

NLWJC- Kagan

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Drug Testing Directive

### Memorandum for the Attorney General

Illegal drugs plague our communities, causing despair and illness, and, most importantly, contributing significantly to unacceptable levels of crime and violence. More than half of all individuals brought into the Nation's criminal justice system have substance abuse problems. Too often, the same criminal drug users cycle through the court, corrections and probation systems still hooked on drugs and still committing the crimes necessary to support their habit.

We can and will continue to prosecute and convict these criminal drug users. Yet our criminal justice system must do more to try to reduce drug use. Across the country, employers have accepted their corporate responsibility to reduce the levels of drug use within their workplaces.

So too, the agencies of our criminal justice system must do their part, giving criminal drug users powerful incentives to stay off drugs by putting a high price on continued drug use. These incentives -- commonly referred to as "coerced abstinence" -- should be applied at the earliest possible stage in a person's interaction with the criminal justice system -- following arrest.

To ensure that we are doing all we can to break the cycle of drugs and crime, I am directing you to develop a universal policy providing for drug testing of all federal arrestees before decisions are made on whether to release them into the community pending trial. I further direct that you establish a policy whereby federal prosecutors will seek appropriate sanctions for arrestees who fail pre-trial drug tests.

The Federal criminal justice system should serve as a model for State criminal justice systems -- where the majority of criminal cases are processed and the cycle of repeat drug-related offenders is most evident. Therefore, I am also directing you to take all appropriate steps to encourage States to adopt and implement the same policies that we are initiating at the Federal level.

You should report to me in writing by March 31, 1996, on the specific steps you will take to implement this policy.

## Farm Puzzle

**A**S PART of the effort to balance the budget, Congress came up with a plan to save about \$12.5 billion in farm support payments over the next seven years. The Clinton administration, presenting itself as the farmer's friend, said that was too much and that \$4.5 billion would be a better figure.

Then the Congressional Budget Office updated its estimate of what the existing farm program would likely cost in the years ahead. Market prices would be somewhat higher than earlier forecast, costs to the government lower, and lo! it suddenly looked as if the changes in law that Congress had proposed would not cut spending by \$12.5 billion after all, but only about a third of that, or roughly the same amount that the administration had said it was willing to contemplate.

Question, then: Since Congress had earlier said it was willing to cut \$12.5 billion, should it now be called upon to tighten its plan? Or, to the contrary, should the administration now accept the congressional plan, since it would cut no more than the administration had said was acceptable? Or is the answer neither of the above?

You can hear it argued all three of these ways. What has happened in the farm sector is illustrative of the shakiness of the assumptions and forecasts on which all these efforts to cut costs and the deficit are based. The economic and programmatic forecasts—how fast is the economy going to be growing five, six and seven years from now? how fast are health care costs going to be rising?—can only be educated guesses. It is better to base policy on such estimates than to have no basis at all, but

the estimators themselves would be the first to tell you the figures are anything but firm.

The Republicans propose a system of fixed but declining payments to farmers the next seven years. If the new CBO estimates hold true, in some cases those payments could actually be higher than the farmers would receive under current law. Some critics thus want the Republicans to revise their plan. The administration and others have suggested that, rather than paying some farmers more, the proposal be altered so that any increased payments are set aside for rural development. That way the money would aid the rural population generally and not mainly the better-off, as farm payments tend to do. The authors of the bill say that's not fair, that the CBO figures are almost sure to turn around again in a year or so, as always happens, and that then the bill will work as intended and payments will in fact decline. Instead of now trying to tighten a congressional plan that it had earlier said was already too tight, the administration should simply accept it, they argue.

In fact, both sides might be right. Using the money or some of it for rural development instead of support payments in good years isn't a bad idea. But it's one of the few times all year the administration has stood up for much on farm policy. Mostly, in an effort to curry favor with farmers, it has let the Republicans carry the load—and they've done pretty well. The current system is excessive. They'd begin the process of weaning farmers away from it, and that's progress no matter what the budget estimates.

## Drug Tests Before Bail Hearings

**T**HE WHITE HOUSE issued an executive order yesterday directing the Justice Department to expand a pilot program for drug testing persons arrested and charged with federal crimes. This is now done in 14 federal judicial districts, and the executive order would make the procedure universal. The idea sounds like a tough new step to keep drug addicts off the street, but it is neither as revolutionary nor as harsh as it seems.

The first things to remember about the test is that it is voluntary and that a positive result does not mean that bail will be denied. If a prisoner takes a test—experience indicates that about 80 percent agree to do so—and fails, this information will be presented to the judge or magistrate at the bail hearing and may affect the conditions of release. A defendant could, for example, be required to stay off drugs and to report weekly for tests and counseling as a condition of remaining in the community. Bail could be revoked if drug use continues, just as it could if a prisoner violates travel or weapons conditions of his release.

But if an arrested person simply refuses to take the test, this fact is reported to the judge

and weighed when the decision on bail is made. Pretrial detention can only be justified when a prisoner is a danger to the community or has a high risk of flight. It would be difficult to demonstrate that drug use itself would be a disqualifier on either of these grounds, but that would be a decision made by a judicial officer, not the prosecutor. And it could be appealed.

The Justice Department needn't go any further than the District of Columbia Superior Court for a model. All arrestees in this city are offered drug tests, and very few refuse. Those who test positive are released on condition that they report for testing. Failure to pass subsequent tests results in some kind of short but certain, escalating penalty—a day or two in detention, for example, more time for a second failure—then a return to the community and a treatment program. Pretrial services officials at Superior Court report an impressive rate of compliance with these conditions and a great improvement in drug use statistics overall. If the federal government is as successful with its defendants, the executive order will have served its purpose.

# What's News—

## A1 \* \* \* Business and Finance

**STOCKS PLUMMETED**, with the Dow Jones industrials dropping 101.52 points to 5075.21 and the Nasdaq Composite falling 27.92 to 1002.56. Investors fled blue-chip and technology stocks amid growing concerns about the Washington budget imbroglio and a weakening economy. Bond prices fell sharply; the dollar closed lower.

(Articles on Pages C1, C2, C25 and C18)

**Fleet Financial** has reached a pact to buy National Westminster's U.S. commercial-banking unit for about \$3 billion, said people familiar with the matter. The deal raises the stakes higher in a race between Fleet and its chief regional rival, Bank of Boston.

(Article on Page A3)

Estimates for GM's earnings were trimmed by several auto-industry analysts, prompting other forecasters to reassess their own year-end profit outlooks for the No. 1 auto maker. The dimmed forecast reflects the sluggish state of the U.S. auto industry.

(Article on Page A3)

**Bell Atlantic CEO Raymond Smith** would achieve a major comeback in a merger of his telecommunications firm with Nynex. Smith had tried to orchestrate the purchase of cable-TV giant TCI, but that deal collapsed.

(Article on Page A3)

**American Brands** agreed to acquire golf-club maker Cobra Golf for \$700 million. News of the acquisition sent Cobra shares soaring 29%. The announcement ended months of speculation that American Brands, already a leading seller of golf balls, would buy a premium club manufacturer.

(Article on Page B2)

**Advanced Micro Devices** said it will report lower-than-anticipated profit for the fourth quarter, due mainly to surprising new competition from Intel in an aging line of microprocessors. AMD's stock fell 6.2%.

(Article on Page B5)

**Canadian manufacturers** recorded a substantial drop in shipments and new orders in October for the second consecutive month, heightening concerns about the economy's outlook.

(Article on Page B5)

**Steris** agreed to acquire the much larger and troubled Amsco in a stock transaction valued at about \$508 million. Steris said the acquisition would bring synergies in providing sterilization and surgical-support equipment to the health-care industry.

(Article on Page B5)

**Today's Man** was hit with stoppages in payment guarantees by several factoring firms. The guarantees cover payments for merchandise shipped to the menswear retailer.

(Article on Page B4)

**Derivatives trading** in over-the-counter transactions constitutes a much greater global market than had been thought, a study by the Bank for International Settlements shows.

(Article on Page C15)

**Arch Communications** agreed to acquire Westlink Holdings for \$210 million. The deal will catapult Arch into the No. 3 position in the fast-growing telephone-paging industry.

## World-Wide

**CLINTON AND GOP LEADERS PLAN** to meet today to try to end a budget impasse.

The president asked for the meeting with House Speaker Gingrich and Senate Majority Leader Dole in an effort to break an impasse that has partially shut down the government. The Republicans agreed to the meeting, but said they weren't prepared to retreat from their demands. Both sides appear prepared for a long siege. The president began the day by vetoing two spending bills. It wasn't clear if the 101.52-point drop in the stock market would spur the two sides to an agreement. (Articles on Page A2)

*Some 260,000 federal employees, about one-third of those furloughed in November, were sent home across the country after reporting to work.*

**Yeltsin's government** hinted it might have to moderate free-market reforms following strong showings by Communists and nationalists in Russian parliamentary elections. The White House strove to put a positive interpretation on the results, saying today's Communists aren't the "Bolsheviks of old." (Related Article on Page A15)

**Russian forces** were preparing to assault Gudermes, Chechnya's second city, where guerrillas have pinned down more than 150 Russian troops. The military was considering airstrikes to dislodge rebels. Fighting also was reported in Grozny, the capital.

**The Justice Department** was ordered by Clinton to develop a policy for seeking drug tests from all people arrested on federal charges. Under the president's proposal, refusal to be tested would be grounds for prosecutors to ask that bail, or release pending trial, be denied. The plan drew immediate criticism from civil libertarians.

**An Israeli assassination panel** told six top officials of the internal-security service that they could face dismissal over lapses that contributed to the killing of Rabin. Prime Minister Peres, however, told the head of Shin Bet that he would try to save his job. Separately, Israel plans to turn over Bethlehem to Palestinian rule this week.

**Palestinian officials** began talks with Hamas leaders in Cairo. The negotiations are an attempt to persuade the militant group to end its guerrilla war against Israel and take part in elections set for Jan. 20.

**Skies cleared a bit over Bosnia**, allowing 16 U.S. military flights to land at Tuzla, headquarters for a U.S. peacekeeping force that will swell to 20,000. But weak railroad tracks and bridges held up other Bosnia-bound troops in Austria and Croatia. Separately, Bosnian Serb leaders have tentatively ratified the Balkan peace agreement.

