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POLICE DRUG TESTING

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INTRODUCTION

Today the demand and availability of illegal drugs has caused a national concern. The widespread use and abuse of drugs has touched all segments of society and has reached epidemic proportions. It is estimated by the National Institute on Drug Abuse that 66 percent of people currently entering the work force have at sometime in their lives used an illegal drug. A staggering 44 percent have used an illegal drug within the last 12 months! It is further estimated that in the United States alcohol and drug abuse cost nearly 100 billion dollars in lost production per year (see attachment #1). 1

It is no surprise that the Law Enforcement Community has not been immune. A long-time hidden law enforcement problem has finally been given proper acknowledgment. Many would argue in law enforcement today that if proper attention would have been given to a small drug problem, a larger drug problem would not have risen. There is an increasing awareness of drug abuse by police officers both within the profession and among the public as illustrated by the following sample of articles:

"A state police narcotics investigator was arrested Friday and charged with keeping drugs he bought undercover with state money." 2

"Confessions by two Miami police officers have finally cracked open a police ring that allegedly killed four drug dealers and terrorized others, stole their cocaine and plotted to murder two federal witnesses." 3

"Following an investigation by the Drug Enforcement Administration fourteen current and former Flint police officers, including two sergeants, have been indicted by a Federal Grand Jury on charges of conspiracy to possess controlled substances."

4

"Thirteen New York City police officers accused of stealing drugs and money from low-level street pushers were suspended without pay. An informed source said the officers allegedly mugged drug dealers at their hangouts, took their money and drugs and resold them to other street dealers." 5

"Two city detectives were charged with shooting into the home of a former drug dealer who is cooperating with federal agents. The arrests coincide with opening arguments in the corruption trial

of seven other officers. The officers on trial are accused of running a cocaine ring believed to be responsible for four deaths." 6

"Four police officers resigned from the Livonico (MI) Police Department after pleading guilty to one misdemeanor count each of marijuana possession." 7

"A Miami police supervisor and property room manager have been suspended after an investigation into the theft of 1,300 pounds of marijuana from a police evidence locker. It was the fourth major theft of confiscated drugs since 1985." 8

"The Grand Rapids Police Department announced a mandatory drug testing program for civilian personnel with access to narcotics in the wake of an admission by a Department, chemist that he took cocaine from the crime lab for his personal use." 9

"One of every three applicants for jobs as Chicago police officer was rejected because of drug use. One of every five applicants flunked the urine test. Most showed chemical signs of having recently smoked marijuana and a few showed signs of having used cocaine or other illegal drugs." 10

Drug abuse among police officers poses a threat to police integrity, effective police performance and the liability of law enforcement organizations (see attachment #2). The necessity to maintain a drug free workplace has introduced the drug testing concept.

NATURE OF THE PROBLEM

The nature of the problem can be divided into two dimensions. The first dimension deals with police corruption and misconduct associated with drug trafficking either by law enforcement officers or through the assistance of police. The second dimension deals with some police officers using drugs as a recreational activity. Corruption can be defined as the misuse of authority by a police officer in a manner designed to produce personal gain for the officer or for others. 11 Research has shown that minor undetected police misconducts have led to police corruption. In addition, police corruption is associated with selling and buying drugs, stealing drugs, money or property from criminals or people on the streets or police property rooms, accepting bribes and personal consumption of illegal drugs. The police officer exposure to enormous amounts of money involved in drug trafficking can tempt officers to be bad.

Police officers who use drugs have been generally consuming these drugs on their off duty time due to their unlawful nature. One must remember that many of today's police officers grew up in a social environment where drug use was simply not uncommon. It appears that abusing officers use drugs for social reasons and to experience the euphoria of the drug. Abusing officers have argued that they have resorted to drug use as a stress coping mechanism. However, this argument is not realistic due to the possibility of discovery of this behavior that can only multiply stress because of disciplinary action or termination factors.

A second argument posed by abusing officers is that their job assignment caused them to be substance abusers. This argument may be valid to officers who are working in an undercover capacity with frequent or ongoing exposure to narcotics and drugs. They are socialized into the drug culture.

