



MFI

FBI

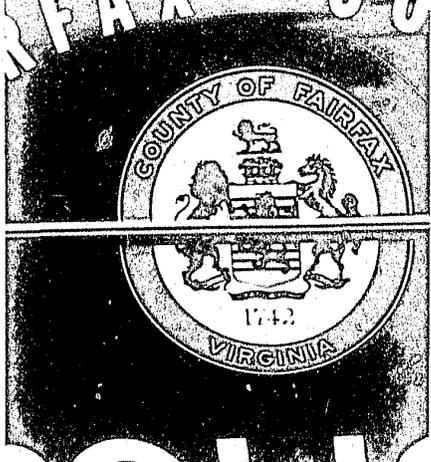
October 1986

Law Enforcement Bulletin



K-9

102887



U.S. Department of Justice
National Institute of Justice

102887

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

FBI Law Enforcement Bulletin

to the National Crime and Justice Reference Service (NCJRS)

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

Jb

Contents

October 1986, Volume 55, Number 10

- Police-Community Relations 2 Police Beat**
By Tom Bell
- Crime Prevention 5 Ensuring Computer Security**
By Charles B. Careek
- Administration 9 An Alternative Approach to Investigations**
By Terryl C. LaCasse
- Training 13 Job-Specific Training for Police:
An Airport Example**
By Robert T. Raffel
- Crime Prevention 16 The McGruff Mobile**
By John W. Carpenter
- Organized Crime 21 Organized Crime and Medical Fraud**
By Kenneth P. Walton
- Legal Digest 25 Urinalysis Drug Testing Programs
for Law Enforcement (Part I) 102887**
By Jeffrey Higginbotham
- 31 Wanted by the FBI**

The Cover:

Fairfax County, VA, police officer Shelby Bailey with "Casey Kelly," newest member of the department's K-9 Corps. The pup, donated by a firm that breeds German shepherds from original bloodlines, is the first to be raised by the department in an effort to cut the cost of selecting a suitable adult dog.

FBI **Law Enforcement Bulletin**

United States Department of Justice
Federal Bureau of Investigation
Washington, DC 20535

William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through June 6, 1988.

Published by the Office of
Congressional and Public Affairs,
William M. Baker, *Assistant Director*

Editor—Thomas J. Deakin
Assistant Editor—Kathryn E. Sulewski
Art Director—Kevin J. Mulholland
Production Manager—Marlethia S. Black
Reprints—Beth Corbin



Urinalysis, Drug Testing Programs for Law Enforcement

(Part I)

“Drug testing through urinalysis furthers the goal of preventing the loss of public trust and confidence due to drug abuse by law enforcement officers.”

The menace that drug abuse poses for today's society is beyond question. Its adverse effects are many and substantial, and the death of a University of Maryland athlete on June 19, 1986, from cocaine ingestion is but one tragic illustration of the consequences facing drug abusers. But society is also the victim of drug abuse. Drug abuse is causing economic damage of staggering proportions. Some estimates place the economic damage caused by chemical dependency in terms of lost productivity and medical expenditures alone to be in excess of \$100 billion annually.¹ Since 1975, about 50 railroad accidents or mishaps have been attributed to drug or alcohol impairment, resulting in the death of 37 people, the injury of at least 80 more people, and property damage of more than \$34 million.² Crime statistics seem to bear a direct relationship to drug abuse as well. The District of Columbia government announced that a preliminary study in that city showed that over 61 percent of all arrested persons between the ages of 18 to 25 years tested positive for the ingestion of one or more drugs.³

The effect that this drug abuse problem poses for law enforcement is obvious, yet at the same time hidden. On the one hand, the problems of investigating, detecting, and

prosecuting drug traffickers are obvious. On the other hand, the adverse consequences of drug abuse in the workplace are much more of a hidden menace.

Because of the special place held by the law enforcement community in our society, the effects of drug abuse by any officer or official are magnified. In addition to the obvious physical injuries which might stem from drug abuse, illegal drug use by law enforcement officers would create a disrespect for law enforcement and diminish public trust in our system of government. Just as everyone would object to an airline pilot flying under the influence of drugs, so too will they refuse to tolerate drug abuse by police officers. The challenge for law enforcement is to prevent the disintegration of public trust and respect for law enforcement and to develop a viable mechanism to identify and deal with those officers who abuse drugs.

