
PUBLIC COMMENT

2001 AMENDMENT CYCLE

PUBLIC COMMENT EMERGENCY AMENDMENTS

2001 AMENDMENT CYCLE



United States Sentencing Commission

January 2001

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

Re: Proposed Changes to Sentencing Guidelines for Counterfeiting Offenses

Dear Judge Murphy:

The Department of the Treasury would first like to thank the Commission for its attention throughout the amendment process to the challenges raised by new trends in counterfeit currency production. As we have expressed in our written submissions as well as in our presentation to the Commission, the exponential increase in digitally-based counterfeiting has resulted in a proliferation of guideline sentences that we believe do not properly reflect the seriousness of the offense and the threat it poses to the integrity of the United States currency worldwide. However, it is our opinion that the proposed amendments to Section 2B5.1 published in the Federal Register, 65 Fed. Reg. 66792 (Nov. 7, 2000), will serve to lower the guideline sentences even further in more than 90% of counterfeit manufacturing cases. Accordingly, we respectfully request that the Commission consider our comments on the proposed amendments set forth below.

Change to Commentary

As an initial matter, we support the Commission's decision to eliminate the "merely photocopy notes" language found in the commentary. This change more accurately reflects the capabilities of today's copiers to generate passable notes, and resolves a conflict in the district courts. More importantly, it also makes a much-needed change to remove any technology-specific references in the guidelines.

New Base Offense Level

We also believe that the Commission's decision to raise the base offense level to 10 is a positive step. However, we reiterate our position that a base offense level of 11 is warranted given the increase in digitally-generated notes. As these notes are generally produced and passed in small quantities, the total amount seized often does not register on the fraud loss table in §2F1.1, and these offenders receive a sentencing windfall for their ability to access counterfeit notes virtually "on demand."

Sophisticated Means Enhancement

We fully support the intent of this proposed enhancement but have concerns regarding its application. As we set forth in our presentation to the Commission, it is crucial to recognize that sophistication cannot be tied to any particular method of production. There are offset printers who use digital technology to create extremely high-quality notes, and there are producers who use digital technology to create very crude simulations. Accordingly, an enhanced penalty for individuals who go to great lengths to produce a more deceptive note should not be associated with any particular "means." Instead, such an enhanced penalty would be more properly applied to individuals who are able to simulate the unique security features incorporated in our currency. Enhancement

of a counterfeit note to include our currency's distinctive counterfeit deterrents would require more labor, more skill and a more studied effort to defraud which we believe would render the producer more culpable.

Should the Commission determine that a more sophisticated attack on the integrity of the currency merits a heightened penalty, we believe that 18 U.S.C. §474A, Deterrents to counterfeiting of obligations and securities, could provide an effective explanatory aid. That section defines "distinctive counterfeit deterrent" as including "any ink, watermark, seal, security thread, optically variable device, or other feature or device; (A) in which the United States has an exclusive property interest; or (B) which is not otherwise in commercial use or in the public domain and which the Secretary designates as being necessary in preventing the counterfeiting of obligations or other securities of the United States." 18 U.S.C. §474A(c)(2).

We, therefore, recommend applying such an enhancement in cases where a manufacturer has taken additional steps beyond capturing the front and back images of United States currency in an effort to simulate the distinctive counterfeit deterrents defined in 18 U.S.C. §474A(c)(2).

Finally, it has been our position throughout this process that any amendments to Section 2B5.1 should be technology neutral. Given the pace at which analog, digital and other electronic methods have evolved thus far, it is impossible to predict what future technologies may emerge in counterfeiting. Accordingly, we advise against referring to any particular forms of technology either in the guideline itself or in the commentary.

Adjusted Offense Level for Manufacturing

While the Commission has indicated that it shares our view of the seriousness of these offenses in its decision to raise the base offense level, the proposed amendments will actually result in lower sentences in 94% of manufacturing cases. We feel strongly that the elimination of the adjusted offense level of 15 for manufacturing, even when the two-level enhancement is added, will not provide a sufficient penalty for the expanding group of digitally-based counterfeiters.

Statistics from Fiscal Year (FY) 2000 indicate that 99% of domestic plant suppressions conducted by the Secret Service involved digitally-based manufacturing. See attached Chart A. Under the proposed amendment, manufacturers who produce less than \$10,000 worth of counterfeit, and such manufacturers constituted 94% of FY 2000's plant suppressions (see Chart B), will score out with a lower offense level than they would have with the adjusted offense level of 15 currently in place.

This downward move is particularly problematic at the lowest dollar amounts. Because of the difficulties inherent in connecting digitally-based counterfeit to its point of origin, most offenders will be held responsible solely for whatever amount of inventory they have in their possession at the time of the suppression. When that inventory stays low, so does the guideline range. If a manufacturer is charged with producing less than \$2,000, which was the case in 80% of FY 2000 domestic plant suppressions, the adjusted offense level will be 12 under the proposal. This reduction for the group of manufacturers expanding at the fastest rate will only encourage digital counterfeiters to "print and print often."

As a general matter, we agree with the Commission that guideline sentences should reflect the degree of economic harm inflicted. In the case of digitally-based counterfeit, however, the issue is complicated by the inherent difficulty in ascertaining exactly how

much counterfeit has been produced. In these cases, economic harm is not always fully measured by the amount seized at the plant suppression. In order to forward the goal of proportionality in this context, we would ask that the Commission consider either:

1. Implementing our original proposal of a two-level enhancement for cases involving over \$70,000 while retaining the 15 adjusted offense level. As we suggested initially, this would do much to eliminate the windfall created by the cap currently in place.
2. Applying a four-level enhancement for all manufacturing cases rather than the proposed two-level enhancement. If the Commission prefers a "sliding scale" approach to reflect the amount of currency produced, we would recommend a consistent four-level enhancement for manufacturing. Manufacturing is a much more serious offense than passing and even a low-dollar manufacturer requires more than an adjusted offense level of 12 to meet the goals of punishment and deterrence. Under our proposal, a manufacturer who is charged with producing \$2,000 or less, which was the case in 80% of all domestic plant suppressions in FY 2000, will receive an adjusted offense level of 14, one point less than under the current scheme. A manufacturer who produces more than \$2,000, but less than \$5,000 (another 8% in FY 2000) would score out at 15, just as he would under the current guideline.

Either of these options would enhance proportionality as well as better reflect the seriousness of the offense.

Should the Commission reject the above proposals, we would ask that you merely retain the existing structure, at least for this year. While the current guideline does not address the windfall for manufacturers who produce over \$70,000, it is our position that the elimination of the 15 adjusted offense level poses a more serious threat to the goal of proportionality.

We recognize that the Commission was concerned with the lack of proportionality in the existing cap. This inequity was one of our primary concerns when we first began to consider seeking amendments to Section 2B5.1, and it informed our recommendation to add a two-level enhancement for high-volume manufacturers. However, the cap currently affects only a very small number of offenders. Fiscal year 2000 statistics reveal that only three plant suppressions involved more than \$70,000. These three represent less than 1% of the year's suppressions. The elimination of the adjusted offense level of 15 will result in lower sentences for 94% of manufacturers. If the choice is to reduce the penalty for more than 90% of manufacturers or provide a windfall for fewer than 1%, we would better accept the latter.

The above recommendations reflect the experience of the Secret Service in investigating digitally-based counterfeit manufacturing. Should the Commission determine that any of our comments or suggestions require more thorough discussion or the presentation of additional evidence, we would be pleased to participate in another briefing or to prepare supplemental documentary submissions before this issue moves on to Congress. We appreciate the Commission's attention to this matter and hope that our comments on the proposals will assist the Commission in its deliberations on this important issue.

Sincerely,

Elisabeth A. Bresee
Acting Under Secretary (Enforcement)

Attachments



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, DC 20530-0001

January 2, 2001

Honorable Diana E. Murphy
Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Murphy:

Under the Sentencing Reform Act of 1984, the Criminal Division is required to submit at least annually to the United States Sentencing Commission a report commenting on the operation of the sentencing guidelines, suggesting changes that appear to be warranted, and otherwise assessing the Commission's work. 28 U.S.C. § 994(o). We are pleased to submit this report, pursuant to this provision. It is our view that the sentencing guidelines are operating relatively well on the whole.

Specific Commission Priorities

We agree with the priorities established by the Commission for this amendment cycle and appreciate having had the opportunity to discuss the development of these priorities with the Commission earlier in this amendment cycle. These priorities include: economic crimes; nuclear, chemical, and biological weapons; money laundering; the Protection of Children from Sexual Predators Act of 1998; the Methamphetamine Anti-Proliferation Act of 2000, which addresses a variety of substances, including methamphetamine, amphetamine, and "Ecstasy"; the Victims of Trafficking and Violence Protection Act of 2000; other crime legislation enacted during the second session of the 106th Congress, including legislation addressing the drug "GHB" and scholarship fraud; counterfeiting of bearer obligations of the United States; firearms; the safety valve; obscenity; stalking; criminal history; immigration; the payment to, or receipt by, federal employees of unauthorized compensation; offenses implicating the privacy interests of taxpayers; and circuit conflicts.

Chief among our concerns are the economic crime amendments, which were addressed at the Commission's excellent symposium held recently; nuclear, chemical, and biological weapons; money laundering; the safety valve; statutory directives and other crime legislation; and circuit conflicts. Several of these merit specific discussion. As to the economic crime amendments, we believe it is important for the Commission to develop a new loss table that provides increased penalties for offenders at most levels, particularly at the middle and upper ranges. In many cases penalties are inadequate to serve the purposes of sentencing for white collar offenders, including just punishment, deterrence, and incapacitation. While the Commission has recently addressed specific types of economic offenses, including identity theft and cellular cloning, there are many other offenses that have been largely untouched by these amendments, including health care and procurement fraud. Moreover, the fact that the Internet has created vast opportunities for large-scale fraud deserves the attention of the Commission. A new loss table should address all areas of white collar crime in order to bring about greater deterrence, while maintaining proportionality and fairness in sentencing.

With respect to nuclear, chemical, and biological weapons, we have submitted a guideline amendment proposal to the Commission addressing such offenses as possession and threats involving these weapons and have worked productively with the staff in this area. Our proposal would fill gaps in the current guidelines, for example, the absence of a guideline to address offenses covered by 18 U.S.C. § 175 (relating to biological weapons), § 229 (relating to chemical weapons), and certain violations of § 831 (concerning prohibited transactions involving nuclear materials). In addition, the proposal we submitted would address other offenses that are now inadequately handled by the guidelines, including offenses relating to weapons of mass destruction, 18 U.S.C. § 2332a, when committed with biological, chemical, or radiological materials. While we have not proposed a specific amendment for importation and exportation offenses involving such weapons, we believe the Commission should raise penalties for these offenses as well. As you know, the National Defense Authorization Act for Fiscal Year 1997 urged the Sentencing Commission to provide increased penalties for offenses relating to importation, exportation, and attempted importation or exportation of nuclear, biological, or chemical weapons or related materials or technologies under specified provisions of law.

Money laundering is another area where we urge the Commission to act expeditiously. The Department has attempted to cooperate fully with Commission staff in developing a revised guideline that would be fair, workable and effective. Attorneys from our Asset Forfeiture and Money Laundering Section have spent many hours meeting with Commission staff and have shared their concerns and perspectives directly with the Commission at a recent meeting. The development of guidelines amendments for money laundering has taken many years and has been the subject of intense interest among the bench and bar. We urge the Commission to complete its work on this project during this amendment cycle.

Ongoing Commission Priorities

We recognize that the Commission's agenda is quite demanding and that it faces many difficult guideline amendment decisions in the coming months. Nevertheless, we believe the Commission can address certain additional areas of the sentencing guidelines as part of its long-term goals. Among these areas should be the further refinement of criminal history so that those with particularly serious criminal backgrounds are appropriately distinguished from those with less serious backgrounds who may merit more lenient treatment. The nature and severity of past offenses are significant in this regard, as is the issue of whether they involved an act of violence.

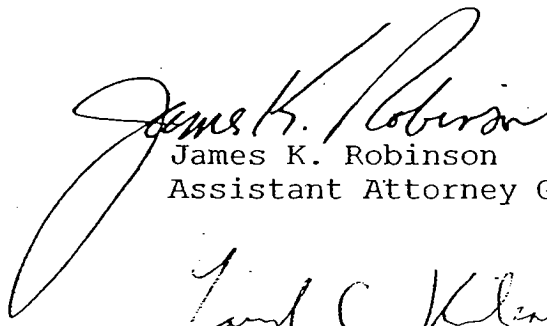
Another area for ongoing consideration is refinement of the guideline for acceptance of responsibility. The guideline should contain an incentive for early guilty pleas that permit the government to avoid preparing for trial and the court to allocate its resources efficiently. The current guideline allows for reduction in sentence by one level (in addition to the two for acceptance of responsibility generally) either for timely notification of authorities of an intention to enter a guilty plea or for timely provision of complete information to the government concerning the offender's involvement in the offense, §3E1.1(b). Subsection (b)(2) of the guideline specifically includes the goal of permitting the government to avoid preparing for trial and permitting the court to allocate its resources efficiently, but achieving this goal is difficult because of the alternative basis for reduction provided by subsection (b)(1). Thus, an offender who makes a timely disclosure but, nevertheless, waits until the eve of trial to plead guilty may receive this third level of reduction in the offense level. Tightening the guideline to create an incentive for timely pleas that save government resources is an important area for the Commission's consideration.

We also urge the Commission in its endeavors generally to take into account a provision of the Sentencing Reform Act of 1984 that, in our view, has received only passing attention in the past. The provision in question addresses the purposes of the Commission and provides that one purpose is to establish sentencing policies and practices for the Federal criminal justice system, that, among other things, "reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process" 28 U.S.C. § 991(b)(1)(C). The Commission's recent report by an expert on sexual predators is an example of how the Commission can make use of social science research in its development of the sentencing guidelines. There are many other opportunities for such enlightenment that would serve the Commission well in the future. Moreover, the Commission can also gain knowledge from the experience of state sentencing commissions and should seek information from such commissions more often. These commissions often address the same types of issues for purposes of state sentencing law that are of interest federally, and the research, policy analysis, and experience of these state commissions can serve federal interests as well.

Conclusion

We appreciate the opportunity to provide the Commission with our views, comments, and suggestions. We look forward to continuing to work with the Commission in a cooperative spirit as it addresses the many items on its agenda.

Sincerely,


James K. Robinson
Assistant Attorney General


Laird C. Kirkpatrick
/ Commissioner Ex-officio



U.S. Department of Justice

Criminal Division

Assistant Attorney General

Washington, DC 20530-0001

January 12, 2001

Honorable Diana E. Murphy
Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Dear Judge Murphy:

The Department of Justice submits the following comments regarding the proposed amendments to the federal sentencing guidelines published for comment in the Federal Register in November, 2000. These comments concern: Amendment 2 (counterfeiting), Amendment 5 (aggravated assault), Amendment 6 (fraudulent misrepresentations), and Amendment 7 (mitigating role).

AMENDMENT 2. Counterfeiting Offenses

Amendment 2 would amend the counterfeiting guideline, §2B5.1, in several respects. It would increase the base offense level from level 9 to 10; delete the minimum offense level of 15 for manufacturing offenses and replace it with a two-level enhancement; and delete commentary that suggests that the manufacturing adjustment does not apply if the defendant "merely photocopies." We agree with the increased base offense level and commentary change. However, we object to the deletion of the minimum offense level of 15 for manufacturing offenses. Deleting the floor will provide a windfall to many counterfeiters in the form of reduced punishment at a time when technology has made the offense increasingly easier to commit. We strongly believe this is the wrong message to send and that the floor of 15 should be retained.

AMENDMENT 5. Circuit Conflict Concerning Aggravated Assault

The proposed amendment includes two options to amend §2A.2 to address a circuit conflict regarding whether the four-level enhancement for the use of a dangerous weapon during an aggravated assault is impermissible double counting in a case in which the object used as a weapon was not inherently dangerous, such as a chair. We agree with the goal of both options to

resolve the circuit conflict in a manner that clarifies that the weapon enhancement in subsection (b) (2) of the guideline applies even though the reason for the application of the aggravated assault guideline is the presence of the weapon. However, both options may inadvertently raise additional issues for litigation. We would favor a simple statement that the weapon enhancement in subsection (b) (2) applies in a case involving a weapon even where the applicability of the aggravated assault guideline itself is predicated upon the involvement of the weapon. We do not believe there is a need for a more in-depth explanation in the commentary to §2A2.2 of the rationale for applying the weapon enhancement. As between the two options, we believe that Option 1 is more straightforward and consistent with the structure of other guidelines and that, while Option 2 attempts to address several concerns, it may raise similar problems to those in Option 1.

Including an explanation of the Commission's rationale for the applicability of the weapon enhancement is problematic in several respects. First, both options state in proposed Application Note 2 that the base offense level itself incorporates the presence of the dangerous weapon. However, since the aggravated assault guideline also applies in situations in which there is no weapon, the proposed language in Note 2 may lead to litigation that the aggravated assault guideline should not apply in such cases. In addition, Note 2 may raise a negative inference that other enhancements in the aggravated assault guideline are not applicable in the absence of a specific statement regarding their treatment in both the base offense level and specific offense characteristics. Eliminating the rationale for resolution of the circuit conflict would cure these problems. However, if the rationale is not deleted, the note should be clarified to indicate that the presence of a weapon is one of the aggravating factors taken into account in the base offense level.

In a related vein, both Options 1 and 2 state at the end of proposed Application Note 2 that in a case involving a dangerous weapon with intent to cause bodily injury, the court shall apply both the base offense level and the weapon enhancement. The underlined words may lead courts to believe that it is acceptable to avoid application of the weapon enhancement in a case in which the government has not shown an intent to cause bodily injury. However, there are other instances in which both the base offense level and the weapon enhancement should apply. Thus, we prefer the simple statement recommended above to the effect that the weapon enhancement in subsection (b) (2) applies in a case involving a weapon even where the applicability of the aggravated

assault guideline itself is predicated upon the involvement of the weapon.

AMENDMENT 6. Circuit Conflict Concerning Certain Fraudulent Misrepresentations

Amendment 6 addresses a circuit conflict regarding the applicability of an enhancement to the fraud guideline concerning actions on behalf of a charitable, educational, religious, or political organization, or government agency, §2F1.1(b)(4)(A). Specifically, the amendment addresses the question whether the enhancement applies where the defendant did not misrepresent his or her authority to act on behalf of the organization but rather only misrepresented that he or she was conducting an activity on behalf of the organization. We agree with the proposed resolution of this circuit conflict to assure the applicability of the enhancement in question to a defendant working for a charity, for example, who raises funds ostensibly for the charity and then diverts them to personal use. This situation presents increased culpability not captured by the amount of the fraud alone. However, the proposed language should be modified to delete the word "solely" from proposed Application Note 5(B) in the phrase "acting 'solely' to obtain a benefit for the organization or agency" A defendant who represents that he or she was acting to obtain a benefit for the organization or agency, whether or not solely for this purpose, but who diverts the proceeds to personal use is equally culpable. For example, a defendant working for a fund-raising organization under contract with a charity may indicate that some of the funds are to be paid to the former, but his or her culpability is not lessened when funds are diverted to personal use simply because the contributor is aware that some of the funds are intended for the benefit of the fund-raising organization.

We are also concerned with a change in Application Note 5 concerning persons presently covered by the enhancement. It now applies to persons who misrepresent that they are "acting on behalf of" a charitable or other specified organization. The amendment would make the enhancement applicable to a person who misrepresents that he was an "employee or authorized agent" of a such an organization. This additional change, while likely intended to be non-substantive, is unnecessary and may produce litigation by defendants claiming that a narrowed effect was intended.

Finally, we do not believe that the proscription against application of the Chapter 3 enhancement for abuse of a position of trust or use of a special skill is necessary, as proposed in

Application Note 5. The harm addressed in §2F1.1(b)(4)(A) concerns fraudulent conduct that leads the victim to believe that funds solicited will go to a charitable or similar organization or a government entity. The fact that the defendant is able to conduct such a fraud because he or she works for the charity is a separate harm addressed by Chapter 3 and should not be subsumed in the misrepresentation relating to the use to be made of the funds. If Application Note 5 were adopted as proposed, a person who uses his or her position of trust to conduct a fraud relating to a charitable organization would receive no greater sentence than one who uses his or her position in connection with a non-charity (except to the extent the level 10 floor currently in 2F1.1(b)(4) affects an otherwise low sentence). Therefore, we would recommend deleting the proposed commentary at the end of Application Note 5 regarding the application of §3B1.3. If, nevertheless, the Commission is intent upon retaining this commentary, it should be limited to the situation in which the defendant was an employee or agent of a covered organization or agency who represented that he or she was acting for its benefit. As currently drafted, the limitation placed on the application of §3B1.3 could also apply where the defendant falsely represented that he or she was an employee of a covered organization or government agency and used a special skill to commit the fraud. The published explanation preceding the proposed amendment language indicates that the limitation on the applicability of §3B1.3 was intended to apply only in the case of an employee of a covered organization or agency.

