



Drug-Free Workplace Week October 14-20, 2007

by Gerard A. Marini, Founding Member of *Drugs Don't Work in NJ!*

A little historical perspective.

Drug abuse is a complicated social phenomenon. Over the last 30 years there has been a significant increase in the impact of drug abuse on the daily life of the average American. One cannot pick up a newspaper or watch a television newscast without being reminded of the tragic consequences of drug abuse. Drug-related crime, disease, accidents, injuries, deaths and associated sordid details have become daily reminders of the limited effectiveness of supply reduction efforts to reduce drug abuse.

On the supply (law enforcement) side, significantly outstrip demand-side dollars (treatment, prevention, and education). Furthermore, the relationships between individual involvement in drug use, even for casual or recreational use, and the concomitant economic and health costs, as well as the assault on the moral fabric of American society, are only beginning to be recognized.

The Reagan and Bush administrations have argued that the key to reducing the demand for drugs is to hold the individual drug user responsible for his or her behavior-to develop societal contingencies that censure and penalize the individual user with stiff sanctions (e.g., seizing assets or withholding the opportunity for employment). The environment in which this technique has been most effectively used is in the American workplace. Beginning with the military experience in the early 1980's, workplace programs have been developed to send a simple and direct message that drug use by employees will not be tolerated. Clearly, one of the key elements of such policies has been the use of drug-detection technology to identify drug users.

Drug testing has clearly become an issue in the 1980's. The Department of Defense (DOD) utilized urinalysis in the 1960's and early 1970's to screen military personnel returning from Vietnam, and law enforcement officers and drug-treatment programs have used drug testing for many years. The DOD and the Congress (House Select Committee on Narcotics, 1981) independently reported the survey results of drug use by U. S. Military personnel. The results of these two surveys indicated high rates of drug use by members of the military services and triggered considerable congressional scrutiny resulting in several acrimonious hearings in the fall of 1981 (Burt & Biegel, 1980). The unfortunate accident aboard the U.S. aircraft carrier Nimitz in May 1981, where drug use was discovered in the postmortem of the dead crew members, served also to fuel the fire that was smoldering in the Congress. The juxtaposition of these events-the availability of new drug-testing technology and congressional demands of the Defense Department to "do something" about the military drug problem was pivotal in the justification for widespread application of drug-testing technology. In February 1982, the U.S. Navy was the first military branch to launch worldwide initiatives that included an on-site drug-testing capability on virtually every ship in the fleet.

Initially, the rationale for testing was a negative, punitive concept where the basic purpose was to identify drug users and dismiss them without addressing the cause, the philosophy has evolved. The basic purpose of today's model policy is to get substance abusing employees into drug treatment, afford the opportunity to get help and get the individual back on the job.

Despite the positive progress, the utilization of drug testing to make employment decisions generates an emotional, gut-level response from both labor and management.

As the U.S. Navy began a large-scale assault on drug abuse with the implementation of an ambitious drug-testing program in February 1982 under the leadership of Rear Admiral P.J. Mulloy, the National Institute of Drug

Abuse (U.S. Department of Health and Human Services) received guarded inquiries (often from attorneys, representing firms that wished to remain anonymous), regarding the use of drug-testing technology, its reliability and accuracy, and the legality of its use in the private sector.

At the same time, directors of the utility and transportation industries were quietly meeting to discuss problems regarding drug use by employees in their own companies. A task force was developed under the auspices of the Edison Electric Institute representing the gas, electric, and nuclear power industries to coordinate and provide guidance as to the appropriate use of drug-testing technology.

Similar efforts, although considerably less organized, were under way in the transportation industry. In October 1982, during a discussion on alcohol and drug use in transportation held at the annual meeting of the National Safety Council, a representative of the Greyhound Corporations indicated that his company had begun regularly scheduled drug testing of bus drivers. The announcement by Greyhound and subsequent reports of unacceptable rates of positive drug test in its drivers and applicants brought considerable pressure on companies that provided service to the traveling public to implement testing programs.