One mechanism for dealing with this potential problem is the establishment of a comprehensive mandatory drug testing program to identify drug abusers. The purpose of this article is to consider the legal issues in developing and implementing such a mandatory urinalysis drug testing program for law enforcement officers.⁴ Part I of this article will discuss the basis for

By
JEFFREY HIGGINBOTHAM
Special Agent
FBI Academy
Legal Counsel Division
Federal Bureau of Investigation
Quantico, VA

Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.



Special Agent Higginbotham

such a program and the necessary balancing of the competing interests of the individual officer and the officer's department under a traditional fourth amendment analysis. Parts II and III will address the legal basis of drug testing in a law enforcement context, legal issues that arise during implementation of the program, and the use of positive test results in personnel actions.

THE BASIS FOR A DRUG TESTING PROGRAM

Initially, each law enforcement agency or department must determine if it has the need for a comprehensive, mandatory drug testing program. Though the focus of this article is on legal issues related to the development and implementation of such a program, it is not meant to suggest that all agencies must adopt a comprehensive drug testing program. Any department which is considering a mandatory drug testing program should consider two interrelated questions, the answers to which will determine the type of program best suited to the needs of that agency and form the foundation for the defense of the program if it is subsequently challenged in court.

The two questions that should be asked at the outset are: 1) Why should this department adopt a urinalysis drug testing program? and 2) What does this department hope to accomplish with such a program? By analyzing those questions, a law enforcement agency may find that it can simply rely on traditional methods of securing evidence, such as search warrants,⁵ court orders,⁶ or consent,⁷ to deal with the problem of drug abuse by law enforce-

ment officers. However, the analysis might also disclose that a comprehensive urinalysis drug testing program is required to prevent the loss of public trust and to insure the ability of the agency to fulfill its investigatory and enforcement responsibilities.

CONSTITUTIONAL ISSUES IMPLICATED BY A DRUG TESTING PROGRAM

If an agency concludes that a comprehensive urinalysis drug testing program may be required, its next consideration is the legality of the program. Since it will necessarily involve the law enforcement agency or department in inquiries concerning the privacy of its employees' activities and bodily functions and require personnel decisions to be made, certain constitutional considerations immediately appear. They include the law of search and seizure under the 4th amendment, as well as due process notions under the 5th and 14th amendments. For example, is mandatory participation in a urinalysis drug testing program a reasonable search and seizure? Might the program be conducted or the results be used in such an unfair manner as to offend the concept of due process? The answers to those questions will determine whether and how a law enforcement agency or department could constitutionally mandate participation in a urinalysis drug testing program over an individual officer's objection. They will be addressed as they might arise—first in the development of a drug testing program, and second, in implementing the program.

CONSTITUTIONAL ISSUES IN DEVELOPING A DRUG TESTING PROGRAM

The first constitutional issue certain to arise when a mandatory drug

“... a urinalysis drug testing program is not an attempt by law enforcement executives to test officers for drug abuse out of distrust, but rather to provide a better working climate within the law enforcement department and the community it serves.”

testing program is being developed involves the fourth amendment's prescription against unreasonable searches and seizures.⁸ Is mandatory drug testing even a search within the meaning of the fourth amendment?

The Supreme Court has said that “[a] ‘search’ occurs when an expectation of privacy that society is prepared to consider reasonable is infringed”⁹ by governmental action. Does a person, therefore, have a reasonable expectation of privacy in urine sufficient to prohibit the government's warrantless inspection of it for the presence of an illegal drug? That question could be debated at length, but without practical effect, since there is another aspect of urinalysis which almost certainly implicates fourth amendment concerns.¹⁰

That aspect is the act of urination which is considered by American society to be a private bodily function. The expectation of privacy which one possesses in the act of urination is almost certain to be recognized by the courts as reasonable. Since the fourth amendment “protects people, not places”¹¹ and is concerned with “those intimate activities that the Amendment is intended to shelter from government interference or surveillance,”¹² a mandatory urinalysis drug testing program which must concern itself with both compelled urination and inspection of a urine sample will implicate the fourth amendment.¹³

Concluding that a mandatory urinalysis drug testing program by a law enforcement agency is a fourth amendment search does not mean that it cannot legally be implemented. The fourth amendment proscribes only unreasonable searches. The challenge to law enforcement, then, is to adopt a urinalysis drug testing program that can pass the reasonableness test.

Fourth Amendment Reasonableness—A Balancing of Interests

What constitutes a reasonable or unreasonable search is not always easy to determine.

