reagan serves as its National Honorary Chairman.

Attending from Alaska were:

Lynda Adams (Ketchikan), Alaska Networker for NFP, and Bobi Trani (Juneau), Legislative Liaison for the NFP. Important contacts were made at this training session by Lynda and Bobi to aid in the networking and legislative efforts. They also had important separate meetings with Nancy Murkowski, head of Congressional Families for Drug Free Youth and with Catherine Stevens, wife of Senator Ted Stevens.

## CONFERENCES HELD



Don't just try it  
one time for the  
fun of it. Some have  
died because they  
thought Cocaine was  
a "safe" drug.

Lynda Adams and Bobi Trani represented us November 8-11 in Los Angeles at the White House Conference for a Drug Free America. This conference represented an opportunity for citizens to share their ideas and experiences in order to more vigorously and directly attack drug abuse at all levels - local, state, federal and international. The primary purpose of the Conference is to gain a more thorough understanding of the nature and extent of this problem, and by working together to develop the most effective national strategies to help make America drug free. After six regional meetings, the national conference will be held in Washington D. C. and the insights learned from both the regional and national conferences will be incorporated into a final report to the President and Congress.

Also, attending the White House Conference from Ketchikan were Dick Callentine, Private Counselor and Don Pennington, Vice Principal of Ketchikan High School. Following the conference all four representatives attended Dr. Forest Tennant's Fitness for Duty and Rapid Eye Test Training. Look forward to more information on this in the next newsletter!

# WHO IS RESPONSIBLE FOR THE FUTURE OF OUR COMMUNITY?

media persons from television, radio and print  
juvenile court probation officer  
youth-serving agency personnel  
parent organization leaders  
medical service providers  
social service providers  
school administrators  
school counselors  
business people  
senior citizens  
city officials  
volunteers  
ministers  
teachers  
parents  
police  
youth  
YOU!

## "JUST SAY NO" - Bobby Heard comes to S. E.

Juneau schools were the scene of a week long anti-drug blitz recently, culminating in a public "Just Say No" rally.

Bobby Heard, a University of Texas student, and nationally known "Just Say No" trainer was the keynote speaker. "Just Say No" pledges collected from students during the week were turned in to Mayor Polley of Juneau, who mailed them to First Lady Nancy Reagan.

The pledge is simple: "I pledge to lead a drug-free life. I want to be healthy and happy. I will not use alcohol. I will not use tobacco. I will say No to illegal drugs. I will help my friends say No. I pledge to stand up for what I know is right."

Bobby also spoke to three secondary schools and conducted an anti-drug workshop for Teens. He started this movement in Texas and has traveled around the Nation helping establish "Just Say No: clubs.

In Ketchikan, Bobby Heard spoke to the three secondary schools and gave a "Just Say No" Workshop for 100 Teens. The training session dealt with how older students can effectively go into the elementary schools and talk to the students about being Drug Free. The younger students are very impressed to think that the "older" students care about them.

We know that together, they can make a positive difference. Dr. Donald Ian Macdonald, White House Drug Consultant declares: "The importance of this new movement of young people cannot be overestimated. No other generation has had to cope with so much peer pressure at so young an age. But those kids who do learn to handle peer pressure and think for themselves may well be the strongest, most responsible, finest youngsters that we have seen in this Nation."

## N.F.L. ADVISOR PRESENTS WORKSHOP

Dr. Forest Tennant was in Ketchikan September 8 and 9 for a series of talks to teachers, parents, youth, physicians, employees and police.

Dr. Tennant is Executive Director of Community Health Projects, Inc., a drug abuse treatment center. He is also Associate Professor, UCLA School of Public Health, Drug Advisor for the NFL, Drug Abuse Consultant for the Los Angeles Dodgers, California Highway Patrol and the California Department of Justice.

The main theme of his talks was how drugs can alter brain chemistry and ruin lives. He explained that the brain produces chemicals called neurotransmitters. These chemicals may be replaced by drugs such as cocaine, marijuana, alcohol and nicotine. When use of these drugs is discontinued the brain may not be able to return to producing neurotransmitters at the former level. This will cause the person to function below par. The replacement of the neurotransmitters by drugs is part of the addiction process.

Drugs in the workplace workshop was the subject of Dr. Tennant's talk to employers. He discussed the need for pre-hire urine testing and mentioned that random testing was not a good idea. He urged businesses to help the impaired employee get treatment with the option of returning to his job when clean.

Dr. Tennant described the Alaska legal ruling that marijuana can be used in the privacy of one's own home as archaic. "It was passed out of ignorance and has harmed a lot of people," he said.

Dr. Tennant stated that a community response to drug use should be multifaceted, including drug education, testing before hiring, early identification, prevention, caring treatment, and some hard discipline.

### VISITORS TO OUR OFFICE

NANCY MURKOWSKI, head of Congressional Families for Drug Free Youth, took time when she was in Ketchikan recently with Senator Murkowski, to stop by and see our new office in the Prospector Mall.

BOBBY HEARD, "Just Say No" Sophomore from the University of Texas, visited with us while he was here for his training sessions on how to form "Just Say No" Clubs.

REP. ALICE HANLEY (Anchorage), stopped by while she was in Ketchikan. She attended Dr. Forest Tennant's workshops, as did Walt Furnace (Rep. - Anchorage).

BRIAN KELLY, associated with Milam's in Juneau, took a few minutes during his busy travel schedule to stop in. He brought us copies of UNDER THE INFLUENCE by James R. Milam & Kathryn Ketcham. Our "thanks" to you Brian!

# RESPONSIBLE DRINKING . . . AN IRRESPONSIBLE CONCEPT

by Corporal Ed Moses,  
Missouri State Highway Patrol

According to the U.S. Surgeon General's 1980 survey, every age group is enjoying better health . . . except for those between 16 and 24. In fact, the death rate for this age group has increased significantly in the last 10 years!

The single biggest killer of our 16-to-20 year-olds is accidents. And the biggest cause of accidents is alcohol.

Some law enforcement agencies in an effort to address the problem, have endorsed or promoted "responsible drinking groups." On the surface they may sound good, but problems exist with the philosophy behind the responsible drinking concept.

Our young drivers frequently violate the speed limit; however, never has there been any department conducting or endorsing programs that encourage safe driving techniques at higher speeds. Another defect in the philosophy is with the term itself . . . responsible drinking. How does one teach a teenager to break the law responsibly? All drinkers believe they drink responsibly already; it is always the "other guy" who causes the problems.

A case in point was a 16-year-old girl who defensively told a teacher she was a responsible drinker; she only drank between six and 12 beers at the weekly parties. The shocker is that the majority of the junior class nodded their head in agreement to her definition of responsible drinking.

Some specific problems with the responsible drinking concept are:

1. Prior to age 20-22, a person can become an alcoholic 10 times as quickly as he would had he waited until that age to drink. This fact, plus the current drinking trend of our young, helps explain that a third of our 10-million alcoholics are teenagers.

2. The threshold of impairment is estimated between 0.03% and 0.05% (one to three beers, depending on size), with everyone being impaired by 0.05%. The attention has been on drunk drivers, yet one to three beers means the driver is two to six times more likely to be involved in an accident.

3. We tell teens when they have had too much to drink (0.03% to 0.05%), and then tell them to use good judgment in driving, riding with impaired drivers, making social decisions, etc. The problem is this: dexterity is the second area of the brain affected by drinking; the first areas to be affected are inhibitions and judgment. So, what we have is a relatively new driver, drinker, socializer, trying to make good decisions with an inexperienced impaired brain.

4. Some adults believe if we accept the fact that teens are going to drink anyway, and cater to that belief, we have helped to avoid other problems such as accidents, use of other drugs, etc. Some organized groups propose signing a contract with children. But, this only lulls the parent into a false sense of security that a signed piece of paper in a dresser drawer will have more pressure on a teen than his peers in a party atmosphere. Look at the contract from the teens' perspective. Their parents, in writing, just told them it is OK to drink . . . just don't drive or ride with someone under the influence.

One such parent thought he had guaranteed a safe party by making the teens promise "no drugs and no drunkenness" before buying them the keg. The parent even supervised the party. A teen leaving the party had an accident, which seriously injured him and killed two of his friends. One of the dead was carrying nearly \$1,000 in cash, reportedly money from drug sales at the party.

We in law enforcement must also be careful in how teens read our signals. Surveys of police officers in DWI schools reflected that most officers will ticket teen drivers for doing 10 miles per hour over the speed limit. However, very few officers will ticket minors for possession of alcohol. Most say they make them pour out the alcoholic beverage, talk to them, and then send them on home. By doing this we are telling teens, and society, that 10 miles over is much more serious than drinking, which statistics indicate is not true.

5. "Responsible use" promoters tend to zero in on drunk driving, misunderstanding or ignoring the other problems drinking imposes on teens.

. . . alcoholism, murder, suicide (a 300% increase in the last 10 years), increased sexual disease, unwanted pregnancies, etc.

The bottom line is this: The parent loves his child in such a way that the biggest concern is if the child will be hurt or killed, not how. Those with less commitment to the individual child attack the problem with an idea (responsible drinking) that will only magnify a problem in another area.

While some efforts are well intended, let us not "kill our kids" in kindness." Instead, as actress Carol Burnett said, "Sometimes you have to love your children enough to let them hate you." They will love you later for it.

Ed Moses is a Sergeant with the Missouri Highway Patrol. He is a member of the Board of Directors for Drug Alcohol Tobacco Education the educational arm of Christian Civic Foundation of Missouri, and he is a past Chairman of the Board of Missouri Federation of Parents (MFP). This article is reprinted with grateful acknowledgement to MFP.

## WE NEED YOUR HELP!

Please indicate any of the following areas in which you are willing to assist.

- Join/help organize a parent group in your neighborhood
- Speakers Bureau
- Fund-raising
- Clerical Assistance
- Legislative Support
  - Testimony
  - Letter Writing
  - Phone Campaign
- Youth Development Activities
- Drug Education
- Public Relations
- Graphic Arts
- Media
- Review Literature
- Telephone Tree
- Report "Do Drug" Messages (T.V., Radio, Movies, Music)
- Liaison with organizations and/or agencies
- Contact Churches
- Newsletter Mailing
- Journalist
- Photographer
- Printing
- Courtwatch



# COMMUNITY PARTICIPATION



Prevention of drug abuse before it becomes a problem for an individual is the best solution. The individual, the family, the educational system, and government and community agencies all have a role in drug abuse prevention.

Families and educators can help individuals develop the abilities and attitudes needed for a healthy lifestyle. These include self-confidence, self-esteem, social skills, trust, and the ability to develop and achieve realistic goals.

Individuals and community groups need to educate others about drug abuse and promote positive action on the local level.

Government agencies have the responsibility to develop policies and programs that promote healthy attitudes toward drugs. They can fund research into the causes of abuse and give special assistance to disadvantaged groups. Community agencies are able to provide help to individuals on the local level.

## Bored... and Drug-Free?

Start a Youth to Youth organization. Youth to Youth is a positive peer pressure organization. It started out in Columbus, Ohio and has spread out all over the Nation including Ketchikan, Alaska. Here, in Ketchikan, we have done a large variety of things. We raised money and attended the National Youth to Youth Conference; put on our own mini-conference and have lots of fun including lock-ins, dances, movies, and our own PSA's over the radio. So, if you're bored, drug-free, and want to have lots of fun, start a "Youth to Youth," or a drug-free fun organization.

Katherine McGee  
Ketchikan Teen

**OPERATION PROM GRADUATION** - a guide to having a fun, drug-free evening. Order from National Federation of Parents for Drug-Free Youth, 8730 Georgia Ave., Suite 200, Silver Spring, Maryland 20910

Members: \$4.00    Non-Members \$5.00

## VOLUNTARY DRUG TESTING

The Sitka School Board voted, without objection, to continue and expand the voluntary drug testing program, which was started last year for the wrestling and basketball teams. The program will now include boy's and girl's basketball, volleyball, wrestling and track and field.

The program allows athletes to voluntarily sign up for random urine testing to check for drug and alcohol use. Proponents say it gives young athletes an excuse to resist peer pressure and refuse drugs.

School Superintendent Art Woodhouse said he wanted to give new teacher advisors and coaches a chance to study the plan before expanding to more activities.



## JOIN THE RED RIBBON CAMPAIGN

sponsored by the National Federation of Parents for Drug-Free Youth annually, Pick a week - buy lots of red ribbon & pins - give them to everyone to wear for DRUG FREE YOUTH. People really notice and it doesn't cost much.

## Ketchikan Community Health Fair

On September 26th. & 27th, Ketchikan participated in a "well person clinic". People could get their vital signs checked, along with vision and hearing testing. In one area breast exams were done, with training to help detect cancer.

Families in Action had a table with informative pamphlets, books, bumper stickers, buttons and red ribbons. There was also a display wall with a decision tree and large posters to educate about the hazards of drug use.

This year four local groups coordinated an educational viewpoint directed towards Youth. Ketchikan Youth Services, Ketchikan Teen Pregnancy Coalition, Life is For Everyone, and Ketchikan Families in Action set up a room with copies addressing how just saying "NO" could help young people in a variety of situations to stay healthy. Free popcorn was given out. We displayed a decision tree that shows the effects of adverse behavior on a person as opposed to just saying "NO". The adverse effects side of the tree is weighted down and unhealthy looking.

We are excited that so many groups of interested people can agree on the importance of teaching our young people about high self esteem and the idea that saying "NO" can be the best answer.

We encourage you to be visible with our message wherever large groups of people gather. Set up your table and listen to the questions...



## DRUGS DESTROY DREAMS

### *SAFE HOMES - A Pledge for Parents*

This is a program to encourage "Peer Pressure and Communication Among Parents". The pledge parents sign states: I will not allow:

1. Parties in my home when I am not there.
2. Youth to consume alcohol in my home.
3. Use of illegal drugs in my home.

The list of names of the pledge signers are mailed to Safe Homes members and is published in the newspaper so that parents may know who has a safe home.

In Ketchikan, the High School and Junior High include the pledge in their mailing at the beginning of the year to parents.

The Ketchikan Lions Club donates the cost of the printing. Samples of the pledge are available from our ALASKANS FOR DRUG FREE YOUTH office.

We encourage all parents with school-age children to participate. If you would like to start this program in your community contact us for more information.

## HUGS & KISSES

We feel so good when we think of how much help many of our local fraternal organizations and local businesses have given us through the years.

SEAMART - a local grocery store is using their grocery bags to help spread the message about where to get help for drug abuse. Printed on their grocery bags are the phone numbers of places for information, Youth and Adult Programs, Activities, Treatment and Counseling. We appreciate their contribution in the fight against drug abuse in their Ketchikan and Sitka communities.

Our local ELKS CLUB 1429 has been such a bunch of good guys...they recently contributed \$200 for printing of stationary & flyers and they have also paid for bumper stickers.

ALASKA AIRLINES have helped us many times in transporting our speakers, and with special allowances with tickets to our Alaskan Networkers.

Our local LIONS CLUB have underwritten the cost of our Safe Homes pamphlets and the SCHOOL DISTRICT paid for their mailing to all our Junior and Senior High School parents.

MCDONALDS was great, as usual, when we had our "Just Say No" Day. They had agreed to provide lunch & drinks for 75 participants. When we had a larger than expected group, on short notice, with one phone call just before lunch, they came through with 110 lunches!

MADISON HARDWARE has been great to us for so long and we really appreciate them. They now have an abundance of copy paper for their machine and their phones ring again with "Hardware" business, since we have our office open. Thanks Bob!

A big "THANK YOU" from ALASKANS FOR DRUG-FREE YOUTH to Everyone!!



**FOOD FOR THOUGHT:** According to 'American Association of School Administrators, in the June 15, 1987 issue of Leadership News, the USA has highest rate of teen drug use of any industrialized nation.



**HUGS  
NOT  
DRUGS!**

## A PSYCHIATRIST'S VIEW ON MARIJUANA

In my experience there is only one certain way to be cured from marijuana smoking. The user must be totally isolated from the drug for a minimum of three months. Only after a period of sustained abstinence will the user become aware of the profound effects the drug has had on him, and at the same time, become free of it's addictive effects.

The inability of the user to perceive himself or gain insight into what has happened to him over time is one of the truly pernicious and remarkable aspects of the effects of the drug. Talking rarely works; forthright decisive action by someone willing and able to take responsibility for the fate of the user is necessary. The chronic and heavy, and probably even moderate user, cannot take responsibility for himself.

How the person or persons exercise their responsibility to the user depends on the age of the user, his life circumstances, the severity of the retrogressive changes and deterioration of the user, and so on. I recommend sparing no effort whatsoever in achieving this objective. Searches are in order, use of police to back up parental authority if necessary, hiring a companion for the user, confinement to the home and hospitalization are all methods that I have recommended and have seen used.

Someone who cares must intervene, totally, consistently and with unrelenting perseverance. Efforts short of an all-out effort generally fail.

In summary, I believe chronic marijuana use affects judgment, motivation, perception, cognition, and will. In addition, the drug causes an overall deterioration of personality; it leads to an estrangement from the mainstream of life; it lowers performance in all areas and it leads to a social phenomenon in which users bond together into both loose and tightly bound subsocial groups. The effects on the user's family life is frequently devastating.

By Harold M. Voth, M.D., Senior Psychiatrist and Psychoanalyst, The Menninger Foundation, Topeka, Kansas; Associate Chief of Psychiatry for Education, Topeka Veterans Administration Medical Center, Topeka, Kansas; Clinical Professor of Psychiatry, School of Medicine, University of Kansas, Kansas City, Kansas; Rear Admiral, Medical Corps, United States Naval Reserve. Reprinted with permission.

## LEGISLATIVE UPDATE

JUNEAU

By Bobi Trani

As the Legislative Liaison for Alaska representing Alaskans For Drug Free Youth and the National Federation of Parents for Drug-Free Youth, the focus for this year is modernizing or re-aligning our marijuana possession law to conform with the rest of the United States.

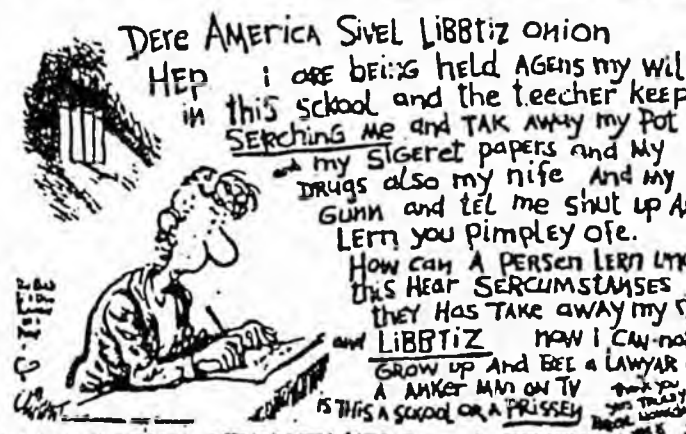
As an educational and informative update on the new medical and scientific information on marijuana, Sandy Spargo and I write a weekly "Line on Pot" to all legislators, newspaper editors, key commissioners and the Governor. We have met with varied reactions, which was expected. On the positive side, Representative Bill Hudson has agreed to send the "Lines on Pot" to all legislators under his cover letter. Senator Jan Faiks has asked that all legislators and committee representatives receive a copy. Senator Jim Duncan of Juneau has written stating that he will vote to recriminalize marijuana when it reaches the floor. Also, adding their names to the House Bill 55 are Representative Fran Ulmer and Representative Bill Hudson.

Other legislators have written to respond to specific materials included in the "Lines on Pot", and have thanked us for writing, but have not committed themselves as of yet. We are feeling like we are making a difference, and will continue to personally contact as many legislators as possible this winter.

Sandy and I are planning to have breakfast viewings of the videos Marijuana: Myths and Misconceptions, and "America Hurts" for legislators when the session begins.

## Sunrise Opinion

Individual comments on the page after the first column of text that are not necessarily those of The World-Herald.



Oaaha World Herald, January 22, 1988

## MARIJUANA BILLS HEARINGS HELD

The Alaska House Judiciary Committee held S.E. Teleconference hearings that began October 23 in Ketchikan on H.B. 283 and H.B. 55.

House Bill 283 "An act prohibiting certain employees from testing employees for drugs and other substances" would prohibit any pre-hire drug testing of any employees except peace officers, fire fighters or operators of emergency vehicles.

The insurance company for Alaska Loggers Association testified to the importance of drug testing for their companies and of their concern about seven fatalities this year. Long Island Logging Company and Louisiana Pacific Co. both testified that they use pre-hire drug testing, and have greatly improved their safety record as well as their productivity.

Ketchikan Families in Action testified against the bill. They believe pre-hire drug testing should be required for those who may injure others if impaired by drugs, ie. heavy equipment operators, school and public bus drivers, airplane pilots, and taxi drivers etc.

Dr. Forest Tennant testified as an expert witness. He said that pre-hire testing and testing for probable cause during employment is necessary for safe business and has been legally upheld across the Nation. There should be an opportunity for the employee to recover his job when he is drug-free.

Larry Taylor, of Taylor Labs in Sitka, testified as to the accuracy of most reputable labs now. It took a few years for the good labs to come forth and the bad labs to disappear.

Three people testified for the bill as an invasion of privacy; a union representative, a teacher, and the Alaska President of the American Civil Liberties Union.

HOUSE BILL 55 - making it illegal to possess any amount of marijuana in your home.

Ketchikan High School Principal, John Holst, Police Chief Dan Anslinger, concerned parents, a Petersburg Minister and Ketchikan Families in Action all testified in support of this bill.

Their concerns were that the right of privacy transcends the home influencing the children, spouse, friends, schools and the community. Although enforcement will be difficult and not a priority, it is the message that the law will give. Potency of the drug has increased greatly and research has now documented the many harmful effects and the reasons for them.

House Bill 283 - was further examined when Rep. John Sund spoke to the Alaska Timber Insurance Exchange, a group made up mostly of Logging Companies in S.E. Alaska, and associated services.

The group expressed their concern with the bill stating that it really would prevent them from maintaining a safe environment for their employees and lowering Workmans Compensation Rates. What they need is help from the state to set adequate guidelines for testing and to certify laboratories to do the urine tests.

There was testimony that many employees want drug testing done to provide a safe place for them to work. A banker spoke of the problems caused by an employee using drugs in a bank, who is working with thousands of dollars.

Rep. Sund concluded the meeting by saying that he would modify the bill and is interested in all testimony. He believes that pre-hire testing can and should be done by the logging industry if it is done as Long Island Log and Louisiana Pacific Pulp Mill are now doing it.

If you have input on this bill send it to the House Judiciary Committee.

\*\*\*\*\*

This item appeared in the Fairbanks News-Miner the week the House Judiciary Committee held hearings in Ketchikan on re-criminalizing marijuana.

"It hasn't been easy for some state employees to abide by the new rule prohibiting smoking in the state courthouse.

"One frustrated smoker made this ironic observation:

"This is the only state I know where it's legal to smoke pot in your house, but illegal to smoke cigarettes in the courthouse."

## COMMUNICATE - your opinion counts!

Yes, your opinion does count. If all of us in Alaska who care about Drug Free Youth would get in touch with our legislators, we could turn things around.

Personally written letters are rated most impressive - make them clear, brief and to the point. Include personal knowledge and examples, and include the number of the bill you are concerned with.

In Alaska we often have the opportunity to speak to our legislators in person. If you can make an appointment and state the piece of legislation you will speak about, your legislator can be prepared to talk with you.