An issue which has been debated in law enforcement discipline cases on numerous instances is the ability of a police administrator to discipline officers for behavior that was performed while the officer was off duty. Cases have ranged from officers being drunk in public, consensual sex and cohabitation without benefit of marriage, consorting with known felons, participation in racist organization, engaging in homosexual activity, and use of controlled substances. 12

On one extreme, civil libertarians argue that the police organization has no authority to dictate off duty behavioral standards, because such dictates violate the officer's rights. On the other hand, advocates of strict behavioral accountability maintain that given the nature of the police mandate, the organization can and must articulate very rigid standards of behavior that extend into the officer's off duty hours. As in most debates, it appears that "the truth" lies in the middle of this spectrum.

A free society must expect the highest standards of behavior and ethical conduct in those persons afforded the power to deprive persons of their basic liberties. That is to say, the public expects agents of the state (the police) to behave at the highest levels of integrity and to clearly obey the rules (laws) of society. The expectation of integrity and rule obedience for police is clearly stamped in our social history.

The police have important ethical mandates incumbent on their behavior. The International Association of Chiefs of Police (IACP) promulgated both the Law Enforcement Code of Ethics and the Canons of Police Ethics in 1957 as philosophical guides for police behavior and decision making. The "Code of Ethics" is a

pledge to be made by each law enforcement officer to discharge fundamental law enforcement duties to the best of their ability, to conduct personal affairs so as to reflect credit on one's Department, to enforce the law impartially, and to recognize the public trust implied in the job. 13 The American Bar Association's project on criminal justice standards stated: "since a principal function of police is the safeguarding of democratic processes, if police fail to confirm their conduct to the requirements of the law, they subvert the democratic process and frustrate the achievement of a principal police function." 14

More significantly, the courts have been directly faced with this issue. In Calvert v. Pontiac, a Michigan court stated that a police officer is a person whose character must be above reproach and whose truthfulness must be above suspicion. The officer's veracity and integrity must be relied upon in the performance of his or her duties in the trial of criminal cases. 15 Law enforcement officers must maintain a degree of integrity higher than the average citizen because of the powers the government invests in the police and because of the important responsibilities the police hold for the public.

Overall, the public has a fairly high opinion of the police. They feel law-enforcement officers are honest, concerned,

faithful to duty, have a high level of integrity, perform their job in the best interests of society, do not abuse their authority, and are fair in the enforcement of laws. 16 These opinions can be influenced by scandal or even unflattering publicity about the police department.

It appears that society considers it important for police officers to be drug free. According to a Newsweek poll, 85% of those polled believed that testing police officers for drug use was a "good idea." It is most important to note that police officers ranked first in this poll as the occupational group the public thought was most important to test. Air traffic controllers ranked a close second. 17

The poll would suggest not that the public suspects widespread drug use in police work, but rather that citizens recognize the immense responsibility for life and safety that law enforcement has been entrusted. It would appear that the public demands that law enforcement officers be "clean."

Law enforcement's traditional role with regard to drug abuse has primarily dealt with education, prevention, and enforcement. However, with regard to drug abuse, law enforcement does not have the luxury of exemption from the problem. The responsibilities

of education, prevention, and enforcement are still part of the primary focus, but now law enforcement must also look at itself in the mirror and make a realistic evaluation and assessment of what it sees.

Current and future police leaders will be challenged by this problem, and success will be based upon the ability to handle drug abuse problems that arise in ways that enhance rather than diminish public confidence in police departments. All it takes is one incident for a department to lose its credibility with the public. If the incident of drug abuse is not handled properly by the police leader, the whole force may be thought of as a band of corrupt drug abusers.

Recognizing the dangers of this, many police leaders are taking steps to demonstrate that officers are "clean" by implementing drug tests for all officers. This is optimally viewed by the public not as an admission of a drug problem by a police agency, but rather as part of their responsibility for ensuring a drug-free workplace and setting an example within their communities.

Police departments and local governments may be subject to civil liability for the negligent acts of police officers that cause injury to citizens. Under state laws the legal causes of action

vary widely. As a result of legal limitations under state law, many plaintiffs in recent years have attempted to convert local court actions into Federal claims under 42 U.S.C., section 1983, Deprivation of Civil Rights. 18

Police departments have a duty to develop policies and programs to monitor the behavior of officers who pose a risk of harm to others. A jury found the city of New York liable for negligence in failing to adopt an effective program of psychological screening and monitoring of police officers. In this case a mentally unfit police officer shot and severely injured his wife before committing suicide. 19

As an analogy to drug testing, this case suggests that departments have a duty to adopt effective programs to discover unfit or impaired police officers. The department should be able to determine in advance if an officer poses a risk of harm to the public. Officer drug impairment might be manifested in many negligence situations, including vehicle accidents and delay or failure to respond to calls for service.