**The administration** delayed implementing a provision of Nafta that would have allowed trucks from Mexico to travel freely in U.S. border states. Transportation Secretary Pena said safety provisions must be improved. The White House is caught between labor and environmental groups and free-trade backers. (Article on Page A2)

**Roh Tae Woo** told a three-judge panel that he took only "donations," not bribes, in assembling a \$650 million slush fund. "I thought this was the standard practice, to receive money at private interviews," the former South Korean president said at the start of his trial. Fourteen business leaders and former aides are also in the dock.

**Yemen claimed** Eritrea violated a truce reached late Sunday and allowed its troops to overrun the main island of a disputed chain at the mouth of the Red Sea. Eritrea denied the charge, saying its troops captured the island before the truce took hold. Reports from both sides said 10 Yemenis and six Eritrean died in weekend fighting.

**Canada said** it will increase its seal-harvest quota by one-third next year. The Fisheries Ministry plan to allow hunters to kill as many as 250,000 harp seals along the Atlantic coast drew denunciations from animal-rights groups. The head of the ministry blames seals for a steep decline in codfish stocks, which has idled many fishermen.

**Spain's Gonzalez** has agreed to stand for election as the Socialist standard-bearer in March, party leaders said. The prime minister, battered by allegations that he helped form death squads sent to kill Basque separatist leaders, had wanted to stand aside.

**The IRA** told an international commission headed by former U.S. Senate leader Mitchell that it would not disarm until its political arm, Sinn Fein, is included in Northern Ireland peace talks. Britain has insisted disarmament take place first.

# Drug tests ordered for federal suspects

## Prisoners could refuse, but might not be freed on bail

By Warren P. Strobel  
THE WASHINGTON TIMES

President Clinton signed a directive yesterday ordering the Justice Department to begin drug testing of all people arrested on federal criminal charges.

Under the new national policy, 40,000 to 50,000 federal suspects each year would be tested for illegal drugs before their first court appearance. It replaces a haphazard system of testing now in place.

The policy change was recommended in the Clinton administration's 1995 drug-control strategy and is supported by most of the nation's district attorneys. The move gives Mr. Clinton a chance to burnish his anti-drug and anti-crime credentials.

"This directive is another step in our effort to eliminate illegal drug use," the president said at an Oval Office ceremony attended by Attorney General Janet Reno, two

district attorneys and Minnesota Attorney General Hubert H. Humphrey III.

"The administration is committed to breaking the link between crime and drugs," Mr. Clinton said. He called on the states to follow the federal government's lead.

Mr. Clinton ordered Miss Reno to devise a plan to implement the new policy and report back to him by March.

A White House statement said the policy would discourage drug use by invoking penalties, such as refusal of bail or periodic tests, for those who test positive for drugs.

Those backing the move say it will make it less likely that suspects under the influence of drugs will be released on bail, after which they might commit further crimes.

Under Mr. Clinton's directive, those arrested on federal criminal charges would be asked to submit to a drug test. They could refuse,

but that information would be given to a judge or federal magistrate at the suspect's first court appearance.

Art Spitzer, legal director for the American Civil Liberties Union of the National Capital Area, said the key issue is whether a suspect's refusal to take a drug test is used against him or her. To do so, he said, would violate the Fourth Amendment's ban on unreasonable search and seizure.

"It seems to me, nothing can happen constitutionally" if a suspect refuses, Mr. Spitzer said. "It's an irrelevant fact. The judge can give it no weight."

But Miss Reno said, "It is clearly constitutional to condition bail on testing."

Michael P. Barnes, president of the National District Attorneys Association, said most people who are arrested agree to drug tests anyway in order to improve their bargaining position.

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*The White House said the policy would discourage drug use by invoking penalties for those who test positive.*

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"There is, if not unanimous, widespread support for the president's proposal" among federal prosecutors, Mr. Barnes said.

The Clinton administration has been an avid supporter of drug testing. Yesterday, outgoing White House drug policy director Lee Brown, speaking at a convention of high school athletic directors in San Diego, urged them to test their students for drugs.

In June, with strong administration backing, the Supreme Court upheld schools' power to conduct such tests.

American  
scene

## GOP is optimistic about welfare deal

A deal to break the Senate-House stalemate on the welfare-reform bill didn't materialize last night, but Republicans in both houses expected an agreement could be reached today.

Sen. James M. Jeffords, Vermont Republican, was reviewing a proposal that allowed a seven-state experiment with school nutrition block grants, added \$1 billion to the \$17 billion child care block grant and boosted funding for other programs.

The bill could be brought up for final votes as early as tomorrow. Democratic leaders declined to comment on the new funding, saying they wanted to see the final language.

# U.S. puts hold on Mexican truckers

## Groups challenge NAFTA provision

By David R. Sands  
THE WASHINGTON TIMES

The Clinton administration yesterday postponed plans to open four U.S. border states to Mexican trucks, putting off indefinitely a key market-opening provision of the North American Free Trade Agreement.

Transportation Secretary Federico Pena said yesterday he planned a series of discussions with Mexican counterpart Carlos Ruiz on security, road safety and inspection issues before a single Mexican trucking firm would be granted expanded rights to drive throughout California, Arizona, New Mexico and Texas.

Mexican carriers have pressed for their NAFTA-promised rights, but the administration has been lobbied heavily by the Teamsters union, border officials and traffic safety groups to delay or deny the expanded access. A key factor in the decision is its political effect on California, considered vital to President Clinton's re-election prospects.

The decision "is a smoke screen that has little to do with safety and everything to do with presidential politics," said Thomas J. Donohue, president and chief executive officer of the American Trucking Associations (ATA), whose members are seeking reciprocal rights to expand into Mexico.

Mr. Pena said yesterday that the move was "absolutely not" a setback for NAFTA, but he pointedly refused to set a timetable for the completion of the talks and would not even predict that they would result in an agreement to implement NAFTA's open-trucking provisions.

"I don't want to pre-judge or speculate on what might happen in the negotiations," he said.

He said face-to-face U.S.-Mexican talks on truck safety and security questions, including drug smuggling and illegal immigration connected with freer borders, would begin this week, but neither the time nor the place for the talks had been determined yet.

The Teamsters union, which filed a federal lawsuit Friday to block the NAFTA trucking provisions, praised Mr. Pena's decision and promised to press the issue.

"This is a temporary victory for highway safety," said Teamsters General President Ron Carey, "but the real solution is to have American trucking done by American workers with American safety standards and American wages."

Mexican trucks already operate relatively freely in a 20-mile-wide belt along the U.S. border. Under NAFTA, they would have been able to apply to travel throughout the four border states as of yesterday, and to travel throughout the entire United States by 2000.

Mr. Pena announced yesterday that Mexican trucks within the existing free-travel zone would be subject to more frequent and more rigorous safety inspections starting this week.

Under the delay, Mexican operators will be allowed to apply to the Interstate Commerce Commission to do business in the border states beyond the existing commercial zones. The ICC will be able to process those applications — which can take up to 45 days — but no final approvals will be issued until the new U.S.-Mexican talks are completed.

"This was supposed to be a significant milestone for NAFTA and it's just getting shrugged off," said Linda Bauer Darr, vice president for international affairs at the ATA. "It's absolutely disconcerting to us that there's not even a deadline on the talks."

U.S. critics say Mexican trucks often don't meet state and federal safety, weight and insurance regulations, and that Mexican drivers aren't trained to carry hazardous cargo. An average of about 5,000 trucks a day cross the border from Mexico into Texas alone, while Texas safety officials are able to inspect only about 15 a day.

The Teamsters and independent trucking groups staged rallies in California and Texas over the weekend. The El Cajon, Calif., office of Rep. Duncan Hunter, California Republican and a leading NAFTA foe in Congress, was picketed Saturday by local truckers unhappy over another aspect of the issue — theft of California trucks by Mexican thieves.

There has also been resistance from Mexican trucking firms, fearful that an open border would leave them at the mercy of more competitive U.S. carriers.

Mr. Pena and U.S. Trade Representative Mickey Kantor said yesterday the administration was not backing off from NAFTA, just ensuring that its implementation went as smoothly as possible.

The Washington Times

TUESDAY, DECEMBER 19, 1995

# NEH cuts 'PC' project's funding

## Smaller budget forces reduction

By Carol Innerst  
THE WASHINGTON TIMES

With its spending drastically curtailed by Congress, the National Endowment for the Humanities has reduced the latest round of grants for a program that conservatives have attacked for promoting "political correctness."

There are nine new grants, worth a total of \$600,000, for Chairman Sheldon Hackney's "National Conversation on American Pluralism and Identity."

"Each project is a focused, text-based opportunity for individuals to discuss frankly with other Americans of diverse backgrounds the nature of the differences among us as a people but also the common threads that knit us together as Americans," Mr. Hackney said.

Spending on the "National Conversation" project so far totals \$4.9 million for 71 projects. A final round of special competition grants will be awarded in March 1996.

The fiscal 1996 budget for the agency, which Congress considered killing off, has been reduced to \$110 million. But NEH spokesman Jim Turner said funding problems will not mean the death of the "National Conversation."

"Clearly, there will be reduced funding for all our programs," he said.

The National Association of Scholars has been critical of the "National Conversation" for its advocacy of "politically correct" ideas.

Peter N. Warren, NAS policy analyst, found NEH's promotional literature particularly disturbing because it defined diversity almost exclusively in terms of group membership.



Sheldon Hackney

The agency's announcement read: "Although the 'many' in E pluribus unum can be variously defined, the focus of this new initiative is on ethnic, racial and cultural differences, with other important differentiating and unifying factors such as class, gender, religion and region interwoven where appropriate."

The new "National Conversation" awards go to the University of California at Berkeley's Center for Ethics and Social Policy, \$43,000 for discussions on the themes of immigration and racial justice; California State University at Fresno, \$50,000 for the Fresno community to talk about cultural diversity; Imagine Chicago, \$55,000 for four conversations on equality and civic participation in American history; Arcadia Pictures in New York City, \$50,000 for conversations in five cities using a film on "National Conversation" themes; and the United Negro College Fund, \$62,000 for 24 conversations at historically black colleges on black-Jewish relations.

Also funded are Brown University, \$250,000 to support reading programs on "What Is America? And What Do We Want It to Be?" at libraries in eight states, and three research fellowships of \$30,000 each.