There is a rule of thumb among legislators that for every person who calls, there are ten who feel the same way, and for every person who bothers to write a letter or visit, there are twenty who hold the same opinion. Very often, your contact will alert legislators to a piece of legislation, and the information, insight, and opinion you offer will stick in their minds.

Do not overlook the power of public opinion. THE PUBLIC IS YOU!

Public opinion messages of 50 words or less can be sent free to your state Legislators from legislative affairs offices across the state. They must be signed and written neatly. Please offer your opinions for support or opposition and give bill number.

# Underage cigarette buyers

From the American Lung  
Association of Alaska

On Monday, August 10th, the American Lung Association of Alaska completed an important test. The test was conducted with two school-age girls: a 9th. grader, 14 year old Shelly Klingbell, and a 5th grader, 10 year old Heather Timmerman. Neither were old enough to legally purchase cigarettes. In the first experiment, the 14 years old was instructed to try to purchase cigarettes from a clerk or store attendant. In the second part, the 10 year old was instructed to enter various establishments and attempt to buy cigarettes from a vending machine.

Shelly, age 14, attempted to purchase cigarettes at 49 different stores; she succeeded at 47 of those. Not only regular cashiers, but also assistant managers sold her cigarettes. Surprisingly, out of 49 stores, only 4 of them asked her to produce ID, when she stated that she left her ID at home, 2 of those stores still sold to her.

Heather, age 10, attempted to buy cigarettes from vending machines at 20 establishments, and succeeded 19 times. At only one restaurant did a waitress tell her she could not buy the cigarettes. Heather stated, at first she was nervous, but later in the test, she said, "It is so easy, I don't even think about it anymore, and a lot of the machines are supervised. Heather was surprised, that three of the machines sold not only cigarettes but also candy.

"I was appalled when I found out that many establishments sold cigarettes to minors!" stated an astonished Deborah Williams, Executive Director of the American Lung Association of Alaska. "Something has to be done, this is totally unacceptable," she notes.

"This test proves that the current laws regarding tobacco and minors are inadequate and unacceptable. New legislation must be adopted, which will prohibit the sale of tobacco in vending machines and which will raise the age at which a minor can purchase tobacco to 19," stated Paul Wrzesinske, Public Relations Director of the Lung Association. The current age to legally purchase cigarettes in Alaska is 16.

"Prior to this test we had only anecdotal evidence about how easy it was for people under 16 to purchase tobacco. We wanted to do a more comprehensive test. Originally, we were planning on doing 50 vending machines and 50 over-the-counter sales. We only did 20 of the vending machines because it got to the point where it was so easy for the 10 year old to purchase the cigarettes that we were just wasting money," noted Deborah Williams. "We have definitely proved an important point, and we hope that all Alaskans will join us in improving the laws on this matter." Cigarettes are the #1 preventable cause of premature death and disability in the U.S., and 90% of all smokers become addicted by the time they are 19 years old. Sixty per cent of all smokers start by age 14, studies show. The younger a person starts to smoke, the more likely one is to remain a smoker, smoke more heavily and dies prematurely. "The time to stop the improper flow of cigarettes to children under 16 is now."

## SUPPORT FOR "JUST SAY NO" CLUBS

McDonalds donated 110 free hamburgers, fries & soft drinks at the "Just Say No" training session that Bobby Heard put on for the youth in our community. A big "THANK YOU" from Alaskans for Drug-Free Youth!!

# NORMAL and the Drug Paraphernalia Industry

Playing on the nation's concern about imprisoning students and veterans for smoking a few joints, the pot-smoking constituency established its own lobby in 1971, the National Organization for the Reform of Marijuana Laws with the purposefully-contrived acronym of "NORML" to advance its then hidden agenda—legal pot. (At NORML's 1978 Annual Conference, Keith Stroup, then-executive director of the organization, said "It's time we finally took the honest step to declare to the world: we want legal marijuana.")

Throughout its history, NORML'S literature has minimized, distorted, falsified, and ridiculed emerging evidence from the research community on the harmful effects of this drug.

Although NORML states in its "Official Policy" that marijuana should not be used by children or while driving, the sincerity of this message is at best questionable when one realizes that a substantial amount of NORML's annual budget comes from the multi-million dollar drug paraphernalia industry—producers of an entire line of "kiddie" products (imitation "Frisbee" pot pipes, Practice Grass Kits, Candy Quaaludes, Cocaine Comics, etc.) as well as dashboard pot pipes with plastic tube attached for "no hands" use while driving. NORML's funding is augmented by High Times, the bible of the drug culture which, according to its editor, NORML Advisory Board member, Andy Kowl, was established in 1974 to market drug paraphernalia products to a mass audience.

## BOOKS TO BE AWARE OF:

### **CHOCOLATE TO MORPHINE** by Andrew Weil (Published in 1983)

Dr. Weil is a long time advisory Board member of NORML.

The book's first sentence indicates it is written for teenagers. The publisher says it's also quite popular with school counselors and professionals.

One quote, "Question your parents about the drugs they use. If you can convince them that your drug use is responsible, you may be able to allay their anxiety. Drugs are fascinating because they can change our awareness. Occasional snorting of cocaine in social situations is probably not harmful."

Is High Times magazine still being sold in your community? Current articles can teach your child how to grow Marijuana, and through High Times magazine drug paraphernalia can be ordered by mail.

Ketchikan has a paraphernalia ordinance. However, as long as this magazine and others like it abound, our children can order it all by mail.

Please check your local magazine stands and express your concern to the owners if you find High Times magazine on display.

The brain knows the rules  
The ♥ knows the score  
The brain knows alot  
But the ♥ knows more



# RESOLUTION

## No "Responsible Use"

**WHEREAS**, the National Federation of Parents for Drug-Free Youth acknowledges and accepts alcohol as a drug, and

**WHEREAS**, alcohol is an illegal drug for minors, and

**WHEREAS**, adolescents and young adults are the only age group in the United States whose death rate is increasing, and

**WHEREAS**, the most prevalent causes of death among this age group are accidents, suicides, and homicides, most of which are drug- and alcohol-related, and

**WHEREAS**, the use of all illicit drugs including alcohol (which is an illegal drug for young people), may seriously impair the healthy development of children and adolescents, and

**WHEREAS**, our young people are continuously bombarded with messages to "use drugs," and

**WHEREAS**, parents, due to lack of knowledge, often provide alcohol to young people at teenage parties in violation of the law,

**THEREFORE BE IT RESOLVED** that the National Federation of Parents for Drug Free Youth resoundly rejects any educational, prevention, or treatment program which advocates or condones the "responsible use" of illicit drugs including the use of alcohol by minors and further rejects our tax dollars supporting a "responsible use" message.

Adopted October 1982

### MEMBERSHIP APPLICATION

I, too, believe America's children should be drug-free. I also believe the best way to achieve drug-free youth is by educating parents, children, teachers, legislators, and others in a *nonblaming* way. I want to join this effort. Please enroll me as:

Individual Member-\$15 per year (\$20 outside USA)\*

Two-year Individual Member-\$25 per year (\$35 outside USA)\*

\*All checks must be drawn on American banks.

Group Member-\$35 per year (\$40 outside USA)\*

Grandparent Patron-\$12 (\$18 outside USA)\*

Contribution-\$ \_\_\_\_\_

Individual or Group Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Group Contact Person \_\_\_\_\_

Home Telephone \_\_\_\_\_ Office Telephone \_\_\_\_\_

Amount Enclosed \$ \_\_\_\_\_

Note: Your donation to NFP is tax deductible.

Visa  MasterCard Card No. \_\_\_\_\_

Expiration Date \_\_\_\_\_ Signature \_\_\_\_\_

**NATIONAL FEDERATION OF PARENTS FOR DRUG-FREE YOUTH**

8730 Georgia Avenue Suite 200 • Silver Spring, MD 20910 • (301) 585-5437

Newsletters included with membership

**GOOD GROUPS TO JOIN AND/OR OBTAIN MATERI**

National Federation of Parents for Drug Free Youth  
8730 Georgia Avenue, Suite 200  
Silver Spring, Maryland 20910 (\$15 per year)

Committees of Correspondence  
P.O. Box 232  
Topsfield, Massachusetts 01983 (\$10 per year)

American Council for Drug Education  
204 Monroe Street  
Rockville, Maryland 20850 (\$25 per year)

PRIDE  
100 Edgewood Avenue, Suite 1002  
Atlanta, Georgia 30303 (\$12 per year)

All have catalogs with prices available on request. Committees of Correspondence headed by Otto and Connie Moulton is a great source of information. The Moultons came to Ketchikan about 4 years ago to help us in our efforts toward drug free youth. We love them both and appreciate them for all their help.



**ALASKANS FOR  
DRUG-FREE YOUTH**  
P O BOX 8515  
KETCHIKAN, ALASKA 99901  
PHONE 247-CARE  
In Alaska, Call Toll Free:  
(800) 478-CARE

John & DeDe Sund  
3504 2nd. Avenue  
Ketchikan, Alaska 99901

**FILM PREVIEW**

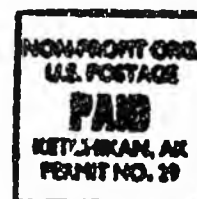
The following videos we have available in our Library.

**AMERICA HURTS: THE DRUG EPIDEMIC** (35 min.) High School/Adults A powerful documentary that examines the frightening, crippling menace of our society's drug use, the ramifications of which create an ever-expanding circle of drug-related death and destruction on international proportions.

Dr. Forest Tennant's NFL Drug Educational Series

1. "My Brain Doesn't Work Like It Used To"
2. "Don't Drop The Ball Again"
3. "Insults And Injuries"
4. "Doctor, I Can't Quit"

**MARIJUANA: MYTHS AND MISCONCEPTION** (90 min.) High School/Adults Robert C. Gilkeson, M.D. reviews the latest findings in drug & brain research, taking the viewer step by step from the chemicals in drugs - alcohol, cocaine, amphetamines, LSD, and heroin - to their alternation of brain cells to the result of those brain cell changes on personality, learning and performance.



**"USERS AREN'T  
THE ONLY LOSE**

# VIEWPOINT

## BUSINESSES AND UNIVERSITIES MUST TEAM TO STOP DRUG ABUSE

**R**ecent court decisions have ruled against intrusive, random drug testing of employees. At the same time, however, many employers are expanding their testing of job applicants.

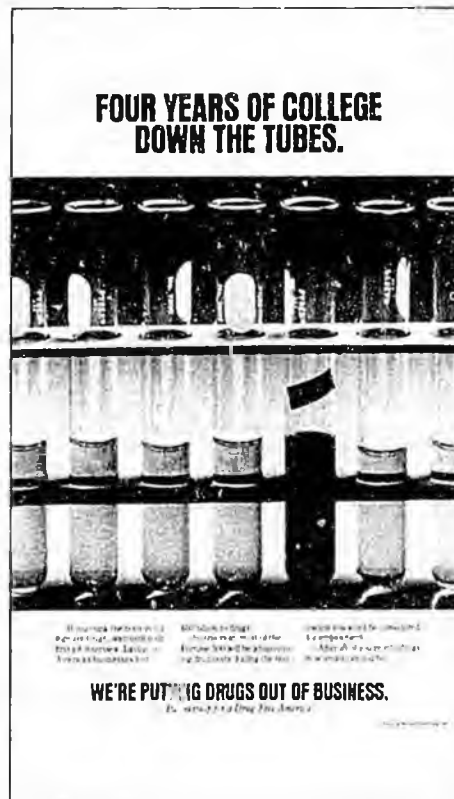
Have these companies finally recognized their social responsibilities? Are they concerned about the billions of dollars spent on illicit drugs? Are they concerned about the impact an individual's drug abuse has on the family, our social structure and future generations?

Maybe. But in all likelihood, the driving force behind the latest concerns of employers in reducing substance abuse among its employees is the bottom line, money.

Alcohol and drug abuse in the workplace is costing American industry more than \$100 billion annually in personal injuries, property damage and lost productivity. Twenty-six to 33 billion of these lost dollars are attributed to drug abuse.

Alcohol and drug abuse in the workplace is often believed to be the real cause of poor performance and quality of services, frequent absenteeism and tardiness, insubordination, threats, poor quality control and product reliability, industrial accidents and other security infractions.

Consequently, while many companies are expanding their Employee Assistance Programs (EAP) and emphasizing preventive and rehabilitative services, nearly 30% of businesses are currently screening job applicants for drugs to lessen the chance that employees will be bringing their problems to the job. Almost half of all businesses — 47.2% — will be conducting screening within two years, and more than 90% of Fortune 500 companies are considering implementing such programs.



**FOUR YEARS OF COLLEGE  
DOWN THE TUBES.**

**WE'RE PUTTING DRUGS OUT OF BUSINESS.**

But should and can American business have additional responsibilities and take a more active stance against drug abuse? Does it have a responsibility to inform students and other applicants of drug testing for new hires and to subtly attempt to discourage drug abuse?

The answer lies in a series of new public service advertisements endorsed by business.

The impetus for this program came about in June 1986. Northrop Corporation's director of college relations, Jim McNeely, sought to determine how best to inform colleges and students that the company would test all applicants for drug abuse. McNeely contacted the career development center director at California State University, Long Beach (CSULB), for input on the issue.

Two days later, 20 employer and university representatives gathered to

discuss substance abuse problems and new applicant testing. Attendees represented such companies as Xerox Corp., Rockwell International, Martin Marietta and Hughes Aircraft.

After sharing ideas, problems and established policies and procedures for three hours, the group was unable to define the difference between "abuse" and "use." While they concluded this eventually would be decided in the courts, three concerns required immediate action:

- The acquisition of current, broad-based statistical information regarding drug testing program implementation.
- A means to provide drug abuse testing information to high school and college students.
- A series of public service ads to communicate the drug testing message to students and applicants.

A subcommittee met early in July and developed a questionnaire to determine the extent of drug testing, and present and future directions. They used the College Placement Council's mailing list to contact personnel responsible for college relations and recruiting in 1,200 council-member organizations. It also sought the placement council's statistical services to tabulate and publish the results.<sup>1</sup>

### Larger Companies Are More Likely to Test for Drugs

According to the survey results, 28.2% of respondents said drug screening, usually including urinalysis, was required of potential employees. Another 20% had plans to adopt the practice within the next two years.

Finer interpretation of the data, however, indicated a large variation between respondents from various industrial classifications. For example, 70% of

## VIEWPOINT

the utilities, including transportation, were already testing, with this figure projected to increase to 86.5% within two years.

In the aerospace industry, which had a 42.9% testing rate, 22 of 28 companies responding (78.6%) indicated that they would be testing within two years. Glass, paper and packaging companies' 40% testing rate would jump to 70%, and building material manufacturers' and construction companies' 38.5% figure was projected

to increase to 76.9% (see Figures 1 and 2).

The survey also said the larger the company, the more likely it is to have a testing program. Many companies are testing not only full-time employment applicants but also potential interns and part-time and temporary employees.

In most cases, employers are informing applicants that a urinalysis is required as part of a physical; 88.6% of survey respondents said they would not hire college-trained applicants who

failed the drug test.

Most employers recognize that alcohol is the major problem in American society today, but it is difficult to test for it. Consequently, marijuana and cocaine were the substances of abuse in most disqualifications (see Figure 3). It is usually personnel or human resources officials who must inform applicants when they have been disqualified (see Figure 4).

The University of California at Los Angeles and CSULB developed bro-

FIGURE 1

### RESPONDENTS WITH DRUG SCREENING PROGRAMS BY INDUSTRIAL CLASSIFICATION

Type of Industry	Respondents Number %*			
	Total	Positive	% Total	% By Type
Utilities—public (incl. transportation)	74	52	37.1	70.3
Chemicals, drugs, & allied products	35	13	9.3	37.1
Aerospace	28	12	8.6	42.9
Petroleum & allied products (incl. nat. gas)	25	11	7.9	44.0
Glass, paper, packaging, and allied products	20	08	5.7	40.0
Research and/or consulting organizations	38	08	5.7	21.1
Metals and metal products	19	06	4.3	31.6
Building materials manufacturers and construction	13	05	3.6	38.5
Electrical and electronic machine and equipment	51	05	3.6	9.8
Banking, finance, and insurance	56	04	2.9	7.1
Merchandising (retail and wholesale) and services	43	04	2.9	9.3
Automotive and mechanical equipment	15	03	2.1	20.0
Computers and business machines	23	02	1.4	8.7
Federal government	11	02	1.4	18.2
Local/state government	05	01	0.7	20.0
Accounting	09	—	—	.0
Nonprofit organizations and educational institutions	11	—	—	.0
Did not respond to classification	21	04	2.9	19.0
*Rounded to nearest one-tenth of 1%	497	140	100.1*	28.2

FIGURE 2

### CURRENTLY TESTING AND IMPLEMENTING TESTING BY 1988\*

Industry	New Testing %		
	Now Testing	Two Years	Two Year
Utilities—public (incl. transportation)	52	12	86.5
Chemicals, drugs, & allied products	13	09	62.9
Aerospace	12	10	78.6
Petroleum & allied products (incl. nat. gas)	11	06	68.0
Glass, paper, packaging and allied products	08	06	70.0
Research and/or consulting organizations	08	06	36.8
Metals and metal products	06	02	42.1
Building materials manufacturers and construction	05	05	76.9
Electrical and electronic machine and equipment	05	11	31.4
Banking, finance, and insurance	04	08	25.0
Merchandising (retail and wholesale) and services	04	05	20.9
Automotive and mechanical equipment	03	02	33.3
Computers and business machines	02	02	17.4
Federal government	02	02	36.4
Local/state government	01	01	40.0
Accounting	—	01	11.1
Nonprofit organizations and educational institutions	—	03	27.3
Did not respond to classification	04	06	47.6
*Rounded to nearest one-tenth of 1%			

# D C C

## Developmental Child Care, Inc.

"The Employee and Family Assistance Company"

WHY DO THESE LEADERS IN EMPLOYEE DEPENDENT CARE ASSISTANCE COME TO DCC FOR THEIR DEPENDENT CARE INFORMATION AND EDUCATION PROGRAMS?

American Management Association  
Aetna Life and Casualty  
Bankers Trust  
Champion International Corporation  
Chase Manhattan Bank  
Clairol  
Crocker / Wells Fargo Banks  
Dow Jones & Company  
E. I. Du Pont de Nemours & Co.  
F M C Corporation  
Gannett Company  
General Electric Credit Corporation

General Re Services Corporation  
I. C. Industries  
Joseph E. Seagram & Sons  
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CIRCLE NO. 19

## VIEWPOINT

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The ads began appearing in periodicals and newspapers in April of this

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

# VIEWPOINT

## BUSINESSES AND UNIVERSITIES MUST TEAM TO STOP DRUG ABUSE

**R**ecent court decisions have ruled against intrusive, random drug testing of employees. At the same time, however, many employers are expanding their testing of job applicants.

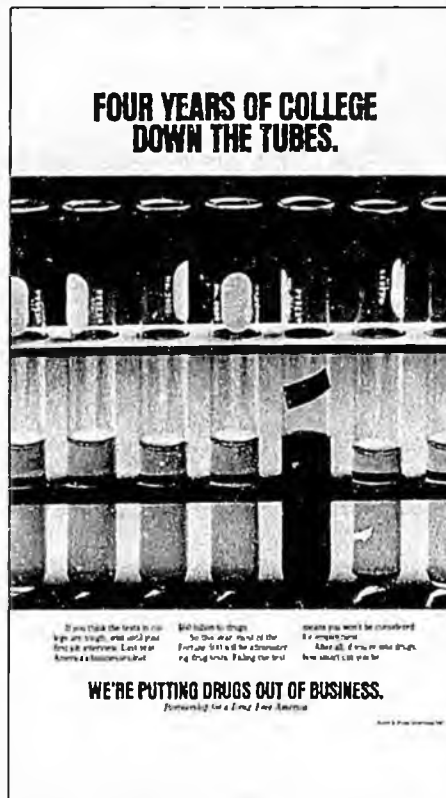
Have these companies finally recognized their social responsibilities? Are they concerned about the billions of dollars spent on illicit drugs? Are they concerned about the impact an individual's drug abuse has on the family, our social structure and future generations?

Maybe. But in all likelihood, the driving force behind the latest concerns of employers in reducing substance abuse among its employees is the bottom line, money.

Alcohol and drug abuse in the workplace is costing American industry more than \$100 billion annually in personal injuries, property damage and lost productivity. Twenty-six to 33 billion of these lost dollars are attributed to drug abuse.

Alcohol and drug abuse in the workplace is often believed to be the real cause of poor performance and quality of services, frequent absenteeism and tardiness, insubordination, threats, poor quality control and product reliability, industrial accidents and other security infractions.

Consequently, while many companies are expanding their Employee Assistance Programs (EAP) and emphasizing preventive and rehabilitative services, nearly 30% of businesses are currently screening job applicants for drugs to lessen the chance that employees will be bringing their problems to the job. Almost half of all businesses — 47.2% — will be conducting screening within two years, and more than 90% of Fortune 500 companies are considering implementing such programs.



**FOUR YEARS OF COLLEGE  
DOWN THE TUBES.**

**WE'RE PUTTING DRUGS OUT OF BUSINESS.**  
Partnership for a Drug Free America

If you take the tests in college you might miss out on a job or an interview. Last year 40% of employers tested for drugs before hiring. But taking drugs in college can hurt you. For every 100 of the Fortune 500 it is estimated 100 drug tests. Taking the test means you won't be considered for a job. After all, if you're on drugs, how can you be sure?

But should and can American business have additional responsibilities and take a more active stance against drug abuse? Does it have a responsibility to inform students and other applicants of drug testing for new hires and to subtly attempt to discourage drug abuse?

The answer lies in a series of new public service advertisements endorsed by business.

The impetus for this program came about in June 1986. Northrop Corporation's director of college relations, Jim McNeely, sought to determine how best to inform colleges and students that the company would test all applicants for drug abuse. McNeely contacted the career development center director at California State University, Long Beach (CSULB), for input on the issue.

Two days later, 20 employer and university representatives gathered to

discuss substance abuse problems and new applicant testing. Attendees represented such companies as Xerox Corp., Rockwell International, Martin Marietta and Hughes Aircraft.

After sharing ideas, problems and established policies and procedures for three hours, the group was unable to define the difference between "abuse" and "use." While they concluded this eventually would be decided in the courts, three concerns required immediate action:

- The acquisition of current, broad-based statistical information regarding drug testing program implementation.
- A means to provide drug abuse testing information to high school and college students.
- A series of public service ads to communicate the drug testing message to students and applicants.

A subcommittee met early in July and developed a questionnaire to determine the extent of drug testing, and present and future directions. They used the College Placement Council's mailing list to contact personnel responsible for college relations and recruiting in 1,200 council-member organizations. It also sought the placement council's statistical services to tabulate and publish the results.<sup>1</sup>

### Larger Companies Are More Likely to Test for Drugs

According to the survey results, 28.2% of respondents said drug screening, usually including urinalysis, was required of potential employees. Another 20% had plans to adopt the practice within the next two years.

Finer interpretation of the data, however, indicated a large variation between respondents from various industrial classifications. For example, 70% of

## VIEWPOINT

the utilities, including transportation, were already testing, with this figure projected to increase to 86.5% within two years.

In the aerospace industry, which had a 42.9% testing rate, 22 of 28 companies responding (78.6%) indicated that they would be testing within two years. Glass, paper and packaging companies' 40% testing rate would jump to 70%, and building material manufacturers' and construction companies' 38.5% figure was projected

to increase to 76.9% (see Figures 1 and 2).

The survey also said the larger the company, the more likely it is to have a testing program. Many companies are testing not only full-time employment applicants but also potential interns and part-time and temporary employees.