Failure to adequately train supervisors to detect officers impaired by drugs might result in department or government liability. It must be shown that the failure to train amounted

to reckless disregard for or deliberate indifference to public safety. 20 If a department recognizes the dangers associated with officer drug impairment by promulgating a written rule prohibiting the use of illegal drugs, but fails to train supervisors on methods of detecting officers impaired by drugs a jury or court could properly draw the inference that the department made a conscious policy decision not to do such training. 21 An established department policy and program against police officer drug abuse, consistently enforced, and including supervisor training, could serve as an effective defense against negligence claims by plaintiffs injured by drug-impaired officers.

Police administrators have both legal and moral obligations for identifying officers whose job performance is being impacted by drug usage. The community's safety is at stake with this issue. A police administrator is paid to ensure the safety of his community by recruiting the best officers he can to protect the citizenry. In addition, the administrator and his agency can be held liable if action was not taken toward an unsafe employee, whose inability to carry out his responsibilities was known or should have been known to his department. With this in mind, it would be tempting for a police administrator to try and disregard all legal, moral, and privacy rights of individual officers and

simple implement an iron-clad policy of drug testing at random. However, in today's complex world, no administrator can realistically attempt to implement any type of policy or program without fully examining all the issues that are pertinent. These issues include but are not limited to legal aspects, privacy rights, property interests, community standards, employee tolerances, and implementation considerations. Only after a full consideration of all the issues can a police administrator begin to formulate a policy to implement drug testing, and what types of procedures will be used to implement the policy.

DEVELOPMENT OF A DRUG TESTING PROGRAM

The National Institute on Drug Abuse recommends that decisions to initiate a drug screening program for employees should be based upon conclusions after considering three factors: 22

1. The awareness of or concern about impaired performance at the worksite;
2. The impact of drug abuse upon the health, safety, security, and productivity of employees; and,
3. Supportive or alternative means to detect drug use in the workplace.

All three of these factors are worthy of consideration by a police administrator but the law enforcement profession must take a stricter approach when applying any program. Most everyone agrees that police officers hold a special place in society. They are society's first level of defense, and as such they must be exemplary in their conduct and in their job performance.

The necessity to maintain a drug free workplace has introduced the drug testing concept. Random drug testing is preferable over other drug-testing programs in that the random test gives a true perception that anyone may be tested at any given time. The use of a random testing program allows police administrators to test a greater number of employees than "for cause" testing, which allows administrators to test only those employees who openly display signs of drug abuse. The implementation for a "for cause" testing program will not result in voluntary compliance, whereas a random testing program can achieve voluntary compliance by its very implementation. Not every police department will need a comprehensive drug testing program. Some agencies will be able to accomplish their objectives with a program of limited tests based on reasonable suspicion. Others may place their highest priority on testing applicants. The type of program developed needs to be directly related to a department's own problems or objectives.

Some police administrators would prefer to institute a "random" drug testing program. A fair random drug testing program must give serious consideration to some specific areas, namely: 23

Written Policies. Police administrators need to develop written policies which both clearly define the random drug testing program to be implemented and which leaves no avenue for capriciousness or arbitrariness in its application.

Choosing an Appropriate Random-Selection Process.

The method of random selection choosing whether a manual statistical method or a computer-generated process, needs to be identified with appropriate controls for fairness and true randomness. Also, police administrators must decide whether personnel occupying positions in which they are subject to a higher than normal frequency of contact with drugs and/or drug abuse (e.g. narcotics vice crime labs. and organized crime) should be assigned a higher probability of being selected for a random drug test.

Researching and Identifying the Type of Sample That Will be Tested. A decision must be made whether to

test blood, hair, or urine samples. The present trend for most corporations and police departments is to conduct urinalysis testing because of its accuracy and limited "intrusiveness."