By 1983, there was a dramatic increase in media attention to the scope of drug abuse in the American workplace. A National Transportation Safety Board report (1983) indicated that seven train accidents occurring between June 1982 and May 1983- with numerous fatalities and more than \$17 million in property damage-involved alcohol or drugs. In response, the Federal Railroad Administration began a rule-making process that would take almost two years, and ultimately, in 1985, would require reasonable suspicion, post accident, and applicant testing for covered positions.

On August 22, 1983, Newsweek ran an eight-page cover story on drugs in the workplace, describing for the average American the vivid details that justify their statement that “the use of illegal drug on the job has become a crisis for American business.” By the end of the year, many companies were reporting the implementation of drug testing programs. On December 5, 1983, a U.S. News and World Report article, “Getting Tough on Drugs”, documented the efforts of numerous companies with aggressive anti-drug programs, which included drug testing, polygraph examination, locker searches, and drug-sniffing dogs, all of which resulted in the firing of employees and in the denials of employment to applicants. The article contained the prediction that within 5 years you’d have to be clean to get a job.

Accounts of lawsuits against companies with testing policies also began to be regularly reported in 1983. Initial legal strategies relied heavily on federal statutes protecting against handicap discrimination. Generally where drug testing was struck down by the courts or in arbitration, it was the result of a poorly run program. For example, the litigation concerning the New York and Washington, D.C. police department was lost because administrations could not positively identify the source of the tainted specimens (see Newsweek, 1983).

At the same time, unions were beginning to negotiate agreements that permitted the limited use of drug testing under specified circumstances. The International Brotherhood of Teamsters and the Amalgamated Transit Workers Union were among the first to begin discussions and contract negotiations involving drug testing.

In recapitulating the events of the 1983, we must include a brief summary of the decisions of the U.S. Court of Appeals for the Second Circuit in the case of Borsari vs. Federal Aviation Administration. Although this case did not involve drug testing, we believe the decision, which upheld the firing of an air traffic controller for off-duty sale of drugs, significantly influenced the utilization of drug testing in safety and security-sensitive workplaces. The appeals court found that there was no evidence that Mr. Borsari used drugs either on or off the job and had an excellent performance record.

“We are persuaded by the FAA’s simple but seemingly incontrovertible reliance on the incompatibility of drugs with successful air traffic control. The phrase “promote the efficiency-of-service” cannot be so limited as to require the Agency to wait for an on-the-job violation before dismissing an offending employee. Indeed, it has repeatedly been held that where an employee’s misconduct is in conflict with the mission of the agency, dismissal without proof of a direct effect on the individual’s job performance is permissible [emphasis added] under the “efficiency of the serve” standard.

The decision set a precedent that established a link between off-duty drug involvement and performance of a safety-sensitive job.

On August 5, 1984, the Baltimore Sun ran the headline “Drug Testing Increasingly Becoming Standard Procedure at Workplace”. Shortly thereafter, the American Medical Associations, AMA News (September 7, 1984) reported that drug testing had increased because of the state of the art of the tests had improved-making the test cheaper to run and more accurate; and companies had learned that drug abusers could cost them money.

Many large employers (GM, IBM, Mobil, Exxon, etc.) began to establish and implement testing programs; major professional organizations held national meetings and developed policy positions; and these activists brought

about a nationwide philosophical discussion as to the “appropriateness” of drug testing. Political commentators, economists, and civil rights activists focused their attention on the issues, and their positions were voiced in editorials and op-ed pages of virtually every newspaper in the country.

BIZNET, the cable network of the U.S. Chamber of Commerce, aired the first of a series of specials on “Drugs in the Workplace” in which drug testing was discussed at length. Dr. Richard Leshner, president of the organization, stated clearly, “My message is to business people. Let’s seek that goal of a drug-free environment... I think emphasis on the rights of the people working with and around them, and the rights of the corporation as well”. Although the Chamber of Commerce did not openly support drug testing at this time, the implication was clear.