In most cases, employers are informing applicants that a urinalysis is required as part of a physical; 88.6% of survey respondents said they would not hire college-trained applicants who

failed the drug test.

Most employers recognize that alcohol is the major problem in American society today, but it is difficult to test for it. Consequently, marijuana and cocaine were the substances of abuse in most disqualifications (see Figure 3). It is usually personnel or human resources officials who must inform applicants when they have been disqualified (see Figure 4).

The University of California at Los Angeles and CSULB developed bro-

FIGURE 1

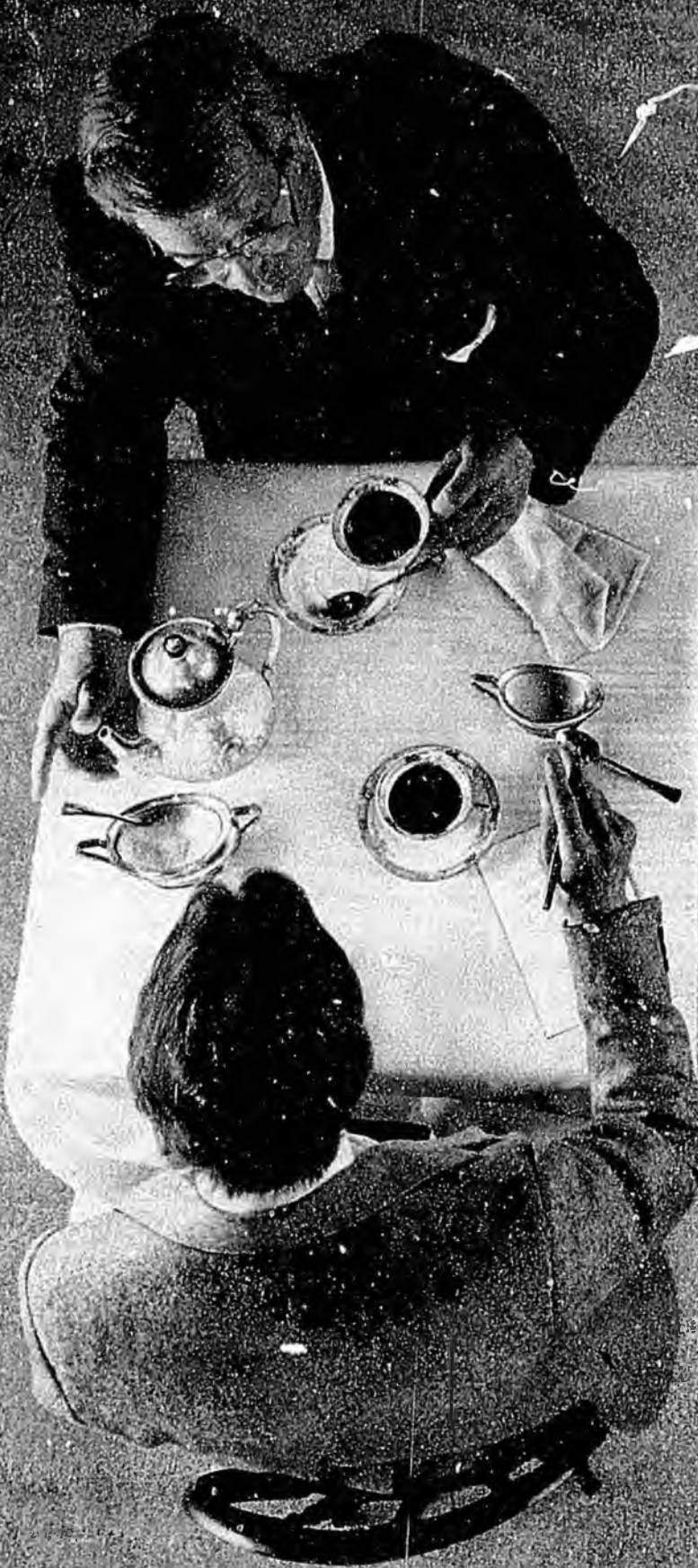
### RESPONDENTS WITH DRUG SCREENING PROGRAMS BY INDUSTRIAL CLASSIFICATION

Type of Industry	Respondents Number % *			
	Total	Positive	% Total	% By Type
Utilities—public (incl. transportation)	74	52	37.1	70.3
Chemicals, drugs, & allied products	35	13	9.3	37.1
Aerospace	28	12	8.6	42.9
Petroleum & allied products (incl. nat. gas)	25	11	7.9	44.0
Glass, paper, packaging, and allied products	20	08	5.7	40.0
Research and/or consulting organizations	38	08	5.7	21.1
Metals and metal products	19	06	4.3	31.6
Building materials manufacturers and construction	13	05	3.6	38.5
Electrical and electronic machine and equipment	51	05	3.6	9.8
Banking, finance, and insurance	56	04	2.9	7.1
Merchandising (retail and wholesale) and services	43	04	2.9	9.3
Automotive and mechanical equipment	15	03	2.1	20.0
Computers and business machines	23	02	1.4	8.7
Federal government	11	02	1.4	18.2
Local/state government	05	01	0.7	20.0
Accounting	09	—	—	.0
Nonprofit organizations and educational institutions	11	—	—	.0
Did not respond to classification	21	04	2.9	19.0
*Rounded to nearest one-tenth of 1%	497	140	100.1*	28.2

FIGURE 2

### CURRENTLY TESTING AND IMPLEMENTING TESTING BY 1988\*

Industry	New Testing %		
	Now Testing	Two Years	Two Years
Utilities—public (incl. transportation)	52	12	86.5
Chemicals, drugs, & allied products	13	09	62.9
Aerospace	12	10	78.6
Petroleum & allied products (incl. nat. gas)	11	06	68.0
Glass, paper, packaging and allied products	08	06	70.0
Research and/or consulting organizations	08	06	36.8
Metals and metal products	06	02	42.1
Building materials manufacturers and construction	05	05	76.9
Electrical and electronic machine and equipment	05	11	31.4
Banking, finance, and insurance	04	08	25.0
Merchandising (retail and wholesale) and services	04	05	20.9
Automotive and mechanical equipment	03	02	33.3
Computers and business machines	02	02	17.4
Federal government	02	02	36.4
Local/state government	01	01	40.0
Accounting	—	01	11.1
Nonprofit organizations and educational institutions	—	03	27.3
Did not respond to classification	04	06	47.6
*Rounded to nearest one-tenth of 1%			



**Mr. Parker planned  
to fire Dave today.  
He took him to lunch instead.**

*Dave was sure this was his farewell lunch. And it was . . . until Mr. Parker took a second look at Dave's record. Great attitude, extra hours, no sick time—and a real way with people. Dave may not be getting the hang of things in accounting, but the way Mr. Parker sees it, he's worth another try—in production.*

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CIRCLE NO. 19

## VIEWPOINT

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FIGURE 3

DISQUALIFICATIONS

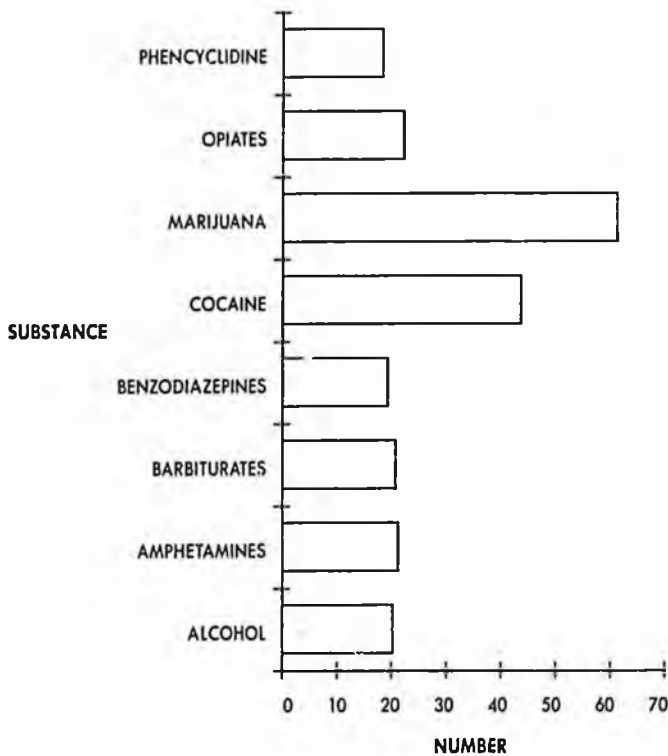
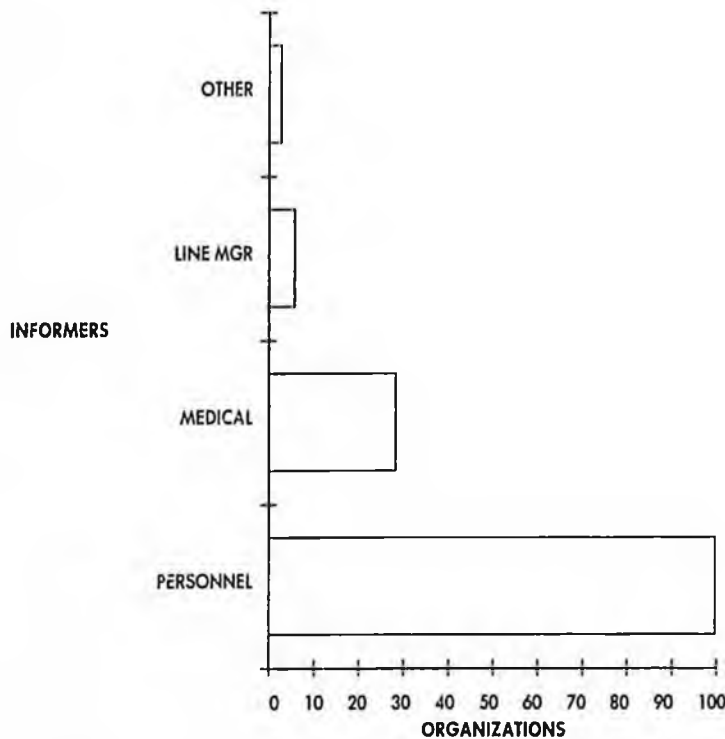


FIGURE 4

DRUG ABUSE



year. The targeted publications ranged from McGraw-Hill Publications and Graduate Engineer to Computer World and PERSONNEL JOURNAL.

The campaign has received the endorsements of the College Placement Council, the American Management Association and the Employment Managers Association. Thus, the committee anticipates expanding the campaign to radio and television spots as appropriate.

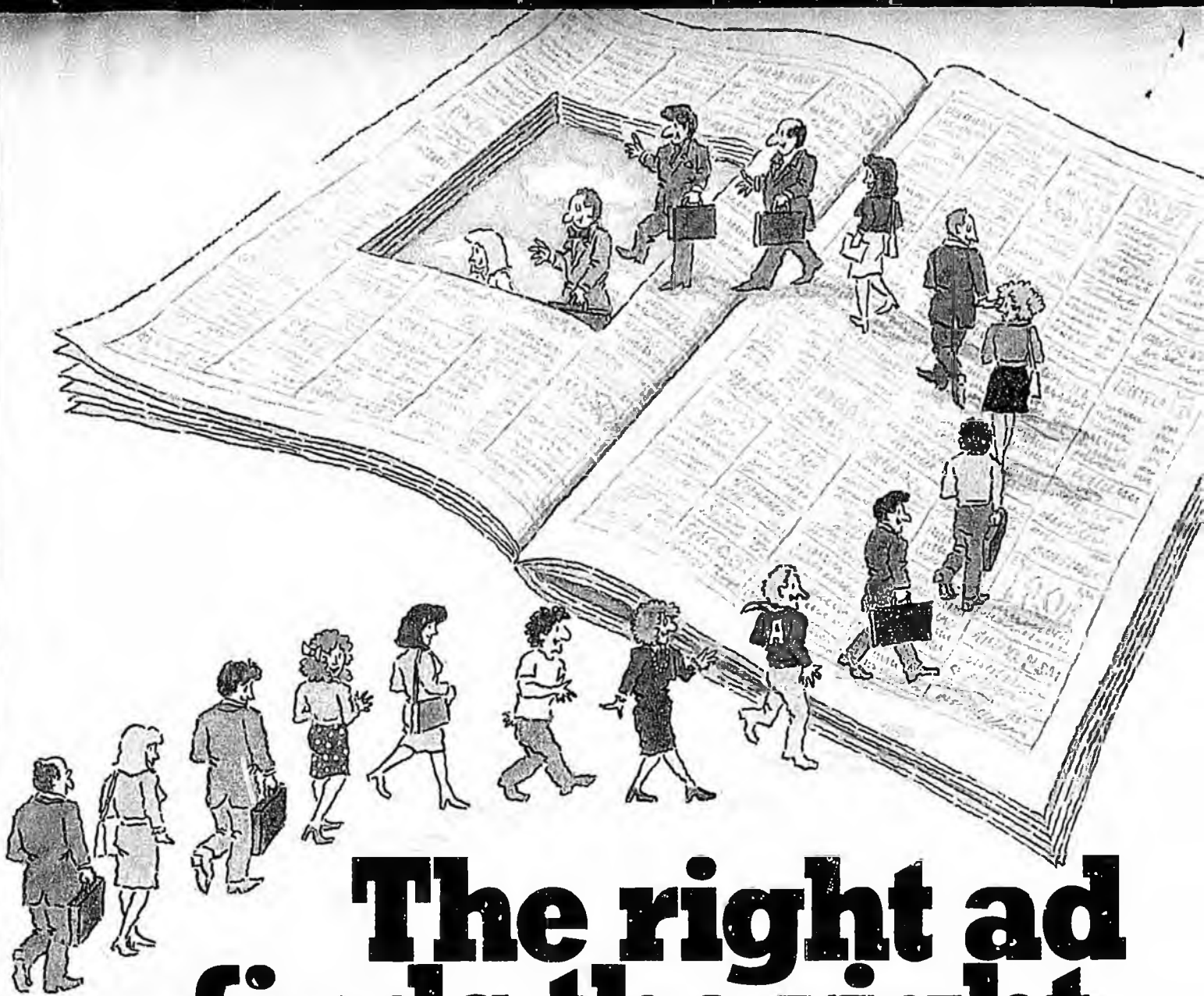
The committee members recognize the campaign may not actually eliminate drug use. Yet they believe it is worth the effort to emphasize that alcohol and drug screening is a part of today's employment picture. Abusers may have good academic and social skills, and may have spent a great amount of time and money preparing for their career, yet they may be unable to obtain a job in their chosen career.

*Author's note: If you desire more information or wish to help with this campaign, contact: WCPA We're Putting Drugs Out of Business Campaign, c/o H. Edward Babbush, Director, Career Development Center, California State University, Long Beach, 1250 Bellflower Blvd., Long Beach, CA 90840, (Tel.) 213/498-5551 or Alan R. Kidd, Vice President, Recruitment Services, Knoth & Meads Co., 401 W. A St., San Diego, CA 92101, (Tel.) 619/236-6001.*

Footnotes

1. The College Placement Council published the survey results in a report entitled, *Pre-Employment Drug Screening: A Survey of Practices among National Employers of College Graduates*. The report is available for \$25 from the College Placement Council, 62 Highland Ave., Bethlehem, PA 18017.
2. The Western College Placement Association's (WCPA) Public Relations Committee has published a generic version of the CSULB brochure. The publication, entitled *Alcohol, Drugs and Your Career*, may be obtained free of charge by contacting Joe Borillo, Unisys, 3519 W. Warner Ave., Santa Ana, CA 92704, 714/957-8427.

*H. Edward Babbush is also vice president of college relations for the College Placement Council. He has served as a consultant for numerous educational institutions and employers.*



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SAVE For Dr. ... 6/11



# REGIONAL HEALTH REVIEW

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FALL 1987

## Drug Abuse Programs in the Workplace: The Need for a Comprehensive Approach

### Overview of the Drug Abuse Problem

The nation's attention in recent months has been focused dramatically on the tragic results of drug abuse. The news media's detailed reporting of the drug-related deaths of college basketball star Len Bias and professional football player Don Rogers and the use of cocaine by baseball star Dwight Gooden, coupled with mounting safety concerns resulting from drug abuse by airline and train crews and air traffic controllers, has demonstrated the growth of the problem.

*Business Insurance* magazine reports that drug and alcohol abuse are now the nation's third largest health problem, estimated to cost between \$60 and \$120 billion a year in lost productivity, increased job accidents and injuries, higher medical and insurance costs, absenteeism and worker theft to support drug habits. The Federal Railroad Administration found that train accidents caused by substance abuse killed 37 people and injured 80 during a nine-year period ending in 1984. These numbers will, of course, increase greatly if it is shown that the recent Amtrak/Conrail tragedy in Maryland was drug-related.

Increasingly, the focus is on the jobsite as the place to confront drug abuse with well-conceived, proven programs of prevention, education and rehabilitation. Initially, at least, employers' responses to the growing drug abuse problem varied widely—from heavy-handed actions such as surprise drug testing followed by no-recourse firing for unconfirmed positive results to benign neglect by firms wary of legal, labor and employee morale problems.

Media attention to drug abuse by public figures, and the resulting public awareness, has resulted in a dramatic increase in governmental and private action. These efforts include First Lady Nancy Reagan's nationwide education campaign against drug abuse; the expansion of counseling, assistance and rehabilitation programs; the establishment of information hotlines and support groups; and, more recently, the creation by employers of programs for the workplace that reflect a broad understanding of drug abuse, its prevention and its treatment.

### Methods of Preventing Drug Abuse in the Workplace

Many employers, including Federal and state officials, are implementing *comprehensive* drug abuse programs aimed not just at the detection of substance abuse but, more importantly, at education, prevention and treatment. These programs, which almost always are based on a written policy, address the needs not only of the employer but of individual employees, fellow workers and the public at large. They are designed to maintain high standards of safety, quality and productivity, and they include the education, rehabilitation and treatment of those employees found to have substance abuse problems.

Historically, employers relied primarily on observation to identify drug abuse. Later, the sensitive nature of certain jobs and the growing awareness of the potential for workplace drug abuse prompted some companies to institute searches of employees' briefcases, lunchboxes, lockers and work areas. Now, a greater number of employers are using some form of employee drug testing, as part of a comprehensive program, to help spot problems before they become a greater danger to the worker and to others.

In the early 1970s, the military began the first large-scale drug abuse program. The Department of Defense now requires mandatory testing of all service personnel and performs more than three million tests a year. The primary test used by the military is the Abuscreen® System, a highly accurate urinalysis using the Radioimmunoassay (RIA) technique. The use of random urinalysis is the linchpin of the military's program, with approximately three million urine specimens being tested annually. Drug abuse in the armed forces has dropped to the lowest point since the program's inception in the early 1970s, and officers in all four services credit this to the deterrent of "pervasive testing through urinalysis," as *The New York Times* reported in April of 1987. Military officers said that in 1986 less than 3 percent of those tested were found to have used illicit drugs, compared to the 27 percent of those surveyed confidentially in 1980 who admitted to using drugs.

before military testing began. The military's program places great emphasis on informing its personnel of the dangers of drug abuse and helping them overcome it.

The results of the military's program have encouraged other government agencies and private enterprises to implement similar programs. Many of these programs use testing to identify abusers, who are then offered assistance.

### Who Should Be Tested?

Employers make crucial decisions in determining the frequency and nature of testing once they decide to develop an employee drug abuse prevention program. Several levels of testing are in use:

1. pre-employment testing,
2. "for-cause" testing based on observable evidence of drug abuse,
3. testing as part of periodic physical examinations, and
4. random testing.

The most frequent testing use is pre-employment screening, where hiring depends on a favorable outcome. Usually, applicants failing the test are told why they did not get the job and are allowed to reapply at a later date. Many companies also require employees, once hired, to be tested "for cause" if drug abuse is suspected from certain types of continuing behavior, erratic conduct, loss of productivity or safety problems. Random testing, because of its unexpected nature, is said to be the most effective. But random testing is controversial and more likely to be challenged by employees, unions or civil rights groups. Some employers have decided to require random testing only in cases where public safety is a factor, such as for airline or railroad crews.

Only 3 percent of the Fortune 500 companies screened job applicants for drug abuse in 1983; but by 1986 some 40 percent were doing so, according to the National Institute on Drug Abuse. Very soon, at least 50 percent of these major corporations are expected to have some type of employee drug abuse prevention program involving testing. Companies have identified the following advantages of setting up a comprehensive drug abuse prevention and testing program:

1. a safer and healthier work environment,
2. improved safety and product or service quality,
3. increased worker productivity,
4. fewer work days lost,
5. less need for more disruptive actions such as searches and police referrals,
6. reduced security costs, and
7. reduced health, accident and disability benefit costs.

### Accuracy and Reliability

Drug testing must be a two-step process, involving an initial test and then a confirmatory test for those samples that tested positive. Three screening techniques are primarily used: Enzyme Immunoassay (EIA), Radioimmunoassay (RIA) and Thin-Layer Chromatography (TLC). The Defense Department has selected an RIA screening test that is extremely accurate and cost-effective for the detection of THC (marijuana), cocaine, morphine, barbiturates, amphetamines, PCP, methaqualone and LSD. For those members of the armed forces testing positive in the initial assay, the second, confirmatory test—a gas chromatograph/mass spectroscopy (GC/MS) test—is required. This dual testing procedure assures maximum accuracy and is strongly recommended for all employers with worksite drug abuse programs.

Drug testing results can be extremely reliable. The Department of Defense has a continuing proficiency verification program for the nine military and two civilian laboratories conducting its drug tests. In scientific (double-blind) weekly checks of all 11 labs, test results are examined for "false-positive" reports, in which evidence of drug abuse is erroneously reported. The acceptable rate of false positives is 0 percent; to date, not a single false-positive result has been reported. Should any lab report a false positive, it will be closed and decertified, under military policy.

### Testing Policies

Knowledgeable employers provide rehabilitation services as part of their health benefit plans and view these services as the keystone of a "comprehensive" program approach to drug abuse prevention. These companies recognize that their most important asset is a safe and healthy workforce. They base their drug abuse program on a written policy defining the consequences of illicit drug use. Management then strives to make the policy clear to all employees, implement the policy fairly, provide education and treatment resources and train supervisors in all aspects of the program. There should be rigid safeguards to keep

employees' names and test results confidential and, by monitoring the "chain of custody," to maintain the integrity and identity of urine samples.

Courts generally have upheld such workplace drug abuse testing policies when they are part of a comprehensive program that addresses the needs not only of the employer but of the employee and the general public. Many court challenges are to *random* testing—that is, testing imposed without suspicion on a mandatory basis. In June, the New York State Court of Appeals, the first state supreme court to examine the issue, ruled unanimously that random tests to identify drug abuse by probationary school teachers violated constitutional guarantees against unreasonable search and seizure. But U.S. appeals courts have upheld random tests for certain U.S. Customs Service workers, Iowa prison guards and New Jersey racetrack jockeys. A number of other challenges to workplace drug testing are now before state and Federal courts, based on Fourth Amendment search questions brought by public employees.

### Federal Government Response

The Federal government is approaching workplace drug abuse on a number of fronts, both for its own employees and for certain private-sector employees. A rule established by the U.S. Department of Transportation in February of 1986 requires post-accident drug testing of railroad workers involved in major train accidents and authorizes testing when there is evidence of impairment. It also requires pre-employment screening and preventive education. A unique "bypass" feature of the rule allows drug- or alcohol-dependent rail employees to step forward and obtain treatment confidentially, through employee assistance programs. Workers are not disciplined for admitting to abuse problems.