Researching and Identifying the Type of Test That will be Conducted. A number of questions and issues have been raised about the types and accuracy of tests police departments use to detect drugs. The department should take all precautions necessary to ensure the veracity and integrity of the drug screening process.

Identifying the Method of obtaining and Storing Samples. To ensure the integrity of the testing procedure, strict guidelines must be developed and followed for obtaining and storing the sample. Of particular concern is (a) ensuring that the sample is unadulterated and (b) ensuring that the storage process retains the characteristics and constituents of the sample.

Identifying the Chain of Custody that will be Used for the Samples. Clear, concise procedural safeguards must be developed for maintaining the chain of custody. As a rule of thumb, the chain of custody for the

samples should be a process as rigid as that expected in the evidentiary chain for criminal cases.

Identifying Compounds and Threshold. Requirements for each specific compound to be tested must be stipulated for laboratory identification. Likewise, the threshold required for the test to accurately indicate a positive finding must be developed to ensure the reliability of the test results.

Procedures for Positive Test Results. Administrators must decide what procedures will be followed if the initial test is positive. Decisions need to be made concerning the implementation of a second-stage confirmation test. In all likelihood, if the initial test is positive for the presence of any controlled substance which is not shown to have been legally prescribed to the employee, the initial test should be followed by an additional, more definitive, confirmation testing procedure.

Selecting a Vendor or Making Arrangements for a Government Laboratory to Analyze the Test Samples. This selection needs to be made after identifying

and carefully assessing the laboratory's capabilities. Factors to consider should also include cost, "turnaround" time of the analysis, arrangements for laboratory technicians to testify if necessary, and sample control procedures of the laboratory.

Identifying Policies for Personnel who Fail to Show up for a Test. Specific policies must be developed and set forth for members who fail to appear for their tests. If the employee is going to be subject to any form of disciplinary action for failing to show, then this, as well as the discipline imposition procedures, must be clearly articulate in the policy and procedures.

Identifying Policies for Employees with Positive results on Confirmation Test. Sanctions for personnel having positive confirmation tests must be determined and specifically spelled out. Police administrators must decide whether to terminate drug abusing personnel or to implement sanctions enabling them to participate in assisting programs. The fact that these personnel have knowingly acquired and possessed an illegal substance causes many police administrators to take the position that termination is the only solution that meets the needs of the community, the department, and the officer

Once police administrators arrive at a decision regarding the disposition of drug abusing employees, this potential disposition must be made known to all personnel.

Training Programs for all Police Department Personnel.

All members of the police department including managers, supervisors, and officers should receive training regarding drug awareness and more specifically, drug abuse. In addition, all personnel should receive training concerning the policies and procedures that will be used in administering the department's drug testing program. The training component serves not only as an educational and preventive purpose, it also meets the legal needs of "notification" to employees regarding the random testing and potential resultant sanctions.

Keeping Abreast of New Advances in Drug Testing. The technology for conducting accurate drug testing exists today, but police administrators must be aware of the continuing developments to guarantee that the department is using all available measures to become a drug abuse free department.

Police administrators must clearly spell out the rationale for testing and obtain expert legal advice. Second, the costs involved in operating a comprehensive drug testing program should not be underestimated. Third, it is important to put all program policies and procedures in writing, pilot test the program, and inform all personnel of the department's expectations before the program begins. Finally, any department considering a random testing program should begin working with the officer's union or association in the early planning stages.

Police department employee drug testing by urinalysis raises numerous legal issues for agencies considering developing and implementing policies and procedures to deal with the potential of employee drug use. Departments are also concerned about possible liability for the negligent acts of officers under the influence of drugs.

The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures. Under the Fourth Amendment, a search and seizure can only be made with a warrant based on probable cause or without a warrant under certain recognized exceptions. 24 While the courts have held that a person does not have a reasonable expectation of privacy in what a person "knowingly exposes to the public." Most courts find

that an individual clearly has a reasonable and legitimate expectation of privacy in one's own urine. The Fourth Amendment only protects persons from unreasonable searches and seizures.