AMENDMENT 7. Circuit Conflict Concerning Certain Drug Defendants and Mitigating Role

Amendment 7 makes a number of changes to the mitigating role guideline, §3B1.2. While several of these changes are improvements, such as setting forth in the guideline that there must be more than one "participant" in order for the mitigating role adjustment to apply, there are two objectionable features. First, the proposal deletes Application Note 2 from §3B1.2, which states in part that the minimal role adjustment is intended to be used infrequently. Second, the proposed amendment resolves a circuit conflict in a manner we believe is inappropriate in most situations--by indicating that a defendant convicted of drug trafficking whose role was limited to transporting or storing drugs and who is accountable only for the quantity of drugs the defendant personally transported or stored is not precluded from receiving a mitigating role adjustment.

Deletion of Application Note 2 is a significant change that goes well beyond resolving the circuit conflict that is the

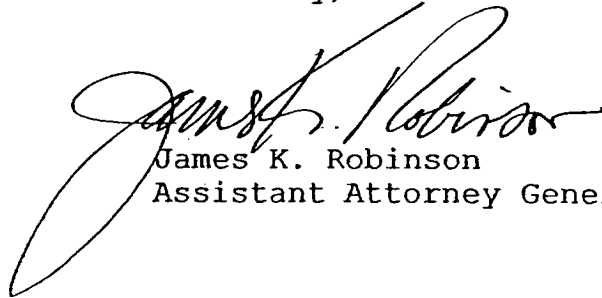
ostensible reason for amending the mitigating role guideline. Deletion of this note would send a strong signal that the four-level reduction for minimal participation should be applied more frequently. First, the note now expressly states that the downward adjustment for a minimal participant is intended to be used infrequently. It also provides examples of the appropriate use of this reduction relating to an off loader of part of a drug shipment or a courier for a single smuggling transaction. Given the scant guidance provided by §3B1.2 as to eligibility for treatment as a minimal participant, the proposed deletion of the infrequency language is particularly significant.

The coupling of the deletion of Application Note 2 with the proposed resolution of the circuit conflict is particularly troubling. It is an invitation to grant a role reduction to drug couriers. While there may be unusual circumstances in which a reduction for mitigating role in the offense may be appropriate for a defendant convicted of drug trafficking whose role was limited to transporting or storing drugs and who is accountable only for the quantity of drugs the he or she personally transported or stored, we believe these circumstances are rare indeed. In our view, the quantity transported or stored by a defendant who commits an offense with other participants often does not reflect the true extent of relevant conduct in cases involving multiple participants. The courier's relevant conduct can easily fail to take into account the true quantity of drugs involved in the offense when other participants have not been apprehended.

Moreover, even in a case in which a defendant actually transports or stores the full amount involved in jointly undertaken activity, his or her responsibility for the total quantity is generally inconsistent with a role reduction. Since the other participants have entrusted the defendant to transport or store the entire quantity of drugs involved in the offense, the defendant's role is ordinarily too significant for treatment as a minor or minimal participant. Only in an unusual case--for example, where the quantity is very small, or there is some other indication that the defendant's level of involvement in the offense is low despite his or her being entrusted with the total drug quantity--should a reduction in the offense level for mitigating role be permitted. Thus, the commentary should be amended to indicate that a role reduction should be precluded in the situation described in the proposed amendment except in rare cases.

We look forward to continuing to work with the Commission on the development of the amendments discussed above.

Sincerely,



James K. Robinson
Assistant Attorney General

STATEMENT
of the
FEDERAL PUBLIC AND
COMMUNITY DEFENDERS

on
Proposed Amendments to
the Sentencing Guidelines
published on November 7, 2000

Submitted by
Jon Sands
Assistant Federal Public Defender,
District of Arizona
Chair, Sentencing Guidelines Committee of the
Federal Public and Community Defenders

PROPOSED AMENDMENT 1

Proposed amendment 1 affects three guidelines – §§ 2C1.3 (conflict of interest), 2C1.4 (payment or receipt of unauthorized compensation), and 2C1.5 (payments to obtain public office). The synopsis of proposed amendment indicates that the proposed amendment is responding to increased statutory maximums enacted more than 11 years ago for offenses set forth in 18 U.S.C. §§ 203, 204, 205, 207, 208, and 209.

The offenses set forth in those provisions all relate to conflicts of interest involving, and unlawful payments to, public officials. All of the offenses except the offense set forth in section 209 had been felonies for which the maximum prison term was two years.¹ The maximum prison term under section 209 had been one year.

Congress changed the maximum prison term for these offenses in title IV of the Ethics Reform Act of 1989, Pub. L. No. 101-194, §§ 101(a), 402-06, 103 Stat. 1716. That Act added 18 U.S.C. § 216, which sets forth the penalties for those offenses.² Section 216 calls for a maximum prison term of one year (18 U.S.C. § 216(a)(1)), unless the offense is committed willfully, in which case the maximum prison term is five years (18 U.S.C. § 216(a)(2)). Under *Apprendi v. New Jersey*, __ U.S. __, 120 U.S. 2348 (2000), the government must plead and prove that the defendant acted willfully before the sentencing court can impose a sentence in excess of one year.

The proposed amendment would make three changes. First, § 2C1.3 would be designated as the offense guideline applicable to the offenses set forth in sections 203-05 and 207-09. Second, § 2C1.3(b)(1) would be revised by adding an alternative basis for enhancement. The new enhancement (of two levels) would be applicable if the offense involved (1) payment, offer, or promise of money or thing of value in consideration for the use, or promised use, of influence to procure an appointive position for any person, or (2) the solicitation or receipt of money or thing of value in consideration for a promise of support, or use of influence, in obtaining an appointive federal position. We do not object to these changes.

The third change would add a cross-reference provision in § 2C1.3. The cross reference would call for the use of § 2C1.1 (bribery) if the offense involved a bribe and §

¹In addition, an offense under sections 203 and 204 carried lifetime disqualification from holding an office of honor, trust, or profit under the United States.

²Ethics Reform Act of 1989, Pub. L. No. 101-194, § 407, 103 Stat. 1716.

2C1.2 (unlawful gratuity) if the offense involved an unlawful gratuity. For example, the sentencing court would use the § 2C1.1 if the court, applying the relevant conduct rules of § 1B1.3 and using a preponderance standard, determined that the offense involved a bribe – thereby relieving the government of the burden of proving beyond a reasonable doubt all of the elements of a bribery offense. Thus, whether the defendant acted corruptly in making or receiving a payment would be determined by the court, based upon information that does not have to qualify as admissible under the Federal Rules of Evidence, using the lowest-possible burden of persuasion. We oppose this change.

We have been concerned for a long time that the increased use of cross references alters the nature of the guidelines, moving from a mixed charge-offense, real-offense system to closer to a pure real-offense system. The original Commission, for good reasons, rejected a pure real-offense system. After attempting to fashion a pure real-offense system, the Commission decided that such a system was impractical and “risked return to wide disparity in sentencing practice.” *See* U.S.S.G. Ch. 1, Pt. A(4)(a). We believe that the Commission should not, ad hoc, abandon that decision.

PROPOSED AMENDMENT 2

Proposed amendment 2 would make three changes in § 2B5.1 (offenses involving counterfeit bearer obligations of the United States). First, the amendment would increase the base offense level from 9 to 10. Second, the amendment would revise the enhancement of subsection (b)(2) to call for a two-level increase instead of a minimum offense level of 15. Third, the amendment would revise application note 4 to eliminate the phrase “merely photocopy notes or otherwise.”

The synopsis of proposed amendment indicates that the purpose of the amendment is to “promote[] proportionality in sentencing for counterfeiting vis-a-vis other, similar economic crimes,” citing fraud offenses. The base offense level under § 2B5.1, however, already is greater than the base offense levels for the two principal economic crimes. The base offense level for an offense under § 2B5.1 is 9. The base offense level under the theft guideline is 4 and under the fraud guideline is 6. Even adding two levels for more-than-minimal planning does not make the offense level under the theft or fraud guideline greater than the base offense level under § 2B5.1.³ We believe that the present base

³We note that one of the options in the Commission’s economic crime package proposes to drop the enhancement for more-than-minimal planning.

offense level under § 2B5.1 is appropriately proportional to the base offense levels of similar economic offenses. We oppose that part of the amendment that would increase the base offense level of § 2B5.1.

We do not oppose the change to subsection (b)(2) or to the language of application note 4.

PROPOSED AMENDMENT 3

Proposed amendment 3 would designate § 2H3.1 (interception of communications or eavesdropping) as the offense guideline applicable to several offenses dealing with unlawful disclosure or inspection of tax return information. The amendment would also add a specific offense characteristic calling for a three-level decrease if the offense involved (1) inspection, but not disclosure, of a tax return information or (2) knowing or reckless disclosure of information furnished to a tax-return preparer in connection with preparation of a tax return.

We have no objection to the proposed amendment.

PROPOSED AMENDMENT 4

Proposed amendment 4 addresses the meaning of the term "stipulation" as used in § 1B1.2(a). The amendment would revise the phrase "plea agreement containing a stipulation" in the first paragraph of application note 1 to read "plea agreement (written or made orally on the record) containing a stipulation." The amendment would similarly revise the first two sentences of the third paragraph of application note 1. We support the proposed amendment.

This is not the first time that the Commission has visited this issue. The Commission, effective November 1, 1991, added language to the second paragraph of application note 1 referring to a stipulation "set forth in a written plea agreement or made between the parties on the record during a plea proceeding."⁴ Effective November 1, 1992, the Commission amended § 1B1.2(a) itself, changing the phrase "in the case of a

⁴U.S.S.G. App. C, amend. 434.

conviction by plea of guilty or nolo contendere” to read “in the case of a plea agreement (written or made orally on the record).⁵ In both instances, the Commission stated that it was clarifying the meaning of the term “stipulation.”

The Commission intends the stipulation method of determining the applicable guideline to be a “limited” exception to the general rule of § 1B1.2.⁶ We believe that the addition of the proposed language should ensure that the exception to the general rule is applied in a limited way. We support the proposed amendment.

PROPOSED AMENDMENT 5

Proposed amendment 5 presents two options for addressing a circuit split concerning the applicability of the dangerous weapon enhancement of § 2A2.2(b)(2) in a case in which the defendant’s use of a dangerous weapon with intent to do bodily harm triggers application of § 2A2.2. The proposal presents two options. Option 1 addresses that matter only; option 2 would make numerous additional changes in § 2A2.2. We do not support either option.

For reasons set forth at length by the court in *United States v. Farrow*, 198 F.3d 179 (6th Cir. 1999), we recommend that the Commission add the following new application note to § 2A2.2:

- “4. If the ‘dangerous weapon’ is not an inherently dangerous object, a single aspect of a defendant’s conduct may not be used for two different guideline-calculation purposes. For example, if a defendant’s use of a pencil with intent to cause bodily injury makes an assault aggravated, then that use (an aspect of the defendant’s conduct) has been taken into consideration in determining that this guideline is the applicable offense guideline and cannot be the basis for applying subsection (b)(2).”

⁵U.S.S.G. App. C, amend. 438.

⁶See U.S.S.G. § 1B1.2, comment. (n.1); U.S.S.G App. C, amend. 591 (sentencing court must apply offense guideline set forth in Appendix A “unless the case falls within the limited ‘stipulation’ exception set forth in § 1B1.2(a)”).

PROPOSED AMENDMENT 6

Subsection (b)(4)(A) of § 2F1.1 calls for a two-level enhancement (with a floor of 10) if the offense involved “a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency.” The purpose of the enhancement is to recognize that “defendants who exploit victims’ charitable impulses or trust in government create particular social harm.”⁷

Proposed amendment 6 would amend application note 5 to § 2F1.1 to state that subsection (b)(4)(A) applies if

(A) the defendant represented that the defendant was an employee or authorized agent of a charitable, educational, religious, or political organization, or government agency when, in fact, the defendant was not such an employee or agent; or (B) the defendant was an employee or agent of the organization or agency and represented that the defendant was acting solely to obtain a benefit for the organization or agency, when in fact, the defendant intended to divert all or part of that benefit (e.g., for the defendant’s personal gain).

The new application note would further provide that “[e]mbezzlement of funds alone is not sufficient to warrant application of subsection (b)(4)(A). The embezzled funds must have been solicited pursuant to a misrepresentation that the defendant was acting to obtain a benefit for the organization or agency.”

We agree with the Commission that an enhancement is appropriate for conduct that seeks to exploit a person’s charitable instinct. We also believe that the enhancement should not apply simply because the victim of the offense is a charity (or a government agency). Charities no longer operate by relying solely upon gifts and donations. Not-for-profit organizations have entered the marketplace and, like for-profit organizations, sell goods and services. The purchaser of a teddy bear with screen printed t-shirt for \$12.99 from the Rock and Roll Hall of Fame and Museum or a CD recording of George Szell conducting Brahms’s Second and Third Symphonies for \$16.00 from The Cleveland Orchestra is motivated principally by marketplace considerations. Likewise, a person who attends a bingo game sponsored by a not-for-profit organization is motivated primarily by the opportunity to win some money. We do not believe that the enhancement is appropriate when a not-for-profit organization behaves like a for-profit

⁷U.S.S.G. § 2F1.1, comment. (backg’d).

organization by being involved in the sale of goods or services or when the not-for-profit organization is conducting a gambling operation. It is simply unrealistic that a person falsely claiming to represent a not-for-profit organization who sells phony lottery tickets has taken advantage of the purchasers' charitable impulse or trust in government.

Revised application note 5 seems to recognize this concern by stating that "[e]mbezzlement of funds alone is not sufficient to warrant application of subsection (b)(4)(A)." We believe that the Commission should strengthen proposed application note 5 in this regard. We recommend that the quoted sentence be revised to read: "Embezzlement of funds *from a charity alone* is not sufficient, *by itself*, to warrant application of subsection (b)(4)(A)." We also recommend the addition of language indicating that the enhancement applies only to conduct related to soliciting donations to a charity, and not to quid pro quo or gambling transactions.

PROPOSED AMENDMENT 7

Proposed amendment 7 addresses whether a drug courier is precluded from receiving a mitigating role adjustment under § 3B1.2 if the courier is being held accountable only for the quantity of drugs that the courier personally handled. We support most of the changes made by the proposed amendment.

As originally promulgated, § 3B1.2 was ambiguous about whether it was to be applied based upon the offense of conviction – the approach of those who hold a courier ineligible for a role reduction if the courier is held accountable only for the drugs personally handled – or upon relevant conduct. The opening sentence of the guideline referred to (and still refers to) "the offense." At the time the guidelines were promulgated, the Commission had not defined the phrase "the offense," so that phrase might have been read to limit consideration to the offense of conviction. On the other hand, § 1B1.3(a) has always stated that the principles of relevant conduct apply to determinations made under the guidelines of chapter 3. Further, subdivisions (a) and (b) of the guideline used (and continue to use) the phrase "any criminal activity," which suggests a broader approach to determinations under § 3B1.2 than offense of conviction.

The Commission resolved the ambiguity, effective November 1, 1990, in an amendment to the introductory commentary to part B of chapter 3.⁸ The amendment

⁸U.S.S.G App. C, amend. 345.

added to that commentary a sentence stating that “[t]he determination of a defendant’s role in the offense is to be made on the basis of all conduct within the scope of § 1B1.3 (Relevant Conduct) . . . and not solely on the basis of elements and acts cited in the count of conviction.”⁹ A literal reading of § 3B1.2, therefore, requires the sentencing court, in determining if a defendant is entitled to a role reduction, to compare the defendant’s relevant conduct to the total relevant conduct engaged in by all of the participants. Thus, precluding a courier accountable only for drugs personally handled from receiving a role reduction is, in our view, inconsistent with the letter and spirit of § 3B1.2.

The policy behind applying § 3B1.2 in this way is sound. A courier has few skills, is paid a relatively small amount, and is easily replaced. For purposes of deterrence, a lower penalty is sufficient to deter a courier who is paid, say, \$3,500 to deliver a drug, while a higher penalty is required to deter a person who expects to profit substantially (say, \$300,000) from the drugs so delivered. For purposes of preventing crime, incapacitating the drug profiteer will have a greater impact than incapacitating the courier, who is easily replaced.

The goal of proposed amendment 7 is to ensure that a courier held accountable only for drugs personally handled “is not precluded from receiving a mitigating role adjustment.” We endorse that goal. We support the changes to application notes 1 and 3 and their redesignation as application notes 4 and 5, and we support adoption of new application notes 1 and 2. We support the deletion of current application notes 2 and 4 and of the background commentary. We believe, however, that proposed application note 3 needs revision.

Application note 3 consists of three parts. Part A carries forward, in modified form, language from the current background commentary and current application note 4. Part B adds new language relating to determining if a role reduction applies. Part C adds new language stating that a drug defendant held accountable only for drugs personally handled is not precluded from receiving a role reduction under this guideline. We recommend that part A be revised, that part B be deleted, and that part C be promulgated as drafted.

⁹The Commission reinforced this when it added, effective November 1, 1991, a definition of the term “offense” to the commentary to § 1B1.1. U.S.S.G. App. C, amend. 388. The Commission has defined the term “offense” to mean “the offense of conviction and all relevant conduct under § 1B1.3 (Relevant Conduct) unless a different meaning is specified or is otherwise clear from the context.”

The first sentence of part A carries forward language from the background commentary stating that § 3B1.2 “provides a range of adjustments for a defendant who plays a part in committing the offense that makes him *substantially less culpable* than the average participant” (emphasis added). That statement suggests that a minor participant must be substantially less culpable and creates an inconsistency with redesignated application note 4 (current application note 3). Redesignated application note 4 states that a minor participant is “any participant who is *less culpable* than most other participants, but whose role could not be described as minimal” (emphasis added). In view of the deletion of the background commentary, we recommend that the first sentence of part A be revised to read: “This section provides a range of adjustments for a defendant who is less culpable than the average participant.”¹⁰

The first sentence of the second paragraph of part A, derived from current application note 4, states that a role reduction ordinarily is not warranted if the defendant “has received an offense level lower than the offense level warranted by the defendant’s *actual criminal conduct* (because, for example, the defendant was convicted of a less serious offense or was held accountable for a quantity of drugs less than what the defendant otherwise would have been accountable under § 1B1.3 (Relevant Conduct))” (emphasis added). We find that statement to be confusing and inconsistent with the goal of proposed amendment 7.

One problem centers on the term “actual criminal conduct.” Is “actual criminal conduct” different from relevant conduct? The term “actual criminal conduct” should not be broader than relevant conduct because the sentencing court, in applying the guidelines, cannot use conduct that goes beyond the scope of relevant conduct. It does not make sense for the term “actual criminal conduct” to be narrower than relevant conduct because the sentencing court, by considering the defendant’s relevant conduct, will always take the defendant’s actual criminal conduct into account (the greater includes the lesser). It would seem, then, that “actual criminal conduct” must mean relevant conduct.

If “actual criminal conduct” means relevant conduct, then the first sentence of the second paragraph of part A states a logical impossibility. That sentence refers to a defendant who “has received an offense level lower than the offense level warranted by the defendant’s actual criminal conduct (because, for example, the defendant . . . was held accountable for a quantity of drugs less than what the defendant otherwise would have been accountable under § 1B1.3 (Relevant Conduct)).” That cannot occur when applying

¹⁰We also recommend deleting “substantially” in the second and third sentences of the second paragraph of part A.

the guidelines. A sentencing court, when determining the guideline sentence, can never hold a defendant accountable for less than what the defendant's relevant conduct calls for.¹¹ The court must select the offense level warranted by the drug quantity determined by application of the relevant conduct rules.¹²

A second problem with the first sentence of part A is the failure to carry forward an important concept in current application note 4 – that the lower offense level be due to the defendant having been convicted of an offense “significantly less serious” than warranted by the defendant's actual criminal conduct. The first sentence of part A drops the adjective “significantly.” The deletion of “significantly” would seem to be at odds with the purpose of the amendment. A role reduction is not appropriate if the defendant is convicted of a significantly less serious offense than warranted by the defendant's relevant conduct because the much lower offense level for the significantly less serious offense serves as something of a proxy for the role reduction. Thus, in the example used

¹¹U.S.S.G. § 1B1.2(b) requires the sentencing court, “[a]fter determining the appropriate offense guideline section . . . [to] determine the applicable guideline range in accordance with § 1B1.3 (Relevant Conduct).”