This comprehensive approach involving education, rehabilitation and assurance of the reliability of testing, is also the thrust of President Ronald Reagan's September 15, 1986, executive order on drug abuse affecting all Federal agencies. The order calls for a number of preventive and educational actions, including drug testing of certain Federal employees in "sensitive" jobs. These include jobs that demand a high degree of public trust and confidence, such as agents of the Drug Enforcement Administration, the Customs Service and the FBI who fight illicit drug trafficking and related crimes.

In the 100th Congress, at least six bills have been introduced concerning drug abuse and testing (HR 280, HR 691, HR 693, S 352, S 356 and S 1041). Prompting the introduction of at least one of the bills was the January 4, 1987, Amtrak/Conrail railroad accident in Maryland. Post-accident urinalysis revealed the presence of marijuana residue in two train engineers. Dr. Robert L. DuPont, former head of the National Institute on Drug Abuse, concluded that the accident "is a very compelling argument for random [drug] testing of any [person in a] safety position." Transportation Secretary Elizabeth Dole has proposed a program that would require testing of many transportation industry employees. The Senate Commerce Committee, by a vote of 19-1, has approved a bill (S 1041) along these lines that calls for testing in five categories—random, pre-employment, post-accident, "reasonable suspicion" and "periodic recurrent"—for airline pilots, train crews, air traffic controllers, long-haul bus and truck drivers and others. The measure, now awaiting Senate action, would require rehabilitation programs for all affected government and private-sector employees.

### State and Local Government Activities

In the first half of 1987, more than 50 bills related to workplace drug abuse or testing were introduced in various state legislatures. Montana, Vermont and Connecticut adopted laws that prohibit the testing of most workers without at least "reasonable suspicion" of drug abuse. Iowa banned random testing, requiring "probable cause" before employees can be tested for drug abuse. These new laws place fewer restrictions on testing job applicants than on testing employees. The Vermont and Iowa laws prohibit the firing of employees who successfully complete drug rehabilitation programs. Other legislatures are still considering various measures to regulate or authorize workplace drug abuse testing.

At the local level, a number of city and county governments have considered similar proposals. To date, San Francisco is the only major city that has enacted a measure to prohibit mandatory workplace drug testing.

### Private Sector Initiatives

Long before regulatory laws were proposed widely, some private companies were implementing drug testing programs for humanistic reasons and to contain costs, including the expense of hiring and training replacement employees. Many firms can now document the savings resulting from comprehensive drug programs. In a survey commissioned by United Technologies, General Motors reported a 60 to 65 percent recovery rate for employees testing positive for drugs. In treating cocaine users, GM reported saving three dollars for every dollar spent. United Airlines said it spent from \$5,000 to \$10,000 treating each case of cocaine abuse, but reported a 4-1 return on the investment by returning rehabilitated employees to their jobs.

Evidence of reduced accidents and absenteeism and improved health and productivity was related by the Mid-Cal Corporation, an oil well service company of Taft, California. Less than two years after instituting an employee drug program, Mid-Cal reported that the percentage of employees testing positive for drugs plunged from 60 percent to 3 percent. Accidents resulting in time lost from work dropped from 30 to 0 and Worker's Compensation payments dropped from \$156,276 to \$25,116.

The sports industry has been actively involved in drug testing programs as well. The National Football League, several major league baseball teams and most National Collegiate Athletic Association (NCAA) member colleges perform drug tests on athletes.

The well-documented success of drug abuse programs in large corporations has prompted smaller firms to introduce their own programs and has also encouraged professional and collegiate sports groups to undertake or endorse such comprehensive programs.

## Conclusion

Already, a broad range of government and private-sector policymakers are establishing workplace drug abuse programs, with the military and large national corporations setting the pace. While much attention has been focused on drug testing, successful corporate programs consider testing to be only one part of a comprehensive approach that includes education, detection, treatment and rehabilitation. The public, too, seems to support employee drug testing, at least in a public safety context. In a Gallup poll conducted for *Hospitals* magazine, 66 percent of over 1000 Americans surveyed agreed that employees in public safety occupations should be tested.

Drug testing in the workplace is expected to continue to expand. It is increasingly apparent that a workplace drug program combining education, testing and employee assistance efforts is both an effective and an appropriate response to the cost and tragedy of drug abuse.

*If carefully designed and carried out, employer-required programs for the screening of employees and applicants for drugs, including alcohol, can serve to protect and improve employee health and safety in an ethically acceptable manner.*

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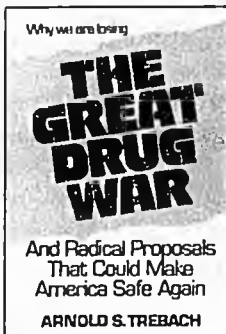
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BY ANDREW HACKER

## IS THE WAR ON DRUGS A

**A critic of the war says we're doing it wrong. But he ignores the cost of not fighting.**



**“Stop talking about winning drug wars. In the broadest sense, there is no way to win because we cannot make the drugs or their abusers go away. They will always be with us. We have never run a successful drug war and never will.”**

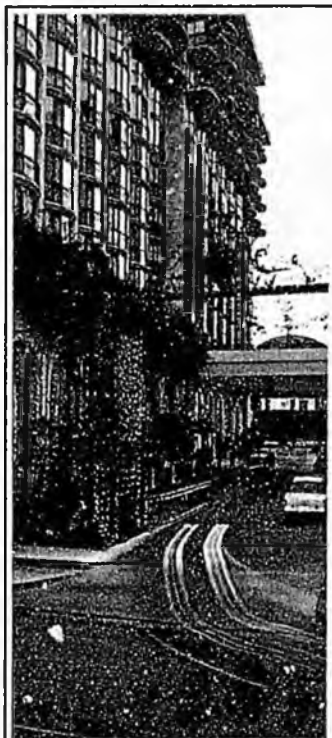
■ The campaign Americans are waging against drugs does more damage to the country than the narcotics themselves. Or so says Arnold Trebach, founder of the Institute on Drugs, Crime, and Justice and a professor in the School of Justice at American University. In *The Great Drug War* (Macmillan, \$22.50) he argues that the U.S. would be better off if we stopped viewing cocaine and heroin as unmitigated evils and accepted that they are here to stay. Presumably not many citizens are ready to adopt this relaxed perspective. I suspect, however, that most of them will be troubled by some details Trebach cites in the course of arguing that present policy is a disaster. Among his vignettes from the war on drugs:

- ▶ Strip-searching of high school students, after reports of sales in the school building.
- ▶ The emergence of “tough love” treatment centers, featuring brutal discipline, where troubled teenagers are often sent by their parents—sometimes for months on end.
- ▶ California’s “bud buster” raids on home-grown marijuana, in which paramilitary police operations, with air support, located 398 sites and uprooted 158,493 plants in 1985.
- ▶ The discharge of some 9,000 Army personnel for failing drug tests, half of which were later found to have been flawed. (Some widely prescribed medicines register as marijuana in the tests.)
- ▶ Sending U.S. troops to Bolivia to help run helicopter strikes against cocaine processing plants.

The author, whom you may have caught on various TV talk shows in recent years, makes a number of persuasive points. One of them concerns the link between illegal narcotics and massive corruption of the American police. And not only the uniformed police: In 1983-85 some 300 government law enforcement officials at higher levels were publicly implicated in drug-related corruption. Drug arrests—there were 700,000 last year—place endless demands on law enforcement resources. Convictions of drug dealers are a major reason the country is running out of prison space.

ANDREW HACKER is a professor of political science at Queens College in New York City.

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## BOOKS

been declining: Thus, among children age 12 to 17, the proportion who had recently used marijuana was down to 12% in 1985 (from 17% in 1979). Among young adults (18 to 25), cocaine use fell in the same period from 9% to 8%.

For those who will still find those numbers dismaying, he minimizes the deleterious effects of drugs. Heroin, for example, is "physically benign," since it causes no "organic damage." Heroin deaths should be attributed not to routine use of the drug itself, but to huge overdoses, adulterated merchandise, and infected needles. Furthermore, many drugs have major positive effects, even aside from the "high" experienced by users. Speaking as a professor, he informs us that many students report they "would never have made it through school without the regular use of marijuana or other chemicals to calm the enormous anxieties attendant upon the educational process." More than that, "drugs probably prevent as many youth suicides as they cause." All told, the author finds no reason to oppose the "moderate use of drugs by minors."

**D**OES THIS MEAN that Trebach is a latter-day Timothy Leary, celebrating the joys of drugs for escape and recreation? At times it's hard to be sure, since his argument is often wobbly and anecdotal. But in the end—possibly confusing readers who had bought his views about the relative harmlessness of heroin—he shrinks from proposing a complete legalization of drugs. He would make marijuana freely available to adults, believes that heroin should be available only by prescription (and prescribed only as a painkiller), and would allow the states a wide range of choices (including complete legalization) on cocaine. Meanwhile, he wants more controls over alcohol and tobacco. At times it almost seems as though Trebach's main objective is equal rights for the narcotics that are now illegal—to make his readers see that these are really no more evil than alcohol and tobacco.

*The Great Drug War* is a patchwork of a book, confused and confusing about its basic thesis. Few if any distinctions are drawn between the different kinds of drugs, and Trebach has virtually nothing at all to say about such entries as amphetamines and diet prescriptions, or more exotic offerings like angel dust and LSD. The author does not

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## BOOKS & IDEAS

explore the conditions under which harmless use may turn into abuse and addiction, nor does he try to distinguish between the mental states connoted by "addiction" to heroin and tobacco.

His ultimate reason for proposing an end to the drug war is pragmatic: Drugs, he insists, are so entrenched in our culture that any war against them will be unwinnable. ("We have never run a successful drug war and never will.") He cites surveys showing that more than 60 million Americans have smoked marijuana "at least once in their lives," while almost six million people were recently (1985) using cocaine. He wants us to admit—just as we were forced to admit about Prohibition—that we just don't know how to solve the problem. "Whenever there is a demand for an illicit opiate . . . in time a supply appears," Trebach writes, "and when one source of supply is cut off, another soon replaces it in sufficient volume to satisfy the demand." Taiwan and Singapore may be able to halt drug imports, he acknowledges, but the loose structure of a free society allows a greater measure of illegal activity. He does not consider the possibility that the hated drug war might be entitled to some credit for the recent declines in usage among young people.

**W**HILE TREBACH views the demand for drugs as natural and irresistible, he seems not to understand why so many think it natural to wage war on drugs. Surveys show that less than one-quarter of college students want marijuana legalized. Last year Oregon, a relatively liberal state, had on its ballot a proposal to allow adults to possess or grow marijuana for their personal use. It was overwhelmingly voted down.

Ultimately missing from Trebach's presentation is any sense that the debate about drugs might involve larger issues. One reason so many Americans are determined to fight drugs is that they are focusing on the kind of people they think we ought to be. They fear that the U.S. is becoming a nation of lotus eaters, being drugged into oblivion. They worry about the connection between drugs and various bits of evidence of declining mental sharpness. In this view, anything that legitimizes narcotics would sap even more of the country's strength, bringing a once-proud nation closer to social suicide. I fear that Arnold Trebach hasn't the faintest understanding of this concern.

## Putting Lawyers in Their Place

BY WALTER KIECHEL III

■ Rumor has it that the original working title for *The Terrible Truth About Lawyers* (Beech Tree/Morrow, \$17.95) was *What They Don't Teach You at the Yale Law School*, which would have not only reflected where author Mark H. McCormack got his legal education but capitalized on the success of his awesomely best-selling *What They Don't Teach You at the Harvard Business School*. More accurate than either would have been something like *Let's Make a Deal*, with the subtitle *And How, Too Often, Lawyers Screw Them Up*.

Alas, McCormack's truth about the lawyerly mind-set and *modus operandi* will seem not terrible, just terribly familiar. Yes, members of the bar are a clannish lot, sometimes more concerned with observing the punctilio of the profession than with ministering to the needs of the client. And, uh-huh, you should scrutinize the bill carefully. If you have foolishly let your lawyer take you to lunch, you may find the tab billed back to you, along with a healthy markup for his time.

Where the author does add value, or at least color, is in his advice on deals: how to negotiate them, why they sometimes fall apart. As the book modestly notes, McCormack is "founder and chairman of International Management Group, the world's leading sports management and marketing organization." In other words, he is an agent for broadcasters and professional athletes and puts together such TV spectaculars as *The World's Strongest Man*. If you are interested in how the law treats the injuries allegedly sustained by a contestant attempting to run with a 400-pound refrigerator on his back, this could be the book you've been waiting for. While even here McCormack's advice seems a trifle unoriginal (know who is making the decisions on the other side, don't bring the lawyers in too early, leave a little something on the table), the examples make it pungent and the reading fun. **E**

### THE TERRIBLE TRUTH ABOUT LAWYERS

How Lawyers Really Work and  
How to Deal with Them Successfully



Mark H. McCormack  
Author of *What They Don't Teach You*  
at Harvard Business School

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The American Council for Drug Education is a non-profit membership organization dedicated to public education about the health hazards of various psychoactive substances. ACDE promotes research, organizes conferences, reviews scientific findings, and educates the public about current knowledge of the effects of drug use.

Since its founding in 1977, ACDE has been dedicated to the principle that an informed public is the nation's best defense against drug abuse. While knowledge alone will not solve the drug problem, there is now abundant evidence that it will help to reduce drug experimentation and even drug use among people of all ages—including teenagers. Furthermore, public understanding of the health consequences of drug use is the necessary precondition to a wide range of family, community, religious, cultural, legal and other efforts to deal with drug abuse problems. In the absence of clear, reliable and objective information about the health effects of drugs, the prevention of drug abuse in our society is all but impossible.

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# Urine Testing in the Workplace

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by Lee I. Dogoloff  
and Robert T. Angarola  
Susan C. Price, Editor

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Editor, Susan C. Price has a B.S. in journalism from Ohio University and a Masters in international affairs from the same institution. A former clinical services account executive and current consultant for CompuChem Laboratories, Ms. Price has a detailed knowledge about urine testing.

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## I. Urine Testing: One Tool for Drug Abuse Prevention

Lee I. Dogoloff

Urine testing has become an emotionally loaded term for many, triggering visions that range from a police state to a drug-free paradise, depending on one's perspective. These reactions are unfortunate and can be damaging because, in the heated arguments over invasion of privacy, social responsibility and liability, the purpose and appropriate use of drug testing in the workplace is often obscured.

"To test or not to test" is never the opening question nor the primary issue. It is rather one method among many that may be used to address drug abuse prevention, treatment and control. The decision to use urine testing or any other technique should come only after a thoughtful consideration of the nature and extent of drug use in a particular office or plant; the impact employee drug use has on productivity, safety, quality control, and profits; the alternatives available to confront the problem; and any constraints those methods may pose. Examples of these alternatives might include an Employee Assistance Program or other personnel or medical services. Constraints might include pre-existing labor contracts or available financial support for rehabilitative services.

Depending on the circumstances, urine testing can be an effective option if it is used properly. Following is a brief summary of the nature and dimensions of the drug problem within the U.S. work force and a description of some principles that may be useful in structuring a corporate response to the problem. The approach described is relatively simple and is not intended to address all the complex issues involved in designing an adequate policy — that would require another book. Rather, this approach is included for illustrative purpose only to give some ideas on the elements of a corporate policy and the context in which urine testing should be used.

### *Dimensions of the Problem*

The Alcohol Drug Abuse and Mental Health Administration, an agency of the Federal Government, estimates that reduced productivity due to alcohol and drug abuse cost the U.S. nearly \$99 billion in 1983 (Research Triangle Institute, 1984).

In characterizing the findings from its 1982 survey on Wall Street, researchers from the New York State Division

of Substance Abuse Services concluded that "Drugs were dealt as freely as stocks and bonds." Marijuana was purchased most frequently followed by cocaine, pills (e.g. uppers, downers), and heroin. The buyers were equally divided between men and women and, in contrast to the stereotyped image of the urban drug abuser as an unemployed street person or criminal, 40 percent of the men held middle-management positions, while 95 percent of the women were employed as clerical workers.

According to the most recent household survey of "Drug Use in America," sponsored by the National Institute On Drug Abuse, 20 million Americans reported using marijuana in 1982, 9 million of whom were 18 to 25 years old. The survey also revealed that more than 2.3 million Americans in the 18- to 25-year-age group reported using cocaine in 1982. Since then, cocaine use has escalated substantially. The national cocaine helpline, an ongoing telephone treatment/referral and information service, has been averaging over 1,000 calls a day since its inception in the summer of 1983. Their average caller is a white, 30 year-old *employed* male earning more than \$25,000 a year, who has an average of 14 years of education. He has typically used cocaine for almost five years and, in almost 50 percent of the cases, has been using it every day. The callers admit spending an average of \$637 for cocaine in the week prior to calling the helpline and say they remain employed for two primary reasons: (1) work gives them some of the money they need to support their cocaine habit (which almost invariably exceeds their income) and (2) the workplace offers them a convenient environment for the drug dealing many engage in as another means of supporting their habit.

While these statistics help to show how pervasive the problem is, one must also understand the impact that drug abuse can have on the workplace, including "the bottom line." Drug abuse leads to increased absenteeism, higher turnover, and decreased productivity. Drug abusers can suffer from impaired memory, lethargy, and reduced coordination, which may be, in turn, responsible for performance problems. Marijuana and alcohol, for example, interfere with driving ability and negatively affect other skills needed to operate equipment safely and effectively. Drugs have been implicated in railway collisions and derailments, bus and heavy equipment accidents, and poor product assembly.

Professionals recovering from cocaine dependency report instances of irresponsible conduct while they were using the drug, including inadequate preparation of cases and presentations, inattention to tasks, and failure to complete assignments or to provide needed follow-up services. In some

cases, these lapses endangered public safety and opened employers to liability actions.

In addition to performance problems, drug-using employees can experience a number of changes in heart, brain and lung function and often develop medical problems as a result of their drug use. These can result in increased use of sick benefits and, ultimately, higher health insurance premiums. Other costs derive from the fact that a drug habit is expensive. Security problems, including employee theft of tools and products, embezzlement of company funds, and selling of trade secrets, can often be traced to drug-dependent employees who need money to buy drugs.

A final cost, although one which cannot be quantified, concerns the negative impact on non-using employees. Co-workers often find themselves in the position of covering-up for drug users who do not do their share or whose behavior poses a safety risk. Drug dealing may be observed at the workplace, but go unreported because reprisals are feared or because co-workers believe they must protect the individuals involved. The resentment and confusion this breeds can undermine morale and ultimately affect the non-users' participation in the work force.

#### *Understanding the Condition*

While the consequences of drug abuse provide the rationale for a corporate response to the problem, an understanding of how the condition of chemical dependency develops is essential in order to structure a response.

Chemical dependence is a progressive disease — when left alone it does not get better or just go away, it tends to get worse. Denial is the critical element that perpetuates and feeds it. Drug abusers (including those who abuse alcohol) usually do not see themselves as such, and cannot self-diagnose their condition, call a halt to their destructive behavior, or present themselves voluntarily for treatment.

Not only do chemically dependent individuals practice denial, but just as tragically, so do those around them. Parents, spouses, friends, supervisors, and co-workers want to believe there is no problem. They tend to "overlook" the behavior and to avoid the discomfort of confrontation. This "sin of omission" earns these people the title of "enablers" — they allow the destructive behavior to continue by not intervening.

It is important to recognize that virtually all drug use is contagious. The most likely way a person is introduced to drugs is "by a friend or loved one" and this is as true of tobacco

smokers as it is of heroin addicts, cocaine users, marijuana smokers and alcohol abusers. That principle has important implications for employers because the workplace offers a natural setting in which the contagion can occur.

Based on these principles of chemical dependence, several features of an occupational approach to the problem emerge. First, understanding that chemical dependence is a progressive disease underlines the importance of early identification and intervention. The earlier the intervention, the more positive and less costly the outcome. Depending on how an office or company is organized, ways should be found to identify the drug user both through specific attention to poor work performance and work habits (e.g. absenteeism, tardiness) and through sensitivity to increases in accidents and other unacceptable incidents on the job.

Second, the denial aspect means it is ineffective for a company merely to wait for people to admit their problem and voluntarily seek treatment. By understanding the enabling role that those around the dependent person play, the stage can be set for an aggressive effort to break the cycle of denial and cover-up, and to help the enablers become part of the solution rather than contributors to the problem. In short, this means confronting the poor work performance and referring the employee to professional help. In the work force, as in the family, "enablers" may be the single most important element in beginning a successful intervention.

Lastly, the contagious nature of drug abuse means that if a company fails to identify individuals who are experiencing the problem, then the workplace inadvertently becomes an environment for spreading the condition to others.

Understanding chemical dependence leads inevitably to the conclusion that prevention, intervention, and supported recovery must be the foundation of any occupationally based program to deal with the drug abuse problem. The next step is to devise a framework for an employer to follow in developing such a program. While specific elements in each program will differ depending on the nature of the business, employee characteristics, size, number of work sites and managerial style, some generalizations can be made about essential features.

1. The company should formulate a policy about drug abuse that spells out why it is unacceptable and how it will be addressed;
2. It should communicate that policy to employees;
3. It should encourage and support supervisors in the active identification and referral of problem

workers — this is the bedrock of any successful program;

4. It should locate treatment and rehabilitation resources for its employees;
5. It should institute follow-up procedures to ensure that the condition is being treated and that, insofar as possible, the workplace supports the recovery process;
6. It should define enforceable and appropriate alternatives (e.g. reassignment, early retirement, termination, disability) for those employees who are unwilling or unable to successfully return to full functioning.

Within this framework, urine testing can be an important tool for identifying drug abusers or confirming suspected drug use at various stages in the employment process. For example, urine testing can be one element in a pre-employment screening process. Companies using this procedure report that it helps protect them from problems later on by weeding out many prospective employees who use drugs. In addition, urine testing gives job candidates and current employees a clear message about the organization's position on employee drug use. Urine testing also can be used on a random basis with selected employees who hold sensitive jobs involving public safety or public trust. The purpose here is not only to prevent drug abuse but to identify users as early as possible so the public is not jeopardized because of drug-related impairment.

Urine testing also can be used when job performance problems have been observed or accidents/incidents occur which result in a supervisor referring an employee to Employee Assistance, medical or safety/security personnel for evaluation. In these cases, the urine test can be an important diagnostic tool in uncovering the source of the employee's problem and indicating the direction referral should take.

If an organization carefully considers the circumstances in which urine testing will be instituted and the use that will be made of the results, such testing can be immensely helpful in identifying users, facilitating interventions, supporting the recovery process, and ensuring the safety and security of the workplace.

The ensuing chapters discuss the legal issues surrounding urine testing, what testing can and cannot do, the technology currently available to perform the tests, and what to look for when selecting a laboratory to perform urinalysis.

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## II. The Legal Issues of Urine Testing

Robert T. Angarola, Esq.

When considering a urine screening program, many employers immediately ask "Is it legal?" While this is an obvious concern, it is actually the wrong place to start.

Employers should first answer the question "Why do I want to test?" Are the employees handling heavy equipment; are they running a nuclear power plant; are they bus drivers with responsibility for public safety; do they have access to large amounts of money? If the employer knows at the outset why he wants to screen for drugs, he is much more likely to have a legally sound program.

The next question is "What do I do when someone tests positive?" Should the individual be fired on the spot? Offered treatment and rehabilitative services? Reported to the police? An employer must plan beforehand how to deal with employees who are using drugs, and then structure policies and programs accordingly.

