**Illegal Drugs and Clearances**

 **-- what you don’t know can hurt you**

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*June 16, 2016*

*I am a lawyer in Washington, D.C. who, among other things, has been handling security clearance issues for individuals for the past two decades. I’ve seen many good and trustworthy people lose clearances and careers due in large part to their naiveté about illegal drug use and the security clearance process. I offer the following guidance in hopes of leveling the playing field.*

 Illegal drug use matters to the U.S. Government, much as any other illegal conduct would in assessing security clearance eligibility. This includes the use of marijuana. Some states may have legalized it, but marijuana use is problematic from the U.S. Government’s perspective and should be a cause for concern to those seeking clearance eligibility. The best advice from this seasoned security clearance lawyer is to avoid illegal drugs altogether. If you want to play in the Government arena, then you must play by their rules.

 Past illegal drug use is not per se fatal to clearance eligibility. Much depends on the period of time over which the use occurred, the type of drug used, the frequency of use, whether it was sold or purchased in addition to being used, and whether the use occurred during a period in which the applicant held a clearance. When and how disclosure of past drug use is made and the way it is described in writing and verbally to the Government plays an important role as well.

 Unless a police record exists, illegal drug use is one of those things the Government typically only learns about through self-disclosure. This means that a decision needs to be made whether or not to disclose the usage in the security clearance application (SF-86), which includes an entire section on past and present drug use. I believe it should be disclosed, but experience teaches that deceit about drug use happens, largely because of the significant adverse consequences of disclosure. The notion that voluntary disclosure results in receiving “credit” for trustworthiness and candor is mostly myth. No one gets a pass for fessing up; the Government will act on adverse information about drug use regardless of how it is obtained.

 Disclosure triggers extensive questioning and often extensive re-questioning from government agents about the period of use, the quantity used, the frequency of use, and the circumstances of use. It typically starts with a set of written questions from the Government seeking details. This is often followed by an interview with an investigator trained to extract adverse admissions and to detect even the slightest of inconsistencies, which it often seems, are the primary objectives of the interview. Many investigators are infected with a zealous distrust of those unable to recall specific details of their drug use and will use leading questions to suggest desired answers, or seek assent to benign questions about whether something is likely or possible, or incite guesses and estimates when memories fail. Most trusting folks are often more than happy to oblige such requests, generally to their ultimate regret. If you admit something is possible, chances are that it will be deemed an admission that it occurred. Guesses, estimates, and approximations, innocuously extracted, typically become etched in stone, difficult if not impossible to later amend without serious consequences. Even the truth is often not enough for cynical investigators who will persist with their questions until they get the adverse admissions they want.

 Investigators take notes and sometime later summarize what they believe you said during the interview in a report (Report of Investigation) that becomes part of your investigation file. These reports become gospel, presumed to be true by adjudicators regardless of their accuracy. Applicants who dare to contradict such reports during adjudication risk being judged dishonest.

 The price of non-disclosure can be steep as well. Individuals who initially opt to hide drug use but subsequently disclose it risk triggering allegations of deceit, which are particularly difficult to overcome. Why would someone subsequently disclose illegal drug use after initially opting to hide it? The polygraph. Most secret and top secret clearances do not require a polygraph; however, intelligence agencies typically do. There are times in a person’s career when an employer requires a cleared employee to participate in a new project necessitating clearances or access permissions from intelligence agencies, which inevitably leads to a polygraph. The way that agents administer the polygraph often prompts those with secrets, particularly secrets about illegal drug use, to come clean, which then triggers allegations of dishonesty for keeping it hidden.

 Here are some tips for dealing with illegal drug use in connection with the clearance investigative process:

1. Avoidance is the best policy. If you’re interested in a career involving government work (whether as a contractor or government employee) avoid illegal drugs and people who use illegal drugs.

2. Inconsistencies lead to denials. Determine the full extent of your drug use, including all the details on dates, times, and places, etc, before submitting your clearance application.
Trying to recall details of things that happened in the past is made all the more difficult when pressured by interrogators. Mistakes in recollection are very likely to be construed as deceit.

3. You don’t get a second chance to make a first impression. If you opt for initial disclosure, which I recommend, seek competent help on when and how to disclose it. Knowing how to explain it in the application is critical and sets the tone for the ensuing investigation.

4. Federal agents are not your friends. Investigators often appear to be friendly, helpful, and genuinely interested in your success. Perhaps some are. Most, however, put up the front simply to get you to share information. To avoid being misquoted or misunderstood by an investigator, take contemporaneous notes during your interview and particularly note your answers. Ask investigators to repeat the important things you said to ensure they understand you and to avoid mistakes in the Report of Investigation, which are virtually impossible to correct after the fact.

5. Know what you know and know what you don’t know. Do not ever guess, assume, or suppose facts in dealing with drug issues. If you don’t know or don’t recall something say so and stick with it. Don’t let anyone put ideas in your head or words in your mouth. Your obligation is to tell the truth, not satisfy investigators.

6. Be specific and clear with your answers. Don’t ever generalize. Be accurate and avoid confusion:

* Telling an agent that something is possible likely will be construed as an admission that the something actually occurred.
* Giving an agent a range of usage dates likely will be construed as an admission that you continually and actively used drugs during those dates. Dates can loom large, especially if the Government is attempting to prove that you used drugs during the same time period in which you possessed a clearance.
* Giving a range of the number of times you used likely will be construed as an admission that you used drugs at least as many times as the upper number in the range. The number of times is not inconsequential. It factors into several mitigating conditions.
* Never exaggerate your answers to appear cooperative with a pushy investigator or to “be safe”.
* Estimations and approximations are nothing more than guesses. Don’t guess. Guesses likely will be construed as admissions of fact.
* Be consistent. Variations in details, regardless of magnitude, likely will be construed as attempts at deceit. Changing any aspect of your drug history after an initial disclosure will jeopardize your eligibility.

 In summary, when faced with past drug use in the clearance application process, you best heed the warning of concerned locals at an old English countryside pub to two naïve backpacking boys before heading out into the cold, misty night in the 1981 movie, *An American Werewolf in London:*  “Stay on the road. Keep clear of the moors. Beware of the moon, lads.”

 Stay with what you know. Keep clear of guesses and assumptions. Beware of what you say and how you say it.