The fellowships go to an independent scholar in New Bedford, Mass., who will explore racial tolerance in New Bedford from 1790 to 1860; a Swarthmore College scholar who will look at political parties and black suffrage; and a South Carolina State University scholar who will examine the anti-slavery community in Washington from 1828 to 1861.

## Clinton Orders Drug Tests for Those Arrested on Federal Charges

By ALISON MITCHELL

WASHINGTON, Dec. 18 — President Clinton, seeking to take a tough stand on drugs, directed the Government today to require that all people arrested on Federal criminal charges face drug testing.

The move was one of an array of events planned by the Administration this week to tackle the social issues of crime and drugs.

In an Oval Office ceremony, Mr. Clinton signed an executive order instructing Attorney General Janet Reno to put the drug policy in place by March 31.

For his part, Lee P. Brown, the departing director of the White House Office of National Drug Control Policy, met with high school athletic directors in San Diego today to urge them to require drug testing for students joining sports teams in the aftermath of a Supreme Court decision finding such requirements legal.

Mr. Clinton plans to veto on Tuesday a spending bill covering the State, Justice and Commerce Departments because it would end a hiring program for community policing enacted as part of the 1994 anti-crime legislation. Instead, it would create block grants for the states, giving them wide latitude on how they would fight crime.

The President said he would submit to Congress later this week new legislation on juvenile crimes. The proposals being forwarded by the Administration would allow more access to juvenile records and give Federal prosecutors discretion to charge serious juvenile offenders as adults.

The Clinton Administration initiatives come as the President approaches the 1996 election year, when social issues like crime and violence are likely to play a major role, and as both parties maneuver for advantage on the issue of drugs. A new Gallup poll recently found that Americans view drug abuse as one of the most serious issues facing the country.

Mr. Clinton announced the drug-testing policy a day before the Senate Judiciary Committee was to hold a hearing on national trends in drug abuse. In an appearance on the NBC New program "Today," Senator Orrin G. Hatch, a Utah Republican who has sharply criticized the President's attention to drug issues, said that in the last two years, "marijuana usage has gone up from 1.6 million kids to 2.9 million."

"For 14- and 15-year-olds," Mr. Hatch said, "it's gone up some 200 percent."

Mr. Clinton said the new Federal approach to drug tests would seek to weaken the link between drugs and crime. "Unless we break the cycle of drugs and crime, criminal addicts will end up back on the street committing more crimes and then right back in the criminal justice system, still hooked on drugs," he said.

Almost 50,000 people a year are arrested and processed through the Federal courts on felony charges. Under Mr. Clinton's executive order, a person accused of a Federal crime would be asked to take a drug test upon arrest. While the suspect would have the right to refuse, officials

said, Justice Department lawyers could present that refusal to a judge at a bail hearing and could ask the judge to refuse to grant bail.

If the suspect took the drug test and failed it, prosecutors would request that the court refuse to grant bail or impose additional conditions, like drug treatment and additional testing, before allowing the release.

James Alan Fox, the dean of the College of Criminal Justice at Northeastern University, said that drug tests for people arrested on Federal charges would have some impact, "but I don't think we can expect it to

solve all of our problems of drug-related crime." He pointed out that violent crimes like murder and rape were under state, not Federal, jurisdiction. Mr. Clinton urged states today to follow his lead in requiring drug tests.

Ms. Reno contended today that "it is clearly constitutional to condition bail on testing." But Arthur Spitzer, the legal director of the American Civil Liberties Union for the Washington area, said his group would probably challenge such tests.

"If someone is arrested for a drug-related crime, they probably can

make drug testing part of the pre-trial conditions," he said. "But lots of people are arrested for crimes that have nothing to do with drug use — failing to file your income tax return, or, here in Washington, we get lots of arrests for people demonstrating at the White House — and I think there's no proper basis for subjecting those people to drug tests."

In recent years, the Supreme Court has said that drug tests are searches and fall under the Fourth Amendment's protection against unreasonable searches. But in two separate cases in recent years, the

Court has approved drug tests for certain employees where there was a risk to public safety.

In another action today, Mr. Clinton declared international heroin control a major objective of foreign policy, which means that countries can be denied American aid if they do not cooperate to prevent the flow of heroin.

Since coming to office, Mr. Clinton has sought to erode the Republicans' sharp advantage with the public on crime-fighting issues, and several polls in the past year have suggested that he has succeeded. The Administration regularly points to the anti-crime legislation passed in 1994, with its promise of putting 100,000 new police officers on the street, and the President's fight for gun control.

The Republicans, in turn, have accused Mr. Clinton of being less than aggressive in fighting drugs. In the past, Mr. Hatch has accused Mr. Clinton of being "AWOL — absent without leadership — in the war on drugs."

Early in Mr. Clinton's term, he sought to live up to a campaign pledge that he would cut the White House staff by a quarter by cutting jobs from the White House Office of National Drug Control Policy.

More national news  
appears on pages B10-12.

# Dole's Switch on Abortion Leads Quickly to Furor on G.O.P. Right

By KATHARINE Q. SEELYE

WASHINGTON, Dec. 18 — Senator Bob Dole's statement on Sunday that he would no longer support an unconditional ban on abortion prompted a wave of anger today from the Republican right and escalated an already fierce ideological war in the party.

It also gave Mr. Dole's Republican rivals an opportunity to accuse him of sacrificing principle for political expedience.

"What issue hasn't Dole shifted on?" asked Malcolm S. Forbes, a competitor for the Republican Presidential nomination.

On Sunday, Mr. Dole, the leading candidate for the nomination, said on NBC's "Meet the Press" program that while he at one time supported a Constitutional Amendment to ban abortion, "I would not do it again." He called himself "pro-life," but said he would make exceptions to save the pregnant woman's life or in cases of rape or incest.

The Republican Party is already embroiled in an abortion battle that is expected to be played out in public at its nominating convention.

Since 1980, the national Republican Party platform has opposed abortion without exceptions and promoted a Constitutional Amendment to ban the procedure. But for the coming campaign, the first since 1980 in which Republicans do not control the White House and therefore have no single candidate who can dictate the platform, the political right has been arguing to keep the ban while others want to moderate its language to try to broaden support for the party.

Mr. Dole's comments set back proponents of the ban and provided an easy opening for his rivals to pinch a raw nerve in the Dole campaign: that Mr. Dole lacks principles.

"It sent a clear signal to moral conservatives that Dole is no good for those who care about the moral agenda," said Alan Keyes, a radio talk show host and the Republican candidate opposed to abortion.

Several campaigns said political

workers in Iowa and New Hampshire were furious. In a fax to the campaign of Senator Phil Gramm, Republican of Texas, Rebecca Lindstedt, an official of Iowans for Life, wrote, "Bob Dole will find himself regretting the pro-abortion rhetoric he spouted forth yesterday."

Ralph Reed, the executive director of the Christian Coalition, who said of abortion that "there is no issue more transcendent," said his organization would be distributing 22 million voter guides in the Presidential primaries reflecting Mr. Dole's position.

Mr. Dole's campaign press spokes-

man did not return phone calls today, but the campaign tonight released a copy of a letter that Mr. Dole sent to Mr. Reed. He seemed to take exception to a news release in which Mr. Reed said he was "profoundly disappointed" in Mr. Dole's remarks "that he no longer supports Constitutional protection of the unborn."

Mr. Dole's letter reiterated his support for overturning Roe v. Wade, which legalized abortion, and said he still supported a Constitutional amendment to ban abortion, but with exceptions for rape, incest and to protect the life of the mother. "I

supported the same set of exceptions in 1992," he wrote to Mr. Reed.

Mr. Bauer said the Dole campaign had told him that the Senator's remarks were being misinterpreted.

"His people are insisting today that he was talking about not supporting a Constitutional ban that had no exceptions in it," Mr. Bauer said. "If you look at the transcript, you can put that spin on it. But if that's the case, he better correct it soon."

The timing of Mr. Dole's remarks on such an explosive topic puzzled several Republicans. Some speculated that he was beginning his long-

expected march to the ideological center, since he appeared to have the nomination locked up. Some said he was just responding to a question; others said the question may have been prompted by the debate reflected by the cover story in the most recent issue of *The Weekly Standard*. The article, by Noemie Emery, suggests that Republicans could win more votes by moderating their anti-abortion platform language.

"His campaign wishes it hadn't come up now," said William Kristol, the magazine's editor. "They wanted a safe, front-runner campaign for now, they wanted him to avoid controversy, get the nomination wrapped up, and then they were going to confront the issue of abortion

in the platform. But Dole was asked a question and he gave an honest answer."

Mr. Kristol said Mr. Dole's response to the uproar could prove significant. "The conventional political advice will be to back off," he said, "that he can revisit the issue after he gets the nomination. But the bolder thing for him to do is to forge ahead, make it clear that he wasn't just stumbling, and try to articulate a position that acknowledges that the human life amendment was untenable and a disservice to the pro-life cause, and that it was alienating lots of Americans who might be open to pro-life arguments but worried that you had to be all or nothing. But that's risky."

## Group Seeking Middle Ground In Politics Begins Its Conference

MINNEAPOLIS, Dec. 18 (Reuters) — A group that includes former Congressmen and governors opened a two-day meeting here today at which it will try to find a middle ground in American politics. But an organizer said the group did not plan to endorse a third-party Presidential candidate for next year's election.

"We are trying to define the political center," said Timothy J. Penny, a former Democratic Representative from Minnesota who is an organizer of the movement.

"We are just trying to further a discussion and hope to bring a better definition to the moderate middle in the United States," Mr. Penny added.

Others involved in the group include former Gov. Richard D. Lamm of Colorado, a Democrat; former Senator Paul E. Tsongas of Massachusetts, a Democrat; former Gov. Lowell P. Weicker Jr. of Connecticut, a Republican Senator before running for governor as an independent, and former Representative John B. Anderson of Illinois, an independent candidate for President in 1980.

"We are not writing a platform,

not setting up a party organization, and we will not endorse a candidate," Mr. Penny said.

"We have noticed there is a desire for radical political reform and one of our goals is to make it easier for third parties to get ballot access," he said.

"Nothing official will come from this conference," he added.

Mr. Tsongas, who sought the Democratic Presidential nomination four years ago, said recently that there was a "passionate center" in American politics that neither major party shared in.

He said that center supported a balanced budget, was socially inclusive and protective of individual liberties, was pro-environment and wanted campaign finance reform.