After the employer answers these two crucial questions, he or she is in a position to draft a formal written company policy on substance abuse. This policy must be clearly communicated to and understood by all prospective and current employees. It must be uniformly applied and consistently enforced. Once an employer does this, the probability of legal challenge to a drug screening program is substantially reduced.

There is much a company can do to protect its workers and itself from the dangers of drug abuse in the workplace — and it can do it in a fully legal way. Nevertheless, workers have brought lawsuits in this area and will continue to do so in the future. The following chapter attempts to describe the types of challenges being filed and — more importantly — ways to avoid them.

Legal challenges to urine testing 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.

### *Right to Privacy*

Private employees who argue that urine testing violates their constitutional right to privacy are confused about our system of law for two reasons. First, the U.S. Supreme Court has found that the right to privacy implied in the Con-

stitution protects only against *governmental* intrusions.\* A private employer's actions, therefore, cannot violate an employee's constitutional right to privacy. Second, the constitutional right to privacy protects a very narrow range of activities. An individual's *personal* belief concerning those aspects of his life which are private and which should not be subjected involuntarily to intrusion by others creates a much larger zone than that which the Constitution *legally* protects. The constitutional right to privacy has been held to protect individual decisions on matters such as marriage, procreation, childrearing and family. But the courts have specifically held that the constitutional right to privacy does *not* apply to the use or possession of illicit substances, even in one's own home. Thus, a government agency's drug testing program for its employees cannot violate their constitutional right to privacy.

### *Freedom from Unreasonable Searches*

Most lawsuits claiming that urine testing is an invasion of privacy have actually been based on the fourth amendment's prohibition against unreasonable searches and seizures. Plaintiffs assert that urine testing intrudes so far into an employee's sense of privacy that it constitutes an unreasonable search in violation of the Constitution.

Once again, this constitutional provision applies only to searches conducted by the government. A private employer's urine screening program cannot violate an employee's right to be free from unreasonable searches and seizures.

Because the fourth amendment does not constrain private employers, they have 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, 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, arguing that the dog surveillance program was an unconstitutional search.

A federal court held that the search was not unconstitutional because the railroad, a private company, was not bound by the fourth amendment. 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

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\*As used here, the term "government" includes federal, state and local government.

dog as a condition of entering the entity's premises, or refusing entry to any person believed to be in possession of an illicit substance."

Indeed, government employer's urine testing programs nearly always withstand challenges that they violate the fourth amendment. In a case decided in federal court this year, city employees who regularly worked around high voltage electric wires were terminated because their urine tests were positive. The terminated employees argued that the tests violated the fourth amendment protection against unreasonable search. The court agreed that the testing was a search. However, since the employees in question were engaged in hazardous work, the court found that the testing program did not violate the constitution because the search was not unreasonable — in this case, the employer had a legitimate need to know that employees were using drugs.

#### *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." This means that the government must engage in a fair decision-making process before taking measures that affect an individual's basic rights. While private employers are, again, not bound by the constitutional guarantee of due process, wise private employers take into consideration the standards of fairness courts have demanded of government employers.

Due process arguments made against government urine testing programs generally claim that the tests are inaccurate, that the results are insufficiently related to work performance, or that the employee was punished without being afforded an opportunity to contest positive test results.

#### • Accuracy and Reliability

Courts have consistently upheld the accuracy and reliability of urine tests. In a case decided in federal court last year, city fire fighters and police officers argued that both urine testing and polygraph examinations (lie-detector tests) were unconstitutionally unreliable. The court agreed that, despite the city's need to maintain safe police and fire services, polygraph testing was unconstitutionally unreliable. But the court held that urine tests were so accurate that these city employees had no basis to challenge their constitutionality.

#### *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, positive urine test results prove that an individual has ingested a substance, but they cannot prove that he or she is impaired by that substance at the time the specimen is given. Opponents of the tests argue that it is unfair to discipline employees on the basis of positive test results unless their employer can prove that they were actually impaired on-the-job. But the fact that the courts are upholding urine testing shows that judges and juries recognize that urine testing is probably the best tool we have today to spot drug abuse — despite its inability to prove impairment.

#### *Opportunity to Contest Results*

The due process guarantee of fair decision-making also means that government employers must provide workers with a reasonable opportunity to contest charges against them before they are punished. While an employer can safely rely upon statistics and court cases proving the accuracy of urine testing as an indicator of drug use, this third area is one in which an employee can prevail against a government employer who has not been careful to weigh employee rights before imposing discipline. (Note again that we are discussing the government employer. Private employers, as noted previously, have greater latitude in this area also.) For example, a federal court held that the Federal Aviation Administration violated due process by disposing of the urine samples the agency had used to justify firing several air traffic controllers for drug use. The court reasoned that the agency easily could have stored the samples. This would have afforded the tested employees a chance to have an independent analysis by a second laboratory. In failing to preserve the samples, the agency violated the workers' due process rights.

On the other hand, a Chicago bus driver argued in another federal court that the city transit authority had denied him due process by failing to give him a hearing to contest positive urine test results before removing him from behind the wheel. This court held that the employee's due process rights were not denied. The bus drivers' rights had to be balanced against the public safety. The court held that a hearing provided after the employee was removed from his driving responsibilities would satisfy due process.

Each of these two courts balanced all of the factors involved in the case before determining what action was appropriate. The same considerations should precede a private

employer's decision to discipline an employee based upon positive test results. Good personnel practices, good public relations, and most labor contracts require that a private employee be given some notice of the reason for any disciplinary action and some opportunity to discuss that action with a superior.

#### *Negligence Law*

Unlike the constitutional claims discussed above, negligence claims can be brought against the private employer as well as the government. Negligence actions are generally of three types. First, an employer may be liable for negligence in hiring a substance abuser who harms another person while performing his job. Second, an employer may be liable for negligence if he fails to conduct the drug screening procedure with due care. Third, an employer who maliciously spreads untrue reports of positive test results could be sued for libel and slander.

#### • Negligent Hiring

A negligent hiring case decided in a state court last year involved a boy who was sexually assaulted by an intoxicated hotel 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 continued to drink 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 reversed the trial judge's holding in favor of the hotel and ordered the case sent back to trial so that a jury could decide whether the hotel was responsible, and, if so, the sum the hotel was to pay the boy in damages. In lieu of a second trial, however, the hotel agreed to a settlement.

This case illustrates the importance of controlling substance abuse in the workplace. Employers have a duty to foresee the dangers presented by an impaired employee, and they can be held liable for substantial damages if they fail to do so.

Companies with a well-publicized, consistently enforced policy and program against employee substance abuse not only will deter such abuse, but also will be better able to identify and deal with the substance-abusing employee *before* he causes injuries that bring his employer into court. These companies will also be less likely to be held responsible for injuries caused by the employee who, without detection, violates the company's rules on substance abuse.

#### *Negligent Testing*

Employers should be sure that the laboratories they hire or the technicians they use to perform the tests are well-qualified and meet high quality control standards. The contrasting outcomes of two negligent testing cases, both filed by unsuccessful job applicants and both filed in the same federal court, demonstrate the importance of following manufacturers' instructions when performing a drug test.

In the first case, two job applicants who were refused employment on the basis of positive urine test results sued the laboratory that performed the tests. Because the applicants had proof that the laboratory failed to follow the test manufacturer's instructions to confirm all positive test results, the laboratory agreed to a settlement. In the second case, the test results had been confirmed by a second test as recommended by the manufacturer. The court dismissed these job applicants' testing claims before the case even reached trial.

To avoid charges of negligent testing, employers must be certain that the laboratories they use perform the tests correctly. If on-site testing is done using company employees as technicians, then the employer must ensure that these employees have been properly trained in test administration and know how to protect the chain of custody over urine samples. They must understand what confidentiality means and they must be able to maintain a storage system that protects samples from tampering, switching or misidentification.

#### *Libel and Slander*

An employer who spreads information about positive test results that later prove to be false probably will not be found to have committed libel or slander if his actions were accidental or merely careless. Most state laws recognize that an employer needs some degree of freedom to discuss employee matters in order to run a company. Therefore, a successful libel or slander suit generally requires a showing that the employer acted with reckless disregard for the truth or with actual malice toward the employee.

As the following case shows, however, it would be a foolish company that relied on the protections provided by such laws as an excuse for dealing with test results in an unacceptable manner. Employers should make sure that positive test results are confirmed and that they are not publicized beyond those people who absolutely need to know.

A railroad switchman sued his employer for libel and slander after being accused of having methadone in his urine. Although the company physician who administered the test

had explained to the company that the presence of methadone was tentative and that further lab work would be required before he could draw any definite conclusions about drug use, the company, nevertheless, commenced disciplinary actions immediately based on that tentative test result.

The employee then arranged for a second urine test, which indicated that there was a compound in his urine which had the characteristics of methadone, but was not in fact methadone or any other commonly abused drug. In spite of this, the company circulated a statement that the employee had been fired for using methadone. The switchman collected \$150,000 for damage to his reputation, and an additional \$50,000 in punitive damages, from the railroad.

#### *Contract Law*

An employer who plans to institute a drug screening program should determine whether the plan complies with employment or union contracts, and renegotiate those contracts if it does not. Recall the case, discussed earlier, in which the Burlington Northern Railroad unilaterally implemented a detector-dog surveillance program. The railroad had a safety rule prohibiting on-the-job use or possession of drugs or alcohol; employees were well aware of the 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.

While the court found that the railroad had not violated the U.S. Constitution, it still halted the program. The surveillance program illegally changed the employment contract because it was not the result of collective bargaining involving both management and the union. Even though there was already a no-drugs, no-alcohol rule, a program to enforce that rule required a revision of the contract jointly agreed upon by employer and employee.

The principles that an employer should follow in establishing a drug testing program have remained consistent since urine testing was first perfected a decade ago, and they have generally been sustained in court. A company that observes the following in implementing its substance abuse policy and program will in all probability avoid successful legal challenge:

- Demonstrate the need for drug testing in the company; document a relationship between job performance and substance abuse.
- Develop a specific substance abuse policy and program in consultation with all parts of the company that may be affected. Union representatives, oc-

cupational health and safety personnel, security staff, personnel managers, legal advisors, and most importantly, top management must be involved. Outside consultants can often help a company identify problems and adopt a workable policy.

- If necessary, modify employment contracts and union contracts to reflect the company's substance abuse policy.
- Notify employees of the policy. Tell them in advance the penalties that will be imposed for specified violations.
- Follow through. Do not let a substance abuse program become a "paper" policy.
- Test for substance abuse carefully. Make sure that persons who administer the tests and perform laboratory analyses are qualified to do so and that good analytical and chain of custody procedures are followed.
- Notify employees of positive test results and provide them with an opportunity to appeal disciplinary actions taken on the basis of those results.
- 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.
- Consider setting up an employee assistance program for those employees found to have substance abuse problems.

Judges and arbitrators increasingly are recognizing the costs of substance abuse in the workplace to employers, workers, and the economy. They will uphold measures to deal with the problem, including urine testing, when these are instituted in a reasonable manner. Employers who follow the above guidelines and have answered the questions "Why do I want to test?" and "What do I do when someone tests positive?" should be able to use urine testing effectively and legally.

### III. Analytical Methods for Testing

Urinalysis methods vary substantially in cost, accuracy, the number of different drugs detected and the amount of expertise required to perform them. Understanding the relative advantages and disadvantages of each method will help employers decide which kind makes sense for their organization and who should perform the tests.

No matter which method is used to screen applicants or employees for drugs, it is generally agreed that a positive result should be *confirmed* at the laboratory by a second test, using a different and preferably a more sensitive and specific method to achieve accuracy. This is an especially critical step when testing for drugs at the workplace because a person's livelihood and the company's legal liability may be at stake.

Three major types of screening methods are currently available and, depending on which type is selected, testing can be performed on-site at the workplace or off-site at the laboratory.

#### *Screening Methods*

The most commonly used *screening* methods are *thin layer chromatography* and the two immunoassay techniques: *enzyme immunoassay* and *radioimmunoassay*.

*Thin layer chromatography* (TLC) is the least expensive method of drug urinalysis and it must be performed in a laboratory. Although TLC can detect a few prescription drugs that the immunoassay tests do not identify, it is not as sensitive; that is, it won't always detect as minute a quantity of drug as the immunoassay tests. Moreover, the result is more subjective, requiring more judgment by the technician performing the test.

The TLC method involves reading a plate on which a drop of urine has been chemically treated to separate its various compounds. Drugs are identified when a dye solution is sprayed onto the plate causing colors to appear. The location of the color spots are then compared to known standards. Reading the plate requires a high degree of technical expertise. Furthermore, the dye often fades in minutes, so there is no permanent record of the test unless a photograph is taken.

The enzyme immunoassay (EIA) and the radioimmunoassay (RIA) methods are slightly more expensive than TLC. They are designed to detect the eight major abused

drugs or drug classes — amphetamine, barbiturates, benzodiazepine, cannabinoids (marijuana), cocaine, methaqualone, opiates (including heroin), and phencyclidine (PCP) — but will not identify some of the prescription drugs picked up by the TLC test. However, they are slightly more sensitive and give a more definitive test result.

The immunoassays use antibodies to detect drugs. In the test mixture (reagent) designed to detect a certain drug, antibodies attach themselves to that drug if it is present in the urine. In the enzyme immunoassay method the reaction causes a color change which can be measured by a device called a spectrophotometer. In the radioimmunoassay method, a low level of radiation is given off which is measured by a gamma counter. The RIA cannot be used outside of a laboratory setting because the radioactive materials require specially trained technicians and a licensed facility. The EIA, however, can be used either in the laboratory or at the workplace.

On-site, the enzyme immunoassay method is most commonly performed using the desk-top sized Emit Drug Detection System manufactured by the SYVA Company, Palo Alto, California. The manufacturer recommends that all positive results be confirmed by another method, so an outside laboratory is still required to perform confirmation testing.

On-site testing offers several advantages:

- Results are available very quickly for samples which test negative because they don't have to be sent to a laboratory;
- Non-technical people can be trained to operate the equipment;
- On-site testing may be less expensive than laboratory screening.

There are also disadvantages to consider:

- Confidentiality may be harder to protect if testing is done in-house. There is also a greater threat of sample-tampering;
- The employer must maintain the equipment, keep a supply of chemical mixtures in cold storage, provide a secured area for the urine samples, etc.;
- The chance of error in results is greater than in a lab where the staff has more training, and where stringent quality control measures are in use.

#### *Confirmation*

Although each of the screening methods described can detect small amounts of drugs with a fairly high degree of accuracy, the manufacturers recommend a second test by an

alternative method for all positive test results in order to assure the validity of the results. This is because the screening tests occasionally produce false readings for a variety of reasons including cross reactivity, that is, similarity of compounds which the screening test can misread as being an abused drug. For example, some over-the-counter cold and diet medications may produce a positive amphetamine test result. Confirming all screened positives, as described below, will eliminate this problem. However, common urinary metabolites (e.g. Melanin and others) have been shown not to cause fake readings.

Although some laboratories will confirm one type of screening method with another (for example, TLC followed by EIA or RIA), it is better — and more acceptable legally — to use a more sophisticated technique such as gas chromatography or gas chromatography/mass spectrometry (GC/MS).

*Gas chromatography* (GC — sometimes called *gas/liquid chromatography* or *GLC*) involves heating and vaporizing a liquid sample while it moves through a column of absorbent material. Individual compounds are separated on this column according to their chemical and physical properties. These separated compounds appear as peaks on a graph and can be identified.

Although GC is sometimes used alone to perform confirmation tests, the best method combines it with a *mass spectrometer*. The two instruments together are more powerful than either instrument alone. The GC/MS further breaks down the compound molecules into electrically charged ion fragments. Different compounds break down into different fragments and like fingerprints, no two fragment patterns are alike. Because the GC/MS can match up these patterns to the known patterns of abused drugs, positive identification can be made. Quantification is possible with GC or GC/MS.

Although the GC/MS test is the state-of-the-art drug testing method currently available, it is not practical to use as a screening method because it is too expensive, requires very sophisticated equipment and must be performed by highly trained technicians. Therefore, it is best to use a screening method first to eliminate the negatives and then use the more definitive tests only on the positives.

#### *Test Results Only Show Presence*

It is important to understand that urine tests for drugs only determine whether a person has used the drug recently or frequently. They cannot tell with certainty just how recently nor the degree of impairment, if any, at the time the sample was taken. The amount of time a drug is detectable in

body fluids depends on the drug used, the amount and purity of it, how often the person uses it, and the user's age, weight and metabolism. For example marijuana constituents can show up in a urine test many days after the last use particularly in frequent or chronic users, whereas cocaine is usually undetectable within two days.

#### *False Positive and Negative Results*

No matter how accurate a testing method is, there will always be a certain small number of incorrect test results. These fall into two categories: false positives (urine specimens which are actually drug free), and false negatives (samples which do contain a drug). Good laboratories build checks and balances into their systems to catch such analytical errors before the results are reported.

A false positive is more undesirable because it can result in unjustified action against an individual. The possibility of false positive results from laboratory or technical error is greatly reduced, however, by the confirming of all positives with an alternate method which is more sensitive and specific. A good laboratory also strives to avoid false negatives, however, because they can allow drug users to go undetected, posing threats to themselves and others.

False results are not only caused by problems with the urinalysis itself. They may also occur if specimens are accidentally switched at the collection point or in the laboratory, or if the sample is tampered with. Errors in reporting results may also occur. The laboratory and the employer must give attention to those potential problems in order to insure accuracy in the urine testing program.

#### *Passive Inhalation*

In the case of marijuana, the question of "passive inhalation" is sometimes raised. A person who tests positive for marijuana will sometimes claim he inhaled smoke from other users at a party or a rock concert. Recent studies suggest that positive test results from passive inhalation can be obtained only if the nonsmoker is confined with several smokers in very small quarters such as a closed car. However, the minute quantity inhaled by a nonsmoker is unlikely to generate a level which would exceed the "cutoff" of the analytical methods currently in use.

#### *Cutoffs*

Cutoffs can be a confusing aspect of drug testing to the nontechnical purchaser of laboratory services. Laboratories will talk about their cutoffs or detection limits usually in

billionths of a gram (a nanogram). The detection limit is the lowest amount of the drug which can be reliably detected by the analytical methods used by the laboratory. Below this level, although there may be small quantities of drug present, the test will be reported as negative because the technical limitations of the laboratory's procedures make a positive result uncertain. Cutoffs vary from one laboratory to another, based on their technical capabilities and the methodologies used. An example of screening cutoffs is provided in the table below:

	RIA	EIA	(NG/ML)
Amphetamines	1000	300	
Barbiturates	200	300	
Benzodiazepines	Not Available	300	
Cannabinoids (THC)	100	20 or 100*	
Cocaine	300	300	
Methaqualone	750	300	
Opiates	300	300	
PCP	25	75	

\*Two choices of test kits are available.

There is no standard list of cutoffs for confirmation testing to which an employer can refer since each laboratory must establish its own. But the levels used by the military laboratories provide a good example. Their *confirmation cutoffs* (by GC/MS) are:

THC metabolite (Marijuana)	20 ng (nanograms)
Cocaine metabolite (Benzolecgonine)	300 ng
Amphetamines	500 ng
Barbiturates	200 ng
Opiates	300 ng
PCP	25 ng

Note: The military uses the RIA test for screening at the manufacturer-recommended cutoffs. (Abuscreen®, Roche Diagnostic Systems, Nutley, N.J.)

Some laboratories will offer an employer a quantified test report (i.e., how much of the drug was found in the urine tested) rather than just a positive or negative result. Quantified results may be useful in providing insight into the conditions of use. The employer should be cautioned, however, against drawing any definite conclusions about a drug user based on quantity. For example, an employee found to have 100 ng of the major metabolite of THC, the active ingredient of marijuana in his urine has not necessarily used more of the drug or used it more recently than someone with a reading of 50 ng. It is even possi-

ble in rare cases for a result to be higher in quantity in the afternoon than in the morning with no drug use in between. This is because the intake of body fluids can change the concentration of the marijuana metabolites as they are gradually secreted from the body.

#### *Drug Detection Methods Other Than Urinalysis*

Scientists are developing other drug detection methods to give a better sense of the relationship between test results and impairment. Currently, blood analysis and saliva tests are the most promising.

Although it is often used in hospitals, *blood analysis* currently is not used as frequently as urine for routine screening in an industrial setting because samples are harder to collect. A licensed technician is needed to draw blood. Furthermore, a blood test is a more invasive procedure, making cooperation by employees or applicants more difficult to obtain.

Blood tests often are used for post-accident testing. For example, recently issued federal regulations will require train crews involved in serious accidents to submit to blood tests as soon as possible after the incident. However, toxicologists have not yet fully agreed on standard blood levels indicating impairment for abused drugs. Although such levels have been set for alcohol as it affects driving, even those levels vary from state to state. Therefore, as an indicator of impairment for various job functions, blood testing has its limitations but can provide better evidence for possible impairment than urine.

*Testing the saliva* of a marijuana user may eventually be useful in determining recent past use of that drug because the active ingredients in marijuana remain in saliva for only a few hours after the drug is smoked. However, the greatest impairment from marijuana probably occurs during the first two to three hours after smoking.

Saliva screening tests have been developed, including a commercial kit using an RIA procedure, but they are not widely used, and confirmation is usually not possible because of the low volume of fluid. Saliva tests involve swabbing the mouth or expectorating into a collection cup. The drawbacks, however, are that collecting a sufficient volume of saliva for testing can be difficult, and laboratories find saliva a more difficult body fluid to deal with than urine.

Some employers have heard about a new method of drug detection involving the recording of brainwave patterns. The reliability of this method has not been established, however.

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## IV. Selecting a Laboratory

A key component of any sound drug detection program is the laboratory performing the urinalysis. This is true even if the employer decides to do on-site testing since positive samples must be sent to a laboratory for confirmation.

Due to the critical importance of accurate results, both to the company and to the employee, this is not the sort of service which should simply be allocated to the lowest bidder. Therefore, although price will certainly be a consideration, there are many other more critical questions to be determined first. The following are some of the key questions to be asked:

*What is the laboratory's testing volume and experience?*

Many laboratories do not routinely perform drug tests or do not do them in very large volumes. The most accurate results most likely come from a laboratory specifically set up to do drugs of abuse testing. Properly performed drug urinalysis requires a high degree of training (especially in the confirmation technologies) and these skills must be maintained through constant application. Furthermore, by having a relatively high volume (some experts suggest 300 or more tests per week) an employer can be sure the laboratory has the proper equipment required for testing and is not making do with equipment intended and/or used for other procedures. It is also good to check any certifications and licenses the laboratory holds and also to find out the laboratory director's qualifications and those of the laboratory staff.

*What methods of screening and confirmation does the laboratory use?*

As discussed in the previous chapter, a positive screening test should be followed by a confirmation test using a different, and preferably more sensitive, analytical method. It is not acceptable to perform the same test twice, although some laboratories do this. Many will use two different screening techniques such as a TLC test followed by EIA or RIA. For the greatest accuracy, however, choose a laboratory which confirms by GC or, even better, by GC/MS. Results from all forms of immunoassay plus the GC/MS have been admissible in court, however GC/MS confirmation is now required by such

organizations as the Department of Defense for tests of military personnel.

*Which drugs can the laboratory's analysis detect?*

Because of economic considerations, an employer would not test for all possible drugs but rather for the most prevalent drugs of abuse. These can actually vary depending upon the particular region of the country in which the employer is located. The most common list used for employment screening includes cannabinoids (marijuana), cocaine, benzodiazepines (e.g. diazepam), opiates (e.g. heroin), barbiturates, phencyclidine (PCP), amphetamines, and methaqualone (Quaaludes). Of these, barbiturates, benzodiazepines, and codeine (an opiate), are legitimate therapeutic drugs. Therefore, a test subject should be asked about any medications he or she may have taken recently.