¹²After determining the applicable guideline range, the sentencing court can, of course, depart downward, resulting in a sentence less than that called for by the drug quantity for which the defendant is accountable under § 1B1.3. That determination, however, does not involve application of the guidelines but is a departure from the guidelines and must be justified under 18 U.S.C. § 3553(b).

A sentence called for by a plea agreement under Rule 11(e)(1)(C) may call for a sentence that is less than the sentence warranted by the drug quantity for which the defendant is accountable under § 1B1.3. Before the sentencing court can accept a plea agreement under Rule 11(e)(1)(C), however, the court must determine that either the sentence called for by the agreement is within the applicable guideline range or else departs from that range for “justifiable reasons.” U.S.S.G. § 6B1.2(c). To make that determination, the court must first determine the guideline range, and that will be determined based upon the defendant's relevant conduct.

In the case of a plea agreement under Rule 11(e)(1)(B), the court must make similar findings – that the recommended sentence is within the applicable guideline range or departs from that range for justifiable reasons. Again, to make that determination, the court must first determine the guideline range, and the guideline range will be determined based upon the defendant's relevant conduct.

For a plea under rule 11(e)(1)(A), the court must determine if the remaining charges “adequately reflect the seriousness of the actual offense behavior and that accepting the agreement will not undermine the statutory purposes of sentencing or the sentencing guidelines.” To make such a determination, the court must determine the applicable guideline range based upon the defendant's relevant conduct.

in the second paragraph of part A, a role reduction for the defendant is unnecessary, and inappropriate, because an offense level 14 drug trafficker is being sentenced at offense level 6, 4 levels less than the defendant's offense level would have been had the defendant been convicted of the offense level 14 offense and received a 4-level reduction under § 3B1.2.

We recommend that the second paragraph of part A of proposed application note 3 carry forward the substance of current application note 4, rather than attempt to expand current application note 4. We suggest, therefore, that the first sentence of the second paragraph of part A be revised to read as follows: "However, a reduction for mitigating role under this section ordinarily is not warranted if the defendant has received an offense level that is significantly lower than the offense level warranted by the defendant's relevant conduct because the defendant has been convicted of an offense significantly less serious than warranted by the defendant's relevant conduct."

The first sentence of part B of proposed application note 3 states a truism. The second sentence of part B unnecessarily and gratuitously impugns the common sense and fact-finding ability of federal judges. The commentary to § 3B1.1, the aggravating-role guideline, contains no similar statement (such as, "As with any other factual issue, the court, in weighing the totality of the circumstances, is not required to find, based solely on the government's bare assertion, that an aggravating-role adjustment is warranted"). Moreover, in our experience, federal judges do not find facts based upon a bare assertion by any party. There is no reason to expect federal judges to behave differently when determining whether a defendant qualifies for a mitigating-role reduction. We recommend deletion of part B of proposed application note 3.

Here is redlined version of proposed application note 3 reflecting our recommendations (material we suggest adding in *italic*; material we suggest deleting struck through):

3. Applicability of Adjustment.—

(A) *Substantially Less Culpable than Average Participant.*— This section provides a range of adjustments for a defendant who is less culpable than the average participant.

However, a reduction for mitigating role under this section ordinarily is not warranted if the defendant has received an offense level that is significantly lower than the offense level warranted by the defendant's relevant conduct

because the defendant has been convicted of an offense significantly less serious than warranted by the defendant's relevant conduct. In such a case, the defendant is not substantially less culpable than a defendant whose only conduct involved the less serious offense. For example, if a defendant whose actual conduct involved a minimal role in the distribution of 25 grams of cocaine (an offense having a Chapter Two offense level of level 14 under § 2D1.1) is convicted of simple possession of cocaine (an offense having a Chapter Two offense level of level 6 under § 2D2.1), no reduction for a mitigating role is warranted because the defendant is not substantially less culpable than a defendant whose only conduct involved the simple possession of cocaine.

~~(B) Fact-Based Determination.—The determination whether to apply subsection (a) or subsection (b), or an intermediate adjustment, involves a determination that is heavily dependent upon the facts of the particular case. As with any other factual issue, the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted.~~

~~(C)~~(B) Applicability to Certain Defendants.— A defendant who is convicted of a drug trafficking offense , whose role in that offense was limited to transporting or storing drugs and who, based on the defendant's criminal conduct, is accountable under § 1B1.3 (Relevant Conduct) only for the quantity of drugs the defendant personally transported or stored is not precluded from receiving an adjustment under this guideline.

Issues for Comment

Issue 1. For reasons set forth above, we believe that a courier should be eligible for a role reduction under § 3B1.2 and that a courier can be a minimal participant as well as a minor participant.

Issue 2. Proposed application note 3(C) addresses a problem that affects a large number of cases and responds to a problem that has occurred with some frequency. We are unaware at this time of similar problems in other guidelines. However, we do not oppose adding language that is more general as long as the drug-courier language remains. The issue that has provoked the need for this proposed amendment ought to be addressed specifically.

COMMENTS OF
THE NEW YORK COUNCIL OF DEFENSE LAWYERS
REGARDING PROPOSED 2000 AMENDMENTS TO
THE SENTENCING GUIDELINES

Respectfully Submitted,

**NEW YORK COUNCIL OF
DEFENSE LAWYERS**

**767 Fifth Avenue
New York, New York 10153
(212) 310-8000**

John R. Wing, President

Brian E. Maas, Chairman, Sentencing Guidelines Committee

January 5, 2001

[21]

NEW YORK COUNCIL OF DEFENSE LAWYERS

COMMENTS OF THE NEW YORK COUNCIL OF DEFENSE LAWYERS REGARDING PROPOSED 2000 AMENDMENTS TO THE SENTENCING GUIDELINES

Once again, we would like to thank the Sentencing Commission for the opportunity to present our views on the proposed amendments. The New York Council of Defense Lawyers ("NYCDL") is an organization comprised of more than 150 attorneys whose principal area of practice is the defense of criminal cases in federal court. Many of our members are former Assistant United States Attorneys, including previous Chiefs of the Criminal Division in the Southern and Eastern Districts of New York. Our membership also includes attorneys from the Federal Defender Services offices in the Eastern and Southern Districts of New York.

Our members thus have gained familiarity with the Sentencing Guidelines both as prosecutors and as a defense lawyers. In the pages that follow, we address the proposed amendments published in the Federal Registry on November 7, 2000 which are of interest to our organization.

I: COMMENTS REGARDING PROPOSED AMENDMENT AS TO UNAUTHORIZED COMPENSATION

We oppose the proposed amendment because of our concern that the proposed addition to the Application Notes of the cross-reference to Guideline §§2C1.1 and 2C1.2, which cover the bribery and gratuity offenses, will likely result in defendants convicted of conflict of interest offenses being sentenced inappropriately under the cross-referenced harsher Guidelines. This concern is based on the Commission's own statement that many of the cases sentenced under Guidelines §§2C1.3 and 2C1.4 involve in some way a bribe or gratuity. However, it does not necessarily follow that "many of these defendants likely could have been charged under a bribery or gratuity statute...." Rather, it seems likely that these defendants were convicted of a conflict of

interest crime either because of a prosecutorial determination that the facts of a case did not warrant bringing charges under 18 U.S.C. § 201 or § 202 or from a jury's finding that the evidence did not warrant conviction under the bribery or gratuity statutes. Under such circumstances, it would be inappropriate to add an Application Note cross-referencing the bribery and gratuity guidelines so that the mere involvement of a bribe or gratuity in the offense compels the court to impose the more serious sentence.

In addition, the proposed amendment may well subject a defendant convicted of a violation of 18 U.S.C. § 209 to being sentenced as though his offense involved a bribe or gratuity which was not charged and, therefore, not subjected to a jury finding, thereby depriving the defendant of his constitutional right to being convicted of such an offense by proof beyond a reasonable doubt, arguably in violation of the United States Supreme Court's recent decision in New Jersey v. Appendi, 530 U.S. 466 (2000). In light of the Appendi decision, this amendment will likely result in burdensome and unnecessary litigation.

Moreover, we do not believe that the application of the enhancements proposed for inclusion at § 2C1.3(b)(1) and (2) to the offenses now covered by § 2C1.4 fairly addresses the Commission's concern that the Guideline at § 2C1.4(a) does not adequately implement the sentencing options for defendants who engaged in willful conduct as set forth at 18 U.S.C. § 216(a)(2). As drafted, the proposed enhancements to be added to § 2C1.3(1)(B) are not limited to willful conduct and could be applied to convictions for non-willful violations of 18 U.S.C. § 209. We are particularly concerned that the proposed two point enhancement for circumstances where the offense involved the promise or receipt of money in consideration for the use of influence will be indiscriminately applied to both willful and non-willful violation. Therefore, at a minimum, it should be made clear that the enhancements should only apply to willful violations eligible for

sentencing under 18 U.S.C. § 216(a)(2).

II: COUNTERFEITING OFFENSES

We oppose the proposed modification of the base offense level in Guideline § 2B5.2 for counterfeiting from level 9 to level 10. The base offense level of 9 currently set forth in § 2B5.1 is already 1 point higher than the offense level of 8 which is applied to those fraud offenses for which the “more than minimal planning” enhancement is added. Given that the base offense level for counterfeiting applies to all individuals who possess and pass counterfeit instruments, regardless of the total value of counterfeit instruments possessed or passed, we question the premise of this amendment which suggests that even this most basic counterfeiting offense warrant sentencing at a level 2 offense levels higher than that applied to the most basic fraud offenses. In light of the enhancements set out at § 2B5.1(b) we believe that the guidelines as currently structured deal adequately with any enhanced conduct relating to the counterfeiting offenses.

As to the amendment which replaces the minimum level of offense level 15 for manufacturing offenses with a 2 level enhancement, we believe that this amendment would foster a fairer approach to the manufacturing of counterfeit instruments for the reasons set forth in the proposed amendment. However, as to the proposal to delete the language in Application Note 4, we do not see why the concern with digital technology should result in the elimination of the application note in its entirety. Rather, we would suggest that the Commission’s concern could be addressed by rewording application note 4 to make clear that the enhancement in subsection B(2) would not apply to persons who photocopy notes to create items that are so obviously counterfeit that they are unlikely to be accepted even if subjected to only minimal scrutiny, regardless of the process used. In this way, it will be clear that the enhancement is applicable to defendants who use digital

technology to create "photocopy notes" that are passable while still making clear that this enhancement should not be applied to persons who photocopy notes in a way that creates notes so obviously counterfeit as to be unlikely to be accepted.

III: TAX PRIVACY

We do not disagree with the decision to refer the listed violations of Title 26 to Guideline § 2H3.1. However, we would suggest that the portion of the amendment which creates a base offense level of 6 should be clarified to make clear that the provision is intended to cover violations of 26 U.S.C. §§ 7213A and 7216.

However, we do object to the addition of a new Application Note 3 advising that the 2 point enhancement for "Abuse of Position of Trust" can be applied to a violation of any of these tax-related offenses. Given that, by definition, the persons who have been in a position to disclose or inspect the tax information in question have the ability to conduct the inspection or disclosure because of their occupying positions of public or private trust, this enhancement would be available in almost every case. As we do not believe that the Commission should create an automatic enhancement akin to the "more than minimal planning" enhancement as applied in the fraud context, we oppose this portion of the proposed amendment.

IV: PROPOSED AMENDMENT: CIRCUIT CONFLICT CONCERNING STIPULATIONS

We agree with the Commission's approach in this proposed Amendment which makes clear that statements made by defendants during plea proceedings are not to be considered stipulations for purposes of Guideline § 1B1.2 unless the statement was agreed to as part of the plea agreement itself. As to the proposal for rewarding the first sentence of the third paragraph of

Application Note 1 to clarify that a stipulation need to have been agreed to as part of the plea agreement before it can increase a defendant's sentence, we suggest that the Commission follow the language used in United States v. Nathan, 188 F.3d 190, 201 (3d Cir. 1999) which would make even clearer the limited circumstances under which a stipulation can bind the defendant. Specifically, the Nathan Court stated that the statement would be considered a "stipulation" only if (i) it is part of a defendant's written plea agreement; (ii) is explicitly annexed thereto; or (iii) both the government and the defendant explicitly agree at a factual basis hearing that the facts being put on the record are stipulations that might subject the defendant to the provisions of § 1B1.2(a). By following this wording, it reduces the possibility of there being any dispute as to what the actual plea agreement was.

V: PROPOSED AMENDMENT: CIRCUIT CONFLICT CONCERNING AGGRAVATED ASSAULT

We oppose both of the proposed options presented in this proposed amendment to the extent that both include language directing that the 4 point enhancement in Guideline § 2A2.2(b)(2) shall be applied in instances where an ordinary object such as a car or a chair is used in an aggravated assault with the intent to cause bodily injury. Although these proposed amendments address the concern expressed in several cases that it is unclear whether the Commission intended for this enhancement to apply to those situations where an ordinary object becomes a dangerous weapon for purposes of Guideline § 2A2.2, the amendments do not address the double counting concern raised first by the Second Circuit in United States v. Hudson, 972 F.2d 504, 506-07 (2d Cir. 1992) and most recently by the Sixth Circuit in United States v. Farrow, 198 F.3d 179, 188-193(6th Cir. 1999). The Farrow Court correctly found that the form of double

counting inherent in the application of the 4 point enhancement to cases involving ordinary objects does not serve any policy underlying Guideline § 2A2.2 and agreed with the Second Circuit decision in Hudson that the application of the 4 point enhancement to situations where an ordinary instrument is used in an aggravated assault is inconsistent with the graduated enhancement scheme set forth at § 2A2.2(b)(2). Id. at 189-90.

The logic of the Hudson and Farrow decisions is clear: a defendant becomes eligible for the base offense level of 15 for an aggravated assault whenever an inherently dangerous weapon is involved in the offense, and the base offense level is then enhanced in a graduated way depending on the risk of harm created by how the dangerous weapon is used. For instance, if the weapon is brandished during an assault, then the offense is enhanced by 3 points while the use of the dangerous weapon enhances the offense by 4 points.

This graduated scheme does not apply, however, when the aggravated assault involves an ordinary instrument used to cause bodily injury. In those circumstances, the mere involvement of an ordinary instrument would not trigger the application of the aggravated assault guideline. Rather, it is only the use of the ordinary instrument, e.g., the car in Hudson and Farrow or the chair in United States v. Williams, 954 F.2d 204 (4th Cir. 1992) or the flashlight in United States v. Johnstone, 107 F.3d 200 (3d Cir. 1997), as the instrument to inflict serious bodily injury which makes the defendant eligible for the base offense level of 15. Thus, as the Hudson and Farrow Courts point out, the use of the ordinary instrument is the precise conduct that both causes the defendant to be eligible for the base offense level of 15 and automatically renders the defendant eligible for the 4 point enhancement under subparagraph B(2) and any defendant using an ordinary instrument as a dangerous weapon will automatically be eligible for the 4 point enhancement and the resulting offense level of 19. As the Farrow Court pointed out, there is no reason to conclude

that the types of cases in which ordinary instruments are used as dangerous weapons mandate what is in effect a base offense level of 19. *Id.* at 194-95. The Guidelines already provide a separate enhancement if serious bodily injury is inflicted irrespective of whether a dangerous weapon was used or not. See § 2A2.2(b)(3).

Those courts that have found the enhancement to apply to situations where an ordinary instrument is used as a dangerous weapon generally acknowledge that they are engaged in a form of double counting but state that such double counting “is permissible because it is explicitly mandated by the clear and unambiguous language of § 2A2.2.” *Johnstone* at 212-13. We believe that the more appropriate approach to double counting is discussed at length by the 6th Circuit in *Farrow* when it interprets Guideline § 1B1.1, Application Note 4 as being inapplicable to the cumulative use of the same conduct to both establish a base offense level and apply an enhancement. *Farrow* at 191-92. Although different guideline sections may be applied cumulatively, it is not appropriate to rely on the exact same conduct both for the establishment of a base offense level and for an enhancement. *Farrow* at 192.

As to the proposal incorporated in Option Two to set a base offense level of 19 if the offense involved serious bodily injury, we believe that the existing guideline is sufficiently clear as to the availability of a serious bodily harm enhancement. That approximately ten cases involving convictions under 18 U.S.C. § 113(a)(6) did not result in a bodily injury enhancement, as the Commission reports in support of the Proposed Amendment, should not automatically cause the Commission to believe that there is a need to create a new base offense level. The sentencing judge is in the best position to have a full appreciation of the true seriousness of the bodily injury inflicted and to determine the appropriateness of the bodily injury enhancement. That the base offense level was enhanced in more than 80% of the cases should suggest that the participants in the sentencing

process are fully aware of the availability and applicability of the enhancement and the no charge is necessary.

VI: PROPOSED AMENDMENT: CIRCUIT CONFLICT CONCERNING CERTAIN FRAUDULENT MISREPRESENTATIONS

We oppose any amendment of the guideline at this time because, as we noted when this issue was first raised in 1998, there is no true conflict among the circuits. The Fourth Circuit has held that the enhancement required by § 2F1.1(b)(3) for misrepresenting that one is acting for a charitable organization applied to a President of a charitable organization that collected money from the public for bingo games but kept 10% of the proceeds for himself and his cronies. United States v. Marcum, 16 F.3d 599 (4th Cir.) cert. denied, 513 U.S. 845 (1994). The decision of the Tenth Circuit in United States v. Frazier, 53 F.3d 1105 (10th Cir. 1995), in which the Court held that the enhancement does not apply to an official of a public agency who steals money that the agency received as grants from the government, is not inconsistent with the Marcum decision because both decisions recognize that the enhancement is appropriately applied whenever the official of a charitable organization, for the purposes of enriching himself, dupes the public into making contributions that it otherwise would not. The proposed amendment is therefore unnecessary and may invite unintended sentence enhancements whenever an offense involves a charitable organization — a result clearly not intended by the Commission.

VII: PROPOSED AMENDMENT: CIRCUIT CONFLICT CONCERNING DRUG DEFENDANTS AND MITIGATING ROLE

We agree that the Commission should make clear that a mitigating role adjustment may be applied to a defendant who is convicted of a drug trafficking offense whose role in the

offense was limited to transporting or storing drugs even if that defendant is only accountable under Guideline § 1B1.3 for the quantity of drugs personally transported or stored by the defendant. In that regard, and in response to the first issue for comment, we have taken the position in the past and still believe that such defendants should have available to them in the appropriate case a minimal role adjustment. It is clear that large drug organizations recruit very poor and very needy people to act as drug couriers for their organizations. Such individuals receive relatively minor amounts of the proceeds of the overall drug organization and their culpability relative to that of the other participants in the organization can in many circumstances be minimal regardless of the precise quantity of drugs attributed to them.

As to the second issue for comment, the NYCDL believes strongly that the adjustments available under § 3B1.2 should be available to any defendant who plays a limited role in a large conspiracy, whether it be a drug conspiracy or a conspiracy to commit a financial crime of some sort. For instance, organizations involved in fraud or theft often involve participants with strictly compartmentalized roles so that relevant conduct attributable to them is less than the entire scope of the conspiracy. See, e.g., United States v. Studley, 47 F.3d 569(2d Cir. 1995). However, such defendants are still in analogous positions to that of a drug courier and are potentially subject to sentences which exceed their actual culpability. Thus, we believe that the sentencing court should have the option, in all appropriate cases, as opposed to merely drug cases mitigate a defendant's sentence to § 3B1.2.

**PRACTITIONERS' ADVISORY GROUP
CO-CHAIRS JIM FELMAN & BARRY BOSS
C/O ASBILL, JUNKIN, MOFFITT & BOSS, CHARTERED
1615 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20009
202 234 9000 (BARRY BOSS)
813 229 1118 (JIM FELMAN)
202 332 6480 (FACSIMILE)**

January 8, 2001

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 proposed amendments

Dear Judge Murphy:

I am writing to provide the Commission with the PAG's submission on the pending amendments for which public comment was due on January 8, 2001.

For the most part, the PAG has already presented the Commission with written submissions regarding each of the specific proposals; however, for the convenience of the Commissioners and the Commission staff, we wanted to provide our position papers in a consolidated package. As always, the PAG appreciates the opportunity to provide the Commission with its perspective on these important issues.