"Both parties fail to give Americans what they really want," Mr. Tsongas said, "because they are beholden to the ideologically pure in their ranks: old-time big spenders on the Democratic left and Reaganomic stalwarts on the Republican right. That is why the voters of the 'passionate center' feel alienated."

## Powell Stands Firm About '96 Campaign

WASHINGTON, Dec. 18 (AP) — Gen. Colin L. Powell remains uninterested in running for Vice President on the Republican ticket, a spokesman for the general said, but Senator Bob Dole predicted that General Powell would run if asked.

Mr. Dole and the general had not discussed the Vice Presidency, said Bill Smullen, a spokesman for General Powell.

"They haven't talked about that, nor has he been asked by the Senator," Mr. Smullen said. "But the general made it very clear when he made his announcement on Nov. 8 that he was not seeking an elective office in 1996 and that would include the Vice Presidency." He has not changed his mind, Mr. Smullen said.

Senator Dole, the front-runner for the 1996 Republican nomination, acknowledged on Sunday that having the general as a running mate would increase his chances to win the election. Asked on the NBC program "Meet the Press" about General Powell's stated decision on seeking national office, Mr. Dole said he believed that the general "would answer the call to duty again" if asked.

THE NEW YORK TIMES, TUESDAY, DECEMBER 19, 1995

## Memorandum for the Attorney General

Illegal drugs plague our communities, causing despair and illness, and, most importantly, contributing significantly to unacceptable levels of crime and violence. More than half of all individuals brought into the Nation's criminal justice system have substance abuse problems. Too often, the same criminal drug users cycle through the court, corrections and probation systems still hooked on drugs and still committing the crimes necessary to support their habit.

We can and will continue to prosecute and convict these criminal drug users. Yet our criminal justice system must do more to try to reduce drug use. Across the country, employers have accepted their corporate responsibility to reduce the levels of drug use within their workplaces.

So too, the agencies of our criminal justice system must do their part, giving criminal drug users powerful incentives to stay off drugs by putting a high price on continued drug use. These incentives -- commonly referred to as "coerced abstinence" -- should be applied at the earliest possible stage in a person's interaction with the criminal justice system -- following arrest.

To ensure that we are doing all we can to break the cycle of drugs and crime, I am directing you to develop a universal policy providing for drug testing of all federal arrestees before decisions are made on whether to release them into the community pending trial. I further direct that you establish a policy whereby federal prosecutors will seek appropriate sanctions for arrestees who fail pre-trial drug tests.

The Federal criminal justice system should serve as a model for State criminal justice systems -- where the majority of criminal cases are processed and the cycle of repeat drug-related offenders is most evident. Therefore, I am also directing you to take all appropriate steps to encourage States to adopt and implement the same policies that we are initiating at the Federal level.

You should report to me in writing by March 31, 1996, on the specific steps you will take to implement this policy.

# FEDERAL ARRESTEE DRUG TESTING PROGRAM

## QUESTIONS AND ANSWERS

### Presidential Announcement:

The President will announce that the Federal Government is establishing a policy providing for drug testing for everyone arrested in the Federal criminal justice system. Federal prosecutors will seek appropriate sanctions, including periodic testing, when an offender tests dirty.

### Questions and Answers:

#### THE DIRECTIVE

Q: What is the purpose of this directive?

There is a direct link between drug use and crime -- both because people commit crimes under the influence of drugs and because they commit crimes to sustain their drug use.

Through this directive, the President is ensuring that the criminal justice system will accurately and speedily identify the users of drugs. Once this identification is made, the justice system can order the user to undergo periodic testing while on release or, when appropriate, detain the user.

The result of this measure --- a reduced the level of drug use in the population of offenders under criminal justice supervision, which will lead to a reduction in criminal behavior.

The President's program will serve as a model for State criminal justice systems, where the majority of criminal cases are processed. Several State Attorneys General and local prosecutors have committed to working with their State legislatures to adopt similar programs.

Q: Why is this being proposed now?

The concept behind this Directive was recommended in the President's 1995 National Drug Control Strategy. It is strongly supported by several experts on crime and drugs. We have been working with them, the Justice Department, and the Federal courts for some time in the formulation of this initiative.

Q: How will it be accomplished?

The President will sign a Directive to the Attorney General directing her to develop a universal policy in which federal arrestee would be tested for drugs before decisions are made on whether to release them into the community pending trial. He would further direct her to establish a policy whereby federal prosecutors will request sanctions, such as detention, when appropriate or on-going testing for arrestee who fail these initial drug tests.

#### HOW IT WORKS

Q: How exactly will it work?

- 1) Offender is arrested for a Federal offense and given his/her rights.
- 2) Offender is taken to Federal booking station or other facility by agent where s/he is processed by a U.S. Marshal -- fingerprinted, photographed, etc.
- 3) Under this Directive, the government would at this stage request that offender take a drug test.
- 4) Within 48 hours, offender appears before a Federal Judge or Magistrate for initial appearance (during that 48 hours offender is in jail in the custody of the U.S. Marshal). It is at this appearance where the Judge/ Magistrate makes a bail determination.
- 5) Judge is made aware of drug test. Judge asks U.S. Atty for the Government's recommendation on bail. Based on results of the drug test and other information, Federal prosecutor will recommend detention or bail conditions, including regular drug testing.

Q: What happens if the arrestee fails the drug test?

The Federal prosecutor would request that the court require detention/or impose appropriate conditions including additional testing and treatment.

Q: What happens if the arrestee refuses to submit to a drug test?

Prior to the first appearance before the judge, the government cannot compel an arrestee to take a drug test. Nevertheless, based on the results of a pilot program by the courts, over 80% of arrestee agreed to take the test when asked. If the arrestee refuses, the judge is made aware of that fact before making a bail determination.

## CURRENT SITUATION AND IMPACT

Q. Doesn't drug testing already occur in every Federal District?

Only a few Districts in the Federal system have uniform testing of Federal arrestees. Most Districts attempt to "screen" an arrestee for drug use by means other than testing. If there are indications of such use, the court may order testing, treatment and other sanctions as appropriate.

The current situation lacks the certainty that will exist under the President's program. The Clinton Drug Testing Program requires offenders to be tested before their initial court appearance. This provides the judge with the best information before any decision is made on pre-trial release.

A 1988 Drug Act required the Federal Courts to establish and evaluate pretrial drug testing in several Districts. The report from that program recommended exactly what the Clinton Federal Arrestee Drug Testing Program will accomplish.

Q: How many people does this affect?

Between 45,000 to 50,000 individuals are arrested and processed through the Federal system for criminal felonies every year. Over 60% of those offenders are on pretrial release within a day.

Q: How much will it cost?

The Justice Department estimates that the first six months of the program would cost roughly \$3-5 million including treatment. The cost of the program is likely to decrease in the future as a result of advances in the technology and efficiency of drug testing.

By March 31, 1996, the Department of Justice will develop a plan to ensure the use of the most accurate and cost effective testing methods.

December 16, 1995

**FEDERAL ARRESTEE DRUG TESTING PROGRAM**  
**QUESTIONS AND ANSWERS**

*Dennis - There are  
a few changes  
here that I'd like  
made.  
Deno*

Presidential Announcement:

The President will announce that the Federal Government is establishing a policy providing for drug testing for everyone arrested in the Federal criminal justice system. Federal prosecutors will seek appropriate sanctions, including periodic testing, when an offender tests dirty.

Questions and Answers:

**THE DIRECTIVE**

**Q: What is the purpose of this directive?**

There is a direct link between drug use and crime -- both because people commit crimes under the influence of drugs and because they commit crimes to sustain their drug use.

Through this directive and other steps he will take, the President is using testing and sanctions as a way to reduce the level of drug use in the population of offenders under criminal justice supervision, and thereby reduce criminal behavior.

The concept behind this Directive was recommended in the President's 1995 National Drug Control Strategy. It is strongly supported by several experts on crime and drugs. We have been working with them, the Justice Department, and the Federal courts for some time in the formulation of this initiative.

The President's program will serve as a model for State criminal justice systems, where the majority of criminal cases are processed. State Attorneys General and local prosecutors have committed to working with their State legislatures to adopt similar programs.

**Q: How will it be accomplished?**

The President will sign a Directive to the Attorney General directing her to develop a universal policy in which federal arrestees would be tested for drugs before decisions are made on whether to release them into the community pending trial. He would further direct her to establish a policy whereby federal prosecutors will request sanctions, such as detention, when appropriate or on-going testing for arrestees who fail these initial drug tests.

**HOW IT WORKS**

**Q: How exactly will it work?**

- 1) Offender is arrested by a Federal agent for a Federal offense and given his/her rights.
- 2) Offender is taken to Federal booking station or other facility by agent where s/he is processed by a U.S. Marshal -- fingerprinted, photographed, etc.
- 3) Under this Directive, the government would at this stage request that offender take a drug test.
- 4) Within 48 hours, offender appears before a Federal Judge or Magistrate for initial appearance (during that 48 hours offender is in jail in the custody of the U.S. Marshal). It is at this appearance where the Judge/ Magistrate makes a bail determination.
- 5) Judge is made aware of drug test. Judge asks U.S. Atty for the Government's recommendation on bail. Based on results of the drug test and other information, Federal prosecutor will recommend detention or bail conditions, including regular drug testing.

**Q: What happens if the arrestee fails the drug test?**

The Federal prosecutor would request that the court require detention or impose appropriate conditions including additional testing and treatment.

**Q: What happens if the arrestee refuses to submit to a drug test?**

Prior to the first appearance before the judge, the government cannot compel an arrestee to take a drug test. Nevertheless, based on the results of a pilot program by the courts, over 80% of arrestees agreed to take the test when asked. If the arrestee refuses, the judge is made aware of that fact before making a bail determination.

**Q: How would this initiative break the cycle of crime and drugs?**

First of all, as a matter of principle, this Administration does not believe that arrestees should receive unconditional bail or pretrial release if we can determine that they are going to continue to break the law. Pretrial release is conditional liberty and it should be conditioned on an arrestee staying drug free.

Moreover, using the criminal justice system to reduce drug demand should be an essential component of any comprehensive effort to fight crime -- and we need to start at the Federal level. The type of crimes committed to support a heroin or cocaine habit result in fairly frequent arrest and conviction. ~~Thus, most drug offenders are likely to be under the jurisdiction of the criminal justice system at any given moment.~~ By not drug testing them and coercing abstinence through appropriate sanctions, the criminal behavior of these addicts

*This is wrong - it has to be charged.*

*Thus, many arrestees are likely to be drug offenders.*

will not change and they will continue to commit crimes and cycle through the system..