*What kind of quality control program does the laboratory have, and is it participating in any outside proficiency programs?*

The laboratory's internal quality control program should include blind samples. Blind urine samples are prepared in advance and either contain a specific amount of one or more of the drugs being screened or are known to be drug-free. These samples are sent through the system along with real samples to check for both equipment and operator error. As an added precaution, the employer may want to send the laboratory blind samples as well. These can be all negative urines, or a single urine divided in two and given a false name to see if the same result comes back on both. If the laboratory participates in outside quality control programs, either state or federal, this provides additional assurance of quality testing.

*What chain of custody procedures and/or documentation does the laboratory have?*

Without proper handling of a specimen so that the sample results can be traced back to the proper individual, the tests will be worthless. It is necessary to examine what methods the laboratory employs for keeping samples from getting mixed up during the various analytical procedures and the final result reporting. Also, the laboratory should provide chain-of-custody documentation if the company is going to use the test results to take action (such as dismissal of an employee) which could end up in litigation. The documentation shows a paper trail of the custody of the sample at all times. If

the results are used only for referring employees to treatment programs, such documentation may not be necessary.

It is important to remember that chain of custody actually begins at the point where the urine is voided. While nothing short of witnessing the urine can guarantee the integrity of the sample, there are some steps that can be taken to minimize opportunities for falsifying or tampering with the urine sample. For example, employees should be asked to remove bulky clothing such as jackets or coats prior to voiding because they might conceal a urine sample that has been prepared in advance. As an added precaution, samples should be checked after voiding to make sure they are warm. Adulterated urines or samples where shampoo or other substances have been substituted for urine will be detected by the laboratory in most cases.

*What kind of sample handling assistance does the laboratory provide?*

Some laboratories furnish the company with urine collection bottles, seals, shipping containers, etc. and chain-of-custody forms which are filled out at the collection point. Employers should ask how the samples are to be shipped and who pays for this. Some laboratories provide their own courier service. Others use commercial carriers such as Federal Express, UPS, etc. (Samples need not be refrigerated en route, but should be shipped as soon as possible after collection to prevent sample deterioration.)

*What provisions does the laboratory have for sample retention?*

Because of the potential for legal challenge of test results, the laboratory should have the capacity to store frozen urine specimens for a considerable period of time. Only a small portion of each urine sample is used for the drug analysis, but the rest should be retained in its original container until the results have been determined. Negative samples need not be stored very long, but some experts suggest positive urines be kept six months to a year to allow time for retests if litigation is pursued.

*What kind of support can the laboratory provide if legal action is brought against the employer?*

Although a company's urine testing program should be designed to avoid the potential for litigation, there is still the possibility of lawsuits, or union grievances being filed. If test results are challenged, the laboratory should be willing to

provide an expert witness to discuss the custody and analysis of that sample. It is a good idea to ask also about the laboratory's past experience in this area, for example, how often its experts have testified and in what types of legal proceedings.

*What is the laboratory's turnaround time?*

Since a company's actions will be determined by the test results, the longer it takes to get them, the more costly the inability to take action becomes. For example, sometimes after an incident where drug use is suspected, an employee is given paid leave until test results are obtained. In such cases, rapid turnaround time can be critical. It may be less so in drug tests performed on applicants. Generally, a laboratory can report negative results quickly, in 24-48 hours. The important question to ask is how long it takes for confirmed positive results. It would not be unreasonable to expect such results within three or four days.

*How does the laboratory report results?*

It is a good policy to avoid telephone reports. Some laboratories give phone results and follow up with hard copy reports mailed later. The problem with this system is the potential for inaccurate verbal reports, especially on large numbers of samples, as well as the risk of endangering confidentiality. The ideal system is to use a speedy method such as telex, telefax or electronic mail to provide hard copies in the first place.

*How good is the laboratory's security?*

The employer will want to make sure that urine samples are protected from tampering. Therefore, it is wise to check on the laboratory's security procedures and methods of controlling access. Alarm systems to protect against intruders, and sprinkler systems to minimize fire damage to samples or records are also important features.

*What does the laboratory charge?*

The key factor affecting price will be which analytical methods the laboratory uses for screening and confirmation. The more sophisticated the method, the more expensive it will be. The employer should also understand if the per-sample price includes both screening and confirmation or if these tests are priced separately. The number of drugs detected will also affect the price. The employer should also ask about any additional charges, for example, the cost of expert testimony if a drug test results in litigation.

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## V. Other Considerations

Urinalysis can be used prospectively to identify drug users before job impairment occurs and retrospectively to link poor work performance to probable cause. In thinking about when urine tests are given, employers should consider which results are most appropriate for their particular organization.

### *Prospective Testing*

The work performed by some organizations — the Armed Forces, air traffic control, mass transit — requires their employees to be in a constant state of readiness or functioning at peak level throughout the work shift. For reasons of public safety and security, the critical skills of some employees cannot be compromised. In these cases, employers may need to know about sources of potential employee impairment before they are manifested in performance decrements.

The most effective way to identify drug use before a work problem develops is to give urine tests randomly and without prior announcement. Employees should be told about the random testing policy in advance and should know what the consequences of a confirmed, positive test are.

The United States Navy provides a dramatic example of how effective prospective testing can be as a deterrent to drug abuse. In 1980, a Defense Department Survey showed that 48 percent of junior enlisted sailors used drugs. After extensive random testing, the number dropped to 21 percent in 1982. Today, the estimate is below 10 percent.

### *Retrospective Testing*

Many organizations with less sensitive missions prefer to use urine tests retrospectively, after an accident or incident on-the-job to establish probable cause. Similarly, if an employee's job performance declines, or if patterns of absences, tardiness, or excessive use of sick leave are noted, retrospective urine tests are used to refute or confirm drug use as a possible explanation for the behavior. Depending on the test outcome, it also can provide the impetus for a treatment referral and involvement of a company's Employee Assistance Program, if one is available.

In some organizations, urine tests for drugs are given routinely during annual physicals, or as part of a posi-

tion auditing or promotion process, shift reinstatement or job application procedures. Although some drug users will escape detection because the urine test schedule is known in advance and they can plan to abstain during that period, others will be identified and subsequently confronted with the action prescribed by the organization. Again, depending on the organization's policy, an employee may have to receive treatment or to face termination, may be temporarily reassigned until recovery is stabilized, or may lose the position. Here again, the major objective is deterrence.

Employees know they will be tested for drugs on a regular basis and will face specified consequences if drugs are detected. They have to determine whether their drug use is worth the risk. Results from the large-scale military programs mentioned earlier indicate that the majority will decide it is not.

Urinalysis can be a valuable asset in coping with the problem of drug use in the workplace. But to make it work effectively, organizations should carefully investigate the options available to ensure that the method selected fits a company's particular style of operation. Just as important, any organization opting for urinalysis likewise should ensure that policies and procedures for handling testing have been completely developed and communicated to employees prior to beginning the program.

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## Special Report



Peter B. Bensinger

*If you have a drug abuse problem at your workplace, don't sweep it under the rug; if you think you haven't, you had better make sure*

## Drugs in the workplace

*When men began wearing longer hair on the streets it was only a short time before neck-length locks appeared on the factory floor. The same phenomenon is true for drugs. Here an expert on the subject describes the rise in drug use in the nation, the inevitable rise in use that followed in the workplace, and its effects. He lists steps that a concerned management can take to deal with the drug problem, from establishing and enforcing a strong company policy to maintaining a good relationship with the local police. The most important part of the program, however, is attitude. Management needs to see the drug abuse problem not only as dangerous and illegal, but as something it must address.*

*Mr. Bensinger served as administrator of the U.S. Drug Enforcement Administration from 1976 to 1981. Before that he was director of Corrections for the State of Illinois and executive director of the Chicago Crime Commission. He is president of Bensinger, Dupont & Associates, a consulting firm in Chicago.*

- In Louisiana, trained dogs sniff at an oil company's helicopter pads.
- In California's Silicon Valley, cocaine dries in computer plants' microwave ovens.
- In the Chicago Board of Trade Building, brokers sell cocaine.
- At a Virginia nuclear power plant, security officers are dismissed for off-duty use of marijuana.
- In the Department of Justice mailroom, employees are arrested for the use and sale of illicit drugs.

These are not research projects for the Department of Commerce nor are they scripts for a TV Sunday night special. These events actually took place, and they are not uncommon. From the mailroom of the Justice Department to auto assembly plants, the community problems have found their way into the workplace. The use of drugs in the workplace is a serious and growing problem reflecting a national trend; but it is one that business generally ignores. The problem's total dimensions are difficult to quan-

tify, but one aspect of it—cost to business—has been estimated. In 1981, drug use among a civilian work force of some 108 million may have cost employers \$16.4 billion.<sup>1</sup>

But management's concern with drugs in the workplace should not begin and end with profit-and-loss statements. Other major responsibilities also are at stake: because each business is part of a larger community that does not tolerate drug abuse, its support of community standards is critically necessary. Moreover, in our complex society, the operation of practically any enterprise—from the small dry cleaning establishment on a street corner to the largest multinational of the *Fortune* "500"—affects public health and safety in some way. Some managers might argue that drug abuse is a matter for law enforcement not management. They would be wrong. Transportation systems and hospitals are stringently regulated, yet abuse occurs. And while law enforcement may help ensure health and safety in communities and business operations, it cannot guarantee it. Law enforcers are only the public's agent, they cannot and should not set the standards. This responsibility lies in part with business managers.

Drug abuse by the operator of a public motor vehicle or by a surgeon would have obvious bad consequences, and instances of such drug use that have caused serious trouble have been documented. But transportation systems and hospitals are not the only workplaces where drug abuses occur.

The use of drugs in the workplace is not a remote or isolated phenomenon. Rather, it reflects national drug use patterns and trends. In this article the most recent statistics and projections of U.S. drug use generally set the stage for a look at drug use in the workplace and some policies business can adopt to deal with it.

### How bad is it?

During recent years the amount of heroin available in the United States has decreased, as have

Editor's note: All footnotes are listed at the end of the article.

he number of addicts, emergency room episodes, and overdose deaths. This positive development is a consequence of determined domestic enforcement efforts, rehabilitation programs, and successful diplomatic negotiations to limit the supply of heroin at its sources, primarily in Mexico and Turkey.

This successful effort in regard to heroin has not been matched with similar success where other drugs, mainly marijuana and cocaine, are concerned. The available supply of these two drugs has increased dramatically. Marijuana is grown in every state (it's one of California's biggest crops) and in one overseas area alone, the Guajira Peninsula of Colombia, 100,000 acres of marijuana are under cultivation. Cocaine, made from coca leaves grown in Bolivia, Colombia, and Peru, floods the United States; an illegal retail market operates here with annual revenues of over \$30 billion.<sup>1</sup>

Heroin, marijuana, and cocaine are not the only problem substances. Within any 30-day period, some 7 million people abuse stimulants (amphetamines), barbiturates (phenobarbital, seconal), or tranquilizers (Valium, Librium). Even when prescribed, such substances can easily be abused.

Surveys such as those commissioned by the National Institute for Drug Abuse tell us that high school seniors are not using as much marijuana as they did once.<sup>2</sup> Still, one out of two graduating seniors admits to some use, while one out of three acknowledges use within the previous 30 days.

In 1979, 35% of young adults surveyed between the ages of 18 and 25 had used marijuana within the previous 30 days. In 1976, the number was 25%. The use of cocaine among the same group was alarmingly higher—9.3% had used it within the previous 30 days, compared with 2% in 1976.<sup>3</sup>

More than 25 million Americans use marijuana, some 50% of users are between the ages of 18 and 25. Therefore a large proportion of the population segment that makes up much of America's work force has an incidence of regular illegal drug use—which accounts in part for the doubling of referrals by industry to federal drug programs between 1977 and 1979. How can corporate executives deal with this problem?

## Controlling drugs at work

Reliance only on law enforcement to control drug traffic is not a realistic option. Indeed, in terms of personnel resources, in 1982 the federal government has 10% fewer customs, FBI, and drug enforcement agents than it did in 1975, and further manpower reduction is likely.

The prospect at local levels is much the same. Thus the burden of dealing with workplace drug use, on the increase, falls more and more on the affected enterprises themselves. Here are some suggestions for controlling drug use at work that are based on experiences of companies that have started to tackle the problem.

**Establish and communicate a clear policy on drug use.** A company must do more than merely state that it does not condone drug use, and that an employee possessing or taking an illegal drug may be dismissed, disciplined, or turned over to law enforcement authorities. Management should see that employees understand the health and safety risks caused by drugs and the danger posed in the workplace by drug abuse. It has to explain that it is determined to obey the law, and that in so doing it may take internal disciplinary action as well as call on law enforcement agencies. It needs to spell out the company drug policy clearly and specifically so that employees know exactly where they stand.

Does management forbid drug use only on the job, and possession and sale only on company property? What about parking lots? What about off-the-job drug use? What if an employee is arrested for a drug offense off the job? If the company decides to take action, does it do so on the basis of the arrest or does it wait until there has been a trial disposition? What if the case is dropped, even though there is clear evidence of drug possession or use? A number of companies issue press statements concerning drug abuse and send letters to all employees detailing their policies. Commonwealth Edison Company went even further and launched a comprehensive drug awareness program providing health and safety information on drugs at meetings where the company drug

policy was explained. Special training was provided to supervisors focusing on job performance, changes in employee behavior, and fitness for duty. If they found reasons to question an employee's fitness to work, they could require a medical examination, including a urine test. Law enforcement liaison was increased as well. The Commonwealth Edison policy is worth noting.

"1 The illegal use, sale, or possession of narcotics, drugs, or controlled substances while on the job or on company property is a dischargeable offense. Any illegal substances will be turned over to the appropriate law enforcement agency and may result in criminal prosecution.

"2 Off-the-job illegal drug use which could adversely affect an employee's job performance or which could jeopardize the safety of other employees, the public, or company equipment is proper cause for administrative or disciplinary action up to, and including, termination of employment.

"3 Employees who are arrested for off-the-job drug activity may be considered to be in violation of this policy. In deciding what action to take, management will take into consideration the nature of the charges, the employee's present job assignment, the employee's record with the company, and other factors relative to the impact of the employee's arrest upon the conduct of company business.

"4 Some of the drugs which are illegal under federal, state, or local laws include, among others, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and stimulants not prescribed for current personal treatment by an accredited physician.

"5 Employees undergoing prescribed medical treatment with a controlled substance should report this treatment to their supervisor or the company medical department. The use of controlled substances as part of a prescribed medical treatment program is naturally not grounds for disciplinary action, although it is important for the company to know such use is occurring."

An important legal question is relevant here: Can a company or public agency refuse to employ drug users, even though they may be in a bona fide treatment program? The answer is "it can." The U.S. Supreme Court has upheld the New York City Transit Authority's workplace drug policy which excludes from employment anyone using narcotics, even though he or she may be in a rehabilitation program such as methadone maintenance. The Supreme Court ruled that such exclusion is constitutional — that the federal courts cannot intervene in a policy decision by an employer to refuse to hire someone whose drug problem may impair performance or threaten safety or property.\*

Be sure to reinforce the policy. Will the company stick by its policy, or will supervisors who enforce it find they are in disfavor with top management because their actions result in employee grievances and unfavorable employee relations and publicity?

These are not easy matters to deal with. Establishing a policy is one thing, enforcing it is another. Internal reaction may actually discourage policy enforcement. Some managers let it be understood in subtle ways that they would prefer to avoid the problem, they do not look kindly on personnel actions and grievances or want industrial relations and security people involved in the operation of their departments.

A company cannot have a credible drug policy and apply it consistently if its higher echelons do not back supervisors or if they try to avoid administrative entanglements. The true test of a company's drug use policy occurs in this area. If it is unwilling to cope with grievances and some disgruntled employees, if it refuses to involve law enforcement and other agencies in drug abuse problems, its policy will fail to be consistent and prevention-oriented.

Shell Oil has a variety of installations — refineries, drilling and production rigs, and distribution operations — and operates a number of offshore drilling and production platforms in the Gulf of Mexico. Crews who are helicoptered or ferried by boat to these rigs from several jump-off locations spend 7 to 14 days on the platforms before returning to the mainland. With

only facilities such as mess halls, sleeping accommodations, and other service areas on the platforms, time spent on them is a Spartan existence in confined quarters. Obviously, there is no family or active social life.

Shell Oil supervisors suspected that workers were bringing marijuana out to the rigs and smoking it there. Richard LaFaver, the company's staff security supervisor in Houston, spelled out the company's drug policy to employees and put them on notice that compliance was a condition of employment on the offshore rigs. If an employee objected to either the rule or its enforcement, the company kept him or her off the rig. The company determined that using illegal drugs would be cause for dismissal, and stated that policy in published workplace rules posted both on the drilling rigs and at the jump-off locations: firearms, illegal drugs, and intoxicating beverages are not permitted on company property; possession or use of them will result in disciplinary action that can include dismissal. Further, employees and vehicles en route to the rigs are liable to search.

The measures Shell Oil takes to enforce its policy are extensive. For one thing, it conducts random searches of employees on the days crews from the rigs go on and off duty. At booths at the jump-off locations, a security representative, an employee relations representative, and an operating officer from the offshore rig conduct the searches. Workers are asked to empty their pockets and to allow their suitcases to be examined. Shell Oil also conducts spot searches on the rigs themselves. These inspections are made by private security agencies which use canine units. Other procedures that Shell Oil employs include placing undercover people in the workforce to discover and obtain evidence of on-the-job use.

It is understandable that Shell Oil goes to such lengths to enforce its workplace rules. The company wants to make sure employees and contractors realize that the work on the rigs is too important to be taken for granted. These searches exceed what may be required in most industrial settings.

But companies must inspect their premises. The purpose of inspections is not merely to discover and

seize contraband, but to show that company policies have teeth and that management is willing to invest time and money to ensure that they are enforced. A company can also reinforce its drug policy by stressing it in initial employee interviews, orientation sessions for new employees, safety manual and workplace rules, industrial relations manuals and personnel brochures, and during in-service training programs and seminars for existing personnel.

Finally, company drug use policies should be consistent with other company practices. Where, for instance, termination for drug abuse is not listed under "Terminations" in a personnel manual, but is mentioned under "Drugs," employees may be unclear as to management's intentions.\*

Provide education and accurate information about drugs. As part of employee orientation, management should offer awareness programs that deal with the legal, physical, psychological, and symptomatic consequences of drug use. How do drugs affect behavior and coordination? What are the legal penalties for possession and use? How will using a drug affect workplace performance on an assembly line, driving a forklift truck, or dealing with a customer?

Companies should stress the importance to first-line supervisors of ensuring that their employees are fit for duty. To understand their company's drug policy and enforce it, supervisors must believe in the policy and understand the seriousness of drug abuse. Their job is not to diagnose drug dependency, but to spot changes in behavior and to be aware of the warning signs of absenteeism, accidents, operational errors, and emotional outbursts. Rather than dealing with the problem abstractly or tentatively, management needs to confront the reality that some employees are abusing drugs.

Ford Motor Company's corporate coordinator for employee health services, Thomas E. McGriff, describes the company's efforts to educate its employees as an investment in the future. Their purpose is to promote early identification as well as provide appropriate treatment. Ford and UAW [Continued on page 54]

have local management-union recovery committees. Ford publicizes its assistance program by mailing information to all employees and by distributing posters throughout plants. Ford also puts out a detailed brochure advising employees that requests for diagnosis and treatment will not jeopardize their job security and promotional opportunities and that medical records will be kept confidential. The company provides treatment facilities, including detoxification units and access to outpatient clinics, hospitals, and group therapy sessions.

But Ford, like most manufacturers, can go only so far with respect to rehabilitative services. Drug-caused performance inadequacy or disruptive behavior continues to be grounds for transfer, reassignment, and even discharge.

Many young employees routinely use marijuana and believe that "recreational" use of the drug on their own time is a purely personal matter. A company may have rules discouraging such use, but employees often scorn the reasons for them. They believe that such rules exist only for cosmetic public relations, to appease stockholders and old-line management. Young employees also archly observe that the rule makers often consume alcohol and thus are in no position to lay down rules about drug use.

This young employee group must grasp the different off-duty risks of using drugs versus those of using alcohol:

[ ] Marijuana's THC remains in the bloodstream for several days, even weeks, while alcohol is usually eliminated within 12 hours.

[ ] Neither alcohol nor drugs are acceptable workplace substances. Alcohol is legal, however, while possession of any amount of marijuana violates both federal and state laws.

[ ] Alcoholic beverages contain far fewer dangerous chemicals than marijuana, which contains 400—some of these have only immediate and transitory effects but others have long-lasting consequences.

Any educative program should present in detail the National Highway Safety Commission's findings relating vehicle accidents to drug and alcohol use. Briefly, the commis-

sion found the correlation to drug use to be quite high, higher than users are generally aware of or will readily admit. However, emphasis on the hazards of drugs should not downgrade the problem of alcohol. Both substances are killers on and off the job. Drug awareness and enforcement should not reduce the company's concern with respect to alcohol abuse.

An employee drug awareness program should end with a completely candid question and answer period, in which employees can freely ask questions and offer their opinions, and management can discuss any misconceptions.

Anticipate the problem, do not be surprised by it. Drug problems too often catch managers by surprise, and public relations officers—and occasionally chief executive officers—can find themselves scrambling for answers to probing questions from the media. One way managers can prepare themselves is to search for drugs on the premises before they are found by others. Where are drugs most likely to be used? Where are they most likely to be sold? What security steps can reduce these threats?

Unions generally look to management to prevent drugs from coming into the plant, but traditionally, management is reluctant to undertake the expense of surveillance equipment, extra guard services, and protective procedures such as video cameras and security people in the work force. As we've seen, signs and threats mean little unless they are followed up.

The procedures commonly used in international airports serve as one reference for managers wondering how to detect drugs in their offices and factories. Signs inform the public that bringing in contraband, narcotics, or firearms is a federal offense, punishable by imprisonment. Customs officials inspect baggage, and passengers are put on notice that they and their baggage are subject to search. Of equal importance, inspectors are trained in what to look for in terms of behavior. While the same procedures may not be possible or appropriate at many workplace settings, it is important to convey the impression that inspection is not only possible but also happens.

Typical factory problem areas include:

Locker and changing rooms.

Parking lots.

Shipping, receiving, and mailroom areas.

Nearby taverns where employees often discuss company gossip, including the use of drugs, and where exchange or use of drugs may take place.

Many companies, such as Virginia Electric & Power Company, require that all new employees sign a statement to the effect that they understand the company's policy on drugs and accept it as a condition of employment. If a company articulates its policy, enforces it, and has good relationships with both employees and local security and law enforcement agencies, it makes clear that it is dealing with a serious problem in a competent, professional way. Thus the company and its employees are less likely to be faced with a sudden, embarrassing surprise.

Maintain a good relationship with the police. What kind of liaison with the law should a company seek? How much can and will local police do? What won't they do? Now that most local law enforcement agencies have fallen on lean times and may have too few officers to visit plants, conduct seminars, or respond to drug use and sale situations, where can a company turn for help?