“The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.”¹⁴

This balancing test of reasonableness under the Fourth Amendment requires a twofold analysis. “[F]irst, one must consider ‘whether the ... action was justified at its inception,’ ... [S]econd, one must determine whether the search as actually conducted ‘was reasonably related in scope to the circumstances which justified the interference in the first place.’”¹⁵ [citations omitted] In brief, every search must be reasonable at its inception and in its execution. Whether any search, including a urinalysis drug testing program, is reasonable “depends on the context within which a search takes place,”¹⁶ and “the greater the intrusion, the greater must be the reason for conducting a search.”¹⁷

In terms of a urinalysis drug testing program, the balancing test for fourth amendment reasonableness at the inception of the search requires the weighing of three factors: 1) The interests of the law enforcement officer who will be required to participate in the urinalysis program; 2) the interests of the law enforcement agency seeking to implement the program; and 3) the situations or circumstances

under which the actual testing procedures will be implemented. Only if the interests of the law enforcement agency, in the context of the situation in which testing is proposed, outweigh the interests of the individual officers affected will the program be able to pass constitutional muster.

Individual Privacy Interests

The first factor in the balancing test is the interest of the officers and officials who will be tested for drug abuse through urinalysis. That interest can be characterized simply as the fundamental right of “privacy and security of individuals against arbitrary invasions by government officials.”¹⁸ Though law enforcement officers must expect the loss of some rights and freedoms simply by reason of their chosen profession, it is clear that persons who choose careers in law enforcement retain the basic constitutional rights guaranteed to all citizens. “[P]olicemen ... are not related to a watered-down version of constitutional rights.”¹⁹

The right of privacy is the core value of the fourth amendment, encompassing both bodily integrity and private bodily functions. As such, it is directly implicated by a mandatory urinalysis program. In the words of one court:

“Urine, unlike blood, is routinely discharged from the body, so no governmental intrusion into the body is required to seize urine. However, urine is discharged and disposed of under circumstances where the person has a reasonable and legitimate expectation of privacy. One does not reasonably expect to discharge urine under circumstances making it available to others to collect and analyze in order to discover the personal physiological secrets it

“... the threat to public safety posed by government employees who are drug abusers is a legitimate factor in determining the fourth amendment reasonableness of a mandatory urinalysis drug testing program.”

holds.... One clearly has a reasonable and legitimate expectation of privacy in such personal information contained in his body fluids.”²⁰

An officer's privacy interest does not disappear even though the purpose of the search is to detect drug abuse for employment reasons and not to secure evidence for use in a criminal prosecution. “It is surely anomalous to say that the individual and his property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior.”²¹ “All of us are protected by the Fourth Amendment all of the time, not just when the state suspects us of criminal conduct.”²²

Governmental Interests

The second factor to weigh in judging whether a urinalysis drug testing program can meet the fourth amendment test of reasonableness is the governmental need to adopt such a program. Though this article discusses these needs in terms of governmental interests, a close examination will reveal that the interests are, for the most part, of equal importance and value to an individual law enforcement officer. The reasons upon which a law enforcement agency would rely to implement a drug abuse testing program will further valid societal, governmental, and organizational objectives. At the same time, they also advance health and welfare interests important to individual officers as well. Recognizing the dual benefits in these “governmental” interests demonstrates that a urinalysis drug testing program is not an attempt by law enforcement executives to test officers for drug abuse out of distrust, but rather to provide a better working climate within the law enforcement department and the community it serves.

The interests of the “government”

that must be weighed against the individual officer's right to privacy may be summarized as follows: 1) Public safety, 2) public trust and integrity, 3) corruption, 4) presentation of credible testimony, 5) morale and safety in the workplace, 6) loss of productivity, and 7) civil liability. Each will be discussed in turn.

Public Safety

The impairing characteristics of drug abuse are well known. The use of illegal drugs, such as marijuana, are known to adversely affect a person's judgment and response capabilities almost immediately and for extended periods of time thereafter.²³ Yet judgment and response are perhaps the two most important attributes which a law enforcement officer, who seeks to safely and effectively discharge his/her assigned duties, can possess. The need for unimpaired exercise of these two attributes is further heightened by the officer's possession and use of his/her two principal items of equipment—a weapon and the police vehicle.