The courts must decide whether department drug testing of employees is reasonable under the circumstances. The reasonableness will be determined by balancing the employees expectation of privacy against the department's needs and interests in testing employees for use of drugs. The U.S. Supreme Court in Bell v. Worfish explained:

The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it was conducted, the justification for initiating it, and the place in which it is conducted. 25

In Katz v. United States, the U.S. Supreme Court articulated and accepted standard for what constitutes a legitimate expectation of privacy as follows: "There is a twofold requirement, first the person must have exhibited an actual subjective expectation

of privacy and second, that the expectation be one that society is prepared to recognize as "reasonable". 26

While on Penny v. Kennedy the court decision stated that police officers "possessed a certain level of constitutional protection which cannot be lowered. 27 Another court (Turner v. Fraternal Order of Police) recognized that police officers may in certain circumstances "enjoy less constitutional protection than an ordinary citizen." 28

Once a court establishes that the employee has a legitimate privacy interest, the court must still determine whether this privacy interest outweighs the government's interest in using urinalysis to detect illegal drug use. One experienced commentator in this field has enumerated seven significant police department interests that may justify a drug testing program and thus outweigh the privacy rights of the employees. 29

These government interests are as follows:

Public Safety. Police activities, such as the use of firearms, vehicle pursuits, and other activities requiring judgment and skill, can be hazardous to the public if performed by officers impaired by use of drugs

Public Trust and Integrity. Possession of illegal drugs by police officers (or anyone) is a criminal offense in most jurisdictions. Police sworn to uphold the law lose the public trust when they break the law.

Potential for Corruption. An officer using drugs must associate with criminals to obtain the drugs; such association may be a basis for exploitation of the officer.

Presentation of Credible Testimony. An officer illegally using drugs could be subject to impeachment on the witness stand as a law violator.

Co-worker Morale and Safety. The department has an obligation to ensure employees that co-workers can serve as partners or backups in a reliable and effective manner.

Loss of Productivity. Drug use by officers could result in high absenteeism and injuries on the job, increasing the cost of police services to the taxpayer.

Legal Liability. A police department may be held legally

liable if it knew, or should have known, that an officer, as a result of drug use, presented an unreasonable risk of harm to others. Liability may be based on a failure to address an employee drug problem with due diligence or inadequate policies and procedures to ensure officers are fit for duty.

In summary, in order for a police department to develop a drug testing program consistent with the requirement of the Fourth Amendment, the department must document its policies, procedures, and the need for introducing such a measure that infringes on the employee's right to privacy based on some reasonable, perhaps compelling, state interest.

The Fourteenth Amendment safeguards the "liberty" and "property" interests of individuals. Courts recognize that employees have a "liberty interest" to be free from an unwanted stigma attached to one's discharge from employment, particularly where such reputation impairs the individual's ability to obtain future employment. Courts also recognize that employees sometimes have a "property interest" in their employment. These liberty and property interests cannot be removed from employees without due process of law. While these Fourteenth Amendment liberty and property rights do not prohibit police departments from disciplining or discharging officers using drug.

departments developing a urine testing program must consider some basic procedural safeguards in order to meet the requirements of due process of law. Employee notification of drug testing and a clear and detailed written directive enumerating applicable procedures for collecting, testing, and using the information derived may be prerequisites to ensure due process under the Fourteenth Amendment. Notice of drug testing reduces the employee's expectation of privacy and may help a department meet the test of reasonableness under the Fourth Amendment. The chain of custody of drug specimens in a urine testing program should be treated as carefully as physical evidence in a criminal investigation. Departments should strongly consider preserving positive urine samples for independent verification by employees in order to "promote a sense of fairness and enhanced reliability in the testing procedures." In this same vein, the court in Capua v. City of Plainfield, stated:

"Defendants' [the city] refusal to afford plaintiff [police officers] a full opportunity to evaluate and review their personal test results or to have their own specimens retested by a technician of their choice offends traditional notions of fundamental fairness and due process." The due process requirement of the Fourteenth Amendment does not require that the

screening, or presumptive, test be entirely faultless; only that the testing apparatus and procedures be highly reliable and accurate. 30

Courts have always been very circumspect about protecting the individual's right of privacy in medical information. 31 In Capua v. City of Plainfield, the court expressed the need for confidentiality of information in a drug testing program as follows:

Compulsory urinalysis forces plaintiffs [police officers] to divulge private, personal medical information unrelated to the government's professed interest in discovering illegal drug abuse. Plaintiffs have a significant interest in safeguarding the confidentiality of such information whereas the government has no legitimate need for access to this personal medical data. 32

Confidentiality should also be extended to the employment records of employees involved in drug use situations. As a cautionary measure to prevent unauthorized disclosure of information, if an employee is discharged due to drug abuse, the reason for such termination should be treated with ultimate care to protect the employee and the employer.