With regard to the specific proposed amendments, the PAG recommends the following:

1. Unauthorized compensation. The PAG opposes passage of this proposed amendment. We have not submitted a separate position paper, but agree with the views expressed by the Defenders in its submission to the Commission.
2. Counterfeiting. The PAG, for the most part, opposes passage of this proposed amendment. A detailed submission is attached at tab 2.
3. Tax Privacy. The PAG does not oppose passage of this proposed amendment.

4. Stipulations. The PAG supports passage of this proposed amendment. A detailed submission is attached at tab 4.
5. Aggravated assault. The PAG opposes passage of this proposed amendment (either option). We agree with the Defender's position that the Commission should add commentary consistent with the reasoning set forth in United States v. Farrow, 198 F.3d 179 (6th Cir. 1999).
6. Fraudulent misrepresentations. The PAG does not oppose passage of this proposed amendment, but agrees that the Commission should revise application note 5 in the manner suggested by the Defenders.
7. Mitigating role. The PAG supports passage of this proposed amendment. A detailed submission is attached at tab 7.

As always, we appreciate the opportunity to provide the Commission with our input.

Sincerely,


Barry Boss

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

PROPOSED AMENDMENT: COUNTERFEITING

Like many of the past and present guideline amendment proposals that increase offense levels and thus result in increases in punishment, the Practitioners Advisory Group (PAG) is concerned that no actual or demonstrable basis exists to justify the changes being proposed. Put another way, while we appreciate the fact the changes are being put forward at the suggestion of the Department of the Treasury to address the alleged "additional harm" that these crimes present due to the "erosion of public confidence in the currency" and because of "the large expenditures required to craft and implement anti-counterfeiting safeguards," we believe that no data has been developed to demonstrate that either the current sanction levels are inadequate in those regards or that the proposed increases directly or proportionately address that so-called additional harm.¹

Importantly, the proposal itself seeks to promote proportionality with other similar economic crimes. Yet, the existing offense level of 9 is already set above the otherwise typical starting point of 8 (base of 6 + 2 for more than minimal planning) for those matters with nothing being put on the table to concretely demonstrate why more punishment is required. Furthermore, while we appreciate the fact that part of the motivation here stems from the apparent ease of creating passable currency through the use of readily available digital equipment, there appears no reason to increase punishments for all counterfeiters just because technology has afforded a subset of these offenders with a better mousetrap.

¹The presentation of such data might serve to address/eliminate our belief that the harsher punishments being proposed amount to the use of a howitzer when a flyswatter is more appropriate. If the bulk of these offenses involve college kids printing up a few \$20's for beer money, then the proposed sanction increase appears totally unjustified.

In that latter regard, the Commission might wish to consider a 1 level increase as a specific offense characteristic reserved for digital counterfeiting. Alternatively, the Commission might consider a 2 level increase for such offenses, but limit its imposition to situations where the currency produced (face value) is \$5,000.00 or less. At that dollar point and higher, the fraud table will provide any necessary increment in harm/punishment.

While the PAG has no objection to replacing the existing level 15 floor for manufacturing/device possession crimes at §2B5.1(b)(2) with a 2 level increase for such offenders as proposed, it appears necessary that the application notes that accompany this change clearly express the Commission's intent that such SOC is meant to address the more sophisticated counterfeiting offense conduct like that associated with offset printing. Put another way, it is important for the Commission to make it clear that the mere possession of a personal computer and an inkjet printer is not sufficient in-and-of-itself to secure this (now) additional enhancement if such readily available items were the devices/materials used for the manufacturing/production/counterfeiting. If the Commission were to accept our proposal for a 1 or 2 level increase for digital offenses, then a second enhancement for possessing the means to do so would seemingly amount to impermissible double-counting.

Next, while the PAG understands the intent of the deletion of the phrase "merely photocopy notes or otherwise," we remain concerned that the use of digital equipment and fancy inkjet printers can still result in the production of obviously phony currency. Some language needs to be crafted to accompany the (our) proposed digital equipment SOC if the Commission chooses to include same. To avoid what we view as an unwarranted result, we suggest that Application Note 4. be amended to read: "Subsection (b)(2) does not apply to persons who, by

whatever means, produce items that are so obviously counterfeit”

Finally, the PAG agrees with the drafters of the proposal that a “sophisticated means” enhancement is not an appropriate way to address the digital counterfeiting problem. We believe that our above suggestions better address that issue.

PAG CIRCUIT CONFLICT POSITION PAPER:
THE BREADTH OF ORAL STIPULATIONS TO CONDUCT CONSTITUTING
MORE SERIOUS OFFENSES UNDER USSG §1B1.2

DAVID F. AXELROD
TIMOTHY W. HOOVER¹

I. Introduction

Plea bargaining is an essential part of the criminal justice system. It allows defendants to limit their exposure, and both parties to resolve criminal cases without the expense of a trial. It also permits the system to operate without the chaos that would ensue if every indicted case were to go to trial.

Most plea bargaining in the federal system results in written plea agreements. Such agreements usually include a statement of the factual basis for the plea, and agreements to resolve various guidelines issues. In entering these agreements, both parties – defendants especially – consider it essential to be able to make a reasonable prediction of the sentencing range. That essential value, predictability, is lost if the court can dramatically alter the parameters of the sentence through the simple expedient of the plea colloquy.

Under USSG §1B1.2(a),² the Court is to apply "the offense guideline section most applicable to the offense of conviction (i.e., the offense conduct charged in the

¹ Mr. Axelrod is a partner, and Mr. Hoover an associate, in the White Collar Defense Group of the Columbus, Ohio office of Vorys, Sater, Seymour and Pease LLP. Mr. Axelrod is a member of the United States Sentencing Commission Practitioners Advisory Group.

² The Commission has proposed an amendment to the Guidelines, effective November 1, 2000, that would clarify when a court may sentence under a guideline other than that for the statute of conviction. It would do so by replacing §1B1.1(a), modifying §1B1.2(a), replacing paragraph one of Application Note 1 to §1B1.2, and striking current Application Note 3 to §1B1.2. See Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary, at 1-3. The amendment:

count of the indictment or information of which the defendant was convicted)." A limited exception to this general rule is the source of controversy: "in the case of a plea agreement (written or made orally on the record) containing a stipulation that specifically establishes a more serious offense than the offense of conviction, determine the offense guideline section in Chapter Two most applicable to the stipulated offense." Id.; accord USSG §1B1.2(c).

A circuit split has arisen regarding what constitutes such a stipulation. The central question concerns whether the defendant's colloquy with the court at a plea hearing can constitute such a stipulation. The PAG's position is that commentary should be added to §1B1.2 to adopt the position of the majority of circuits, namely, that a defendant's responses to questions by the court constitute neither a stipulation to a more serious offense, nor any other part of a plea agreement, and therefore cannot authorize the court to shop for the guideline that it considers to be most applicable to the defendant's conduct. As noted above, if the rule becomes otherwise, predictability will be lost with the result that many cases will unfairly be forced to trial.

clarifies that the courts must apply the offense guideline references for the statute of conviction listed in the Statutory Index unless the case involves a stipulation to a more serious offense or additional offenses set forth in §1B1.2(a). This amendment will make it clear that a court may not look to the defendant's relevant conduct in determining the offense guideline to be used.

United States Sentencing Commission, Office of Education & Sentencing Practice, 2000 Amendments to the Federal Sentencing Guidelines, at 4-5. Thus, while this amendment narrows consideration of the use of §1B1.2(a) stipulations, it does not resolve what constitutes a "stipulation to a more serious offense."

II. The Circuit Split

In Braxton v. United States, 500 U.S. 344 (1991), the United States Supreme Court declined to decide whether a stipulation for purposes of USSG §1B1.2(a) could be made orally at a plea hearing, or by a formal assent to a set of facts. Id. at 348-49. The Court demurred because the Sentencing Commission had requested comment on whether a stipulation under USSG §1B1.2(a) had to be part of a formal plea agreement. USSG §1B1.2(a) was subsequently amended to provide that a stipulation may be put on the record at an oral hearing. Significantly, the amendment also requires that such an oral stipulation occur "between the parties." USSG §1B1.2(a), Application Note 1, para. 2.

A circuit split nevertheless persists regarding whether a defendant's admissions in response to questions by the court can constitute a stipulation to a more serious offense. The approach of the majority of the courts of appeal that have considered the issue is consistent with the requirement in §1B1.2(a) that a stipulation be between the parties:

A statement is a stipulation only if: (i) it is part of a defendant's written plea agreement; (ii) it is explicitly annexed thereto; or (iii) *both the government and the defendant explicitly agree* at a factual basis hearing that the facts being put on the record are stipulations that might subject a defendant to the provisions of section 1B1.2(a).

United States v. Nathan, 188 F.3d 190, 201 (3d Cir. 1999) (emphasis added); accord, e.g., United States v. Timley, No. 98-3226, 1999 U.S. App. LEXIS 9737 (10th Cir. May 20, 1999); United States v. Saaverda, 148 F.3d 1311 (11th Cir. 1998); United

States v. McCall, 915 F.2d 811 (2d Cir. 1990); United States v. Guerrero, 863 F.2d 245 (2d Cir. 1988). The Fifth and Seventh Circuits constitute the minority, holding that any admission by the defendant may be deemed a stipulation. See United States v. Loos, 165 F.3d 504 (7th Cir. 1998); United States v. Domino, 62 F.3d 716 (5th Cir. 1995).

The Tenth Circuit's decision in Timley illustrates the better view. There, the defendant's sentence was increased because of his oral admission to the court that his offense occurred within 1000 feet of a school. The Tenth Circuit remanded the case for resentencing because it "[could not] conclude that Timley's admissions at the plea hearing ... were part of an agreement 'made between the parties.'" 1999 U.S. App. LEXIS 9737 at *17. The appeals court observed that "the parties treated the written agreement as encompassing their entire agreement", and that "[o]nly after the parties' agreement had been presented to the court did the court . . . elicit admissions from Timley that his offense occurred within 1000 feet of a school." Consequently, the court found "no indication that any of these admission were part of an agreement between the parties, as required by § 1B1.2(a)." Id. at *19.

The Timley court explicitly rejected the minority approach, that §1B1.2(a) is a grant of authority to the court that does not require the defendant's consent. Id. at *19 n.8 (disagreeing with Loos, 165 F.3d at 506-508). Reasoning that "§ 1B1.2(a) by its very terms requires 'a plea agreement . . . containing a stipulation'" (ellipsis in original), the court stated the obvious, namely, that "a stipulation ... requires a defendant's consent (or there would be no agreement)." Id.

Similarly, the Third Circuit's decision in Nathan, 188 F.3d at 190, explains why a careful reading of the Guidelines supports the majority position:

[S]ection 1B1.2(a)'s reference to a stipulation as something contained within the plea agreement strongly suggests that statements made in factual basis colloquies are not stipulations. Section 1B1.2(a) speaks of stipulations as part of a plea agreement. A scrupulous reading of section 1B1.2(a), which will require that all of the defendant's stipulations be either part of or annexed to his plea agreement, would provide notice to the defendant as to exactly what facts underlying his offense he is agreeing to and will ensure that the defendant receives the benefit of his bargain. In addition, though section 1B1.2 itself provides for oral plea agreements and, presumably, oral stipulations contained therein, the Guidelines favor written stipulations over oral ones. [Application Note 1] also suggests that we should give a common sense reading to "stipulation," such that it refers to situations in which both parties specifically and explicitly agree, on the record, to the truth of the relevant facts. We thus think the language of the Guidelines compels the conclusion that Nathan's and Lander's statements should not be construed as stipulations.

Id. at 200-201.

III. Position of the Practitioners Advisory Group

While we believe that the text of §1B1.2 is clear, the existence of the circuit split requires clarifying action. We therefore urge the Commission explicitly to adopt the majority view.

In addition to the cases cited above, that view finds support in the text of the Guidelines as presently written. For instance, the Guidelines state clearly the Commission's preference for written stipulations. The Commentary to §6B1.4 states that, "Because of the importance of the stipulations and the potential complexity of the factors that can affect the determination of sentences, stipulations ordinarily should be in writing." Additionally, the Guidelines strongly presume

that Appendix A identifies the guidelines applicable to the offense of conviction. See USSG App. A Introd. (Statutory Index “specifies the guideline section or sections ordinarily applicable to the offense of conviction”). Accord, United States v. Saaverda, 148 F.3d 1311 (11th Cir. 1998) and cases cited therein.

The majority view is also consistent with the practical realities of day-to-day practice in the district courts. Almost all plea agreements in the federal system are reduced to writing following careful negotiation. Adherence to the majority view allows both parties – prosecution and defendant – to receive the benefit of their bargain, and ensures that the defendant’s waiver of his rights is knowing and intelligent. By contrast, allowing a court to alter the fundamental premises of a plea agreement based on the defendant’s extemporaneous statements deprives the defendant of his negotiated consideration, and eliminates the predictability that is often essential to the decision to enter a plea agreement in the first place.

Finally, the majority view is consistent with the district court’s role in the plea process. The court is to determine whether a factual basis exists for the plea, not to develop (purposefully or inadvertently) other facts so that a harsher sentence may be imposed. If the district judge is dissatisfied with a plea agreement or its factual basis, the proper recourse is to reject the agreement, not to steer a defendant toward a harsher sentence in finding a way to approve the agreement. See USSG §6B1.2 Commentary.

For the foregoing reasons, the Practitioners Advisory Group respectfully urges the Commission to add commentary to §1B1.2 limiting “stipulations” as used

• in §1B1.2(a) to those that are negotiated and entered by the parties, and contained in a plea agreement.

PROPOSED AMENDMENT 7

Proposed Amendment 7 resolves a circuit conflict regarding the application of USSG §3B1.2 (Mitigating Role). The proposed language would permit a mitigating role adjustment for a drug offender whose sentence is based on the drugs he personally stored or transported. Accompanying this proposal are two issues for comment, seeking input on (1) whether the adjustment should be prohibited or limited under the stated circumstances or, on the other hand, (2) whether the language should be broadened to include non-drug offenses.

In our view, proposed application note 3(C), which directly addresses the circuit split, represents a modest step in the right direction. Stephen Breyer, *Federal Sentencing Guidelines Revisited*, 14-SPG Crim. Just. 28, 35 (1999) (“the scope of certain offense characteristics, such as ‘role in the offense,’ can be broadened”); Stephen J. Schulhofer, *Excessive Uniformity — And How to Fix It*, 5 Fed. Sent. Rep. 169 (1992) (advocating larger role adjustments at the higher offense levels). This issue arises frequently but not exclusively in the drug trafficking context; accordingly, PAG recommends additional language that would affirm the principle’s applicability to non-drug cases (per Issue for Comment 2).

Finally, PAG opposes two collateral provisions, contained in proposed application notes 3(A) and (B), which might unintentionally discourage mitigating role adjustments in deserving cases.

THE CIRCUIT CONFLICT

At the lowest level of many drug trafficking enterprises are couriers and individuals who merely store drugs. These defendants frequently “lack knowledge or understanding of the scope and structure of the enterprise and of the activities of others” and are “substantially less culpable” than the other participants in the offense. USSG §3B1.2, comment. (n.1 & backg’d). See generally Deborah Young, *Rethinking the Commission’s Drug Guidelines: Courier Cases Where Quantity Overstates Culpability*, 3 Fed. Sent. R. 63 (1990). This is true irrespective of the drug quantity used to calculate the base offense level. The contrary holding of some circuits is inconsistent with the language and purpose of the mitigating role guideline. See §3B1.2, comment. (n.2) (minimal participant adjustment “would be appropriate . . . where an individual was recruited as a courier for a single smuggling transaction involving a small amount of drugs”).

Proponents of the narrow view say the mitigating role guideline “appears to contemplate a defendant who, because of his role in concerted activity, is held accountable for the acts of others.” *United States v. Isienyi*, 207 F.3d 390, 393 (7th Cir. 2000). See also *United States v. Burnett*, 66 F.3d 137, 141 (7th Cir. 1995) (mitigating role guideline’s “principal office is to give the district judge a means to mitigate unduly harsh punishment that mechanical application of the relevant-conduct rules might yield.”). The introductory commentary to Chapter 3, Part B, instructs that role in the offense is determined based on “all the conduct within the scope of §1B1.3 (Relevant Conduct)” — that is, acts “committed, aided, [or] abetted” by the defendant, §1B1.3(a)(1)(A), and the “reasonably foreseeable acts” of others. §1B1.3(a)(1)(B). However, there is no sound reason — and, notwithstanding the courts’ assumption, no basis in the Guidelines — for confining the mitigating role guideline to cases where the defendant receives

additional punishment based on the “reasonably foreseeable acts” of others.

Indeed, the scope of relevant conduct on which an adjustment may be based is not limited to the relevant conduct that is included in the defendant’s base offense level. For example, the offense of drug importation involves a number of tasks beyond the courier’s actions — purchasing the drugs, recruiting participants, arranging delivery, etc. “All of these activities . . . constitute ‘relevant conduct,’ *United States v. Rodriguez De Varon*, 175 F.3d 930, 951 (11th Cir. 1999) (Barkett, J., dissenting), and must be considered in determining the defendant’s role in the offense. It makes no difference that the other participants’ activities, unlike drug quantity, have no effect on the defendants’ base offense level. Thus, a defendant whose base offense level corresponds to the acts “committed, aided, [or] abetted” by that defendant may still be deemed to play a mitigating role in “concerted activity.” §3B1.2, comment. (n.1).

Another specious reason for denying the adjustment to drug couriers is that they play “an important or essential role” in the offense. *United States v. Rodriguez De Varon*, 175 F.3d 930, 942-43 (11th Cir. 1999). *See also United States v. Burnett*, 66 F.3d 137, 140 (7th Cir. 1995). (“When a courier is held accountable for only the amounts he carries, he plays a significant rather than a minor role in that offense.”). This reasoning, if applied consistently, would eviscerate the mitigating role guideline. Concerted-activity offenses, by their very nature, involve several different tasks, each of which is “essential” to the objective.

OTHER PROPOSED CHANGES

Current commentary states that a mitigating role adjustment is “ordinarily not warranted” in cases where the defendant “has received a lower offense level by virtue of being convicted of an offense significantly less serious than warranted by his actual criminal conduct.” §3B1.2, comment. (n.4). Expanding this commentary, proposed application note 1 discourages an adjustment if the defendant receives an “offense level lower than warranted by the defendant’s actual conduct” because the defendant “was held accountable for a quantity of drugs less than what the defendant otherwise would have been accountable under §1B1.3 (Relevant Conduct).” This language undermines the amendment’s purpose and, more significantly, appears to legitimize guideline subversion.

The current commentary — which the proposed amendment would greatly expand — weighs heavily in decisions denying any mitigating role adjustment to the very drug couriers granted relief by the amendment. *See, e.g., United States v. Isienyi*, 207 F.3d 390, 393 (7th Cir. 2000). This proposed change, according to the synopsis, is intended to address situations where the defendant receives a reduced offense level pursuant to a plea agreement. But the Sentencing Guidelines advise judges to reject guideline-evading plea agreements (absent grounds for a downward departure), §6B1.2, p.s., and prohibit judges from imposing a sentence “lower than warranted by the defendant’s actual conduct.” The Commission embarks on a dangerous course when it begins barring certain adjustments in order to compensate for guideline evasion. *See, e.g., United States v. Holley*, 82 F.3d 1010, 1011 (11th Cir. 1996) (no mitigating role adjustment where district court excluded relevant conduct that should have increased defendant’s sentence); *United States v. Lampkins*, 47 F.3d 175, 47 F.3d 175, 181 (7th Cir. 1995) (same).

PAG also opposes the following new language contained in proposed application note 2: "As with any other factual issue, the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted." While this is an accurate statement of the law, no other guideline (including the many upward adjustments that the government must prove) contains such a caveat. By singling out mitigating role, an issue on which the defendant has the burden of proof, the proposed language suggests a special need for corroboration and may create a double standard.

In conclusion, given the prominence of drug quantity in the sentencing determination, a sentence based solely on the defendant's own conduct under §1B1.3(a)(1)(A) may nonetheless overstate that defendant's relative culpability. *See generally* Kyle O'Dowd, *The Need to Re-assess Quantity-based Drug Sentences*, 12 Fed. Sent. R. 116 (1999). "Indeed, a courier who possesses drugs for distribution as part of a trafficking scheme may be substantially less culpable than a defendant who possess the same amount of drugs for distribution but has no ties to a drug trafficking scheme." *United States v. Demers*, 13 F.3d 1381, 1385 (9th Cir. 1994). Failure to acknowledge such culpability differences exacerbates the drug guidelines' excessive reliance on quantity.