### CURRENT SITUATION AND IMPACT

**Q. Doesn't drug testing already occur in every Federal District?**

Only a few Districts in the Federal system have uniform testing of Federal arrestees.

Most Districts attempt to "screen" an arrestee for drug use by means other than testing. If there are indications of such use, the court may order testing, and treatment as appropriate.

The current situation lacks the certainty that will exist under the President's program. The Clinton Drug Testing Program requires offenders to be tested before their initial court appearance. This provides the judge with the best information before any decision is made on pre-trial release. *and other sanctions*  
~~It is not enough to insure that an arrestee shows up for trial. We need to use the power of the criminal justice system to convince drug-using offenders to "clean up their act."~~

A 1988 Drug Act required the Federal Courts to establish and evaluate pretrial drug testing in several Districts. The report from that program recommended exactly what the Clinton Federal Arrestee Drug Testing Program will accomplish.

**Q: How many people does this affect?**

Between 45,000 to 50,000 individuals are arrested and processed through the Federal system for criminal felonies every year. Over 650% of those offenders are on pretrial release within a day.

**Q: How much will it cost?**

The Justice Department estimates that the first six months of the program would cost roughly \$3-5 million including treatment. The cost of the program is likely to decrease in the future as a result of advances in the technology and efficiency of drug testing.

By March 31, 1996, the Department of Justice will develop a plan based *to ensure the use of* on the most accurate and cost effective testing methods.

**Q: What will this initiative signify and accomplish?**

This initiative will exemplify this Administration's commitment to breaking the link between drugs and crime. The criminal justice system is overburdened with defendants who recycle through the system on drug-related charges. We must use all tools at our disposal to break that cycle. This federal initiative also will provide an example for the states where the problems of drug use in the criminal justice system are severe.

December \_\_, 1995

12/15 DRAFT

5:30 p.m.

## Memorandum for the Attorney General

**Subject: Development of the Administration's Federal Arrestee Drug Testing Policy.**

new: OLC  
approved

Illegal drugs plague our communities, causing despair, illness and, most importantly, contributing significantly to unacceptable levels of crime and violence. More than half of all individuals brought into the Nation's criminal justice system have substance abuse problems. We continue to witness the same criminal drug users cycling through the court, corrections and probation systems with little success in changing their behavior.

We can and will continue to prosecute and convict these drug offenders. Yet without a change to this cycle, criminal drug users can end up back on the street, committing more crimes, and back into the criminal justice system still hooked on drugs.

Our criminal justice system should be structured to take all possible steps to reduce drug demand. Across the country, employers have accepted their corporate responsibility to reduce the levels of drug use within their workplaces. So too, the agencies of our criminal justice system must use all the powers at their command to coerce abstinence from drug use by defendants charged and convicted of criminal behavior.

We should implement testing and sanctions as a way to reduce the level of drug use in the population of offenders under criminal justice supervision, and thereby reduce the level of drug use and other criminal behavior.

To ensure that we are doing all we can to break the cycle of drugs and crime, I am directing you to develop a universal policy providing for drug testing of all federal arrestees before decisions are made on whether to release them into the community pending trial. I further direct that you establish a policy whereby federal prosecutors will seek appropriate sanctions for arrestees who fail pre-trial drug tests.

The Federal criminal justice system should serve as a model for State criminal justice systems -- where the majority of criminal cases are processed and the cycle of repeat drug-related offenders is most evident. Therefore, I am also directing you to take all appropriate steps to encourage States to adopt and implement the same policies that we are initiating at the Federal level.

You should report to me in writing by March 31, 1996, on the specific steps you will take to implement this policy.

Q. What is the purpose of this directive and how will it be accomplished?

A. This policy will break the link between drugs and crime by reducing the level of drug use of offenders who are entering the criminal justice system and who will eventually return to society to commit more drug-related crimes.

The President will sign a Presidential Directive to the Attorney General directing her to report back to him on an implementation plan requiring all United States Attorneys to engage in the announced practice.

Q. What is he directing her to do and how will it be implemented?

A. Under current procedure, when a defendant is arrested, they make an initial appearance before a federal magistrate during which bail is determined. The decision of bail eligibility is made by the magistrate based, in part, on a recommendation made by the United States Attorney. The United States Attorney as part of his/her recommendation can request that certain conditions be imposed for bail.

Under this directive, the United States Attorney would be directed not to recommend any bail that is not conditioned on drug testing during the bail period and appropriate sanctions for a failed drug test.

Q. How would this initiative break the cycle of crime and drugs?

A. First of all, as a matter of principle, this Administration does not believe that arrestees should receive unfettered pretrial release if we can determine that they are going to continue to break the law. Pretrial release is a conditional liberty and it should be conditioned on an arrestee staying drug free.

Moreover, using the criminal justice system to reduce drug demands should be an essential component of any comprehensive effort to fight crime -- and we need to start at the federal level. The type of crimes committed to support a heroin or cocaine habit result in fairly frequent arrest and conviction. Thus, most drug offenders are likely to be under the jurisdiction of the criminal justice system at any given moment. By not drug testing them and coercing abstinence through appropriate sanctions, the criminal behavior of these addicts will not change and they will continue to commit crimes and cycle through the system.

Q. How many people does this effect?

Approximately 45,000 to 50,000 individuals are arrested and processed through the Federal system for criminal felonies every year.

Over 43 percent of those offenders are on pretrial release within a day.

Q. What happens if the arrestee fails the drug test?

A. The United States Attorney's office will immediately request that the court revoke the current conditions of release and remand the defendant to jail pending trial or subject the arrestee to a program of coerced abstinence through graduated sanctions that would also provide for periodic testing.

Q. How much will this policy cost?

We project that the Justice Department will only require \$1.2 million in the first year of operation of the program. There will be some additional costs on the courts and we are working with them on this. Estimated costs in 1991 were approximately \$6.8 million in nonrecurring and \$24.8 million in recurring costs. Accounting for inflation, in FY 96 these costs would be approximately \$8.1 million and \$28.7 million, respectively.

Q. Why hasn't it been done before?

At this time all 94 districts are using pretrial testing.

The Anti-Drug Abuse Act of 1988 required that the Administrative Office of the United States Courts establish and evaluate pretrial and post-conviction drug testing demonstration programs in eight federal judicial districts. While it took several months to implement the proposal, pretrial testing prior to initial appearance was reality in all eight districts within six months of the effective date of the act. *[Took out "Although"]* The evaluation report by the U.S. Courts concluded that pretrial drug testing of all criminal detainees be implemented in all federal judicial districts.

The program currently in place in the courts does not rely on blanket testing of all pretrial defendants. Instead, it employs blanket "screening" of all defendants. Screening involves an evaluation of substance abuse on the part of the defendant by a pretrial services officer or probation officer. Where there are indications of substance abuse, the court may order testing and treatment as appropriate. While the courts do not employ blanket testing, they do ensure that all pretrial defendants are properly screened.

Q. What will this initiative signify and accomplish?

This initiative will exemplify this Administration's commitment to breaking the link between drugs and crime. The state criminal justice

system is overburdened with the same defendants who continue to recycle through the system on drug-related charges with no effort to end their dependency.

The President is merely ordering United States Attorneys to do their job -- if someone enters the criminal justice system (and gives any indication of drug use) a United States Attorney should not be agreeing to release this individual back into society without drug testing and resulting sanction. (This conforms with current practices.)

With the President's announcement of this new Administration policy, he will also provide leadership for the States -- where the recycling of criminal defendants is rampant -- by urging them to adopt similar practices.

**WHITE HOUSE STAFFING MEMORANDUM**

DATE: 12-15 ACTION/CONCURRENCE/COMMENT DUE BY: 12-16 NOON

SUBJECT: Proposed Directive on Drug Testing

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCURRY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PANETTA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGINTY	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
ICKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	QUINN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BOWLES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RASCO	<input checked="" type="checkbox"/>	<input type="checkbox"/>
RIVLIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input type="checkbox"/>	<input type="checkbox"/>
BAER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STEPHANOPOULOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CURRY	<input type="checkbox"/>	<input type="checkbox"/>	STIGLITZ	<input type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input type="checkbox"/>	<input type="checkbox"/>	STREETT	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input type="checkbox"/>	<input type="checkbox"/>	TYSON	<input type="checkbox"/>	<input type="checkbox"/>
GRIFFIN	<input type="checkbox"/>	<input type="checkbox"/>	WALLEY	<input type="checkbox"/>	<input type="checkbox"/>
HALE	<input type="checkbox"/>	<input type="checkbox"/>	WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>
HERMAN	<input type="checkbox"/>	<input type="checkbox"/>	<u>EKAGAN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HIGGINS	<input type="checkbox"/>	<input type="checkbox"/>	<u>REED</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KLAIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
LAKE	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: IF you have comments, please let me know by noon Saturday.

RESPONSE: \_\_\_\_\_

*Kanick*

*244-0294*

# Memorandum on Implementation of the Federal Arrestee Drug Testing Policy

December 18, 1995

Memorandum for the Attorney General

*Subject:* Implementation of the Administration's Federal Arrestee Drug Testing Policy.

Illegal drugs plaque our communities causing despair, illness and, most importantly, contributing significantly to unacceptable levels of crime and violence. More than half of all individuals brought into the Nation's criminal justice systems have substance abuse problems.

We continue to witness the same criminal addicts cycling through the court, corrections and probation systems with little effort to change their behavior.

We can and will continue to prosecute and convict these drug offenders. Yet without a change to this cycle, criminal addicts will end up back on the street, committing more crimes, and back into the criminal justice system still hooked on drugs.

Our criminal justice system should be structured to reduce drug demand, not prolong, enhance, or tolerate it. Across the country, employers have accepted their corporate responsibility to reduce the level of drug use within their workplaces. Teachers and coaches have accepted the educational responsibility to reduce the level of drug use within their schools. So too, the agencies of our criminal justice system must use all the powers at their command to reduce the levels of drug use by defendants charged and convicted of criminal behavior.

We should implement testing and sanctions as a way to reduce the level of drug use in the population of offenders under criminal justice supervision, and thereby reduce the level of ~~drug use and~~ other criminal behavior.