At Compugraphic Corporation, a manufacturer of phototypesetting equipment in Wilmington, Massachusetts, supervisors noticed evidence of drugs. The company then hired an outside security firm to make an undercover investigation which confirmed that drugs were being consumed and sold in the plants. Compugraphic then went to the local police department which arranged for police officers to be brought in on an off-duty basis. The company provided money for the undercover agents' drug purchases, travel expenses, and overtime pay. The Compugraphic case is noteworthy for three reasons: (1) supervisors observed the symptoms of drug

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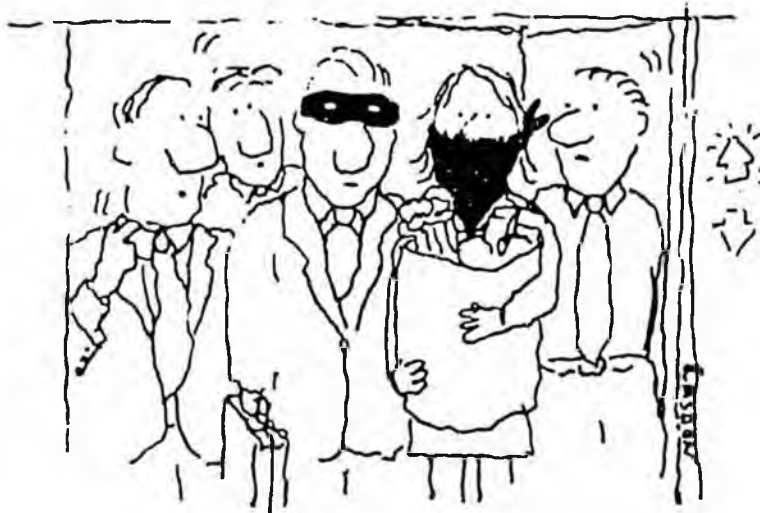
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use, (2) management did not hesitate to get outside help to learn the extent of the problem, and (3) the company brought in the local police and paid overtime costs and other expenses.

Shrinking of their budgets has made police departments reluctant to assign officers for long periods of undercover work in private situations for which they have to pay overtime costs as well as other expenses.

Although companies should look first to their own security offices for guidance, generally these offices' resources are limited, their staffs lack training, and they can hardly work anonymously. Increasingly managers look outside for undercover investigations as well as for assistance and training, professional seminars, and workplace analysis.

Company management should go out of its way to maintain contact with law enforcement agencies and should make sure that relations with local police are strong. Too often, managers want to avoid the publicity of an arrest, which they think will place them in an unfavorable light in the community. For this reason and for fear that police involvement means admitting that a serious problem exists, company officers are sometimes reluctant to bring in local police even when illegal drugs are found on company property.

Regardless of its fears, however, management cannot ignore the law or risk covering up criminal activity. For one thing, a cover-up constitutes an obstruction of justice. Also, drug rings in plants or offices do not remain secret long.

Word travels fast among informants, dealers, undercover agents, and users. When a drug operation is broken and becomes news, the company involved is in a much better position if published accounts refer to a joint investigation in which the company played an important part. Good police-company liaison is essential to such an outcome.

Finally, and I cannot stress this point too heavily, having an employee unfit for duty is potentially dangerous around machinery and obviously should be avoided, but keeping an employee who has brought drugs to the job is not merely troublesome. Such people are involved in illegal

[Continued on page 60]

activity: anyone trafficking in drugs—from production, to distribution, to retail sales, and to use—risks discovery and legal consequences at each step. A well-advised company plays it safe, making absolutely certain that at no point does it condone or even appear to condone this illegal activity.

**Don't attempt to deal with the problem on your own; seek experienced professional advice.** Traditionally, detective and guard firms have provided undercover services to companies for a variety of purposes, including assigning undercover agents to determine the extent of workplace drug use.

The *Lipman Report*, a protective security agency newsletter, recently described an instructive case. The management of a community hospital suspected that employees were stealing and selling hospital supplies and equipment, as well as selling and using drugs on hospital premises. A security firm was hired and two of its undercover agents discovered that supplies ranging from toilet articles to doctors' scrub suits were being stolen. They also discovered that the hospital pharmacy was an easy mark for on-the-job drug users and sellers, that hospital security guards were lax, and that patient care was suffering. Within weeks, hospital management had determined the extent of the problems and begun to correct them.

Managers may think they can handle a drug problem themselves, but there are important reasons for using outside resources.

- 1 Most organizations lack good undercover investigation capability.
- 2 Outside investigators are anonymous.
- 3 Trained detectives can more skillfully assemble evidence of findings.
- 4 Investigation costs and assignments can be restricted to "need to know" organization officials.
- 5 Outside operatives can be assigned immediately without disrupting ongoing com-

pany security coverage needs.

Off-duty police officers available through local law enforcement agencies often can handle such assignments professionally and with generally excellent results.

### Nipping the bud

What else can organizations do to cope with the growing problem of workplace drug use? For one thing, they can build on and draw from the experience of others. Security, industrial relations, and medical directors should meet often to discuss problems, compare techniques, and urge that their respective professional associations schedule workshops on drug abuse when they set meeting agendas.

Although discussions at professional association meetings now deal with drug abuse, chemical dependency, and alcoholism much more than in the past, corporate managers as well as technical experts need to hear about these problems.

Management and unions should focus on the drug problem in their negotiations to ensure that company drug policy and workplace rules are not arbitrarily drawn up but reflect the common interests of the company and employees. Both Shell Oil and members of the automobile industry, including GM and Ford, worked closely with labor representatives when they set up drug policies and enforcement procedures.

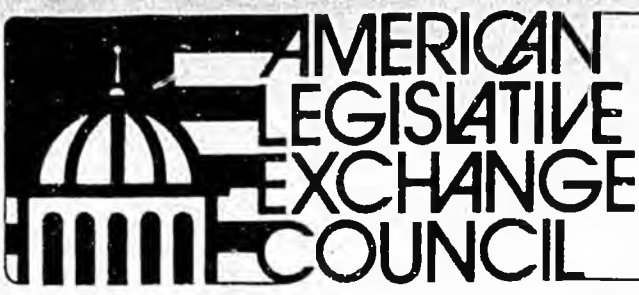
Companies should offer help to those employees with drug problems who are willing to seek assistance. This is not only good employee relations, it is also good for business—retraining, hiring, and arbitration costs are avoided and it helps the company's image. A review of company-provided group health insurance coverage is worthwhile. Does it provide, or can it be extended to provide, payments for treating drug-related problems? What community health agencies may be able to assist in treatment situations?

Most of all, companies must realize that dealing with drug problems involves risks and costs, and that the risks generally are not avoidable. By

taking action, managers risk employee illwill, and perhaps temporary misinterpretation by the public image. But doing nothing is even more risky.

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# The State Factor

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## DRUG TESTING IN THE WORKPLACE

### INTRODUCTION

#### The Pervasive Influence of Drugs

Drug abuse is a present and growing threat to American society -- its families, communities, and economy. Twenty years ago, 96% of Americans had never used any illegal drug and drug use on the job was virtually unheard of.<sup>1/</sup> By contrast, today in the age group currently entering the workforce, the numbers are staggering -- a 1985 survey revealed that 65% of 18 to 25 year-olds had used illicit drugs, and 42% had used illicit drugs within the previous month. Overall, 70.4 million Americans age 12 and over (37% of the population) have used marijuana, cocaine or other illicit drugs at least once in their lifetime; 36.8 million (19% of the population) were users at least once in the past year. Between 1964 and 1984 marijuana use alone has increased thirty fold. In the workplace today, one in six Americans is using marijuana monthly and one in twenty is using cocaine monthly.<sup>2/</sup>

Powerfully addictive drugs have never been more accessible to such a cross section of American society than they are today. While the national infatuation with drugs seems to have waned since the 1960s, drug experts warn that "exposure to addictive substances now begins earlier in life and cuts across a more diverse slice of the population than ever before."<sup>3/</sup> A 1986 study by Straight, Inc. showed that almost half of the nation's teen drug abusers got involved before the age of 12. As Edward Kayfman, Chairman of the American Psychiatric Association's drug abuse panel said, "[t]he kid who used to have to spend \$250 for a gram of coke can now buy a vial of crack for 10 bucks. Two kids can go to the movie or they can split a vial of crack." Since NIDA began monitoring marijuana potency in 1975, the potency of THC, the psychoactive ingredient in marijuana, has increased, on average, 900%. Sensimilla, a type of marijuana, is ten times more potent than marijuana was just ten years ago.<sup>4/</sup>

#### The Costs of Drug Abuse to American Business

Drug abuse has an enormous cost to American business. Conservative estimates are that drug use costs at least \$50 billion a year.<sup>5/</sup> Other estimates set the average cost at \$1,000 per worker (including non-users) per year.<sup>6/</sup> This cost amounts to a "chemical dependence" tax, which, in net effect, destroys future jobs, raises inflation, and diverts more money away from capital growth.

The Conference Board, Inc. recently published updated estimates of the total economic burden of drug abuse on society for the year 1983. The report estimates that alcohol and drug abuse in 1983 were responsible for \$176.4 billion in costs associated with treatment, research and prevention programs; treatment of related health problems; crime; motor vehicle accidents; and reduced productivity and lost employment. These figures compare to an estimated \$136.4 billion in economic costs for substance abuse in 1980 and \$65.8 billion in 1977.<sup>7</sup>

Drug abuse expert, Dr. Edward C. Seanay warns employers of the significant impact substance abuse can have on worker performance: "Even low levels of use of some of the materials can have measurable effects on coordination, morale and alertness. These changes translate directly into increased job-safety risk and reduced attention to work habits."<sup>8</sup> There is substantial evidence showing that alcohol and certain drugs negatively influence a person's ability to perform a job with regard to judgment, interpersonal relationships, manual dexterity and the utilization of skills.

Addressing a group of small businessmen, Assistant U.S. Attorney General Richard Willard recently observed: "Illegal drug use drains our nation's productivity, strangles the economy and hinders our ability to compete internationally against an ever more disciplined foreign workforce ... Drug users in the workforce are three times more likely to be involved in on-the-job accidents, are absent from work twice as often, incur three times the average level of sickness costs, and are only two thirds as productive ... On average, compared with their non-addicted counterparts, substance abusers consume three times the medical benefits, are five times as likely to file workers' compensation claims, experience seven times as many garnishments and are repeatedly involved in grievance procedures."<sup>9</sup>

The private sector is becoming rapidly educated about the costs of drug abuse. Many corporations are now introducing drug testing programs of their own. Thirty percent of all Fortune 500 companies have testing programs, and (20%) more are expected to have programs in place by late 1987.<sup>10</sup> Companies such as Lockheed, Exxon, IBM, Shearson Lehman Brothers, Federal Express, United Airlines, TWA, AT&T and The New York Times require testing of applicants. Others, such as the Wall Street firms of Kidder, Peabody & Company and Smith Barney, Harris Upham & Company are testing employees, in addition to applicants.<sup>11</sup> Rockwell International screens its test pilots for drug use. The Los Angeles Times, Southern Pacific Railroad, and Georgia Power are among companies that test workers if supervisors have reasonable suspicion to believe they may be impaired. A similar policy is in effect for drilling rig workers of all major U.S. oil companies,<sup>12</sup> and some 200,000 employees of U.S. railroads must undergo drug testing under the Federal Railroad Administration's mandatory testing program.<sup>13</sup>

Explaining this trend toward workplace drug testing, Charles R. Schuster, Director of the National Institute on Drug Abuse (NIDA) noted, "In the past, private industry has been somewhat reluctant to discuss drug problems or policies . . . {feeling} that having a drug policy and/or discussing drug issues was an open admission that their

businesses had a problem . . . Within the last year a major transition has taken place in the business world. Progressive companies have begun to adopt the position that society has a drug abuse problem. It is becoming evident that drug abuse is not unique to a particular business, but rather a phenomenon of society-at-large, and since you must draw your workforce from society, you must develop policies and programs to deal with this problem."/14

## WORKPLACE DRUG TESTING

No segment of the American workplace is immune from the problem of drug abuse. Illicit drugs are more common and more readily available than ever before. The losses in productivity are evident, and there is no question that employers will be dealing with substance abuse for years to come.

Many corporations view drug testing as an antidote to many ailments: employee theft, absenteeism, rising health care costs, accidents, shoddy workmanship and low productivity. With increased social awareness of the problem of substance abuse, the corporate world is viewing drug testing as a necessary condition for employment.

Companies such as IBM, Union Oil and The New York Times require job applicants to submit to a urinalysis test to detect drug use as part of the medical examination given at the time of hiring./15 Courts have found drug testing reasonable and constitutional as part of a pre-employment physical examination./16

More complex legal issues arise, however, when drug screening programs are expanded to those already on the job. There are two categories of on-the-job testing for drug abuse -- "reasonable suspicion" testing and "random" testing. Random on-the-job drug testing is the most controversial type of drug testing program currently in use and entails the periodic, random selection of workers for drug testing.

### The History of Workplace Drug Testing

American industry has a long history of evaluating employees to determine their fitness to perform their jobs. Through occupational medicine programs, personnel and job applicants are medically examined to ensure that they did not have medical conditions that would interfere with safe, efficient job performance. The corporate health promotion and wellness programs developed in recent years have added nutrition, drug abuse and hypertension to the factors screened in the medical evaluation./17

During the 1970s, many companies developed pre-employment and in-service drug screenings to ensure job safety and productivity. These programs allowed for early identification and referral for treatment of drug abusing employees. Comprehensive programs, including employee assistance, rehabilitation, treatment and education, are an outgrowth of these early screening programs.

### Successes of Workplace Drug Testing

Many of the companies which have instituted drug screening or testing programs are getting the results they wanted. These companies have observed a decline in the number of job applicants testing positive for drugs: Lockheed: 21% to 15%; Southern California Edison: 28% to 15%; PG&E: 11% to 9%; and, The Los Angeles Times: 13% to 9%.

Other companies which have begun testing for employee drug abuse have witnessed an improvement in job safety and productivity. For example, Southern Pacific Railroad announced that human-factor accidents have gone down as much as 69% since testing was implemented for its employees in 1983.<sup>18/</sup> And a study conducted for General Motors by University of Michigan Researchers found that employees who entered the company's Employee Assistance Program had 40% to 60% reductions in absenteeism, sickness and accident benefit use and occupational injuries. The researchers estimated that for every dollar GM spent on such treatment, the company would save more than two dollars within three years.<sup>19/</sup>

### Challenges to Workplace Drug Testing

Despite these successes, drug testing has received much negative criticism, principally by such groups as the American Civil Liberties Union and various employee unions. Testifying before the House Select Committee on Narcotics Abuse and Control, NIDA Director Schuster, identified two primary concerns with drug testing:

- \* The need to balance an individual's reasonable expectation of privacy and confidentiality with the principles of public safety, efficient performance, and optimal productivity; and
- \* The accuracy of testing, specifically the reliability of urinalysis methods.<sup>20/</sup>

### Privacy & Due Process

Critics of workplace drug testing focus much of their work toward limiting or eliminating on-the-job drug testing. They object to the "dragnet" quality of testing conducted when there is no individualized evidence of drug abuse. Opponents argue that drug testing through urinalysis reveals a great deal about the private life of the person tested, including pregnancy, asthma, heart disease, manic-depression, epilepsy, diabetes and a host of other physical and mental conditions which an individual may not want revealed to a third party.<sup>21</sup>

Critics argue that such testing is therefore violative of employees' "right of privacy" guaranteed by the U.S. Constitution. There are two kinds of privacy rights referred to in the context of drug testing. One is the so-called Constitutional right of privacy that arises under the "penumbra" of the Bill of Rights and is applied to the states via the substance due process clause of the Fourteenth amendment. This right to privacy, while not explicitly recognized in the U.S. Constitution, has been recognized in a stream of United States Supreme Court and lower court decisions.<sup>22</sup>

The second kind of privacy right referred to in the context of the drug testing debate is a common law right of privacy that works its way into Constitutional analysis under the Fourth Amendment's prohibition against unreasonable searches and seizures whereby a search is judged reasonable on the basis of whether it invades an individual's "reasonable expectation of privacy." The U.S. Supreme Court has ruled that extracting bodily fluids constitutes a search within the meaning of the Fourth Amendment. /23

Despite these strong constitutional challenges, drug testing has withstood every single federal appeals court challenge. The federal appeals courts in five Circuits have held that testing of public or private sector employees without individualized suspicion (random drug testing) is constitutional. These courts include the Third, Fifth, Seventh, Eighth and District of Columbia Circuits. Moreover, the Supreme Court unanimously vacated a Ninth Circuit injunction that would have halted the Federal Railway Administration's post accident testing program. As a result of that order, Conrail was able to obtain urine tests of the brakeman and engineer in the recent Maryland train wreck which killed 16 people from employee drug use.

In addition to random testing, reasonable suspicion testing has been upheld by appeals courts for the following job classifications: employees who carry firearms, employees who have access to classified information, and employees who are involved in law enforcement (5th Cir.); bus drivers (7th Cir.); prison guards (8th Cir.); military personnel (D.C. Cir.); and race jockeys (3rd Cir.).

The Circuit Courts have been particularly forceful in upholding the right of private employers to authorize drug testing. In Amalgamated Transit v. Suscy, 538 F.2d 1264 (7th Cir. 1976), cert. denied, 429 U.S. 1029 (1976), a union challenged the constitutionality of the Chicago Transit Authority's requirement that bus operators submit to blood or urine tests following accidents. The 7th Circuit held that the "paramount" interest in protecting the public by insuring that bus drivers are fit to perform their jobs, is so great that bus drivers have no reasonable expectation of privacy. This reasoning was followed in Brotherhood v. Burlington Northern Railroad, 802 F.2d 1016 (8th Cir. 1986), which held that both accident drug testing and periodic drug testing unilaterally imposed as a condition of employment without collective bargaining did not violate the collective bargaining agreement. The court ruled that it is the insidious nature of illegal substances that "too often a user's faculties are impaired and the damage done through a serious error on his part before he realizes that he is impaired and without any outward sign of his impairment that could lead a supervisor or other person to intervene."

The record in the federal district courts is less clear-cut. A great deal of media attention has been given to district court decisions, which, of course, do not establish national precedent. The U.S. Justice Department's current tally indicates this breakdown: of 576 federal district courts, only 17 have ruled in drug testing; of those 17, ten have upheld drug testing and seven have struck it down; of the latter group, two have since been overturned on appeal.

Of those district courts which have ruled against drug testing, most seem to have objected to the means of implementing the program, not that drug testing programs are at all times, and in all circumstances invalid. For instance, in Capua v. City of Plainfield, (D.N.J. 1986), the court struck down random urinalysis to protect against arbitrary abuse. Not surprisingly, the court found that the absence of notice and the absence of written standards violated the Fourth Amendments protections against unreasonable searches and seizures. In language that hinted at a legitimate drug testing program, the court stated that, "{A}ssuming a program of drug testing is warranted, before it may be implemented, its existence must be made known, its methods clearly enunciated, and its procedural and confidentiality safeguards adequately provided."

Although some earlier district court decisions ruled against drug testing, particularly for procedural flaws in drug testing programs, more recent cases have since upheld drug testing in safety-related occupations involving nuclear power plant operators, helicopter mechanics, and air traffic controllers.

### Test Reliability

Central to the growth of workplace drug abuse testing in the U.S. has been the development of reliable, inexpensive screening technology. However, the accuracy and reliability of drug testing procedures are among the most frequently criticized parts of most drug testing programs.

The most commonly used urinalysis methods to screen for illegal drugs are immunoassays and chromatography. These technologies can identify, with a high level of confidence, whether someone has used drugs like marijuana, cocaine, PCP, amphetamines, barbiturates and heroin in the past three or four days.

Unlike a breathalyzer test for alcohol urinalysis cannot determine present drug intoxication. Urinalysis testing will determine only the presence of a drug metabolite in the system, and not whether the individual is currently under the influence of an illicit substance. Therefore this test is used primarily as a deterrent.

Urinalysis technology is not without its problems. A person's body weight, fluids and foods consumed prior to the test and over-the-counter medications can cause false positive readings in some tests. Improper handling and faulty chain of custody procedures can cause samples to deteriorate or to become contaminated and affect the test results. However, when appropriate methods are used, good laboratory procedures followed and adequately trained personnel employed, there is little controversy among experts about the reliability of urinalysis for drug screening.

The false accusation of being a drug abuser could ruin a person's career or life. Therefore, the use of a second, confirming test is almost universally recommended before any disciplinary action is taken based on positive results of a first screening. Imputations of drug use, especially in the case of a false positive result, will follow an employee for the remainder of his career. The federal courts have therefore ruled that employers must take the proper precautions to

avoid such irreparable damage. The courts have found that employees cannot be dismissed based on a single unconfirmed drug test; a confirming test by an alternative method is required to avoid the determination that the firing was arbitrary and capricious. In addition, procedural due process requires that a government employee be provided notice and an opportunity for a hearing before being fired./24

### STATE ACTIVITY

Federal courts have established relatively broad parameters for workplace drug testing by upholding pre-employment screening, "reasonable suspicion" testing and random drug testing for employees in safety-related positions and for employees in extensively regulated industries, provided that certain procedural safeguards exist. While exact parameters will continue to be defined by the courts, the overall questions regarding the propriety of workplace drug testing have now moved to the legislatures -- both state and federal.

This year alone, workplace drug testing legislation has been considered by thirty-one states. Many of the bills introduced during 1987 would limit employee drug testing by creating new rights for employees or by placing new restrictions on testing by employers. For example, a bill introduced in California would make employers "reasonably accommodate" employees seeking drug rehabilitation, while bills in Connecticut, Hawaii, Iowa and Vermont would largely prohibit employers from testing at all.

In early April, Montana Governor Ted Schwinden signed the first state legislation to significantly limit the right of employers to test employees for drug abuse. Montana Chapter 482 prohibits blood or urine testing unless the employee works under hazardous conditions, is in a position involving the public safety, or has specific fiduciary responsibilities. Moreover, the legislation mandates new drug testing procedural standards including requirements that employers have a written policy for testing and definite safeguards for privacy. Employers must make use of two testing procedures and are prohibited from releasing the results.

In other states, legislators are acting to safeguard the right of employers to test employees for drug use. Bills, such as those introduced in Utah, Texas, and Minnesota would permit drug testing in various forms, or limit the rights of employees found to be "under the influence." Many of the bills contain provisions regarding testing in both the private and public sectors.

On March 17, 1987 Utah Governor Norman Bangertter signed legislation specifically permitting employers to test current or prospective employees under the following conditions:

- 1) Reasonable and sanitary conditions for the collecting of samples.
- 2) Guarantee of the right to privacy of the individual.
- 3) Documentation of sample collection.
- 4) Appropriate precautions to preclude the contamination or adulteration of samples.

*Continue*

- 5) Conformance to scientifically accepted analytical methods and procedures.

Maine Governor John R. McKernan, Jr., upheld the right of Maine employers to test employees by vetoing a bill banning random drug testing. The veto was sustained by the Senate. Governor McKernan is opposed to a ban on employee drug testing, but has stated that he will accept a bill of limited nature. The Governor would approve of legislation allowing random drug testing of employees in sensitive areas. Additionally, the Governor opposed the section of the legislation mandating that employers bear the cost of employee rehabilitation.

### FEDERAL ACTIVITY

On September 15, 1986, President Reagan issued an Executive Order mandating that all agencies work toward a drug-free federal workplace. The order requires all federal agency heads: (1) to develop a stated policy regarding illegal drug use; (2) to establish Employee Assistance Programs emphasizing education, counseling, referral to rehabilitation and coordination with community resources; (3) to train supervisors to identify and address employee drug abuse; (4) to set procedures for individuals to seek rehabilitation services and for supervisors to make such referrals which protect personal privacy; and (5) to set procedures for identifying illegal drug users. The order includes use of urinalysis for detecting drug abuse for selected employees of all agencies and a government-wide drug detection program.<sup>25</sup> The order has met with some resistance from Administration officials and Members of Congress who are opposed to drug testing in the workplace.