Another aspect of "due process" in the context of employment decisions requires that "penalties be rationally related to and not disproportionate to the degree of seriousness of an employee's drug related offense." 33 The test results should be combined with other objective and independent sources of information which reliably indicate drug use by the employee prior to the administration of the drug test. Moreover, the department should attempt to show how the drug use has impaired the officer's job performance and jeopardizes the safety of the public and/or co-workers. Regardless of the policy of the police department with regard to disciplining officers found using illegal drugs, courts are consistent in observing the employee's right to a hearing with the concomitant rights, including confrontation of one's accuser, subpoena of witnesses, and protections against self incrimination. 34

Under the Fifth Amendment to the U.S. Constitution, no person "shall be compelled in any criminal case to be a witness against himself." The privilege protects compulsion of "testimonial" disclosures. 35 While requiring a person to give handwriting or voice samples does not involve testimony, compelling an individual to produce private papers may violate the Fifth Amendment privilege. Moreover, the protection against compulsory self-incrimination is not limited to criminal cases but has been

extended to cover situations involving termination of public employment. 36

The court in NTEU v. Von Raab found that requiring workers to complete the pretest form compelled "evidence of a testimonial nature." 37 Due to the holding in this case, departments should consider the types and extent of information to be collected on a pretest form in conducting urine screening programs. Recent court decisions have focused on the status of the individual being tested, the surrounding circumstances, and the type of drug testing application. The issues involved in the employment status of the individual include drug testing tenured officers versus non-tenured officers and civilian versus sworn personnel. The issues related to the type of testing application include testing for cause, testing in sensitive positions, and mandatory and random testing for drugs.

In general, there are no Fourth Amendment problems with police departments' drug testing programs that focus on applicants or probationary officers. The rationale is based on the fact that a urine or blood sample is traditionally provided to meet medical requirements of the job.

In a recent opinion, the office of the Attorney General for the State of Maryland concluded in part:

The State's interest in avoiding the employment of drug abusers in public safety jobs is correspondingly greater because of the obvious link between avoidance of drug abuse and job requirements, we conclude that as to jobs directly related to public safety the Fourth Amendment balancing test permits the State to require drug testing of all applicants. 38

In fact, the Texas Legislature recently passed an act requiring applicants to public safety officer positions to be examined by a licensed physician and to show "no trace of drug dependency or illegal drug usage after a physical examination, blood test, or other medical test." 39

Some police departments are presently conducting drug tests of police officers as a routine part of certain personnel actions such as annual medical physicals, when officers return from extended leaves, such as for a disability, and when officers are promoted or transferred to a sensitive position, such as a narcotic's unit. The theory behind the constitutionality of drug test at routine physicals and officers returning from absence from duty is that the urine is submitted for required medical test, and merely applying an additional screening for the presence of drugs does not violate the individual's expectation of privacy.

While some authorities have supported random urinalysis of employees as the most efficient and effective deterrent against employee drug use, the recent court cases dealing with law enforcement have held such measures as unconstitutional searches and seizures. 40 In Capua v. City of Plainfield, all police employees were subjected to a surprise urine test. The court felt that the city was essentially presuming the guilt of each person tested. 41 Mandatory department wide urine tests were also held unconstitutional in NTEU v. Von Raab, and in Penny v. Kennedy. Both courts found the approaches too intrusive on the individuals reasonable expectations of privacy without the prerequisite of individualized reasonable suspicion of impairment due to drug use as a basis for testing. 42

There are some police departments that have implemented a random drug testing program. For such a program to be constitutional, departments should make certain that the programs are truly statistical random and not subject to arbitrary manipulation. The program should also be clearly documented in a general order and negotiated with the collective bargaining union if a labor contract exists.

CONCLUSION

The widespread use and abuse of drugs has reached epidemic proportions. No one appears to be exempt, as millionaire athletics, top-level executives and celebrities succumb as fast as assembly workers and housewives. Law enforcement does not have the luxury of exemption from the problem.