~~To ensure that we are doing all we can to break the cycle of drugs and crime,~~ <sup>therefore</sup> I am directing you to develop a universal policy requiring federal arrestees to submit to drug testing before decisions are made on whether to release them into the community pending trial. I further direct you to establish a policy whereby federal prosecutors will request sanctions, such as detention, and on-going testing for arrestees who fail these initial drug tests. We should use all tools at our disposal to ~~coerce~~ <sup>make sure</sup> arrestees to abstain from using drugs.

The Federal criminal justice system should serve as a model for State criminal justice systems -- where the majority of criminal cases are processed and the cycle of repeat drug-related offenders is most evident. Therefore, I am also directing you to take all appropriate steps to encourage States to adopt and implement the same policies that we are initiating at the Federal level.

You should report to me in writing by March 31, 1996, on the specific steps you will take to implement this policy.

William J. Clinton

**WHITE HOUSE STAFFING MEMORANDUM**

DATE: 12-15 ACTION/CONCURRENCE/COMMENT DUE BY: 12-16 noon

SUBJECT: Proposed Directive on Drug Testing

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCURRY	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PANETTA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGINTY	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
ICKES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	QUINN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BOWLES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RASCO	<input checked="" type="checkbox"/>	<input type="checkbox"/>
RIVLIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input type="checkbox"/>	<input type="checkbox"/>
BAER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	STEPHANOPOULOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>
CURRY	<input type="checkbox"/>	<input type="checkbox"/>	STIGLITZ	<input type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input type="checkbox"/>	<input type="checkbox"/>	STRETT	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input type="checkbox"/>	<input type="checkbox"/>	TYSON	<input type="checkbox"/>	<input type="checkbox"/>
GRIFFIN	<input type="checkbox"/>	<input type="checkbox"/>	WALLEY	<input type="checkbox"/>	<input type="checkbox"/>
HALE	<input type="checkbox"/>	<input type="checkbox"/>	WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>
HERMAN	<input type="checkbox"/>	<input type="checkbox"/>	<u>E. KAGAN</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HIGGINS	<input type="checkbox"/>	<input type="checkbox"/>	<u>REED</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KLAIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
LAKE	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: IF you have comments, please let me know by noon Saturday.

RESPONSE: \_\_\_\_\_

**Memorandum on Implementation of the Federal Arrestee Drug Testing Policy**

December 18, 1995

*Memorandum for the Attorney General*

**Subject:** Implementation of the Administration's Federal Arrestee Drug Testing Policy.

Illegal drugs <sup>g</sup>plague our communities causing despair, illness and, most importantly, contributing significantly to unacceptable levels of crime and violence. More than half of all individuals brought into the Nation's criminal justice systems have substance abuse problems.

We continue to witness the same criminal addicts cycling through the court, corrections and probation systems with little effort to change their behavior.

We can and will continue to prosecute and convict these drug offenders. Yet without a change to this cycle, criminal addicts will end up back on the street, committing more crimes, and back into the criminal justice system still hooked on drugs.

Our criminal justice system should be structured to reduce drug demand, not prolong, enhance, or tolerate it. Across the country, employers have accepted their corporate responsibility to reduce the level of drug use within their workplaces. Teachers and coaches have accepted the educational responsibility to reduce the level of drug use within their schools. So too, the agencies of our criminal justice system must use all the powers at their command to reduce the levels of drug use by defendants charged and convicted of criminal behavior.

We should implement testing and sanctions as a way to reduce the level of drug use in the population of offenders under criminal justice supervision, and thereby reduce the level of ~~drug use and other~~ <sup>ETET</sup> criminal behavior.

~~To ensure that we are doing all we can to break the cycle of drugs and crime,~~ <sup>Therefore</sup> I am directing you to develop a universal policy requiring federal arrestees to submit to drug testing before decisions are made on whether to release them into the community pending trial. I further direct you to establish a policy whereby federal prosecutors will request sanctions, such as detention, and on-going testing for arrestees who fail these initial drug tests. We should use all tools at our disposal to ~~coerce~~ <sup>make sure</sup> arrestees to abstain from using drugs.

The Federal criminal justice system should serve as a model for State criminal justice systems -- where the majority of criminal cases are processed and the cycle of repeat drug-related offenders is most evident. Therefore, I am also directing you to take all appropriate steps to encourage States to adopt and implement the same policies that we are initiating at the Federal level.

You should report to me in writing by March 31, 1996, on the specific steps you will take to implement this policy.

**William J. Clinton**

## **Memorandum on Implementation of the Federal Arrestee Drug Testing Policy**

*December 18, 1995*

*Memorandum for the Attorney General*

**Subject:** Implementation of the Administration's Federal Arrestee Drug Testing Policy.

Illegal drugs are an enormous factor behind the current levels of crime and violence in America. More than half of all individuals brought into the Nation's criminal justice systems have substance abuse problems. We continue to witness the same criminal addicts cycling through the court, corrections and probation systems with little effort to change their behavior.

We can and will continue to prosecute and convict these drug offenders. But unless we also break the cycle of drugs and violence, criminal addicts will end up back on the street, committing more crimes, and back into the criminal justice system still hooked on drugs.

Our criminal justice system should reduce drug demand, not prolong, enhance, or tolerate it. Across the country, employers have accepted their corporate responsibility to reduce the level of drug use within their workplaces. Teachers and coaches have accepted the educational responsibility to reduce the level of drug use within their schools. So too, all levels of our criminal justice system must use all the powers at their command to reduce the levels of drug use by defendants charged and convicted of criminal behavior.

We should implement testing and sanctions as a way to reduce the level of drug use in the population of offenders under criminal justice supervision, and thereby reduce the level of drug use and other criminal behavior.

To ensure that we are doing all we can to break the cycle of drugs and crime, I am directing you to develop a universal policy requiring federal arrestees to submit to drug testing before decisions are made on whether to release them into the community pending trial. I further direct you to establish a policy whereby federal prosecutors will request sanctions, such as detention, and on-going testing for arrestees who fail these initial drug tests. We should use all tools at our disposal to coerce arrestees to abstain from using drugs.

The Federal criminal justice system already serves as a model for State criminal justice systems -- where the majority of criminal cases are processed and the cycle of repeat drug-related offenders is most evident. It should in this area, too. Therefore, I am also directing you to take all appropriate steps to encourage States to adopt and implement the same policies that we are initiating at the Federal level.

You should report to me in writing by March 31, 1996, on the specific steps you will take to implement this policy.

**William J. Clinton**

Monday event

lots of several directives on drugs.

Sign-off from Lecu-early preliminary release

Sunday's paper

↑  
for Post.

9:45 AM Sign directive / people there

state AGs, Biden, Reno, Holder

going to start doing < Washburn (MA) Press/DAs  
This new. Humphrey (MN)

Press - fact sheet:

what happens when arrested etc.

anecdotal stuff - where this has been done

→ DC / NY - doing universally.

Report coming out - drug use up.

Hatch hearing?



# Hon. Richard S. Arnold U.S. Circuit Judge

Little Rock, AR 72201



### TELEFAX COVER SHEET

DATE: December 13, 1995

TO: Bruce R. Lindsey, Esq.

Assistant to the President and Deputy Counsel  
to the President

(202) 456-2983  
FAX NUMBER

PHONE NUMBER

FROM: Richard S. Arnold

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NUMBER OF PAGES SENT INCLUDING THIS COVER PAGE: 6

**Phone:**  
**(501) 324-5521**  
**FAX: (501) 324-6507**

UNITED STATES COURT APPEALS  
EIGHTH CIRCUITCHAMBERS OF  
RICHARD S. ARNOLD  
CHIEF JUDGE  
UNITED STATES COURTHOUSE  
600 WEST CAPITOL AVENUE, ROOM 208  
LITTLE ROCK, ARKANSAS 72201

[By Fax: (202) 456-2983]

December 13, 1995

Bruce R. Lindsey, Esq.  
Assistant to the President and  
Deputy Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Bruce:

Many thanks for your memo and the attached series of questions and answers describing the President's intended announcement with respect to drug testing. I very much appreciate being given notice of this announcement and an opportunity to make comments.

We are especially grateful for your recognition that this program, assuming courts throughout the country adopt it, would increase our costs.

Enclosed is a copy of your series of questions and answers, revised to reflect better what we believe are the facts. Additional material is underlined.

In particular, it's important to note that pretrial testing is now taking place in all 94 districts in the country. In fact, we are presently testing all those defendants (whom drug screening indicates ought to be tested.) A change in policy to test all defendants would, of course, as you point out, increase the amount of testing beyond what is now being done.

I should perhaps add that the committee of the Judicial Conference with particular jurisdiction over this subject matter is the Committee on Criminal Law, chaired by Judge Maryanne Trump Barry of the District of New Jersey. Judge Barry does not believe that mandatory testing of all defendants is necessary or advisable. In particular, she points to the fact that under present policies very few defendants do not report for trial as scheduled. I believe that Judge Barry has been discussing these concerns with Kathy Russell and Eldie Atchison in the Department of Justice.

I really do appreciate hearing from you. Whenever I can be of service on this or any other matter, please let me know.

Sincerely yours,

*Richard*

Richard S. Arnold

RSA/bf  
Encls.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

14-Dec-1995 05:05pm

TO:           Dennis Burke

FROM:         Todd Stern  
              Office of the Staff Secretary

SUBJECT:      RE: Attached is draft Memorandum that POTUS would send to AG

Dennis -- I don't think the substance of what this does delivers on the big build-up in the first few paragraphs -- addicts cycling through the system, going back on the streets and then back in prison, etc. We say all this and then say -- as if this is the way to cure that problem -- that we're going to drug test arrestees and possibly detain them. How does that even dent the problem? If people are remaining addicted through terms of incarceration, I don't get how detaining them as arrestees is going to help. The arrestees either end up convicted of something, in which case they enter the very system you say they hopelessly cycle through; or they end up not convicted, in which case we presumably can't continue to detain them no matter how addicted they are. Am I missing something?

Also, are you sure we don't run into constitutional problems if we detain someone for testing positive who would otherwise be released, whether on bail or personal recognizance?

Finally, is it our policy that the way to get addicts to stop using drugs is to "use all tools at our disposal to coerce arrestees to abstain"?

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

14-Dec-1995 06:20pm

TO:            Todd Stern

FROM:          Dennis Burke  
                Domestic Policy Council

SUBJECT:      RE: Attached is draft Memorandum that POTUS would send to AG

Maybe a little hyperbole in the build up but all relevant to the issue.