The possession and use of a deadly weapon is an enormous responsibility entrusted to nearly every law enforcement officer in America. One can easily foresee the tragic consequences of diminished judgment or skill in discharging a weapon as a result of drug abuse. The same is true of accidents caused by an officer driving a vehicle in a hot pursuit or emergency response situation while under the influence of drugs. It is clear that drug abuse by law enforcement officers constitutes a direct threat to the physical safety of the community.

The courts have recognized that the threat to public safety posed by government employees who are drug abusers is a legitimate factor in determining the fourth amendment reasona-

bleness of a mandatory urinalysis drug testing program. In *Turner v. Fraternal Order of Police*,²⁴ the court described the peril:

“Without a doubt, drug abuse can have an adverse impact upon a police officer's ability to execute his duties. Given the nature of the work and the fact that not only his life, but the lives of the public rest upon his alertness, the necessity of rational action and a clear head unbefuddled by narcotics becomes self-evident. Thus, the use of controlled substances by police officers creates a situation fraught with serious consequences to the public.”²⁵

Moreover, this rule applies not just to on-duty use or use immediately prior to on-duty status which results in the impairment of an officer, but also to drug abuse by law enforcement officers in an off-duty status. Most departments require law enforcement officers to be subject to, and available for, immediate call to duty at any time. In addition, many require officers, even while off duty, to intervene or respond to criminal activity they observe taking place. As such, there is a potential threat posed to public safety by an officer's drug abuse, even when the officer may technically be off duty. This risk was recognized in *City of Palm Bay v. Bauman*.²⁶

“The City has the right to adopt a policy which prohibits police officers and fire fighters from using controlled substances *at any time* while they are so employed, whether such use is on or off the job. The nature of a police officer's or fire fighter's duties involves so much potential danger to both the employee and the general public as to give the City legitimate concern that these em-

ployees not be users of controlled substances. Their work requires and the safety of the public demands complete mental and physical functioning of these officers."²⁷

Accordingly, because of the threat to public safety posed by a law enforcement officer who abuses drugs, on or off duty, a law enforcement agency or department has a legitimate interest in determining, through a urinalysis drug testing program, those officers who are illegally using drugs.

Public Trust

The second "governmental" interest to be weighed against an officer's right of privacy is that of public trust. All experienced law enforcement professionals quickly realize that the job of serving and protecting the community is made easier when the community trusts and supports its police agency. Winning the support and trust of the community is an ongoing endeavor and is undermined if police officers themselves are breaking the law.

Drug abuse by a police officer, in most jurisdictions, constitutes three separate offenses—purchase, possession, and use. Officers sworn to enforce the law cannot be above it. "[P]olice officers who are sworn to enforce the laws lose . . . public confidence if they violate the very laws they are sworn to enforce. [A department] therefore has a right to insist that its law enforcers not be lawbreakers."²⁸ Drug testing through urinalysis furthers the goal of preventing the loss of public trust and confidence caused by drug abuse by law enforcement officers.

Potential for Corruption

The third factor to be weighed against the individual officer's right to privacy is the potential for corruption,

either of, or by, the officer. The very nature of today's police work, i.e., the daily struggle against drug trafficking and use, often brings officers into direct contact with illegal drugs and people associated with them. That exposure provides an officer who is a drug abuser with easier access to drugs through the abuse of his/her powers of office. The temptation to misappropriate the fruits of a drug arrest or search may be irresistible for the drug abusing officer. In addition, an officer who is a drug abuser must acquire his/her drugs from someone. Often, if not always, this act of obtaining an illegal drug requires the association with criminals. If the criminal learns of his buyer's status as a law enforcement officer, that knowledge can be exploited to extort the officer for money, information, or protection.

The potential for corruption and its far-reaching consequences was the basis for a Federal district court's decision to uphold the FBI's determination to require an Agent to submit to urinalysis. In *Mack v. United States*,²⁹ the court stated:

"... the FBI has a compelling interest in assuring that its agents are not involved in drugs. While all private employers may have a generalized desire to know of their employee's drug use which could decrease efficiency, the FBI has far more urgent and compelling needs for such information. FBI agents are privy to highly classified information. Any involvement of an FBI agent with drugs, no matter how small, exposes him to risks of extortion that could jeopardize national security. Also, since the FBI is charged with responsibility for enforcement of the federal drug laws, illegal drug use by agents risks to corrupt and compromise the agency's discharge of those duties."³⁰