Therefore, PAG urges the Commission to pass this amendment with three minor changes: (1) Delete the paragraph beginning "However, a reduction . . ." in proposed application note 3(A) and insert the language from current application note 4; (2) delete the last sentence of proposed application note 3(B) beginning "As with any other factual issue . . ."; and (3) insert the following sentence at the beginning of proposed application note 3(C): "The scope of relevant conduct on which an adjustment may be based is not limited to the relevant conduct that is included in the defendant's base offense level."

January 8, 2001

The Honorable Diana E. Murphy
and Commissioners
United States Sentencing Commission
One Columbus Circle, N.E.
Washington, D.C. 20002-8002

Re: Proposed Amendment 4, concerning Stipulations
Proposed Amendment 7, concerning Mitigating Role

Dear Judge Murphy and Commissioners:

We write on behalf of Families Against Mandatory Minimums Foundation (FAMM) to comment on two proposed amendments to the Sentencing Guidelines. FAMM is a non-profit, non-partisan organization that conducts research, promotes advocacy, and educates the public about the costs of mandatory minimum sentencing. Cognizant of the need to punish offenders, FAMM works to promote sentencing laws and policies that fit the offense and the offender. The Sentencing Guidelines have the potential to reflect the nuances of culpability and responsibility in a way that mandatory minimums cannot. As a consequence, FAMM is interested in enhancing the Guidelines' ability to promote discretion and proportionality.

Proposed Amendment 4: U.S.S.G. § 1B1.2(a) (Stipulations)

Families Against Mandatory Minimums supports the Commission's proposed amendment to the Commentary accompanying Guideline 1B1.2. The proposed amendment seeks to resolve a circuit conflict by clarifying what constitutes a stipulation for the purposes of determining an offense level based on more serious conduct than that encompassed by the offense of conviction.

While U.S.S.G. § 1B1.2 directs the sentencing court to determine the guideline based on the offense of conviction, it makes an exception for defendants who, in their plea agreements, stipulate to an offense more serious than that for which they were convicted. In that case, § 1B1.2(a) requires the sentencing authority to set the offense guideline based on the more serious stipulated offense.

In light of the potentially severe consequences of stipulating to a more serious offense level, it is important that the parameters defining stipulations be narrowly drawn so as to afford defendants appropriate notice. Some courts have interpreted facts or statements asserted during plea hearings as stipulations permitting the court to address a higher offense level. *United States v. Loos*, 165 F.3d 504, 508 (7th Cir. 1998). The Seventh Circuit in that case found it necessary to

look behind the language of the guideline to determine that U.S.S.G. § 1B1.2(a) “is a grant of authority to the court -- rather than an option for the defendants to use in plea bargaining . . . [I]t is best to read ‘stipulation’ as any step that reflects the defendants’ acknowledgment of their conduct.” *Loos*, 165 F.3d at 507. This approach can result in the transformation of uncounseled statements not contained in the plea agreement but made by defendants in plea colloquies into “stipulations” contained within plea agreements that in turn subject the declarant to increased and unbargained-for consequences.

Other courts have held that such statements cannot be considered part of the agreed-upon plea and thus do not constitute the stipulations contemplated in § 1B1.2(a). *United States v. Nathan*, 188 F.3d 190, 201 (3d Cir. 1999). We agree with the Commission that this is the better view.

The Commission’s proposed resolution of this conflict adopts the Third Circuit’s approach and is consistent with the Guidelines’ language on stipulations and plea agreements. Section 1B1.2 refers to stipulations as statements contained within the four corners of the agreed-upon plea. For example, the exception to the offense level statement in the Guideline applies “in the case of a **plea agreement (written or made orally on the record) containing a stipulation** that specifically establishes a more serious offense . . .” U.S.S.G. § 1B1.2(a) (emphasis added). The commentary advises the sentencing court to assure itself that the plea agreement itself is acceptable in light of the policies set forth in Chapter 6, Part B dealing with plea agreements. U.S.S.G. § 1B1.2, cmt. n. 1. Chapter 6, in turn favors written stipulations of facts “because of the importance of stipulations and the potential complexity of the factors that can affect the determination of sentences . . .” U.S.S.G. § 6B1.4, cmt. An interest in accuracy drives this preference for written stipulations.

That same interest in accuracy appropriately militates against assuming that statements outside the agreed-upon stipulations establish a higher offense level. Plea agreements are a waiver of the constitutional protections afforded defendants and a waiver of the presumption of innocence that protects a defendant until a jury finds beyond a reasonable doubt otherwise. The protections contained in Chapter 6 and in rules that require judges to satisfy themselves about the voluntariness and accuracy of plea agreements reflect the gravity and dangers inherent when a defendant waives such rights.

Statements made at the plea colloquy, the dialogue between sentencing judge and defendant where the judge determines the factual basis for the plea and decides whether or not to accept it, are necessarily made after the plea agreement and attendant stipulations have been arrived at. Statements made during this hearing are thus not contained in the plea agreement (as contemplated by U.S.S.G. § 1B1.2(a)). Nor are they necessarily admissions or other statements of fact agreed to by the defendant and the prosecution as discussed in U.S.S.G. § 6B.

They thus are not part of the plea agreement stipulations contemplated by this guideline and the amendment to the guideline properly clarifies that.

Proposed Amendment 7: U.S.S.G. § 3B1.2 (Mitigating Role)

Families Against Mandatory Minimums supports proposed Amendment 7, to the extent that it establishes the Commission's position that a single drug courier defendant convicted based on the quantity personally handled may receive the benefit of a mitigating role adjustment available to drug courier defendants tried with others or as part of a conspiracy.

Any defendant is currently entitled to a mitigating role adjustment of anywhere from 2 to 4 levels according to the terms of § 3B1.2 which may be applied when more than one participant is involved in the offense. The proposal would amend the Application Notes to clarify that a "'participant' is a person who is criminally responsible for the commission of the offense, but need not have been convicted." U.S.S.G. §3B1.1 Application Note 1. It would require that other participants exist and that to qualify for the adjustment, the defendant's role must have demonstrated that he or she was "substantially less culpable than the average participant." Proposed Application Note 3 (C) clarifies that drug couriers "whose role in that offense was limited to transporting or storing drugs and who, based on the defendant's criminal conduct, is accountable under [the Relevant Conduct guidelines] only for the quantity of drugs the defendant personally transported or stored is not precluded from receiving an adjustment under this guideline."

The proposed amendment rejects the position taken in a line of Seventh Circuit cases in which the courts refused to apply § 3B1.2 to single defendant couriers convicted only of amounts personally handled. The Seventh Circuit reasoned that "when a courier is held accountable for only the amounts he carries, he plays a significant rather than a minor role in that offense." *United States v. Burnett*, 66 F.3d 137, 140 (7th Cir. 1995). The court applied that reasoning in *United States v. Isienyi*, finding support in current Application Note 4:

We believe . . . that this Circuit's approach remains a sound one. It is consistent with the Guideline's commentary, which explains that "if a defendant has received a lower offense level by virtue of being convicted of an offense significantly less serious than warranted by his actual criminal conduct, a reduction for a mitigating role under this section ordinarily is not warranted because such defendant is not substantially less culpable than a defendant whose only conduct involved the less serious offense."

United States v. Isienyi, 207 F.3d 390, 393 (7th Cir. 2000), quoting U.S.S.G. § 3B1.2, cmt. n. 4.

While FAMM supports the rejection of that position, we note that the contemplated

expansion of current Application Note 4 through proposed Application Note 3(A) may operate to undermine the very relief available to some drug couriers provided in Application Note 3 (C) (providing relief to single defendant drug couriers). At best the proposed Application Note 3(A) and its predecessor, are confusing, as evidenced by the *Isienyi* court's reliance on Application Note 4 to justify precluding such drug couriers from the mitigating role adjustment. The proposed note (and in fact the current note) contemplate a situation where a defendant receives an offense level lower than that warranted by the defendant's actual criminal conduct. Such a defendant, according to the note, should be precluded from receiving a mitigating role adjustment. "Actual criminal conduct," however, should be nothing more or less than relevant conduct, which the court must already take into consideration when establishing offense levels. Judges are currently required to only accept plea agreements that "adequately reflect the seriousness of the actual offense behavior." U.S.S.G. § 6B1.2 (a). Adding to the confusion, proposed Application Note 3(A) describes a situation that does not appear to be available to judges under the Guidelines, that is, of a "defendant who is held accountable for a quantity of drugs less than what the defendant otherwise would have been accountable under § 1B1.3 (Relevant Conduct). . . ." Judges are directed under the guideline treating plea agreements to accept pleas only to the extent that the agreement will not "preclude the conduct underlying such charge from being considered under the provisions of § 1B1.3 (Relevant Conduct) in connection with the count(s) of which the defendant is convicted." U.S.S.G. § 6B1.2(a). Judges must assess the guideline range that corresponds to the actual conduct, notwithstanding the plea agreement. The commentary explains that "subsection (a) provides that a plea agreement that includes the dismissal of a charge, or a plea agreement not to pursue a potential charge, shall not prevent the conduct underlying that charge from being considered under the provisions of § 1B1.3 (Relevant Conduct) in connection with the count(s) of which the defendant is convicted." U.S.S.G. § 6B1.2, cmt.

FAMM believes the better course is to avoid *per se* rules against applying adjustments and instead rely on the direction that judges should make fact-based inquiries to determine whether or not a defendant should receive an adjustment for being "substantially less culpable than the average participant." Proposed Application Note 3 (B) reminds the sentencing authority that "the determination whether to apply [a given adjustment] involves a determination that is heavily dependent upon the facts of the particular case." Presumably, if actual conduct precludes an adjustment, an adjustment will not be made.

Therefore, to secure and protect judicial discretion, so important in the consideration of relative role adjustments, FAMM submits that paragraph 2 of proposed Application Note 3 (A) should be removed in its entirety.

We also recommend the deletion of the gratuitous assertion in proposed Application Note 3 (B) that "the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant's bare assertion, that . . . a role adjustment is warranted." Federal judges

rarely grant downward adjustments based only on a defendant's bare assertion, particularly when they are "weighing the totality of the circumstances." Reading this comment carefully reveals the deeper and unwarranted message that downward adjustments should be somehow less available than upward adjustments. In other words, the guidelines could as readily advise the court that judges ought not to award the government upward adjustments based on the government's bare assertion. Such language does not appear in the guidelines and it ought not to be added here. It sends the wrong message, is confusing, and may act to limit the application of this important and necessary relief.

Issue for Comment 1.

Families Against Mandatory Minimums does not support either alternative proposed in Issue for Comment 1. The first proposed alternative would preclude single defendants whose role is limited to transporting or storing drugs from any mitigating role adjustment. The second would permit a "minor role" adjustment (resulting in a two level change) but not a "minimal role" adjustment (leading to a four level change). As discussed above, such rigid approaches would undermine the purpose of the Guidelines by removing discretion as opposed to guiding it. Furthermore, it would conflict with other Guideline directives, as the United States Court of Appeals for the Third Circuit pointed out:

[W]e note that because the determination of whether a defendant is entitled to a minor role adjustment is highly dependent on the facts of particular cases, *see* U.S. Sentencing Guidelines Manual § 3B1.2, Background Commentary, a mechanical application of the guidelines by which a court always denies minor role adjustments to couriers because they are "essential," regardless of the particular facts or circumstances, would be inconsistent with this guidance.

United States v. Isaza-Zapata, 148 F.3d 236, 238 (3rd Cir. 1998).

Those who are least culpable would, under this regime, completely miss the benefit of the bargain afforded their more culpable compatriots, who, by virtue of their level of knowledge of the acts of other participants, can bargain for departures from the guidelines in exchange for providing "substantial assistance" to authorities. *See* U.S.S.G. § 5K1.1. It is precisely the factors that mark a substantially less culpable defendant -- their lack of knowledge of the scope of and personalities involved in the operation -- that preclude them from consideration for such substantial assistance departures. To write them out of any adjustment creates a system where rewards are available to the most culpable of criminals, but unavailable to the least.

Attempts to split the difference, by denying a greater level adjustment do not find support in guideline policy or current guideline commentary. Current Application Note 1, to be amended as indicated in proposed Application Note 4, defines "minimal participant[s]" as those "plainly

The Honorable Diana E. Murphy and Commissioners
January 8, 2001
Page 6

among the least culpable of those involved in the conduct of a group." It sets out several considerations for the sentencing court, including the defendant's lack of knowledge of the enterprise and activities of the other participants. U.S.S.G. § 3B1.2, cmt. 1. "Minor participant[s]" are evaluated relative to the factors defining minimal participants. U.S.S.G. § 3B1.2, cmt. n. 3.

By limiting the adjustment to minor participants, the Guidelines will not permit the sentencing judge to give due effect to his or her fact-based determination that a single defendant courier was plainly among the least culpable of those involved in the conduct. Such drug couriers, while not always among the least culpable defendants, are routinely less culpable than the average participant. No sound reason supports restricting judicial discretion to recognize relative culpability in this fashion.

Issue for Comment 2.

FAMM Foundation would support the application of proposed Application Note 3 (C) to defendants other than drug couriers or other defendants in drug trafficking cases. The principle that underlies the application note (that one's role is to be judged vis-a-vis the role of the average participant and adjustments taken accordingly) is not dependent on the nature of the offender. There is no cogent reason for not extending the rule to similarly situated defendants (those whose convictions are based solely on their personal involvement) in non-drug based cases, where other participants exist. Such an extension of the proposed Application Note would promote reasonable uniformity in sentencing, consistent with the overall purpose of the guidelines.

Thank you for your consideration of our concerns.

Sincerely,

Mary Price
General Counsel

1870 CORAL GATE DRIVE
MIAMI, FLORIDA 33145
305-476-1143

January 5, 2001

2001 JAN 18 AM 11:46

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500
Washington, DC 20002-8002
Attention: Public Information

TO WHOM IT MAY CONCERN:

In response to the United States Sentencing Commission's request, I submit these comments on the proposed amendments to the Application Notes to United States Sentencing Guidelines § 3B1.2 (Mitigating Role).

If approved, the proposed revision would accomplish the following:

- It would delete Application Note 2, which has led some courts to unduly emphasize drug quantities when considering whether a drug courier is eligible for a mitigating role adjustment.
- It would make clear that the definition of "participant" given in the Application Notes to § 3B1.1 (Aggravating Role) also applies to § 3B1.2 and that more than one participant must be involved in the offense for any role adjustment to be possible.
- It would make clear that the determination of whether a mitigating role adjustment should be made is dependent on the facts of each particular case.
- It would resolve a circuit conflict by making clear that a defendant who only transported or stored drugs and who is accountable under § 1B1.3 (Relevant Conduct) for only the amount of drugs that he or she personally transported or stored is eligible for a mitigating role adjustment.

The Commission has requested comment on two issues in particular. The first is whether one who only transports or stores drugs should be precluded from receiving any mitigating role adjustment or, alternatively, a "minimal role" adjustment. The second is whether the proposed Application Note regarding those who only transport or store drugs should clearly state that its rationale is applicable to offenses other than drug crimes.

The proposed amendments correctly recognize that a mitigating role adjustment should be available to a defendant even though he or she is only charged with importing or distributing the amount of drugs personally handled by that individual. The contrary approach adopted by some courts erroneously equates a defendant's criminal culpability with the amount of drugs he or she handled. District courts must determine each individual defendant's culpability based on all the circumstances surrounding that defendant's involvement in crime and not by applying bright-line axioms across a class of superficially similar cases. Furthermore, the Committee should add an additional Application Note making clear that this holds true for all criminal defendants. I suggest that the most effective, consistent, and principled way to accomplish this would be to pattern this new note after the one that sets forth the factors that courts should consider in deciding whether a defendant is entitled to an aggravating role adjustment. This would foster harmonious application of these two related guidelines sections and promote just sentences for all those involved in any given criminal endeavor.

Drug trafficking is typically undertaken jointly and drugs typically pass through many levels of distribution *en route* from the initial supplier to the ultimate consumer.¹ Yet, all those involved in the illicit trade — kingpins, suppliers, buyers, brokers, look-outs, loaders, unloaders, couriers — can be charged under the same statutes, *i.e.* 21 U.S.C. §§ 841, 952, and sentenced on the basis of only the type and amount of drugs that were involved.² District courts should retain the discretion to reflect in each individual's sentence the obvious disparity in criminal culpability among the gamut of drug traffickers — from kingpin to courier — by adjusting each defendant's offense level based on his or her respective role. However, the Commission should clarify that a drug defendant's culpability may bear little relation to the weight of the drugs that person handled.

The rationale for categorically denying mitigating role adjustments to defendants charged only with possessing or importing the amount of drugs they personally handled is based on a fundamental misconception of the purpose of role adjustments. Some of the courts espousing this view improperly overemphasize the fact that the defendant was only charged with importing or distributing the very amount of drugs that the person actually handled.³ For example, the Seventh Circuit has held that the mitigating role adjustment is available only to defendants who are held responsible for drugs handled by other conspirators and thus "held accountable for the acts of others".⁴ The *en banc* Eleventh Circuit concluded that, because

¹See, *e.g.*, *United States v. Witek*, 61 F.3d 819, 821 (11th Cir. 1995).

²See USSG § 2D1.1.

³See, *e.g.*, *United States v. Isienyi*, 207 F.3d 390, 392 (7th Cir. 2000) (collecting cases); *United States v. Rodriguez de Varon*, 175 F.3d 930, 943 (11th Cir. 1999) (*en banc*).

Application Note 2 suggests that a courier handling a small amount of drugs would ordinarily be entitled to a minimal role adjustment, the amount of drugs is a "material consideration" in determining whether any mitigating role adjustment is indicated.⁵ These courts may be led to equate moral or criminal culpability with the amount of drugs personally handled by an individual because a defendant's base offense level is driven by the amount of drugs involved in the crime. Equating the amount of drugs handled with criminal culpability, however, ignores the fact that while a courier may personally handle many kilograms of drugs and a kingpin may never touch a single gram, the mastermind is more culpable than the pawn. Making drug quantity the exclusive or primary factor behind the base offense level and the mitigating role adjustment also tends to render § 3B1.2 somewhat superfluous.

Other courts have adopted a poorly reasoned "but-for" analysis and concluded that, because couriers are necessary to the importation and distribution of drugs, defendants who are couriers necessarily do not play a minor or minimal role.⁶ The "but-for" approach ignores the fact that many couriers are easily replaced and bring no expertise, skill, talent, or unique contribution to the importation or distribution venture other than to act as a conveyance. It is for these very reasons, presumably, that the mitigating role adjustment exists.

The proposed amendments to the mitigating role guidelines recognize that, while a courier may personally handle many kilograms of drugs and a kingpin may never touch a single gram, the mastermind is more culpable than the pawn. The amendments correctly make explicit the fact that a mitigating role adjustment should be available to a drug defendant who is convicted only of importing or distributing the amount of drugs he or she personally handled. Also, they make clear that "participants" means the same thing under both the aggravating and mitigating role guidelines.

The Commission should additionally make clear that the rationale in proposed Application Note 2(C) applies to non-drug defendants as well. A simple and effective way to accomplish this would be to create an Application Note for the mitigating role guideline that parallels Application Note 4 in the aggravating role guideline. The aggravating role guideline enhances the sentence of a defendant who played a managerial or organizational role in a criminal endeavor.⁷ Application Note 4 to that guideline makes clear that labels such as "kingpin" and "boss" do not

⁴*Id.* at 393.

⁵See *Rodríguez de Varón*, 175 F.3d at 943.

⁶See, e.g., *United States v. Carter*, 971 F.2d 597, 600 (10th Cir. 1992).

⁷See USSG § 3B1.1.

control.⁸ Rather, it directs courts to consider the defendant's authority to make decisions, the defendant's ability to recruit others, the defendant's relative share of the profits, and the defendant's degree of control over others.⁹ In short, the aggravating role guideline reflects the reality that, where a crime is carried out by a group of people, a defendant who organizes the group, plans the crime, and takes a relatively large share of the profits is more culpable than others. A corresponding Application Note for § 3B1.2 would reflect society's understanding that an easily replaceable gopher or courier is not as blameworthy or dangerous as other participants. Such a note might read as follows:

In distinguishing a minor role or a minimal role from the role of an average participant, labels such as "courier" or "mule" are not controlling. Factors the court should consider include whether the defendant had any input into planning the criminal activity, whether the defendant had any input into the organization's decisions, whether the defendant had any discretion in his or her own activities or was directed by others, whether and to what extent the defendant had an equity interest in the proceeds, the nature and degree of contacts the defendant had with other participants, and the scope of the defendant's knowledge of other planned or actual crime among other participants. There may, of course, be many or no minor or minimal participants in any given criminal endeavor.