The problem is that we send someone out on bail having no idea that this person has been using drugs and will continue to use drugs while out on bail.

The threat of incarceration for continued drug use might be adequate to deter them. It is called "coerced abstinence" and it has the support of many professionals in the area.

The main concern of the Federal Courts is that an arrestee show up for trial and not whether s/he is using drugs. Lots of drug users show up for trial; lots of Federal arrestees receive bail and go back to using drugs before trial. And quite frankly, at the State level more than the Federal level, lots of crime is committed during pretrial release. We are doing nothing to end the arrestees drug habit.

What we are proposing already exists in some Federal Districts, such as Southern District of New York and D.C. We want it to be the policy of all Districts.

Elena Kagan in WH legal counsel reviewed it and so did Justice OLC.

We need to take "require" out because we are not requiring. The arrestee is asked to take a drug test when s/he is arrested. If s/he objects, then the U.S. Atty can bring that to the judge's attention at the initial appearance.

E X E C U T I V E   O F F I C E   O F   T H E   P R E S I D E N T

14-Dec-1995 06:23pm

TO:            Todd Stern

FROM:         Dennis Burke  
               Domestic Policy Council

SUBJECT:      RE: Attached is draft Memorandum that POTUS would send to AG

Furthermore, and maybe most importantly, is that by issuing this directive, the President is reforming the Federal system and is setting a standard for the States to adopt. The States are where the majority of criminal cases occur. This is a theme we are going to continue to stress in the coming better by the Feds than the States.

**December 8, 1995**

**12/8 1:50 p.m.**

**Memorandum for the Attorney General**

**Subject: Development of the Administration's Federal Arrestee Drug Testing Policy.**

Illegal drugs plague our communities, causing despair, illness and, most importantly, contributing significantly to unacceptable levels of crime and violence. More than half of all individuals brought into the Nation's criminal justice system have substance abuse problems. We continue to witness the same criminal drug users cycling through the court, corrections and probation systems with little success in changing their behavior.

We can and will continue to prosecute and convict these drug offenders. Yet without a change to this cycle, criminal drug users can end up back on the street, committing more crimes, and back into the criminal justice system still hooked on drugs.

Our criminal justice system should be structured to take all possible steps to reduce drug demand. Across the country, employers have accepted their corporate responsibility to reduce the levels of drug use within their workplaces. So too, the agencies of our criminal justice system must use all the powers at their command to reduce the levels of drug use by defendants charged and convicted of criminal behavior.

We should implement testing and sanctions as a way to reduce the level of drug use in the population of offenders under criminal justice supervision, and thereby reduce the level of drug use and other criminal behavior.

To ensure that we are doing all we can to break the cycle of drugs and crime, I am directing you to develop a universal policy requiring federal arrestees to submit to drug testing before decisions are made on whether to release them into the community pending trial. I further direct that you establish a policy for federal prosecutors to request appropriate detention, coerced abstinence through on-going testing or treatment for arrestees who fail pre-trial drug tests. We cannot tolerate drug use in our criminal justice system.

The Federal criminal justice system should serve as a model for State criminal justice systems -- where the majority of criminal cases are processed and the cycle of repeat drug-related offenders is most evident. Therefore, I am also directing you to take all appropriate steps to encourage States to adopt and implement the same policies that we are initiating at the Federal level.

You should report to me in writing by March 31, 1996, on the specific steps you will take to implement this policy.

Drug test -

AG registering - needs firm idea of how much it will cost.

She wants treatment ~~at~~

Q's + A's.

Wednesday

implement  
↓  
develop.

**December 8, 1995**

**12/8 8:45 a.m.**

**Memorandum for the Attorney General**

**Subject: Implementation of the Administration's Federal Arrestee  
Drug Testing Policy.**

Illegal drugs plague our communities, causing despair, illness and, most importantly, contributing significantly to unacceptable levels of crime and violence. More than half of all individuals brought into the Nation's criminal justice system have substance abuse problems. We continue to witness the same criminal drug users cycling through the court, corrections and probation systems with little success in changing their behavior.

We can and will continue to prosecute and convict these drug offenders. Yet without a change to this cycle, criminal drug users can end up back on the street, committing more crimes, and back into the criminal justice system still hooked on drugs.

Our criminal justice system should be structured to take all possible steps to reduce drug demand. Across the country, employers have accepted their corporate responsibility to reduce the levels of drug use within their workplaces. So too, the agencies of our criminal justice system must adopt a system-wide responsibility to use all the powers at their command to reduce the levels of drug use by defendants charged and convicted of criminal behavior.

We need to use the powers of the criminal justice system to break the link between drugs and crime -- to use testing and sanctions as a way to reduce the level of drug use in the population of offenders under criminal justice supervision, and thereby reduce the level of drug use and other criminal behavior.

To ensure that we are doing all we can to break the cycle of drugs and crime, I am directing you to target criminal drug users by implementing a universal policy requiring federal arrestees to submit to drug testing before a decision is made to release them into the community. I further direct that you establish a policy for U.S. Attorneys to request appropriate sanctions and treatment for arrestees who fail the drug test. I further direct that a policy be developed with the Bureau of Prisons and the courts to use the powers of our prisons and probation systems to reduce criminal drug use. We will not tolerate drug use in our criminal justice system.

The Federal criminal justice system should serve as a model for State criminal justice systems -- where the majority of criminal cases are processed and the cycle of repeat drug-related offenders is most evident. Therefore, I am also directing you to take all appropriate steps to encourage States to adopt and implement the same policies that we are initiating at the Federal level.

You should report to me in writing by February 29, 1996 on the specific steps you will take to implement this policy.

— DRAFT —

**Memorandum on Implementation of the Administration's Federal Arrestee Drug Testing Policy**

December 8, 1995

**Memorandum for the Attorney General**

**Subject: Implementation of the Administration's Federal Arrestee Drug Testing Policy.**

Illegal drugs plague our communities, causing despair, illness and, most importantly, contributing significantly to unacceptable levels of crime and violence. More than half of all individuals brought into the Nation's criminal justice systems have substance abuse problems. We continue to witness the same criminal addicts cycling through the court, corrections and probation systems with little effort to change their behavior.

We can and will continue to prosecute and convict these drug offenders. Yet without a change to this cycle, criminal addicts can end up back on the street, committing more crimes, and back into the criminal justice system still hooked on drugs.

Our criminal justice system should be structured to reduce drug demand, not prolong, enhance, or tolerate it. Across the country, employers have accepted their corporate responsibility to reduce the levels of drug use within their workplaces by adopting a policy of zero tolerance. So too, the agencies of our criminal justice system must adopt a system-wide responsibility to use all the powers at their command to reduce the levels of drug use by defendants charged and convicted of criminal behavior.

We need to use the powers of the criminal justice system to break the link between drugs and crime -- to use testing and coerced sanctions as a way to reduce the level of drug use in the population of offenders under criminal justice supervision, and thereby reduce the level of drug use and other criminal behavior.

To ensure that we are doing all we can to break the cycle of drugs and crime, I am directing you to target criminal addicts by implementing a universal policy requiring federal arrestees to submit to drug testing before a decision is made to release them into the community. I further direct that you establish a policy for U.S. Attorneys to request appropriate sanctions for arrestees who fail the drug test. I further direct that a policy be developed with the Bureau of Prisons and the courts to use the powers of our prisons and probation systems to reduce criminal drug use. We will not tolerate drug use in our criminal justice system.

The Federal criminal justice system should serve as a model for State criminal justice systems -- where the majority of drug-related cases are processed and the cycle of repeat drug-related

offenders is most evident. Therefore, I am also directing you to take all appropriate steps to encourage States to adopt and implement the same policies that we are initiating at the Federal level.

You should report to me in writing by February 29, 1996 on the specific steps you will take to implement this policy.

William J. Clinton

October 26, 1995

**FEDERAL ARRESTEE DRUG TESTING PROGRAM**

**QUESTIONS AND ANSWERS**

**Presidential Announcement:**

The President will announce that the Federal Government is instituting the following policy: ~~anyone arrested and processed in the Federal criminal system who ~~has any~~ indication of prior drug use will be tested for drugs and appropriately sanctioned.~~ ]

**Questions and Answers:**

Q. What is the purpose of this directive and how will it be accomplished?

A. This policy will break the link between drugs and crime by reducing the level of drug use of offenders who are entering the criminal justice system and who will eventually return to society to commit more drug-related crimes.

The President will sign a Presidential Directive to the Attorney General directing her to report back to him on an implementation plan requiring all United States Attorneys to engage in the announced practice.

Q. What is he directing her to do and how will it be implemented?

A. Under current procedure, when a defendant is arrested, s/he makes an initial appearance before a Federal Magistrate in which bail is determined. The decision of bail eligibility is made by the Magistrate based on a recommendation made by the United States Attorney. The United States Attorney as part of his/her recommendation can request that certain conditions be imposed for bail.

Under this directive, the United States Attorney would be directed not to recommend any bail that is not conditioned on drug testing during the bail period and appropriate sanctions for a failed drug test. ] ?

Q. Why does the Administration think this initiative will break the cycle of crime and drugs?

A. First of all, as a matter of principle, this Administration does not believe that

arrestees should receive unfettered pretrial release if we can determine that they are going to continue to break the law. Pretrial release is conditional liberty and it should be conditioned on an arrestee staying drug free.

Moreover, using the criminal justice system to reduce drug demand should be an essential component of any comprehensive effort to fight crime -- and we need to start at the Federal level. The type of crimes committed to support a heroin or cocaine habit result in fairly frequent arrest and conviction. Thus, most drug offenders are likely to be under the jurisdiction of the criminal justice system at any given moment. By not drug testing them and coercing abstinence through appropriate sanctions, the criminal behavior of these addicts will not change and they will continue to commit crimes and cycle through the system..

Q. How many people does this effect?

Over 45,000 to 50,000 individuals are arrested and processed through the Federal system for criminal felonies every year. Over 60% of those offenders are on pretrial release within a day.

Q. What happens if the arrestee fails the drug test?

A. The United States Attorney office will immediately request that the court revoke the current conditions of release, and subject the arrestee to a program of coerced abstinence through graduated sanctions that would also provide for periodic testing.