Although *Mack* spoke, in part, in terms of national security, an area not within the purview of most law enforcement agencies, the message is still clear. The government, in serving and protecting the public, has a legitimate interest in detecting and deterring drug abuse among its personnel to prevent the corruption of its law enforcement employees to the detriment of both the organization and society.³¹

Presentation of Credible Testimony

The next "government" interest in the fourth amendment balancing test of reasonableness lies in the obligation of law enforcement to serve and protect the community it serves. That obligation includes the presentation of competent, professional, and credible testimony by law enforcement officers in the courtroom. An officer who illegally abuses drugs would be subject to impeachment through proof or an admission that he/she is, in fact, a law violator. "[P]olice officers who are sworn to enforce the laws lose credibility . . . if they violate the very laws they are sworn to enforce."³² Drug testing through urinalysis diminishes the prospect that testimony susceptible to impeachment will be offered by law enforcement officers, and therefore, furthers a legitimate governmental interest.

Morale and Safety in the Workplace

A fifth interest of the government to be balanced against the individual officer's right of privacy is the need to provide a safe and effective work environment. The nature of police work frequently places police officers in life-threatening jeopardy. The resolution of such perilous situations often depends heavily upon the reactions of fellow officers. Every law enforcement officer has the right to be secure in the knowledge that his/her partner, back-up offi-

"The government ... has a legitimate interest in detecting and deterring drug abuse among its personnel to prevent the corruption of its law enforcement employees to the detriment of both the organization and society."

cers, and all responding fellow officers are capable of reacting in a safe and effective manner. This requires all law enforcement officers to be free from the physical effects of drugs, and free from the restraints which drug abuse forces upon officers in terms of desire and willingness to enforce the laws. The moral and legal obligation to insure that will happen must be shared by both police management and individual officers. "[D]rug use by [a law enforcement officer] could affect the success of an operation implicating important ... law enforcement objectives and could pose risk of injury to other [law enforcement officers] working with him."³³ Urinalysis drug testing is a method by which this interest can be protected.³⁴

Loss of Productivity

The sixth factor to be balanced against the individual's right to privacy is the loss of productivity and financial cost attributable to drug abuse. Much has been written about the decline in productivity and the rise in health benefit costs as a result of drug abuse by private sector workers.³⁵ Even conceding that drug abuse by law enforcement may not be of the same magnitude as drug abuse in private sector employment, one must readily admit that drug abuse, to any degree, will adversely affect productivity and health benefit costs.

The efficient expenditure of budgeted funds has, perhaps, never been more important than today in times of fiscal restraint. Additionally, since the budgets of law enforcement are funded from taxpayers' funds, the obligation of fiscal responsibility may even be greater than the responsibility facing private sector's management of investment dollars. Though no court has addressed the legality of drug testing by law enforcement in these terms,

concern for productivity and prudent expenditure of funds must be recognized as a legitimate "governmental" interest in determining the fourth amendment reasonableness of urinalysis drug testing.

Civil Liability

The last of the "governmental" interests is that of civil liability. Members of the public who suffer injuries at the hands of law enforcement officers may bring lawsuits against the officers³⁶ and the city they represent.³⁷ If a drug abuse problem exists within a law enforcement organization, liability could attach if it were established that an officer's conduct which injured a citizen was directly linked to the failure of the department to detect and resolve the drug abuse problem.³⁸ While it is not suggested that fear of civil liability to be the driving force behind the implementation of a urinalysis drug testing program, it is a legitimate interest to be considered in the fourth amendment's balancing test.

(continued next month)

FBI

Footnotes

¹T. Schneider Denenberg, *Alcohol and Drugs: Issues in the Workplace* (Bureau of National Affairs, Inc., 1984), p. v., combining economic damage attributable to both alcohol and drug dependency.

²J. Castro, "Battling the Enemy Within," *Time Magazine*, March 17, 1986.

³*Washington Post*, p. B3, June 28, 1986.

⁴Any law enforcement department or agency which is contemplating the adoption of a urinalysis drug testing program should give serious consideration to a broader policy which would encompass the issue of substance abuse. That is, of equal and perhaps even greater importance to law enforcement are the issues of alcohol abuse and the use and abuse of legal, prescription drugs. Those issues are beyond the scope of this article but are matters which should be considered as part of a comprehensive policy dealing with substance abuse and chemical dependency.

⁵See, e.g., *State v. Magnuson*, 308 N.W. 2d 83 (Iowa 1981) (upholding search warrant compelling production of blood and urine samples).