By thus further harmonizing the mitigating role guideline with the aggravating role guideline, the Commission would provide the courts with a coherent and rational basis for rejecting the overemphasis on drug quantities and the "but-for" reasoning in some drug courier cases. The courts that have employed these erroneous mitigating role analyses have failed to realize that their approach is inconsistent with the approach for determining whether an aggravating role adjustment is indicated. There is no justification for this conflict between guidelines that are nothing more than two sides of the same coin.

Judge Easterbrook's opinion in *United States v. Burnett*¹⁰ illustrates how this inconsistency subverts the purpose of the Sentencing Guidelines by imposing too harsh a punishment on some while mitigating the law's deterrent effect on the more serious criminals. Judge Easterbrook recognized that the *Burnett* defendant, who was a drug courier, was "a small cog in the scheme."¹¹ He also noted that "giving chauffeurs the same punishment as bigwigs simultaneously overpunishes the small

⁸See *id.* commentary (n.4).

⁹See *id.*

¹⁰66 F.3d 137 (7th Cir. 1995).

¹¹*Id.* at 140.

fry and reduces the marginal penalty for being a big wig”¹² Judge Easterbrook, however, went on to state that § 3B1.2 “does not ask whether the defendant was minor in relation to the organization, or how easily he could have been replaced; it asks the judge to determine whether he was minor in relation to the crime of which he was convicted and in relation to the conduct for which he has been held accountable.”¹³

Just as the applicability of the aggravating role adjustment is determined by the role the defendant played in the organization that committed the crime, the applicability of the mitigating role adjustment should depend precisely on “whether the defendant was minor in relation to the organization, or how easily he could have been replaced.” This would prevent the harms identified by Judge Easterbrook. Not only does society gain nothing from inflicting an overly harsh punishment on a “chauffeur”, but our desire for justice in sentencing is further damaged by the fact that the “bigwig” receives an only somewhat longer sentence for his much more blameworthy misbehavior.

The Commission’s proposed amendments do much to correct some courts’ misapplication of § 3B1.2. The additional Application Note I propose would set forth a reasoned basis for the amendments already proposed and would therefore contribute to greater uniformity in application of § 3B1.2. This is particularly true in light of the fact that courts have already applied similar criteria in the context of the aggravating role guideline.¹⁴ In the context of drug couriers, the district courts

¹²*Id.*

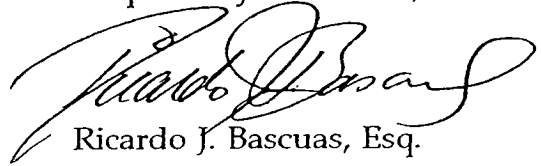
¹³*Id.* (citation omitted).

Burnett is often cited to support an across-the-board bar on mitigating role adjustments for drug couriers. In fact, the Seventh Circuit held in *Burnett* that the district court’s denial of a minor role adjustment was “a reasoned and reasonable judgment, which we therefore will not disturb.” *Id.* at 141. But the court pointed out, “Had the judge decided the other way, we would not have disturbed that decision either. This is what it means to say that a judge has discretion.” *Id.* (citation omitted). Although the opinion states in *dicta* that “[w]hen a courier is held accountable for only the amount he carries, he plays a significant rather than a minor role in that offense,” *Burnett*’s holding emphasizes the district courts’ discretion to consider a role adjustment on the facts of each individual case. *Id.* at 140–41.

¹⁴See e.g., *United States v. Cataldo*, 171 F.3d 1316, 1319–20 (11th Cir. 1999); *United States v. Matthews*, 168 F.3d 1234, 1249 (11th Cir. 1999); *United States v. Brazel*, 102 F.3d 1120, 1132–33, 1162–63 (11th Cir. 1997), *United States v. Delgado*, 56 F.3d 1357, 1371 (11th Cir. 1995); *United States v. Cacho*, 951 F.2d 308, 310 (11th Cir. 1992); *United States v. Jones*, 933 F.2d 1541, 1547 (11th Cir. 1991).

would have a principled basis for distinguishing between a courier who, suffering from economic or other hardship, is paid a relatively small amount by people unknown to him to deliver drugs from one place to another and a savvy drug runner who is taking a share of profits to deliver narcotics so that he can live in high style. More generally, it would provide a consistent rationale for tailoring fair sentences according to the culpability of each participant in any criminal endeavor or conspiracy whether it involves drugs or not. My proposed note would allow courts to reflect in their sentences the much greater harm to society posed by those that orchestrate and conduct criminal activity without ever getting their own hands dirty.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ricardo J. Bascuas".

Ricardo J. Bascuas, Esq.

FEDERAL PUBLIC DEFENDER

District of Arizona
222 North Central Avenue, Suite 810
PHOENIX, ARIZONA 85004

FREDRIC F. KAY
Federal Public Defender

(602) 382-2743
1-800-758-7053
(FAX) 602-382-2800

February 6, 2001

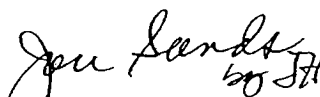
Honorable Diana E. Murphy, Chair
United States Sentencing Commission
One Columbus Circle N.E.
Washington, D.C. 20002-8002

Dear Judge Murphy:

On behalf of the Federal Public and Community Defenders, I submit the enclosed statement on proposed amendments one through four, which were published January 26, 2001 in the Federal Register. We will be happy to respond to any questions that you may have.

With best wishes,

Sincerely,

A handwritten signature in cursive script that reads "Jon Sands" followed by a stylized monogram "JS".

Jon Sands
Assistant Federal Public Defender

Proposed Amendment One Ecstasy

Congress has determined that

due to the popularity and marketability of Ecstasy, there are numerous Internet web sites with information on the effects of Ecstasy, the production of Ecstasy, and the locations of Ecstasy use (often referred to as “raves”). The availability of this information targets the primary users of Ecstasy, who are most often college students, young professionals, and other young people from middle- to high-income families.¹

Congress therefore directed the Commission to amend the guidelines to increase penalties for the manufacture, importation, exportation, or trafficking of ecstasy. The Commission, in carrying out this directive, is to provide for increased penalties “such that those penalties reflect the seriousness of these offenses and the need to deter them.”² Congress directed the Commission to ensure that the guidelines reflect several factors – “the recent increase in the illegal importation of the controlled substances, “the young age at which children are beginning to use the controlled substances,” that the substances are “frequently marketed to youth,” and the “large number of doses per gram of the controlled substances”³ Congress authorized the Commission to promulgate a temporary, emergency amendment.⁴

Amendment one responds to the congressional directive by modifying the drug equivalency table of § 2D1.1 to treat ecstasy like heroin. This is accomplished by assigning to MDMA, MDA, MDEA, and PMA, and any other controlled substance marketed as ecstasy that has a similar chemical structure or an effect on the central nervous system substantially similar to, or greater than, MDMA the same marijuana equivalency assigned to heroin – one gram is equal to one kilogram of marijuana.⁵

We oppose abandoning the Commission’s current distinctions among MDMA, MDA, and MDEA in the drug equivalency table. The ratios in § 2D1.1 for those substances are –

¹Children’s Health Act of 2000, Pub.L. No.106-310, § 3662.

²*Id.* at § 3663(b)(1).

³*Id.* at § 3662(c)(2). It is the sense of Congress that the offense levels for ecstasy are too low, particularly for high level traffickers, and should be comparable to those for other drugs of abuse. *Id.* at § 3663(d)(1).

⁴*Id.* at § 3664.

⁵MDMA is 3,4-methylenedioxy methamphetamine; MDA is 3,4-methylenedioxy amphetamine; MDEA is 3,4-methylenedioxy-N-ethylamphetamine; and PMA is paramethoxymethamphetamine.

1 gm. of MDA = 50 gm. of marihuana
1 gm. of MDMA = 35 gm. of marihuana
1 gm. of MDEA = 30 gm. of marihuana

The Commission set those ratios after hearing from various authorities, including the Drug Enforcement Administration.⁶ Nothing in the legislation or the Commission's published materials addressing amendment one suggests that the distinctions are no longer valid. For instance, a similarity in chemical structure between MDA and MDMA, although of some significance, does not establish that the substances have identical, or even similar, abuse potential. These substances differ from one another in their potency, neurotoxicity, onset, duration, and capacity to modify mood with or without producing hallucinations. This was first recognized when the substance MDMA was being considered for scheduling in the Controlled Substances Act.⁷ It has also been recently recognized that concentrations of MDMA can vary 70-fold between tablets.⁸ In short, these illicitly manufactured tablets can contain a range of ingredients, of widely differing concentrations, and even tablets with the same brand name can have variable concentrations of active ingredients. These factors support differing conversion ratios. We therefore oppose amendment one insofar as it treats all of these substances identically.

⁶See § 2D1.1, comment. (backg'd).

⁷There are observed differences in humans between the effects of MDA and MDMA.

Studies . . . have shown MDA to have duration of action in humans of 12 to 15 hours, as compared to four to six hours for MDMA. MDA has been found to produce a mild cognitive impairment in humans at the 75 mg. Dosage level, while MDMA did not impair cognition even at 200 mg. As MDA dosages increase from 75 mg. to 200 mg., the effects in humans become increasingly similar to the effect of LSD, including the presence of visions. As dosages of MDMA increase from 75 to 200 mg., the intensity of the sense of well being and inner flow of associations which characterize the experience increase only moderately while the ego functions remain intact, cognition is unimpaired and visions are notably absent. Large doses of MDA (200 mg.) produce significantly greater disorientation and an up-welling of visual images that are not characteristic of MDMA in similar dose range.

Drug Enforcement Administration, U.S. Dept. of Justice, *In the Matter of MDMA Scheduling*, Opinion and Recommended Ruling, Findings of Fact and Conclusions of Law of Administrative Law Judge 56 (Docket No. 84-48) (May 1986) (available online at www.streetdrugs.org/mdma.htm).

⁸K. Sherlock et al., *Analysis of Illicit Ecstasy Tablets: Implications for Clinical Management in the Accident and Emergency Department.*, 16 J. Accident & Emergency Medicine 194 (1999).

We also oppose treating ecstasy the same as heroin. Treating them the same ignores the reality that the substances targeted by Congress have no similarity in chemical structure to heroin. While heroin is an opiate, ecstasy is a hallucinogenic amphetamine – a hybrid of the hallucinogen mescaline and the stimulant amphetamine. Moreover, unlike heroin, ecstasy is neither physically nor psychologically addictive. Heroin is known to be taken intravenously with resultant public safety concerns not associated with ecstasy, which are taken orally.

The issue for comment states that it has been represented to the Commission that ecstasy is similar in its hallucinogenic effect on the user to mescaline (which changes or modifies a person's mood). Ecstasy does have an added stimulant component that can elevate heart rate, blood pressure, and body temperature – effects similar to those produced by caffeine. This suggests that use of the mescaline conversion ratio is appropriate (1gm. of mescaline = 10 grams of marihuana).⁹ Use of the mescaline conversion ratio is inappropriate, however, because the result would be a reduction in the conversion ratios, leading to reduced penalties, the opposite of what Congress is seeking.

Two of the factors that Congress wants taken into consideration in responding to the congressional directive need to be discounted somewhat. First, Congress has told the Commission to ensure that the guidelines for ecstasy reflect “the rapidly growing incidence of abuse of the controlled substances”¹⁰ Despite this congressional assertion, the Department of Health and Human Services reports that hospital emergency department episodes attributable to ecstasy and other “club drugs” (including methamphetamine, LSD, GHB or GBL, rohypnol, and ketamine) are relatively infrequent.¹¹ The data reflects that of the 554,932 drug-related emergency room visits in 1999, ecstasy and GHB *together* comprised only 0.3 percent. The most frequent of the club drugs, methamphetamine and LSD, accounted for 0.5 and 1.0 percent of such episodes. In contrast, heroin accounted for over 84,000 emergency room visits. Deaths associated with ecstasy and other club drugs are quite rare and there were no notable increases in deaths involving club drugs from 1994 to 1998 in DAWN data.¹²

⁹Ecstasy does not produce the violent hallucinations associated with such hallucinogens as LSD or PCP, and thus the dangers associated with ecstasy, and its potential for harm, is not comparable to those drugs.

¹⁰Children's Health Act of 2000, Pub.L. No.106-310, § 3663(c)(2)(A).

¹¹See Office of Applied Studies, Substance Abuse and Mental Health Services Administration, Department of Health and Human Services, The DAWN Report (Dec. 2000). DAWN, the Drug Abuse Warning Network, is an ongoing, national drug abuse surveillance system that monitors visits to hospital emergency departments and deaths reviewed by medical examiners and coroners that are attributable to drug abuse.

¹²*Id.*

Second, Congress has stated that use of ecstasy "can cause long-lasting and perhaps permanent, damage to the serotonin system of the brain."¹³ That conclusion, however, does not accurately reflect current scientific findings. Scientists, at present, do not know with certainty the long-term effects on humans of recreational usage.¹⁴

We believe that amendment three, because of the heroin equivalency, is flawed and results in disproportionately larger increases for offenders responsible for lower quantities. For example, amendment three will increase by 12 levels (from level 14 to level 26) the offense level for 100 grams of MDA, but will increase by only four levels (from level 32 to level 36) the offense level for 20 kilograms of MDA.¹⁵ We think that the fairest way to implement the congressional mandate is to add to § 2D1.1(b) a two-level enhancement that applies if the offense involved ecstasy.

Proposed Amendment Three Trafficking in List I Chemicals

Congress has directed the Commission to amend the guidelines affecting ephedrine, phenylpropanolamine, and pseudoephedrine offenses to increase penalties "such that those

¹³Children's Health Act of 2000, Pub.L. No.106-310, § 3662(2).

¹⁴In a 1998 study conducted by scientists at Johns Hopkins Department of Neurology, nerve cell damage was associated with very heavy use, with some subjects having used it 200 or more times. Press release, Johns Hopkins Medical Institutions, Office of Communications and Public Affairs, October 30, 1998. "Whether or not the [serotonin-producing] nerve cells are permanently damaged, is uncertain." *Id.* Recent studies in human MDMA users probing for evidence of "brain serotonergic neurotoxicity" indicate that some MDMA users may incur neural injury and possibly functional sequelae, however, "additional studies in animals, as well as longitudinal and epidemiological studies in MDMA users, are required to confirm and extend the present data, and to determine whether MDMA users are at increased risk for developing neuropsychiatric illness as they age. McCann, UD, and Ricaurte, GA; 3,4-Methylenedioxymethamphetamine ('Ecstasy')-induced serotonin neurotoxicity: clinical studies, Neuropsychobiology 2000; 42(1):11-6; see also Hatzidimitriou, McCann, and Ricaurte, *Journal of Neuroscience*, June 15, 1999; 19(12):5096-5107 ("Additional studies are needed to better understand these and other factors that influence the response of primate 5-HT neurons to MDMA injury and to determine whether the present findings generalize to humans who use MDMA for recreational purposes.)

¹⁵Using the midpoint of the applicable range for a criminal history category I defendant, the increase from level 14 to level 26 is from 18 months to 70.5 months, slightly more than 390 percent. The increase from level 32 to level 36 is from 136 months to 211.5 months, an increase of 75.5 months, about 55 percent.

penalties correspond[] to the quantity of controlled substance that could reasonably have been manufactured using the quantity of ephedrine, phenylpropanolamine, or pseudoephedrine possessed or distributed.”¹⁶ Congress also directed the promulgation of a table setting forth “the quantity of controlled substance that could reasonably have been manufactured” from a given amount of ephedrine, phenylpropanolamine, or pseudoephedrine. Finally, Congress called for increased penalties for list I chemicals other than ephedrine, phenylpropanolamine, and pseudoephedrine “such that those penalties reflect the dangerous nature of such offense, the need for aggressive law enforcement action to fight such offenses, and the extreme dangers associated with unlawful activity involving methamphetamine and amphetamine”¹⁷ Congress gave the Commission the authority to promulgate a temporary, emergency amendment.¹⁸

Amendment three would add a new chemical table to § 2D1.11 that ties the base offense levels for offenses involving ephedrine, phenylpropanolamine, and pseudoephedrine to the base offense level for methamphetamine (actual), assuming a 50 percent yield from the chemicals. In response to the directive about a conversion-ratio table, amendment three would amend the drug equivalency tables of § 2D1.1 to set forth a drug conversion ratio for ephedrine, phenylpropanolamine, and pseudoephedrine. Finally, amendment three, in response to the directive about other list I chemicals, would increase the base offense level (from 30 to 32) for benzaldehyde, hydriodic acid, methylamine, nitroethane, and norpseudoephedrine.

We believe that amendment three complies with the congressional directive. We believe that the Commission should maintain the distinction between offenses involving possession of precursor chemicals with intent to manufacture a controlled substance and offenses involving an actual attempt to manufacture a controlled substance.

Proposed Amendment Four Human Trafficking

Congress has directed the Commission to amend the guidelines concerning offenses involving “the trafficking of persons” (such as peonage cases) “to ensure that these sentencing guidelines and policy statements . . . are sufficiently stringent to deter and adequately reflect the heinous nature of such offenses.”¹⁹ In particular, Congress directed the Commission to consider

¹⁶*Id.* at § 3651 (b)(1).

¹⁷*Id.* at § 3651(c).

¹⁸*Id.* at § 3651(d).

¹⁹Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 112(b). The Act gave the Commission the authority to promulgate a temporary, emergency amendment. *Id.* at § 112(b)(3).

providing enhancements for offenses that (1) involve a large number of victims, (2) involve a pattern of continued and flagrant violations, (3) involve the use or threatened use of a dangerous weapon, or (4) result in death or bodily injury.²⁰

Amendment four would revise §§ 2G1.1, 2G2.1, and 2H4.1 and add a new guideline to Chapter 4, part H, subpart 4 of the *Guidelines Manual* (peonage, involuntary servitude, and slave trade). Amendment four would revise § 2G1.1(b)(2) by adding an enhancement for victimizing children under the age of 12 years (six or nine levels, amount to be decided), for victimizing children 12 years old but not 14 years old (four or six levels, amount to be decided), and for victimizing children 14 years old but not 16 years old (two or three levels, amount to be decided). Amendment four would amend § 2G2.1 similarly.

Amendment four would revise § 2H4.1 to add an alternative base offense level to reflect a newly-enacted offense, expand the weapon enhancement of § 2H4.1(b)(2), and add an enhancement based upon the number of victim. Finally, amendment four would add a new guideline to Chapter 4 of the *Guidelines Manual*. The new guideline would have a base offense level of four or six (amount to be decided) and two specific offense characteristics, for injury to a victim and for committing any part of the offense after a civil or administrative adjudication for similar misconduct.

With regard to the new enhancements to §§ 2G1.1 and 2G2.1 for the age of the victims, we favor a six-level enhancement for the youngest category, a four-level enhancement for the middle category, and a two-level enhancement for the oldest category. We believe that these increases will produce appropriately severe punishment. With regard to the new departure commentary for those guidelines, we favor designating as 10 the number of victims above which a departure would be warranted. With regard to the new base offense level for § 2H4.1, we believe that level 15 best reflects the nature of the offense. With regard to how the number of victims should be handled in that guideline, we favor the departure commentary and, consistent with our view above, would favor designating as 10 the number of victims above which a departure would be warranted.

With regard to the new guideline, we believe that a base offense level of four is appropriate, in view of the enhancements for injury (four levels for serious bodily injury, and two levels for bodily injury) and for prior similar misconduct (two levels).

²⁰*Id.* at § 112(b)(2)(C).

**PRACTITIONERS' ADVISORY GROUP
CO-CHAIRS JIM FELMAN & BARRY BOSS
C/O ASBILL, JUNKIN, MOFFITT & BOSS, CHARTERED
1615 NEW HAMPSHIRE AVENUE, N.W.
WASHINGTON, DC 20009
202 234 9000 (BARRY BOSS)
813 229 1118 (JIM FELMAN)
202 332 6480 (FACSIMILE)**

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:

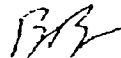
I am writing to provide the Commission with the PAG's submission on the pending amendment to the offense levels for the drug ecstasy.

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.



UNIVERSITY OF SOUTH FLORIDA
DEPARTMENT OF PSYCHIATRY & BEHAVIORAL MEDICINE

Sunday, February 04, 2001

US Sentencing Commission
1 Columbus Circle NE
Suite 2-500
Washington, DC
2002-8002

Attention: Public Information

As invited by your commission, I am writing in response to proposed legislation (Under the Ecstasy Anti-Proliferation Act of 2000) that would make the punishment (federal sentencing) for MDMA (Ecstasy) offenses to be the same as that of heroin.