Police drug testing is necessary today to assure public confidence in their police departments. Urinalysis is a search and seizure within the meaning of the Fourth Amendment. The Fourth Amendment requires searches and seizures to be reasonable. Drug testing by urinalysis is only reasonable when it is rationally related to a legitimate government interest. To be consistent with the Fourth Amendment, a police department must establish the necessity of a drug testing program and document its policies and procedures to meet the mandates of law.

When a drug testing program is administered on the basis of an individualized, reasonable standard, the government's interests in public safety and effective law enforcement outweigh the individual officer's right to privacy. The narrowly drawn, carefully implemented, and well-monitored program then may potentially protect the department from civil liability and maintaining public confidence and department credibility.

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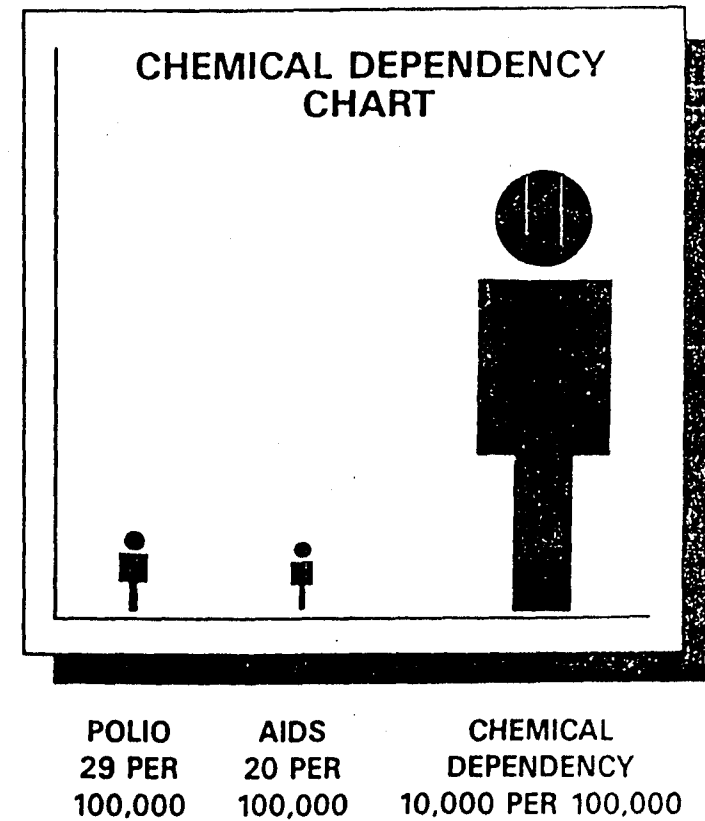
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ATTACHMENT #1

- America's problem is ours
- U.S. comprises 6% of world population, consumes 60% of world's illegal drugs



ATTACHMENT #2

DISPOSITION POLICY FOR OFFICERS WHO HAVE USED DRUGS

	Terminate Officer	Discipline Short of Termination	Rehabilitate Officer	Handled Case-by- Case	Department Has No Policy
Marijuana	41.0%	5.7%	5.7%	40.2%	7.1%
Dangerous Drugs	53.6%	3.0%	4.0%	31.7%	7.7%
Prescriptions	31.8%	7.0%	8.9%	44.5%	7.6%
Heroin	54.3%	2.4%	4.2%	31.5%	7.7%
Cocaine	53.7%	2.4%	4.6%	31.6%	7.6%
Amphetamines	42.5%	5.0%	5.8%	38.2%	8.3%
Barbiturates	41.4%	6.0%	6.0%	38.4%	8.2%
Steroids	21.7%	8.8%	6.4%	45.8%	17.1%

Of the 262 agencies reporting that they discovered officers having used drugs, 103 (39.3%) indicated that marijuana was the most frequently abused drug with cocaine being the second most frequently abused drug (See Table 9). There were 225 agencies (43%) reporting that they had no **known** cases of officers abusing drugs.

MOST FREQUENTLY ABUSED DRUGS AMONG OFFICERS

	Frequency	Percent
Marijuana	103	39.3
Cocaine	94	35.9
Prescriptions	21	8.0
Steroids	12	4.6
Stimulants	6	2.3
Depressants	4	1.5
Dangerous Drugs	2	0.8
Heroin	2	0.8
Other	18	6.8