⁶See, e.g., *In re Fingerprinting of M.B.*, 309 A.2d 3 (N.J. Super. 1973) (compelling suspects to submit to fingerprinting based on a reasonable suspicion standard).

⁷See, e.g., *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973).

⁸The fourth amendment of the U.S. Constitution provides: "The right of the people to be secure in their per-

sons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

⁹*United States v. Jacobsen*, 104 S.Ct. 1652, 1656 (1984).

¹⁰See, *Turner v. Fraternal Order of Police*, 500 A.2d 1005, 1009-1011 (D.C. App. 1985), J. Nebeker, concurring.

¹¹*United States v. Katz*, 389 U.S. 347, 351 (1967).

¹²*Oliver v. United States*, 104 S. Ct. 1735, 1741 (1984).

¹³See, *McDonnell v. Hunter*, 612 F. Supp. 1122 (D. Iowa 1985); cf., *Turner v. Fraternal Order of Police*, 500 A.2d 1005 (D.C. App. 1985), J. Nebeker, concurring.

¹⁴*Bell v. Wolfish*, 441 U.S. 520, 559 (1979).

¹⁵*New Jersey v. T.L.O.*, 105 S.Ct. 733, 744 (1985).

¹⁶*Id.* at 741.

¹⁷*Blackburn v. Snow*, 771 F.2d 556, 565 (1st Cir. 1985).

¹⁸*New Jersey v. T.L.O.*, *supra* note 15, at 736.

¹⁹*Garrity v. New Jersey*, 385 U.S. 493, 500 (1967).

²⁰But see, *Turner v. Fraternal Order of Police*, 500 A.2d 1005, 1008 (D.C. App. 1985): "... the police force is a paramilitary organization dealing hourly with the general public in delicate and often dangerous situations. So we recognize that, as is expected and accepted in the military, police officers may in circumstances enjoy less constitutional protection than the ordinary citizen."

²¹*McDonnell v. Hunter*, 612 F.Supp. 1122, 1127 (D. Iowa 1985).

²²*Camara v. Municipal Court*, 387 U.S. 523, 530 (1967).

²³*Shoemaker v. Handel*, 619 F.Supp. 1089, 1098 (D. New Jersey 1985), *aff'd* ___ F.2d ___ (3d Cir. 1986). But see, *Allen v. City of Marietta*, 601 F.Supp. 482, 489-91 (N.D. Georgia 1985).

²⁴See, e.g., P. Mann, *Marijuana Alert* (McGraw-Hill, 1985).

²⁵*Supra* note 10.

²⁶500 A.2d at 1008. See also, *Allen v. City of Marietta*, 601 F.Supp. 482, 491 (N.D. Georgia 1985).

²⁷475 So.2d 1322 (Fla. App. 5th Dist. 1985).

²⁸*Id.* at 1326 (emphasis in original).

²⁹*Id.*

³⁰83 Civ. 5764, Southern District of New York, April 24, 1986.

³¹*Id.*, slip opinion at 8.

³²For a compilation of instances of the corruption induced by illegal drugs, see 1 Drug Law Report 229-237, March-April, 1986.

³³*City of Palm Bay v. Bauman*, *supra* note 26, at 1326.

³⁴*Mack v. United States*, *supra* note 29, slip opinion at 8.

³⁵See also, *Egger v. Phillips*, 710 F.2d 292 (7th Cir.), *cert. denied*, 464 U.S. 918 (1983), concerning the need and ability of law enforcement management to take those measures necessary to ensure *esprit de corps* and prevent disruption in the workplace.

³⁶See, e.g., P. Mann, *Marijuana Alert*, *supra* note 23, pp. 35-47.

³⁷See, e.g., 42 U.S.C. §1983.

³⁸*Monell v. Department of Social Services*, *supra* 436 U.S. 658 (1978); *Pembaur v. City of Cincinnati*, 106 S.Ct. 1292 (1986).

³⁹See, *Bonsignore v. City of New York*, 521 F. Supp. 394 (S.D.N.Y. 1981), *aff'd*, 683 F.2d 635 (2d Cir. 1982) (liability for failure to identify officers psychologically unfit to carry weapons); *Marchese v. Lucas*, 758 F.2d 181 (4th Cir. 1985) (liability for failure to investigate allegations of excessive force and impose appropriate discipline). Compare *Daniels v. Williams*, 106 S.Ct. 662 (1986), requiring proof above simple negligence to support a claim under 42 U.S.C. §1983.