I am an Assistant Professor at the University of South Florida and I conduct both basic and clinical research in the area of neuropsychopharmacology. Please note that my scientific opinion with regard to the sentencing of MDMA in no way reflects the views or opinions of the University of South Florida or any of its affiliates. Moreover, I do not advocate the recreational use of MDMA or any other controlled substance for that matter and my primary reason for writing this letter is to support "harm reduction."

In my view, any legislation that will ultimately affect the lives of millions of adolescents and young adults must come about after thoughtful and objective consideration of the scientific evidence supporting the need for such legislation as well as the probable consequences of such legislation.

With regard to the scientific evidence, I am not aware of any evidence (other than chemical homology) suggesting that Ecstasy has psychological effects on the user similar to the hallucinogenic effects of mescaline. Over the past 15 years, it has become a well-established scientific fact that MDMA fits into a completely different therapeutic class, known as entactogens (Nichols 1986). Most human reports suggest that MDMA produces feelings of empathy towards others, but without the changes in perception in time and space that accompany most other hallucinogenic drugs. In fact, a recent scientific study it was reported that MDMA improved measures of sensory gating in humans, an effect essentially the opposite one sees with other classic hallucinogens (Vollenweider et al. 1999).

It is true that MDMA has some stimulant properties that resemble amphetamine, though it is unclear what this means in terms of comparable health risks. Moreover, the risk of addiction, either physical or psychological, appears less than that seen with other psychostimulants such as nicotine, cocaine, or amphetamine and considerably less than that seen with heroin. In fact, MDMA's lower abuse potential relative to other psychostimulants may be one of the few characteristics that it shares with classical hallucinogens (see <http://maps.org/research/mdma/index.html>).

In summary, it seems premature to conclude based on the available evidence that MDMA represents a societal or individual health risk equivalent to that of heroin. Thus, there is little or no scientific basis for the need of the proposed legislation.

What is more alarming to me is the apparent lack of consideration of probable consequences that the proposed legislation would have on the future manufacture, importation, and trafficking of Ecstasy. Based on the history of similar legislation aimed at reducing the proliferation of cocaine, heroin, and amphetamine, it is clear that such legislation will only make matters far worse (Ray and Ksir, 1999). That

is, the consolidation of Ecstasy manufacturing, importation, and trafficking by larger more powerful organizations using methods already established for smuggling heroin, cocaine, and amphetamine will surely follow if the proposed legislation is passed.

I would suggest that the penalty for simple possession of MDMA should be less than or comparable to that for mescaline (which would result in a marijuana equivalency for Ecstasy of 10 gm or less). It seems reasonable, that the Drug Quantity Table in §2D1.1 could be revised to provide additional incremental penalties so as to punish more severely those offenders who traffic in large quantities (e.g. > than kg quantities) and those who market to children and adolescents.

The most important recommendation that I can make at this time is not to make a hasty decision based on emotion rather than logic and scientific fact.

Sincerely,

Doug Shytle, Ph.D.



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CURRICULUM VITAE

Roland Douglas Shytle, Ph.D.

Offices: Center for Aging and Brain Repair
Department of Neurosurgery, MDT-78
University of South Florida
College of Medicine
12901 Bruce B. Downs Boulevard
Tampa, Florida 33612-4799
(813) 974-1452
Fax: (813) 974-3223
email: dshytle@hsc.usf.edu

Department of Psychiatry and Behavioral Medicine
University of South Florida
College of Medicine
3515 East Fletcher Avenue, MDT-14
Tampa, Florida 33613

Home: 18416 Sterling Silver Circle
Lutz, Florida 33549
(813) 949-3996

Career Objective: Research and Teaching in Basic and Clinical Neuropsychopharmacology

Education: Ph.D. 1994, Experimental Psychology (Interdisciplinary Specialization in Neuroscience)
University of Wyoming, Laramie WY

B.A. 1990, Psychology
University of North Carolina, Wilmington, NC

Professional Experience: June 1996 - Present
Assistant Professor
Departments of Neurosurgery, Psychiatry and Behavioral Medicine,
Psychology and Neuroscience Program
University of South Florida, College of Medicine, Tampa, FL

July 1994 - May 1996
Post-doctoral Research Fellow
Division of Neurosurgery, Department of Surgery,
Department of Psychiatry and Behavioral Medicine &
University of South Florida, College of Medicine, Tampa, FL

August 1990 - June 1994
Graduate Research and Teaching Assistant
Departments of Psychology and Neuroscience Program
University of Wyoming, Laramie, Wyoming

January 1989 - May 1990
Research Assistant
Department of Psychology
University of North Carolina at Wilmington

Grant History:

October 2000 - October 2001 (Active) Principal Investigator & Grant Writer Archie A. Silver (Co-PI) <i>Layton BioScience, Inc.</i> Behavioral and Neuropharmacological Profiles of Novel Nicotine Antagonists for Neuropsychiatric Disorders	Total Direct Cost: \$150,000
December 1999 - January 2001 (Active) Principal Investigator Roger Papke (Co-PI) at the University of Florida <i>Layton BioScience, Inc.</i> Analysis of Mecamylamine Congeners on Human Nicotinic Receptor Subtypes	Total Direct Cost: \$40,000
May 2000 - May 2001 Principal Investigator Stan Nazian (Co-PI) <i>USF Creative Young Faculty Award</i> Role of Nicotinic Receptors in the Hypothalamic CRH Response to Acetylcholine	Total Direct Costs: \$7,500
August 2001 - November 2003 (under review) Principal Investigator David Sheehan (Co-PI) & Archie A. Silver (Co-PI) <i>The Stanley Foundation</i> Phase II Trial of Mecamylamine for Bipolar Disorder	Total Direct Cost: \$150,000
December 2001 - November 2004 (under review) Principal Investigator David Sheehan (Co-PI) & Archie A. Silver (Co-PI) <i>NIH: National Institutes of Mental Health</i> Phase II Trial of Mecamylamine for Bipolar Disorder	Total Direct Cost: \$375,000
February 1998 - 1999 Principal Investigator <i>USF College of Medicine Equipment Grant</i>	Total Direct Costs: \$7,000
May 1994 - May 1998 (completed) Co-Investigator Paul R. Sanberg (PI) & Archie A. Silver (Co-PI) <i>NIH: National Institutes of Neurological Disorders and Stroke</i> Nicotine/Haloperidol Therapy in Tourette Syndrome	Total Direct Cost: \$337,592 NS32067-02
May 1996 - May 1998 (completed) Grant Writer Paul R. Sanberg (PI) & Brian McConville (Co-PI) <i>Tourette Syndrome Association</i> Transdermal Nicotine and Haldol for Treatment of Tourette Syndrome	Total Direct Cost: \$24,300
July 1996 - May 1998 (completed) Co-Investigator & Grant Writer Paul R. Sanberg (Co-recipient of the 1996 Ove Ferno Grant Prize) <i>Collegium Internationale Neuro-Psychopharmacologicum</i> Transdermal Nicotine for the treatment of Attention-Deficit Hyperactivity Disorder	Total Direct Cost: \$18,000

May 1996 - May 1997 (completed) Total Direct Cost: \$12,420
Co-Investigator & Grant Writer
 Paul R. Sanberg (PI) & Archie A. Silver (Co-PI)
NIH: National Institutes of Neurological Disorders and Stroke NS32067
 Minority Supplement Grant for NS32067

July 1997 - June 1998 (Approved but not funded) Total Direct Cost: \$40,000
Grant Writer
 Paul R. Sanberg (PI) & Archie Silver (Co-PI)
Tourette Syndrome Association
 Transdermal Nicotine Alone for Treatment of Tourette Syndrome

May 1995 - May 1997 (Approved but not funded) Total Direct Cost: \$39,801
Principal Investigator (Post-doctoral Fellowship)
 Paul R. Sanberg (Supervisor)
Tourette Syndrome Association
 Nicotine Potentiation of Haloperidol: Preclinical Relevance to Tourette's Syndrome

May 1989 - May 1990 (Completed) Total Direct Cost: \$250
Principal Investigator
North Carolina Academy of Science
 Effects of Dopamine Antagonists on Avoidance Behavior

**Current
Focus:**

Basic Research

Supervising pre-clinical investigations of a new medication for the possible treatment of several neuropsychiatric disorders. Investigations involve evaluation of the racemic as well as the stereoisomers of medication in behavioral and neurochemical experiments conducted in rats.

Clinical Research

Clinical studies evaluating the therapeutic potential of a new medications for Tourette's syndrome, ADHD, and Bipolar Disorder.

Both projects involve collaboration with seven USF employed investigators.

**Teaching
Experience:**

Psychobiology
 Drugs and Human Behavior
 General Psychology
 Physiological Psychology

**Peer
Reviewer:**

Pharmacology, Biochemistry and Behavior
 Psychopharmacology
 General Pharmacology
 Psychological Medicine
 Neuropsychopharmacology
 CNS Drugs

Academic Committees: 2000 -2001 USF College of Medicine Research Committee
 2000 -2001 USF College of Medicine Space Committee
 2000 -2001 USF College of Medicine Academic Computer Committee
 1999 NIH Brain Disorders & Clinical Neuroscience Review Committee
 1997-Present Basic and Clinical Research Review Committee
 USF Department of Psychiatry and Behavioral Medicine
 1995 USF Institute on Aging

Non Academic Committees: 2001-2002 Medical Advisory Board for the Florida Chapter of the Tourette Syndrome Association

Professional Affiliations: Society for Neuroscience
 International Behavioral Neuroscience Society
 Tourette's Syndrome Association

Awards: 2000
 USF Creative Young Faculty Research Award
 1997 & 1996
 Young Psychopharmacologist Award (Nominee)
 American Psychological Association, Section 28
 1995
 New Investigator Award (Nominee)
 NIH: New Clinical Drug Evaluation Unit Program (NCDEU)
 1990 - 1994
 University of Wyoming's Graduate Research and Teaching Fellowship
 1993
 University of Wyoming's Graduate Travel Assistance Award
 1993
 Lillian Portencir Scholarship
 1990
 First Place Poster Award at the North Carolina Psychological Association
 1989
 Communication Workers Association Academic Scholarship
 1985
 Beta Sigma Phi Academic Scholarship

Patents Issued: Sanberg PR; Shytle RD; & Silver, AA: Nicotine antagonists for nicotine-responsive neuropsychiatric disorders. United States Patent Office, Patent #6,034,079. Issued 3/7/00.

Patents**Applied:**

Shytle RD; Sanberg, PR; Newman M, & Silver AA: WO035279A1: Exo-S-Mecamylamine Formulation And Use In Treatment Of Neuropsychiatric Disorders. Issued/Filed Date: June 22, 2000 / Dec. 16, 1999

Shytle RD; Sanberg, PR; Newman M, & Silver AA: WO035280A1: Exo-R-Mecamylamine Formulation And Use In Treatment Of Neuropsychiatric Disorders. Issued/Filed Dates: June 22, 2000 / Dec. 16, 1999

Shytle RD; Sanberg, PR; & Silver AA: Method of treating cocaine addiction. United States Patent Office (Filed in 2000).

Shytle RD; Sanberg PR, & Silver AA: Method of treating cognitive deficits in learning and memory. United States Patent Office (Filed in 2000).

Speaking**Engagements:**

(1994) SCH23390 and Mecamylamine Prevent the Development of the Sensitized Locomotor Response to Nicotine. Graduate Seminar, Department of Pharmacology, Bowman Gray School of Medicine, Wake Forest, NC.

(1995) Nicotine Therapeutics for Neuropsychiatric Disorders. Presented at the USF Department of Biology Seminars in Neuroscience.

(1995) Nicotine and Tourette's Syndrome. Presented at the First Annual Duke Nicotine Research Conference, Duke University

(1996) Evidence of the Neuroprotective Actions of Nicotine. Presented at the International Behavioral Neuroscience Society Conference, Cancun, Mexico

(1996) Nicotine and Tourette's Syndrome. GRAND ROUNDS, USF Department of Psychiatry and Behavioral Medicine.

(1999) Mecamylamine for Neuropsychiatric Disorders. Board of Directors, Layton BioScience, Inc.

(1999) Mecamylamine for Neuropsychiatric Disorders. Preclinical and Clinical Divisions, Cephalon Pharmaceutical Company, Inc.

(1999) Nicotinic Antagonists for Neuropsychiatric Disorders. Preclinical and Clinical Divisions, Forest Labs, Inc.

(1999) Nicotinic Antagonists for Neuropsychiatric Disorders. Graduate Seminar, USF Department of Pharmacology.

(2000) Nicotinic Medications and Tourette Syndrome. Tourette Syndrome Association (Florida State Chapter).

(2000) Mecamylamine and Tourette Disorder. Departments of Pharmacology and Psychiatry, University of Florida, Gainesville, FL

(2000) Update: Nicotinic Medications and Tourette Syndrome. Tourette Syndrome Association (Pinellas County Chapter, Florida).

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Borlongan CV, Martinez R, **Shytle RD**, Cahill DW, Sanberg PR (1995). Striatal Dopamine-Mediated Motor Behavior Is Altered Following Occlusion Of The Middle Cerebral Artery. Pharmacology, Biochemistry and Behavior. 52(1):225-229.

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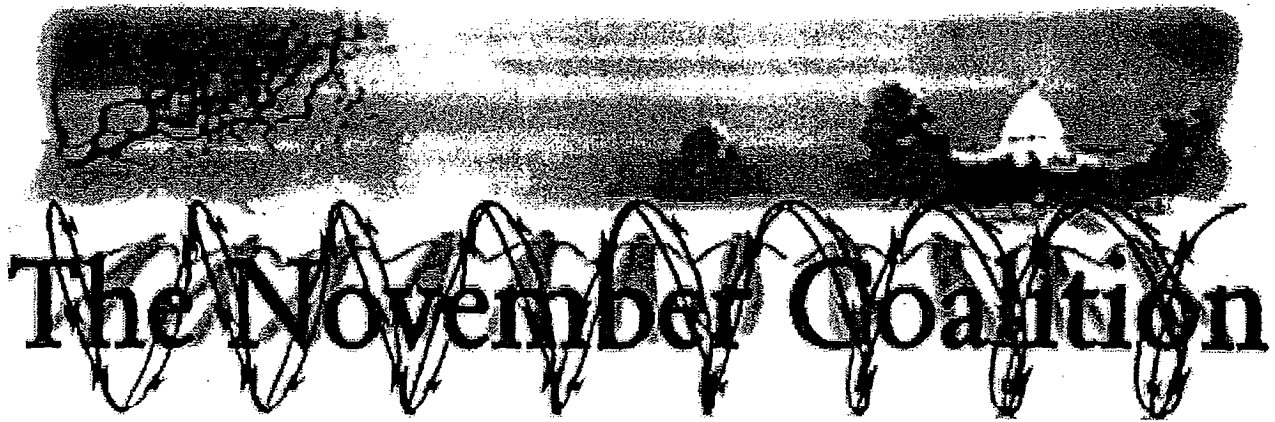
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2 February 2001

U.S. Sentencing Commission
Michael Courlander, Public Affairs Officer
One Columbus Circle, N.E.
Washington, DC. 20002-8002

RE: Comments for the Sentencing Commission on Ecstasy emergency re-sentencing

Dear Mr. Courlander:

Congress has mandated an emergency review of Ecstasy sentencing provisions. The November Coalition is very concerned that the request of Congress, is yet another reactionary response to what congress perceives as an increase in dangerous drug use. Any increase of rates and length of incarceration on the federal level, will probably cause more harm to the enforcement targeted persons, Bureau of prisons staff morale and safety, and to society as a whole, than the use of these substances would ever effect.

We question the so-called emergency nature of this congressional request, there being little time for public comment, wherein physicians, chemists and other experts and professionals could have a true public discussion. Too many times since the war on drugs was declared over 30 years ago, we have seen the prison sentences increase with little input from the public and leaders alike.

In April 2000, Katherine Hawk, the director of the Federal Bureau of prisons testified before the Senate Subcommittee on Criminal Justice. We will include portions of her statement as our part of our comments on Ecstasy emergency re-sentencing:

"Overcrowding in BOP facilities is 34 percent over capacity system wide. At medium and high security facilities overcrowding levels are at even more dangerous proportions, 55 percent at medium security facilities and 51 percent at high security facilities. We must reduce overcrowding at those facilities for the security of staff, inmates, and the surrounding communities. With the resources Congress has already provided, we are making substantial progress with 22 new prisons funded. However, we need to do more . . . over the past 5 years we have had substantial

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- decreases in both inmate suicides and inmate misconduct, including assaults. However, such successes cannot be expected to continue in the face of the dramatic population increases and record setting overcrowding we project will occur in the next several years. Without the resources we have requested to bring additional bed space capacity on line, our record of service may be in jeopardy.”

There are over 95 federal penal institutions and contract confinement facilities at present. Increased penalties will require an overburdened prison system to grow more and more unstable.

We urge the Sentencing Commission to return to Congress and share Katherine Hawk’s recent comments once again. Bureau of Prison staff and prisoner safety “cannot be expected to continue in the face of the dramatic population increases and record setting overcrowding that is expect to occur in the next several years.”

The November Coalition is an organization of thousands upon thousands of prisoners, their loved ones and other concerned citizens nationwide. We know firsthand of mounting tension in our prisons—due to overcrowding, only one of the problems prisoners and staff must endure. Add to that tension, sentences that last decades with no hope of earned release, little hope of good outcome as family units unravel under the strain of incarceration and separation from those we love. These are not laws that serve society well. This is not the opinion of our organization—this statement embodies the many conclusions of numerous studies, some which have been sponsored by the federal government.

To recommend harsher penalties when we know that public education is less expensive and holds more promise of resolution than a rush to incarceration, is questionable from the start. We are the world’s leading jailer, certainly America can find better solutions to our social needs.

Prison cells built for one became two man cells last decade. Those one man cells are now being converted to house three men or women. Rooms previously used for education, recreation and rehabilitation are converted into “dorms”, temporary “units” and still the rush to imprison does not abate. Our leaders must find a better path in our society for our citizens—a better path than the dead end of prison. We know that these laws will target young people primarily. The emergency we see, is an overburdened federal prison system, not the use of a particular substance by a particular group of our society’s citizens.

The war on drugs is a failure, and to continue to wage it unchecked as this “emergency review” suggests, is immoral. This is not a time to rush to more imprisonment, but a time to reexamine every aspect of the war on drugs, and that includes the penalties for club drugs. De-incarceration should be our goal, and would serve justice—not the reverse.

Thank you for considering our hurried comments. Had there been more time, an appropriate time given citizens to respond, I am sure that you would have far more comments to consider.

Sincerely,



Nora Callahan
Executive Director

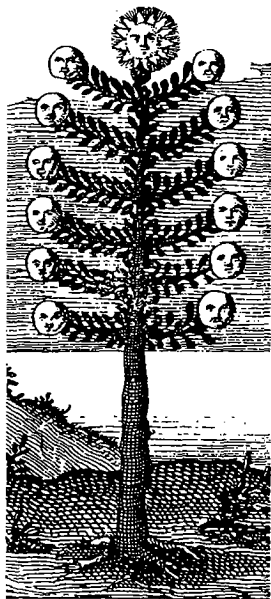
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THE
CENTER FOR COGNITIVE LIBERTY & ETHICS

JOURNAL OF COGNITIVE LIBERTIES

RICHARD GLEN BOIRE, ESQ.
EXECUTIVE DIRECTOR

MONDAY, FEBRUARY 05, 2001



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U.S. Sentencing Commission
Attention Michael Courlander
One Columbus Circle, N.E. Suite 2-500
Washington, D.C. 20002-8002

RE: Emergency Guidelines Amendments Regarding MDMA (Ecstasy)

Dear Commissioners:

The Center for Cognitive Liberty & Ethics submits the following comments and recommendations to the United States Sentencing Commission with respect to the Commission's notice inviting interested persons to submit comments concerning the Commission's proposed amendments to the federal sentencing guidelines. (See, 66(18) *Federal Register* pp. 7961-8017, January, 26, 2001.)

In particular, our comments, and those we hereby submit on behalf of other members of the public, pertain to the Commission's directive to determine the appropriate equivalencies under the sentencing guidelines for "Ecstasy" offenses.

I understand that the Commission's public hearing scheduled for March 19-20 is ostensibly limited to comments concerning the non-emergency amendments, which would preclude comments concerning MDMA ("Ecstasy"). Given that only 10 days were permitted for public comment under the emergency authority, it is my hope, and request, that the Commission will allocate some time at your March public hearing for comments concerning the appropriate punishment for "Ecstasy" offenses.