The Executive Order authorizes the use of drug testing programs as a diagnostic tool to identify drug use in specific circumstances and among certain employees. Random or uniform tests must be given to employees in sensitive positions. Additionally, testing may be ordered for job applicants, when there is reasonable suspicion of drug use, in the course of a safety investigation, or as follow-up to a rehabilitation program. Measures to be taken against illegal drug users and measures to protect employees are also included in the order.

President Reagan also sent to Congress the "Drug-Free American Act of 1986" which included as Title I the "Drug-Free Federal Workplace Act of 1986." Title I amends the Rehabilitation Act and the Civil Service Reform Act to clarify that they do not bar personnel actions to achieve drug-free workplaces. The Anti-Drug Abuse Act of 1986 passed the 99th Congress and was signed into law in late 1986.

Attorney General Edwin Meese announced on February 3, 1987 that President Reagan had placed the responsibility for all federal anti-drug programs into one Cabinet-level board. The new National Drug Policy Board will continue to serve as the National Drug Enforcement Policy Board, created by statute in 1984, to review and develop strategy for all federal law enforcement agencies. "This important step will provide policy coordination for the enhanced

government efforts to substantially cut the demand for drugs while maintaining and strengthening our long-range drive to reduce the supply of drugs," Attorney General Meese said.

Under consideration in the 100th Congress is Senate Bill 1041 which would require mandatory drug and alcohol testing of rail, aviation, and motor carrier industry employees. The legislation requires the Secretary of Transportation to undertake a rulemaking process within 12 months of enactment to establish a drug and alcohol testing program that would require five types of testing, including random, pre-employment, post-accident, periodic recurring, and with reasonable suspicion. According to Senator Ernest F. Hollings (D-SC), co-sponsor of the bill along with Senator John Danforth (R-MO), "This is only the beginning of a long process to ensure that transportation employees will not use drugs or alcohol on the job." Action on this legislation is expected late in 1987.

The Human Resources Subcommittee of the House Committee on the Post Office and Civil Service recently held hearings on the subject of drug testing of federal employees. The Committee is investigating the scientific aspects of testing, including accuracy and laboratory accreditation. No significant action is expected before early fall 1987.

#### CONCLUSION

In March 1986, NIDA sponsored the national forum, "Interdisciplinary Approaches to the Problem of Drug Abuse in the Workplace." The program brought together representatives from business, industry and labor to discuss the growing problem of drug abuse, its impact on American business, and ways of addressing the problem within the workplace environment. As part of the forum, consensus statements on various issues were developed.

On the ethics of workplace drug testing, there was consensus that protecting the privacy of workers' activities in their off-duty hours is an important consideration in establishing fair and equitable drug abuse testing programs. "However, other concerns must be weighed in addition to an employee's right to privacy. These include the employer's obligation to provide a safe environment for the employees and the public, to provide a safe and high quality product or service for the customer, and to protect shareholders from unnecessary financial loss due to drug abuse among employees ... A balancing of the ethical concerns created by drug use in the workplace will, in many cases, result in a need for employer action to screen prospective and current employees for the presence of drugs of abuse."/26

How should a workplace drug program be structured? NIDA's Richard Hawks presents a concise, comprehensive picture: "Many considerations are important to developing a sound drug program in an organization. It cannot be overemphasized that the documentation of well thought out policies, developed with input from all organizational elements, is at the top of the list. An effective program to discourage drug abuse in an organization must have clearly defined rationales, goals, and rules. The consequences of a positive urinalysis result must be clearly stated and not open to arbitrary

responses by management. The rights and sensitivities of the individual should be protected as much as possible. Results of urine drug assays should be kept confidential. The individual should be accorded the benefit of the doubt, if necessary. The program should be designed, in other words, for prevention, and rehabilitation rather than for law enforcement."/27

An area of immediate legislative/regulatory concern is to set laboratory regulations and certification standards. Until such standards are established, private employers and government agencies must insist that the laboratories they use for urinalysis participate in proficiency testing programs such as those provided by the College of American Pathologists or the American Association of Bioanalysts. Recognizing the limits of urinalysis technology, confirming tests should always be conducted before any disciplinary action is taken in cases where first test results are positive.

As Charles Schuster observed, "the workplace provides an excellent forum for dealing with drug abuse through education, prevention, early intervention, and referral for treatment."/28 A drug testing plan, if thoughtfully conceived and carefully executed, can be a very useful component in an overall drug abuse prevention program.

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The State Factor is published by the American Legislative Exchange Council for educational purposes only and was written by Carolyn Peterson of Peterson Public Relations in Vienna, Virginia, and by Michael Fletcher, Director of ALEC's State Legislator Task Force and Private Sector Coordinating Council on Labor. The views expressed herein do not necessarily reflect those of the American Legislative Exchange Council, its officers or members.

HB 283



# TAYLOR LABORATORIES, INC.

CHEMICAL TESTING & MARKETING  
724A SIGINAKA WAY SITKA, ALASKA 99835  
(907) 747-6364

SUBJECT: LABORATORY REPORT, NOVEMBER 1987 - A continuing review of information to increase the effectiveness of our subscribers in serving the public

## DRUGS OF ABUSE LABORATORY

### COCAINE-NOVOCAIN?

"Doesn't novocain test positive for cocaine? They're both 'aines' aren't they?"

This question was recently asked of us in court. To a chemist, the answer is "no" because the chemicals are different. But the relationship is interesting. Novocain is a trademark for procaine hydrochloride. Because cocaine (cocain) is addictive, procaine hydrochloride was developed to take its place [pro-(in place of) + (co)cain].

Thus, the "trivial" similarity in the names is because Novocain replaced cocaine. The scientific names of the chemicals reveal no real similarity.

Cocaine: [1R-(exo,exo)]-3-(Benzoyloxy)-8-methyl-8-azabicyclo[3.2.1]octane-2-carboxylic acid methyl ester.

Novocain: 4-Aminobenzoic acid 2-(diethylamino)ethyl ester hydrochloride.

Their size and shape are significantly different, so they will not give the same results. Also, cocaine spontaneously loses one water molecule in body fluids, and is therefore tested mostly as benzoylecgonine, which cannot be derived from Novocain.

Drug abusers, however, typically believe such excuses, and it is difficult to argue against belief. But, if there is some question, do another urinalysis, when Novocain can no longer be an excuse.

Connecticut, Hawaii, Iowa, and Vermont would mostly prohibit employee testing. The first state legislation to limit the right of employers to test for drugs is that of Montana, where, to be tested, an employee must work under hazardous conditions, affect public safety, or have fiduciary responsibilities.

In Utah, Texas, and Minnesota, legislators are acting to safeguard the rights of employers to test employees. In March, Utah Governor Norman Bangertter signed legislation permitting testing of current or prospective employees, given specific conditions of reasonable collection provisions, right to privacy, documentation, precautions for adulteration, and conformance to acceptable scientific methods.

Maine Governor John R. McKernan, Jr., upheld the right of Maine employers to test employees by vetoing a bill banning random drug testing. The veto was sustained by the Senate.

Alaska Governor Steve Cowper has written to our Laboratory: "I will bear your comments in mind as we try to sort through the conflicts between the right of privacy and the necessity to establish a drug-free work place." We are sure Governor Cowper and committee members working on HB 283 would appreciate your thoughts on this controversial issue.

### HB 283: RESTRICTING SOME EMPLOYERS FROM TESTING FOR DRUGS OF ABUSE

The House Judiciary Committee has scheduled hearings on HB 283 in Anchorage and by teleconference on November 14. Contact: John Hartle, 465-4919.

This year, work place drug testing legislation has been considered in thirty one states. A California bill would make employers "reasonably accommodate" employees seeking drug rehabilitation, while bills in

### ASBESTOS LABORATORY

The Alaska Department of Labor will be holding a workshop on proposed changes to its asbestos regulations this month. Participants representing a crosssection of interests will discuss whether the hazard of working with asbestos warrants reducing the allowed exposure limit for workers to ten times less than current Federal and Alaska State limits.

# SUBSTANCE ABUSE IN THE WORKPLACE

No cost for the seminar

\$7.00 - Lunch

Open to the Public

9:00 - 11:50 a.m.

Welcome .....

Clyde Johnson  
Industrial Relations Manager  
Ketchikan Pulp Company

and

Member, Job Service Employer  
Committee

"What ARCO is doing to curb  
drug abuse at the worksite".

Mike Collar  
Employee Relations Director  
ARCO Alaska, Inc.  
Kuparuk Oil Field

Employer Drug Testing Policy.....  
in Relation to Unemployment Insurance

Stan Burrows  
Unemployment Insurance  
Program Coordinator  
Department of Labor, Juneau

Break

Methods of Drug Testing.....

Fern Jarrett  
Laboratory Director  
Ketchikan General Hospital

Alaska Labor Law and Substance  
Abuse at the Workplace.....

James Sanwick  
Wage & Hour Regional Supervisor  
Department of Labor, Juneau

12:00 - 1:00 p.m. Chamber of Commerce Luncheon  
(Members & Non-Members)

Featured Luncheon Speaker

Employee Assistance Programs .....

Richard Callentine, M.A.  
Family Counseling Services  
Ketchikan  
and  
Southeast Alaska Employee  
Assistance Association

Limited Seating:  
RSVP: 225-3181  
OR: 225-3184

Other Seminars about Substance Abuse in the Workplace

Interim Seminar, Spring, 1987

Final Seminar, September 9, 1987.....

Dr. Forest Tennant, M.D., Dr. P.H.  
Executive Director, Community Health  
Projects, Inc., West Covina, Ca.

# SUBSTANCE ABUSE IN THE WORKPLACE – II

No Cost for the seminar

\$5.00 - Lunch

Open to the Public

9:15 a.m.-1:00 p.m.

Facilitator . . . . . Carroll Fader

“Aspects of Drug Testing” . . . . . Lawrence Taylor, Jr.  
President  
Taylor Laboratories, Inc.  
Sitka, Alaska

“Workers’ Compensation in Relation  
to Substance Abuse at the Worksite” . . . . . Betty Sexton  
Workers’ Compensation Officer  
Department of Labor  
Juneau, Alaska

Break

“Wrongful Termination” . . . . . John Peterson, Attorney  
Ziegler, Cloudy, King & Peterson,  
Attorneys at Law  
Ketchikan, Alaska

“Health in the Workplace” . . . . . Russell Huffman, Jr., M.D.,  
Psychiatrist  
Ketchikan, Alaska

Questions, Answers and Discussion  
Combined with Lunch (Sandwich Buffet) . . . . . Speakers Panel with  
Audience Participation

RSVP: 225-3184 — C of C 225-3181 — KJS
--

Final Seminar about Substance Abuse  
in the workplace, Sept. 9, 1987 . . . . . Dr. Forest Tennant, M.D., Dr. P.H.  
Executive Director,  
Community Health Projects, Inc.,  
West Covina, Ca.

# **SUBSTANCE ABUSE IN THE WORKPLACE—III**

No cost for the seminar

\$7.00 — lunch

Open to the public

September 9 9:30-11:30 (Adjourn for chamber luncheon)

Welcome .....

**Grant Smith, Chairman**  
Job Service Employer Committee

Drugs in the Workplace.....

**Dr. Forest S. Tennant, Jr., M.D. Dr. P.H.**  
Executive Director, Community Health Projects, Inc.  
Associate Professor, UCLA School of Public Health  
Drug Advisor for National Football League  
Drug Abuse Consultant, Los Angeles Dodgers.  
California Highway Patrol and California Department of Justice

— Break —

Questions and Answers

12:00-1:00 — Chamber of Commerce Luncheon.....The Landing  
(Members and non-members)

**Limited Seating**

**R.S.V.P. — 225-3181 or 225-3184**

.....  
Ketchikan Itinerary — Dr. Forest Tennant, Jr.

**Tuesday, September 8**

Breakfast — Ketchikan Families in Action parent group

10:00 — Radio interview — KRBD

11:10 — First City Forum — KTKN

Noon — Rotary Lunch

1:30-3:30 — Department Heads-Ketchikan General Hospital

4:00-5:00 — Drugs identification training — Teachers, school nurses, counselors, social services, WISH.  
Forum room — Ketchikan Community College

7:30-9:30 — Public presentation for parents & community — Forum Room-Ketchikan Community College

**Wednesday, September 9**

7:30 — Doctors staff at Ketchikan General Hospital

9:30 — Drugs in the Workplace (see above)

Noon — Chamber of Commerce luncheon meeting

2:00-4:00 — Police training (Police Headquarters) City Police, State Troopers, Coast Guard, Dept. of Corrections, Immigration Service, Alaska Peace Officers, Juvenile Probation Officer.

.....

# DRUG ABUSE LOSS PROJECTION WORKSHEET

## Present Drug Abuse Financial Conditions in your Business

- A. With \_\_\_\_\_ full time employees and a total annual payroll of \_\_\_\_\_ dollars, a typical worker's (excluding talent) wage/salary package at your business amounts to \$\_\_\_\_\_ (total compensation divided by # of employees). And, according to the most conservative national averages, your business has at least \_\_\_\_\_ (10% of payroll) blue and white collar workers with impaired job performance due to on-the-job chemical abuse. (Another ten to twenty percent use drugs off the job to such an extent that they show impaired performance at work).
- B. For your business this means that the annual ECONOMIC IMPACT of drug abuse is at least \$\_\_\_\_\_ (25% of payroll x 10% of total workforce), potential profit that is needlessly squandered on drug related, job performance deficiencies each year. This conclusion is derived from an Arizona State University Study as well as information from the National Institute on Drug Abuse (NIDA) which reports American firms spend 25% of the chemically troubled employee's wages responding to their performance problems.
- C. Individually, your business wastes \$\_\_\_\_\_ (typical worker's compensation divided by 4) on each of the \_\_\_\_\_ (10% of workforce) chemically dependent employees on the payroll. Of that, according to actuaries from Metropolitan and Kemper Insurance Companies, \$\_\_\_\_\_ (20% of your insurance payments) is consumed on health and accident compensation for employees and their families resulting from drug abuse.
- D. Other studies reflect between 0.5% and 1.0% of gross revenues being allotted to the total employee chemical abuse problem. At your business this would range between \_\_\_\_\_ dollars to \_\_\_\_\_ dollars per year. Regardless of how the losses are figured, "Drugs-on-the-Job" is a serious economic problem for your business, but one that can be readily solved.

## SUMMARY

### EAP Costs:

# Employees x Monthly Rate x  
12 months =  
# Supervisors x Monthly Training  
Rate x 12 months =  
Annual Membership Fee =  
Total Annual Cost =

### EXAMPLE:

10 person business  
8 employees x 4 x 12 = 384.  
2 supervisors x 15 x 12 = 360.  
Annual fee = 75.

$\frac{819}{10} = 81.90$  annual cost per  
employee

Total Annual Cost = Annual Cost  
Number of Employees per employee

- \* Possible reduced cost of benefits
- \* Reduced employee turnover and absenteeism

### Estimate Your Current Costs:

Estimate of between 10 - 20% of your work force.  
% of abusers x # employees x \$7,447 = Total loss/savings/year.  
\_\_\_\_\_ % x \_\_\_\_\_ x \$7,447\* = \$ \_\_\_\_\_

- \* Average additional cost per alcohol/drug abusing employee

Cost of care are greatly reduced by early effective intervention!

### EXAMPLE OF LATE INTERVENTION:

Late intervention of substance abuse problem.  
Pay rate \$8.50/hour  
30-day resident program cost 1,200.  
\*Work Loss (40 hrs x 8.50 x 4) 1,360.  
Cost of replacement 1,360.  
Training supervision expense for replacement  
10 hours supervisor @ \$12./hour 120.  
10 hours employee @ \$8.50/hour 85.  
Total Expense \$4,125.

- \* Does not include loss of productivity due to employee experience

### BENEFITS ARE NOT ALWAYS DOLLAR MEASURABLE!!

1. Increased safety and reduced job problems.
2. Resource for dealing with drug, alcohol and personal problems affecting the workplace.
3. Increased job satisfaction, reduced job stress.
4. Increased employee and supervisor productivity.
5. Increased customer satisfaction.
6. A professional resource for acquiring effective services for employees and their families.
7. A non-intrusive way of caring about your employees.
8. Better trained supervisors.

EAP's are a cost savings way of caring about employees.

SUBSTANCE ABUSE IN THE WORKPLACE

1. On a scale of one (low) to five (high) of what concern to you is substance abuse in the workplace?

1 2 3 4 5

1  
0  
5  
4  
14  
14

2. Are you an employee?  
If you are an employee, do you have job responsibility to deal with substance abuse in your place of work?

No Yes  
7 18  
No Yes  
0 17

3. Are you an employer, or have responsibility to your employer, to employ people in your place of work?

No Yes  
5 19

Do you have a substance abuse screening process?

No Yes  
16 5

Do you plan to have a substance abuse program?

Now: (10) No (6) Yes  
Future: (3) No (4) Yes (?) III

4. In your place of work estimate the number of employees. Circle one:

(1-10) 7 (11-20) 11 (21-50) 7 (51 & up) 9

5. Did you gain insight on methods of dealing with substance abuse in the workplace?

No 0 (Yes) 25

6. Would you like further information about the legal implications of dealing with substance abuse in the workplace?

No 1 (Yes) 21

Do you have a suggestion on what further information would be most helpful?

\_\_\_\_\_

7. Do you agree that substance abuse in the workplace must be dealt with?

No (Yes) 24

8. We welcome any comments about this seminar or the issue that would be helpful in planning subsequent seminars:

\_\_\_\_\_

9. On a scale of one (low) to five (high) overall how do you rate this seminar?

1 2 3 4 5

0  
1  
4  
12  
17



## Women In Safe Homes

*A Safe Alternative to  
Family Violence*

P.O. Box 6552  
Ketchikan, Alaska 99901  
(907) 225-9474

October 26, 1987

House Judiciary Committee  
Alaska State Legislature

Dear Committee Members:

I want to formally thank you for having a committee meeting in Ketchikan. Often we feel left out of the business of the Legislature as such local meetings are rare. Despite the fact that our Legislators are very open to citizen input, it really helps to have contact with others from the Legislature.

I felt Representative Sund did an excellent job of running the meetings despite a number of handicaps. The subject matter of two bills was very tense, so it took solid leadership to pull the meeting off.

Thank you again and I sincerely hope we will see other committee's meeting in Ketchikan.

Sincerely,

Floyd H. Richmond  
Executive Director

HOUSE BILL 283 - DRUG TESTING

Correspondence

\* denotes District One

- |   |          |
|---|----------|
| * Bob Watt<br>Route 2, Box 178<br>Ketchikan 99901   | opposes  |
| * Don Finney<br>Alaska Loggers Association<br>111 Steedman Street, suite 200<br>Ketchikan 99901 | opposes  |
| * Marcia Hilley<br>Box 7483<br>Ketchikan 99901  | opposes  |
| * Donald Mellison<br>Long Island Development<br>Box: 5960<br>Ketchikan 99901                    | opposes  |
| ✓ NEA-Alaska<br>Robert Manners<br>105 Municipal Way Suite 302<br>Juneau 99801                   | supports |
| Greater Sitka Chamber of Commerce<br>Box 638<br>Sitka 99835                                     | opposes  |
| Klukwan, Inc.<br>Box 2077<br>Juneau 99803<br>Thomas Blanton                                     | opposes  |
| Alaska Pulp Corporation<br>Box 1050<br>Sitka 99835  | opposes  |



# Alaska State Legislature

Please enter into the record my testimony to the \_\_\_\_\_

10/24/87

3<sup>35</sup> AM

committee name

committee on \_\_\_\_\_

284

, dated \_\_\_\_\_

bill/subject

Answer to Bob Hays testimony. Angus Timber and Alaska Timber Insurance are two separate entities TTT is a health & welfare now profit company and KPC purchases premiums for their mill employees.

ATIE is a licensed W/C insurance company and must conform to all statutes, etc. KPC does not use ATIE to insure the mill employees. They are a self insured group and ATIE only acts as an intermediary processing claims. This brings an income of 40,000,000 to ATIE which is certainly not the largest support means to ATIE 13,000,000 premium income annually. The form Mr Hays referred to is an ATIE form and only an employee filing a claim against W/C is asked to sign. If they object to any part they are told on an individual basis they may cross out that portion. However if they do so and need information to later request. They will be responsible for obtaining this information at their expense if need be.

Signed: W.C. Board in case of a hearing.  
Testifier

Dana McLeaver

Representing (Optional)

Alaska Timber Inc

Address

225-9451

111 Sheldon Street 201

Phone No.

KTA AK 99501

## CONSENT

### TO WHOM IT MAY CONCERN:

I, Donald L. Borders, do hereby give the insurance company of Alaska Timber Insurance Exchange, or their designees, the power to obtain exact copies and the right to inspect the originals of any and all hospital and medical records concerning me relating to the injuries arising from the accident on August 13, 1987, or any other accident, injury disability, or illness suffered by me either before or after the incident of August 13, 1987, which records are or may be in the hands of or in the control of any hospital, medical clinic, pharmaceutical store, or doctor's office, and

Further, any and all physicians are hereby authorized to disclose the nature of their examination, care and treatment of said injuries sustained by me.

The above consent shall include, but shall not be limited to, the obtaining of all x-rays, doctor's reports (including pharmaceutical), patient charts, and hospital records concerning myself.

I also authorize the release of any and all records maintained by the United States Government or any of its agencies, including, but not limited to, the Civil Service Commission, Veterans Administration, Bureau of Employees' Compensation, National Personnel Records Center, General Services Administration, and Internal Revenue Service, relating to veteran's benefits, all employment records, retirement benefits, including annuities, disability benefits, military records, personnel records and federal tax returns regarding myself.

I further authorize the release of any and all records maintained by the State of Alaska, or any other State, or any of its agencies, including, but not limited to, the Department of Health and Social Services, Department of Education, Division of Vocational Rehabilitation, relating to rehabilitation services, or any other services or benefits of any kind accorded to me or my immediate family, the records of the Department of Public Safety, or any other department of the State relating to criminal prosecutions, convictions, or probation, and the records of the Department of Revenue relating to State tax returns and the Department of Labor, Division of Employment Security regarding any and all applications for unemployment insurance regarding myself. Further, such agencies are authorized to discuss the substance of their records with a representative of Alaska Timber Insurance Exchange.

It is further agreed that the insurance company of Alaska Timber Insurance Exchange, or their designees, may obtain any and all personnel records from any place of employment relating to my employment history. A xerox copy of this form shall in all ways be as valid as the original.



# Alaska State Legislature

Please enter into the record my testimony to the House Judiciary  
committee name

committee on Drug Testing, dated Oct. 24, 1987.  
bill/subject

Drug testing must be allowed. Industry must lead the fight against the drug problem because schools, police and government have not been able to control this exploding problem

Drug testing is needed to reduce accidents on the job. Often in the Forest Products Industry accidents are bloody and devastating... devastating to the injured employee's family, the co-workers, and the employers. Job skills require alertness, co-ordination, and dependence on co-workers. Industry must be able to protect those co-workers from harm caused by another workers use of drugs.

Signed: *Janey Bell*  
Testifier

Alaska Timber Insurance Exchange  
Representing (Optional)

111 Stedman, Suite 201 Ketchikan  
Address

907-225-9451  
Phone No.



# Alaska State Legislature

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Signed:

Harvey Bell  
Testifier

Alaska Timber Insurance Exchange  
Representing (Optional)

111 Stedman, Suite 201 Ketchikan  
Address

907-225-9451  
Phone No.