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February 5, 2001

via hand delivery

The Honorable Diana E. Murphy
Chair, United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

RE: PAG's submission on the ecstasy amendment

Dear Judge Murphy:

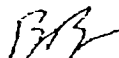
I am writing to provide the Commission with the PAG's submission on the pending amendment to the offense levels for the drug ecstasy.

As set forth in the attached memorandum drafted by Lyle Yurko, the PAG believes that the current proposed amendment provides for punishment that is much too severe, particularly when compared with the offense levels for other illegal drugs.

We would welcome the opportunity to speak to the Commission in greater detail regarding the proposed amendment and regarding the PAG's suggested alternative if you believe that such a meeting would be helpful.

As always, we appreciate the opportunity to provide the Commission with our perspective on these important issues.

Sincerely,



Barry Boss

cc: Jim Felman, Esq.
Lyle Yurko, Esq.
Andy Purdy, Esq.

**PAG SUBMISSION ON THE PROPOSAL TO INCREASE
THE OFFENSE LEVELS FOR THE DRUG ECSTASY**

During the 1992 presidential debates one of the questioners asked President Bush and then candidate Clinton what it was about life in America that led so many citizens to ingest reality altering substances. Neither candidate answered the question. The truth is that millions of our population find a need to use and/or abuse alcohol, prescription and illegal drugs.

Over the past century this substance use and abuse has created a series of political responses to the various perceived and real social maladies attributed to such use and abuse. These policy responses have ranged from outright prohibitions of alcohol and narcotics to increasing criminal justice involvement to treatment and education efforts.

Often the degree of these responses have been based on a particular substance's popularity and not necessarily on that substance's relative harmfulness in comparison with other used and abused substances.

In various states the available incarceration for possession of one marijuana cigarette has ranged from life in prison to decriminalization over the past one hundred years. During the past twenty years as controlled substance policy has been increasingly politicized, vast amounts of public and private resources are being committed to law enforcement, treatment providers, drug testing entities and educational endeavors. Sometimes the very existence of these public and private bureaucracies is dependent on generating a continued need to combat real and perceived negative societal aspects of the use and abuse of controlled substances.

One commentator has called this amalgam of bureaucracies the anti-drug abuse industrial complex.

Unfortunately, because these entities depend on public funds, self-interest can color the information they provide to policy makers like Congress and the Sentencing Commission. Therefore, caution and care must be exercised when interpreting the information provided by any entity in what is often a highly emotional policy debate.

The Practitioner's Advisory Group believes that the sentencing choices selected for a given type of controlled substance should be based on the relative harmfulness of that substance as compared to other drugs. Harm must be measured from both a pharmacological basis as well as a societal basis. If guidelines sentencing is to achieve its goal of proportionality, a drug's popularity cannot be the engine which drives prison length. That having been said, the Sentencing Commission must be sensitive to the political realities of contraband prohibition. Almost from the outset of guidelines sentencing, the Commission has expressed its opposition to mandatory minimums because such minimums countermand important aspects of the structure of the guidelines. In enacting the Ecstasy Anti-proliferation Act this past Congress chose not to impose mandatory minimums for MDA and its derivatives. Rather, it asked the Commission to select the appropriate punishment.

The Practitioner's Advisory Group believes that the punishment selected for these drugs must be rational and relative. But the Commission must respond to the congressional directive in a manner which is perceived by Congress as adequate to address the needs which

created the legislation.

ENTACTOGENS

MDA, MDEA and MDMA are drugs which have mild hallucinogenic and stimulant effects. Users report that the drug causes feelings of empathy and a decrease in defensiveness and fear. Many users report time distortions and hyperactivity with an increase in heart rate and blood pressure. Studies show a decrease in aggression while under the influence of these drugs. While the drug is often used repeatedly, this pattern of use is not at all similar to cocaine or amphetamine with little evidence of compulsive repetitive use as in those drugs associated with high degrees of addiction.

Pharmacologically MDA increases the levels of monoamine neurotransmitters in the synapse. This increase in dopamine, norepinephrine and serotonin is what causes the increased feelings of empathy and a decrease in fear as well as the physiological changes of heart rate and blood pressure increases. The serotonin increase makes the potential for addiction far less than cocaine and amphetamine which do increase dopamine production but which inhibit serotonin release.

The real damage that can result from higher than normal dosage is the permanent destruction of the dopamine and serotonin neurons in the brain. The loss of these brain components can produce increased anxiety and depression but the permanent effects are still under study and have not been conclusively established.

From a social viewpoint what is most disturbing is that those persons who use these

drugs tend to be teenagers and tend to use it in group activity such as "Rave" dance parties. The dangers of mass group use is that altered perceptions caused by those using the drug can lead to panic and some injuries have been reported at these dances due to trampling. However there is no direct link reported between the use of this drug and violence. In terms of its relative harm MDA would appear to be significantly less harmful than the mandatory minimum established substances.

Heroin, cocaine and the amphetamines are all highly addictive and can cause seizure activity and heart arrhythmia at high dose levels, both of which can lead to death. Increases in violent behavior is noted in cocaine and amphetamine abusers. PCP users can develop permanent psychoses.

The only quality which MDA shares with the mandatory minimum drugs is that they, like MDA, can cause permanent changes in brain chemistry when used in higher than average dosage levels. Given this pharmacological aspect of harmfulness as well as the use of the drug by young people in group activities, the Practitioner's Advisory Group recommends that a punishment level be established for MDA at the same level as currently exists for powdered cocaine. Such a punishment level recognizes the serious harms presented by the abuse of this drug but does not over punish simply because of the drug's new found popularity. An increase of seriousness of four times what is currently established for this drug should address the concerns which Congress articulated in passing this legislation.

The structure of the drug quantity table should not be altered simply to address large scale trafficking in this drug alone. When the Commission engages in a comprehensive review of substance abuse penalties in the near future, that review should include a reexamination of the structure of the quantity table.

The Practitioner's Advisory Group wishes to thank Cynthia Kuhn, Ph. D., Scott Swartzwelder, Ph.D., and Wilkie Wilson, Ph. D. of the Duke University Medical Center and their publication, Buzzed, The Straight Facts About the Most Used and Abused Drugs from Alcohol to Ecstasy for their assistance in helping us prepare this report.