Q. How much will this policy cost?

Since 14 districts already have pretrial testing capability that others can access, the program could be implemented an initial annual cost of between \$10 to \$15 million.

Q. Why hasn't it been done before?

At this time, fewer than 20 Districts are using pretrial testing.

The Anti-Drug Abuse Act of 1988 required that the Administrative Office of the United States Courts establish and evaluate pretrial and post-conviction drug testing demonstration programs in 8 Federal judicial Districts. While it took several months to implement the proposal, pretrial testing prior to initial appearance was a reality in all 8 districts within 6 months of the effective date of the act. Although the evaluation report by the U.S. Courts concluded that pretrial drug testing of all criminal

detainees be implemented in all Federal judicial Districts, the courts have not further implemented this program.

Q. What will this initiative signify and accomplish?

A. This initiative will exemplify this Administration's commitment to breaking the link between drugs and crime. The criminal justice system is overburdened with the same defendants who continue to recycle through the system on drug-related charges with no effort to end their dependency.

The President is merely ordering United States Attorneys to do their job -- if someone enters the criminal justice system and ~~gives any indication of drug use~~, a United States Attorney should not be agreeing to release this individual back into society without drug testing and resulting sanctions.

With the President's announcement of this new Administration policy, he will also provide leadership for the States -- where the recycling of criminal defendants is rampant -- by urging them to adopt similar practices.

# 16 USE DRUG TESTS TO REDUCE DEMAND FOR NARCOTICS

by James Q. Wilson

*Many of our worst drug abusers—who spin destruction across society through their habits—are already under the supervision of the criminal justice system because they are on probation or parole. By drug-testing these individuals frequently and punishing them for use, we can take a big bite out of total drug demand.*

There is no doubt that drugs, especially crack cocaine, contribute to crime. What divides experts is why. For some, drugs cause crime because they are illegal: people steal in order to afford their fix, or shoot rivals in order to control illegal markets. For others, drugs cause crime because they alter the subjective state of drug users: drug abuse makes people unfit for regular employment and unable to manage their own lives. Whichever view one takes, crime would be less if the demand for drugs were less.

There is some reason to think that drug demand has in fact declined from 1980s peaks, but this drop is confined almost entirely to light or casual users. For cocaine at least, the number of regular users and the amounts they consume have increased dramatically. As a result, the cocaine problem is as bad today as it was 10 years ago in terms of total consumption, and far worse in terms of its concentration among heavy users.

Efforts to reduce drug demand by choking off supplies so that prices rise have had little if any effect. The price of cocaine has been declining and its purity has remained high. Given the vast resources pumped into supply reduction, this seems puzzling, but it can be explained by the economics of drug production.

Experts at the RAND Corporation estimate that the price of cocaine in transit to the United States is \$17,000 per kilo, but on U.S. streets that same kilo is worth

Urine tests in jails show that a majority of newly admitted inmates were using drugs within a day or two preceding their confinement. In the course of a year or two, a large fraction of the heavy crack users in this country fall under the supervision of the criminal justice system.

\$129,000. That enormous spread means that even if authorities manage to seize 1 out of every 10 kilos shipped (which seems to be about as much as can be hoped for) the street price on the supplies that get through need only be raised by 1.5 percent to make up for the lost shipment.

This has led most experts to conclude that it is more cost effective to invest in treatment programs—if they work. They do work for people who remain in them. The trouble is that many users, especially young ones, are not really seeking a permanent break from the drug. Increased emphasis on treatment will reduce drug demand among heavy users only if more of them become motivated to end their abuse.

One way to make them as motivated is coercion. This is neither as organizationally difficult nor as constitutionally dangerous as one might suspect—if we take advantage of the fact that cocaine use has become concentrated among a relatively small population.

Urine tests in jails show that a majority of newly admitted inmates were using drugs within a day or two preceding their confinement. In the course of a year or two, a large fraction of the heavy crack users in this country fall under the supervision of the criminal justice system. For this reason, prison-based drug treatment programs should be expanded. But they have two limits: First, without community-based follow-up, the relapse rate is likely to be high. Second, three-quarters of all supervised offenders are on the streets on probation or parole, not in prison.

Several experts, notably Mark Kleiman, Eric Wish, and Robert DuPont, have proposed making probationers and parolees subject to frequent, random drug tests, with modest but increasingly severe sanctions if they fail the test. Given the short time horizon of drug users, "frequent" would mean several times a week and the sanctions (a night or two in jail, a week on an arduous work crew) would have to be promptly imposed.

Because we would be testing persons already under the supervision of the criminal justice system, the civil liberties problem would be much reduced. Probationers and parolees are not subject to the full protection of the constitutional bar on unreasonable searches, and, in some states, have waived such protection as a condition of their release.

We know from studies that coerced participation can improve the chances of successful treatment. Kleiman estimates that the cost of the testing would be about \$2,500 per person per year. There would be additional costs for sanctions, but these could be relatively low if punishments were mild but swiftly applied. All of these outlays would be partially offset by a reduction in drug-caused crime and the attendant investigatory and imprisonment costs.

Such a program has been tried on a pilot basis, but never in a large jurisdiction for an extended period. In order for this to be done, probation, parole, and police officers would need to become aggressive about identifying and testing drug-abusing convicts, judges would need to respond crisply to those who failed the tests, and correctional authorities would need to create a graduated set of sanctions.

## Memorandum



Subject	Date
Drug Testing of Federal Arrestees	December 5, 1995

To  
Catherine Russell  
Office of the Deputy  
Attorney General

From  
Richard L. Shiffrin *RLS*  
Deputy Assistant  
Attorney General  
Office of Legal Counsel

This responds to your request for our opinion as to whether the federal government may require all federal arrestees to submit to drug tests prior to their appearance before judicial officers on the question of pre-trial detention or release.

The federal government may request that all arrestees submit to drug testing prior to detention hearings. Absent a court order, however, the government may not compel an arrestee to submit to such a test, either by physically forcing the person to do so or by detaining him or her until such time as "consent" is obtained. If an individual voluntarily submits to the test, the test results may be relied upon as evidence at the bail hearing. If, however, the arrestee refuses to submit to a drug test, evidence of this refusal may be presented to the judge, subject to the government establishing that such evidence is relevant to the determination of release or conditions ordered with release.

Evidence of a defendant's refusal to be tested could be relied upon at a detention hearing if the government demonstrates a reasonable basis for suspecting that the arrestee is a drug user who poses a danger to the community or risk of flight because of that drug use. This individualized suspicion could be based on indicia of prior or current drug use or the nature of the actual crime for which the defendant has been arrested.

Accordingly, we would revise paragraph (1) of "The Clinton Universal Criminal Justice Drug Testing Initiative" to read as follows:

On Friday, the President would sign a directive to the Attorney General to implement a universal policy requiring Federal arrestees to submit to drug testing prior to the determination of pre-trial detention or release.

D  
J

## U. S. Department of Justice

## Criminal Division

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General Litigation and Legal Advice Section  
1001 G Street, N.W., Suite 200  
Washington, D.C. 20001  
(202) 514-1026  
(202) 514-6113 (FAX)

TO: Julie Samuels, Director  
Office of Policy and Management Analysis

FROM: Victor Stone, Senior Legal Advisor

SUBJECT: Whether the Bail Reform Act Would Prohibit Mandatory  
Drug Testing

I see nothing in the Bail Reform Act, 18 U.S.C. 3141 et seq., that would prohibit a statutory amendment requiring mandatory drug testing of all arrested persons. Indeed, it appears that the Bail Reform Act would be generally amenable to provisions requiring drug testing since the current statutory scheme seems to contemplate discretionary drug testing ordered by the court.

For example, 18 U.S.C. 3142(b) sets the standard which the court must use in evaluating each arrested person for release. That standard requires the court to decide, *inter alia*, whether releasing the arrested person "will endanger the safety of any other person or the community." The statutory factors that go into that determination are listed in subsection (g) of section 3142 and include in subsection (3)(A) determining "the characteristics of the person, including...the person's [current] physical and mental condition...[and] history relating to drug or alcohol abuse...." See United States v. Quartermaine, 913 F.2d 910, 917 (11th Cir. 1990) (drug addiction is a relevant consideration in determining pretrial detention). A drug test is the logical way to ascertain a person's physical condition as it relates to substance abuse. Furthermore, the statutory provisions that deal with the conditions that may be imposed where it is likely that the community will be endangered include ordering the arrested person to "refrain from ... any use of a narcotic drug or other controlled substance without a prescription" and also ordering the person to "undergo ... treatment for drug or alcohol dependency" pursuant to 18 U.S.C. 3142(c)(B)(ix)&(x). It would seem inappropriate to impose either of these conditions of release without first having some drug test results upon which to base them. Also, scheduled drug testing could be ordered as a mandatory condition of release, especially where the presence of drugs or drug treatment was ordered, under the court's residual power to impose "additional

or different conditions of release" pursuant to 18 U.S.C. 3142(c)(3).

Thus, since the current bail scheme specifically contemplates consideration of an arrested person's drug addiction, and allows mandatory treatment of drug addiction as a specific condition of release, it would be hard to argue that initial mandatory drug testing would conflict with the provisions of the Bail Reform Act.

Rahm brainchild

Iterations - many over past several months

Federal arrestees - makes sense

Admin Office of the CtS does "This"

in 14 of 96 districts

drug screening

make determ - drug use?

SDNY - test everybody.

"voluntary"

if refuse, can draw negative inference.

(states - condition  
prison grants)

How mandatory can this be?

Schiffman - prepared short memo.

Can't say will test all.

We don't have ability to force.

All states have wide latitude to make refusal  
- draw neg inference.

Set bail or set  
conditions of release

Reason to detain or set ends  
(if that's all)

→ Like breathalyzers  
you can refuse, but...

"Requiring" - too cute?

Schiffman

OK to call to judge's attn or probative re  
conditions of release.

Depending on circs - sometimes not germane.

If nature of crime / etc - no indic. of drug use -  
then problematic.

Always going  
to factor in  
to what  
↑ does, recommends.

That will always be brought to judge's attn - \* US Atty's Office  
Judge will consider other factors will always  
bring to judge's  
attn

"Requiring" -

There is after all a sanction involved

e.g. breath sample -  
lor license.

Doesn't pt to  
this point  
very often. ⇒  
Then just give  
me a cup.

Can't always argue that refusal  
substantive conditions/bail  
(e.g. religious objection)