Concurrently, major trends were notable at the federal level to develop a national response to the problem: namely, the release of the Report of the President’s Commission on Organized Crime, the issuance of Executive Order 12564, which mandated a drug-free federal workplace, and the passage of the Anti-Drug Abuse Act of 1986. The untimely deaths of prominent sports figures, including University of Maryland basketball star Len Bias and Cleveland Browns safety Don Rogers, catapulted drug abuse and the search for solutions to the forefront of the national arena. Professional sports organizations, state legislatures, the U.S. Chamber of Commerce, national health associations, major national labor unions, the American Civil Liberties Union and the courts simultaneously increased the amount of attention and resources devoted to the search for solutions.

An example of this evolution was the response to the cocaine overdose death of a Capital Cities/ABC employee on company property in 1984. The company initially reacted by proposing the use of drug sniffing dogs and other patently punitive measures to identify employees who used drugs. Due to the outraged response by employees, Capital Cities/ABC modified its approach and created an advisory committee of managers and employees charged with developing a responsible and responsive policy that would meet the needs of both the company and its employees. Capital Cities/ABC’s final policy has been touted as a model.

The media routinely focused on reporting terminations of employment: Pennzoil fired eighty-five workers in the course of a nine month period; at a General Motors plant in Dayton, Ohio, forty-nine employees were arrested and twenty-nine were fired. For those occupations in which the performance of one’s job demanded drug-free performance at all time (e.g., pilots, those who work with explosives, railroad employees, bus drivers, etc.), testing programs received less assault.

Outcomes of drug-testing initiatives began to be reported in 1986. For example, the first two years of its testing program Southern Pacific Railroad experienced a 72% drop in the number of accidents; on-the-job injuries and sick days were also reduced. Incidents of widespread firing, combined with the encouraging reports of reduced accidents, reduced absenteeism, and reduced health care utilization resulting from the implementation of drug testing, accelerated the conflict between supporters and detractor of drug testing.

In early March, the President’s Commission on Organized Crime (March 1986) issued its final report. Among the more than fifty recommendations were the following:

The President should direct the heads of all Federal agencies to formulate immediately clear policy statements, with implementing guidelines, including suitable drug testing programs, expressing the unacceptability of drug abuse by Federal employees. State and local governments and leaders in the private sector should support unequivocally a similar policy that any and all use of drugs is unacceptable. Government contracts should not be awarded to companies that fail to implement drug programs, including suitable drug testing.

Government and private sector employers who do not already require drug testing of applicants and current employees should consider the appropriateness of such a testing program. As the lead Federal Agency with national responsibility for addressing drug abuse in the nation, NIDA convened what was called a Landmark Conference in 1986.

After such deliberation, a consensus was reached on the following:

- All individuals tested must be informed
- All positive results on an initial screen must be confirmed through the use of alternative methodology (gas chromatography/mass spectrometry)
- The confidentiality of all test results must be assured
- The use of urine testing must be accompanied by the opportunity for drug abuse treatment
- Random testing for drug abuse under a well-defined program employing neutral criteria is also appropriate and legally defensible in certain circumstances.

Within a week, Time Magazine featured a cover story “Drugs on the Job” which ran an unprecedented ten pages in the issue of March 17, 1986. At the same time major employers who had programs in place for several years began to discuss their results, successes and failures.

J. Patrick Sanders, vice president of Commonwealth Edison, reported a decrease in absenteeism, a slowing in the trend of increasing medical claims and fewer on the job accidents.

Early in January 1987, a Conrail train filled with college students, home after the Christmas holidays crashed in Chase, Maryland, killing sixteen passengers, injuring 174 and causing million of dollars in property damage. Urine samples collected under the authority of the Federal Railroad Administrations Drug Regulations revealed that the Conrail engineer and brakeman had been smoking marijuana. On January 21, 1987, the U.S. Department of Transportation proposed rigorous drug testing programs, requiring pre-employment, post accident and random testing of airline pilots, railroad workers, air traffic controllers and other employees in safety related positions.

A mid year editorial in the New York Times (July 12, 1988) summed up the significance of drug-policy development:

“Law and public perceptions have come a long way since a fire department raided its fire station and roused sleeping firefighters and demanded urine samples on the spot. The Regan program addresses the need for fair warning to employees and job applications, dignified yet reliable collection of samples, safe guards against false results and considerate behavior toward users willing to accept help.”

TO BE CONTINUED

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