If you have any questions concerning the attached materials, please do not hesitate to contact me.

Sincerely,

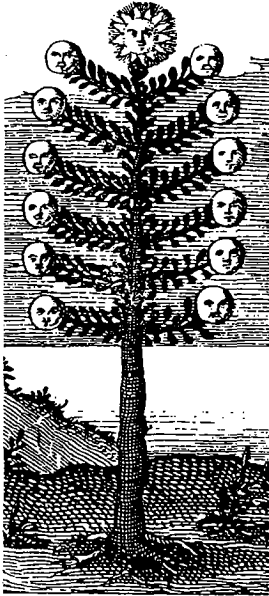
Richard Glen Boire, Esq.
Director, Center for Cognitive Liberty & Ethics

THE
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JOURNAL OF COGNITIVE LIBERTIES

RICHARD GLEN BOIRE, J.D.
EXECUTIVE DIRECTOR

MONDAY, FEBRUARY 05, 2001



U.S. Sentencing Commission
Attention Public Information
One Columbus Circle, N.E. Suite 2-500
Washington, D.C. 20002-8002

Comments & Recommendations from
the Center for Cognitive Liberty & Ethics,
Concerning Emergency Amendments Regarding MDMA ("Ecstasy")

Dear U.S. Sentencing Commission:

The Center for Cognitive Liberty & Ethics submits the following comments and recommendations in response to the Commission's invitation for comments concerning its proposed amendments to the federal sentencing guidelines. In particular, our comments and recommendations pertain to the proposed emergency amendments regarding MDMA, MDA, MDEA, and PMA.

1. THE COMMISSION IS NOT OBLIGATED TO INCREASE THE GUIDELINES' PUNISHMENT FOR MDMA, MDA, MDEA, OR PMA.

The United States Sentencing Commission (hereinafter "Commission") is an independent agency in the judicial branch of the government, vested with prescribing the appropriate form and severity of punishment for offenders of federal crimes. (*Mistretta v. United States* (1989) 488 U.S. 361.)

The Center for Cognitive Liberty & Ethics respectfully submits that the Commission is not obligated under section 3664 of Pub. L. 106-310, to *increase* the penalties for "Ecstasy" offenses, but is instead obligated under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984, to design sentencing guidelines that: (1) incorporate the purposes of sentencing (*i.e.*, just punishment, deterrence, incapacitation, and rehabilitation); (2) provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take into account relevant aggravating and mitigating factors; and (3) reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

These three responsibilities, in conjunction with the fact that the Commission is an independent agency in the judicial branch, mandate that the Commission set the appropriate punishment for "Ecstasy" offenses, rather than yield to political pressure or act under an assumed (but not existent) obligation that it must increase the base offense level for "Ecstasy" offenses.

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2. The Commission should hold a public hearing on the proposed Amendments regarding "Ecstasy" in order to receive and consider evidence concerning "Ecstasy" – evidence that is necessary to consider in order for the Commission to meet its obligations to set the appropriate penalty under Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984.

Section 3662 of Pub. L. 106-310, incorporates Congress' "findings of fact." These summary findings, however, are insufficient for the Commission to determine the appropriate penalty for Ecstasy offenses. In particular, the "findings of fact" in section 3662 fail to acknowledge the findings and recommendations of DEA Administrative Law Judge Francis Young who concluded after a comprehensive hearing on MDMA, that: (1) MDMA has a safe and accepted medical use; and (2), that there was insufficient evidence to conclude that MDMA had a high potential for abuse. Based on these findings, Judge Young ruled that MDMA should be placed in Schedule III, and thus available for doctors to prescribe and use in therapy. (See *In the Matter of MDMA Scheduling*, United States Department of Justice, Drug Enforcement Administration, Docket No. 84-48 (1985-86) [Judge Young's Opinion is available online at: <http://www.mninter.net/~publish/mdma.htm>.])

The Center for Cognitive Liberty & Ethics respectfully submits and recommends that the Commission review and consider Judge Young's opinion, and, further, that the Commission hold public hearings for the purpose of learning more about MDMA, MDA, MDEA, and PMA, before determining the appropriate guidelines penalties for offenses involving these substances.

3. There is no evidence that MDMA use is presenting a significant harm to society.

Although evidence indicates that MDMA use has significantly increased in recent years there appears to be no evidence linking MDMA to disorderly, or violent conduct. Indeed, the evidence is to the contrary. The psychoactive effects of MDMA are almost universally experienced as communitarian, "heart-opening," and empathy eliciting. (See, Beck, J. & Rosenbaum, M., *Pursuit of Ecstasy: The MDMA Experience* (State Univ. of New York Press: NY, 1994.)) Although MDMA is widely used (despite the prohibition), often in large gatherings of people, reports of violence or "anti-social" conduct by people who have ingested MDMA are virtually nonexistent.

The Center for Cognitive Liberty & Ethics respectfully submits and recommends that in light of the lack of evidence of public or social harm associated with MDMA use, it would be inappropriate for the Commission to increase the base offense level for MDMA offenses or to otherwise modify the guidelines such that harsher punishment would be imposed for MDMA offenses.

4. The proposed amendment, which would increase the base offense level for MDMA offenses, violates the moral right of adults to control their own mental processes without fear of government punishment.

Increasing the base offense level for MDMA offenses (which would result in lowering the amount of MDMA necessary for a federal prison sentence under the Guidelines), would unjustly and disproportionately punish otherwise law-abiding citizens who possess as little as 5 grams of MDMA, and/or ingest it responsibly without causing harm to others.

The Center for Cognitive Liberty & Ethics submits that increasing the criminal punishment for MDMA offenses violates the fundamental right of responsible adults to control their own consciousness. In the opinion of the Center for Cognitive Liberty & Ethics, any punishment related to MDMA should be strictly limited to punishing *conduct* that harms others, or which poses an immediate harm to others.

For example, in our opinion, using MDMA (or any other substance, including alcohol) to facilitate rape or another criminal offense should be punished under the guidelines. However, in order to respect the moral rights of adults to autonomy over their own minds and cognitive processes, the Center for Cognitive Liberty & Ethics respectfully submits that any offense that involves merely the possession, manufacture,

importation, exportation, or distribution of MDMA should not be punished—certainly the existing penalties should not be increased.

The Center for Cognitive Liberty & Ethics submits that criminal prosecution and punishment of responsible users of psychoactive plants and chemicals is an ineffectual, immoral, unsophisticated, and socially harmful drug policy. The Center respectfully submits that the U.S. Sentencing Commission, as the body charged with determining the "appropriate punishment" for many of the federal offenses involving psychoactive plants and substances, should take the lead in considering alternatives to the failed "zero-tolerance" Prohibition/Punishment model of drug control.

Respectfully submitted,



Richard Glen Boire, Esq.
Center for Cognitive Liberty & Ethics

ABOUT THE CENTER FOR COGNITIVE LIBERTY & ETHICS

The Center for Cognitive Liberty & Ethics is a nonprofit law and policy center working in the public interest to protect fundamental civil liberties. The Center seeks to foster cognitive liberty – the basic human right to unrestrained independent thinking, including the right to control one's own mental processes and to experience the full spectrum of possible thought.

**THE FOLLOWING PUBLIC COMMENTS CONCERNING THE PROPOSED SENTENCING
AMENDMENT REGARDING MDMA, MDE, MDEA, AND PMA
WERE COLLECTED BY THE CENTER FOR COGNITIVE LIBERTY & ETHICS
AND ARE HEREBY SUBMITTED FOR CONSIDERATION BY THE SENTENCING COMMISSION.**

**THE FOLLOWING COMMENTS ARE THOSE OF THE WRITERS AND DO NOT NECESSARILY
REPRESENT THE OPINIONS OF THE CENTER FOR COGNITIVE LIBERTY & ETHICS**

specmind

From: <Csgrob@aol.com>
To: <rgb@cognitiveliberty.org>; <Glbravo@aol.com>
Sent: Monday, February 05, 2001 1:08 AM
Subject: MDMA Sentencing Commission Letter

February 4, 2001

U.S. Sentencing Commission

Dear Sirs/Madams:

As two psychiatrists who have conducted clinical research and have written extensively about the effects of MDMA (3,4-methylenedioxymethamphetamine), we would like to take this opportunity to express our strong opposition to the proposed new sentencing laws for MDMA.

It has become increasingly evident that raising penalties for MDMA offenses is an unfortunate perpetuation of ineffectual drug war legislation that will ultimately be counterproductive to the government's well-intentioned mission to stem the tide of MDMA use, and will only make a bad situation worse. Most MDMA users are in fact functional citizens, often young adults in our communities, and incarcerating them for longer periods of time would not only fail to be beneficial for society, but would regrettably inflict excessive degrees of punishment and injury to individuals caught within the web of illicit drug war activity, and to their families. We predict that the proposed sentencing laws would only result in targeting low-level dealers and users and not the high volume traffickers for which the laws are intended. Inevitably, the most pronounced consequence would be to push the world's MDMA supply increasingly into the hands of highly organized, unscrupulous, and profit-oriented crime syndicates.

The issue of MDMA has suffered from a persistent pattern of media misinformation. In fact, MDMA's potential for physical and psychological addiction is low. Relevant to the Sentencing Commission's inquiries, MDMA is more equivalent to mescaline in its behavioral and pharmacological effects than it is to heroin. Although there are a small proportion of users who have developed excessive use patterns, they were likely highly vulnerable individuals to begin with who under different circumstances would develop severe problems with other drugs and behaviors. We recognize and deplore the degree to which MDMA abuse does occur, and we readily acknowledge that there are other potentially dangerous adverse effects, particularly when the drug is used under high-risk conditions. However, this proposed change in sentencing will not remedy the situation. Indeed, we predict that the numbers of

[34]

2/5/2001

adverse events as well as fatalities will only increase subsequent to the enactment of the proposed change in sentencing law. Education and harm-reduction programs along with treatment on demand for problematic MDMA users will ultimately serve as far more effective and humane solutions for these problems.

To date, little public attention has been directed to MDMA's potential as a therapeutic medicine. It is our strong contention that MDMA's current placement as a Schedule 1 drug is highly inappropriate. Indeed, in 1986 the DEA's own administrative law judge recommended that the drug be placed in Schedule 3, which is for drugs with putative medical application. Entirely on political grounds, the DEA Director authorized that his own administrative law judge's recommendation be disregarded, and summarily placed MDMA in Schedule 1. It has remained there since, its legal status effectively preventing any approved clinical research from occurring. Well-controlled psychiatric research investigations on MDMA's potential safety and efficacy as an alternative treatment for conditions known to be refractory or non-responsive to conventional treatments, including individuals with end-stage cancer who have severe psychological distress and existential alienation and also for patients with chronic persistent post-traumatic stress disorder, need to be approved and funded.

Great alarm has been expressed about MDMA and its effect on the human brain. Unfortunately, debate has been stifled by the intrusion of a political agenda into the funding and reporting of neuroscience. Pivotal studies attesting to MDMA's "neurotoxic" nature have suffered from a pattern of serious flaws in methodology and problems in data interpretation. To an unfortunate degree, how studies were actually conducted was not honestly represented in formal publication. Ultimately, such practices not only erode scientific credibility, but also obfuscate our understanding of the true range of effects of MDMA.

One unintended result from the proposed sentencing changes will be the psychological, spiritual and material injury inflicted on the families of young people arrested for MDMA crimes. Most victims of these new sentencing guidelines will be young men and women, who will be caught providing friends and acquaintances with the drug. For the vast majority, these will have been activities of low entrepreneurial value.

For the reasons discussed above, we are concerned that the proposal to increase the MDMA sentencing laws will not only fail to reduce criminal activity, but will also lead to compounded degrees of injury to individuals, families and society. There are far more effective and responsible strategies available.

A complete list of our publications on MDMA in the medical literature is appended below.

We are happy to provide any further information or consultation if you so desire.

Sincerely,

Gary L. Bravo, M.D.
Staff Psychiatrist
Sonoma County Mental Health
3322 Chanate Road
Santa Rosa, CA 95404
(707) 565-4997

Charles S. Grob, M.D.
Director, Division of Child and Adolescent Psychiatry
Harbor-UCLA Medical Center
Professor of Psychiatry
UCLA School of Medicine
Box 498
1000 W. Carson St.
Torrance, CA 90509
(310) 222-3112

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PURDUE UNIVERSITY



SCHOOL OF PHARMACY AND
PHARMACAL SCIENCES

February 5, 2001

Michael Courlander
Public Affairs Officer
U.S. Sentencing Commission

Re: Sentencing guidelines for methylenedioxymethamphetamine (MDMA)

Dear Mr. Courlander:

I received word today that the Commission proposes to equate 1 g of MDMA, MDA, and MDEA to 1 kg of marijuana, rather than 35 g, 50 g and 30 g of marijuana, respectively. I also understand that 1 gram of mescaline is presently equated to 10 grams of marijuana, 1 gram of powder cocaine equated to 200 g of marijuana, and 1 gram of methamphetamine to 2 kg of marijuana.

One basis for this reconsideration is the assertion that "ecstasy..... is similar in its hallucinogenic effect on the user to mescaline." This statement is simply incorrect. Extensive literature published on this subject, some of it from my own laboratory and listed later, clearly shows that MDMA is in no way comparable to mescaline in its effect. MDMA does not act by the same pharmacological mechanism as does mescaline, nor does it have the ability to produce the profound sensory disruptions and hallucinations that are characteristic of mescaline. Similarly, while high doses of mescaline can provoke psychosis in labile individuals, there is no evidence that MDMA has similar potential. Whereas MDMA does have a stimulant effect, it is approximately only one-tenth that of methamphetamine, based on human dosage.

Based on reported human dosages I estimate that MDMA has roughly twice the psychoactive potency by weight of mescaline. Thus, based on human dosage, the equivalency for one gram of MDMA should then be equal to 20 g of marijuana.

MDMA has only about 1/25th (doses: 5 mg heroin vs 125 mg MDMA) the potency of heroin. There is no basis either through potency considerations or through risk assessment to equate the harm of one gram of MDMA with one gram of heroin.

In my professional opinion, based on my own 25 years of research into the action of psychoactive drugs of abuse, and extensive reading of the literature, one gram of MDMA can in no way be equated to one gram of heroin, either based on dosage, or upon the degree of harm that can result from use of these two very different substances. Heroin is highly addictive, and in overdose leads directly to death; MDMA is not. The degree of toxicity of heroin and MDMA is not comparable by any standard. Heroin is used by intravenous injection, accompanied by risks of infection with a variety of microorganisms and viruses, whereas MDMA is taken orally with none of those risks. One gram of pure heroin would be a sufficient quantity to lead to overdose death in perhaps as many as 20 drug-naïve individuals, whereas one gram of MDMA taken orally might be sufficient to cause fatality of one drug-naïve person.

[38]

Whereas I do understand the concern regarding large numbers of adolescents who are apparently abusing ecstasy, and support reasonable attempts to discourage this use, I am adamantly opposed to regulations that are not based on facts or science. If the guidelines are to be arbitrary, and based on political whims, then the sentencing commission should so state, but should not attempt to justify the guidelines by misrepresentation of the facts or the science so as to create the public impression that the dangers of MDMA are actually comparable to those of heroin when they demonstrably are not. That is, *there is absolutely no medical or scientific basis* upon which to support guidelines that would purport to equate one gram of MDMA with one gram of heroin.

Sincerely,



David E. Nichols, Ph.D.
Professor of Medicinal Chemistry
And Molecular Pharmacology

Relevant Scientific Literature Published by My Laboratory.

- D.E. Nichols, "Differences Between the Mechanism of Action of MDMA, MBDB, and the Classical Hallucinogens: Identification of a New Therapeutic Class: Entactogens." *J. Psychoactive Drugs*, **18**, 305-313 (1986).
- D.E. Nichols, A.J. Hoffman, R.A. Oberlender, P. Jacob, III, and A.T. Shulgin, "Derivatives of 1-(1,3-benzodioxo-5-yl)-2-butanamine, Representatives of a novel therapeutic class." *J. Med. Chem.*, **29**, 2009- 2015, (1986).
- M.P. Johnson, A.J. Hoffman and D.E. Nichols, "Effects of the Enantiomers of MDA, MDMA and Related Analogues on [³H]-Serotonin and [³H]-Dopamine Release from Superfused Rat Brain Slices," *Eur. J. Pharmacol.*, **132**, 269- 276, (1986).
- T.D. Steele, D.E. Nichols, and G.K.W. Yim, "Stereochemical Effects of 3,4-Methylenedioxy-methamphetamine (MDMA) and Related Amphetamine Derivatives on Inhibition of Uptake of [³H]-Monoamines into Synaptosomes from Different Regions of Rat Brain," *Biochem. Pharmacol.*, **36**, 2297-2303 (1987).
- R.A. Oberlender and D.E. Nichols, "Drug Discrimination Studies with MDMA and Amphetamine," *Psychopharmacol.*, **95**, 71-76 (1988).
- D.E. Nichols and R. Oberlender, "Structure-Activity Relationships of MDMA-like Substances," *NIDA Research Monograph Series*, **94**, 1-29, 1989.
- R. Oberlender and D.E. Nichols, "(+)-N-Methyl-1-(1,3-Benzodioxol-5-yl)-2-Butanamine as a Discriminative Stimulus in Studies of 3,4-Methylenedioxymethamphetamine-Like Behavioral Activity," *J. Pharmacol. Exp. Ther.*, **255**, 1098-1106 (1990).
- D.E. Nichols and R. Oberlender, "Structure-Activity Relationships of MDMA and Related Compounds: A New Class of Psychoactive Drugs?" *Ann. N.Y. Acad. Sci.*, Vol. 600, *The Neuropharmacology of Serotonin*, pp.613-625, 1990.
- D.E. Nichols and R. Oberlender, "Structure-Activity Relationships of MDMA and Related Compounds: A New Class of Psychoactive Agents?" in *ECSTASY: The Clinical, Pharmacological and Neurotoxicological Effects of the Drug MDMA*, S.J. Peroutka, Ed., Kluwer Academic Publishers, Boston, 1990.

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D.E. Nichols, "Role of Serotonergic Neurons and 5-HT Receptors in the Action of Hallucinogens," in *Handbook of Experimental Pharmacology. Serotonergic Neurons and 5-HT Receptors in the CNS*, H.G. Baumgarten and M. Göthert, Eds., Springer-Verlag GmbH & Co., Heidelberg, Germany, pp 563-585, 1997.

12/22/00

CURRICULUM VITAE

Name and Title: David Earl Nichols
Professor of Medicinal Chemistry and
Professor of Pharmacology.

Addresses:

Home

4740 North 225 West
W. Lafayette, Indiana 47906

Phone: 765-497-2320

Office

Department of Medicinal Chemistry and
Molecular Pharmacology
School of Pharmacy and Pharmacal Sciences
Purdue University
West Lafayette, Indiana 47907
Phone: (765)-494-1461; FAX (765)-494-1414
email: drdave@pharmacy.purdue.edu

Birthplace and Date: December 23, 1944, Covington, Kentucky

Degrees Held: B.S. Chemistry, University of Cincinnati, 1969
Ph.D. Medicinal Chemistry, University of Iowa, 1973
Postdoctoral Fellow, Pharmacology, Univ. of Iowa 1973, 1974

Appointments:

Founder and Co-chair, Scientific Advisory Board, DarPharma, Inc.
Interim Head, Dept. of Medicinal Chemistry and Molecular
Pharmacology, 7/1/96-10/1/96
Interim Head, Depts. of Medicinal Chemistry and Pharmacognosy,
and Pharmacology and Toxicology, 7/1/95-6/30/96
Interim Head, Dept. of Medicinal Chemistry and Pharmacognosy
9/1/94-6/30/95
President, Heffter Research Institute, Inc., 1993-present
Professor of Pharmacology
Purdue University 1985-present
Professor of Medicinal Chemistry,
Purdue University 1984-present
Associate Professor of Medicinal Chemistry,
Purdue University 1979-1984
Assistant Professor of Medicinal Chemistry,
Purdue University 1974-1979
Teaching Assistant, 1972, University of Iowa
NDEA IV Fellow, 1969-1972, University of Iowa

° Memberships:

Sigma Xi Scientific Honorary
Phi Lambda Upsilon Chemistry Honorary
Rho Chi Pharmacy Honorary
American Chemical Society
Division of Medicinal Chemistry, ACS
American Association for the Advancement of Science
American Association of Pharmaceutical Scientists
Kappa Psi (Pharmacy fraternity)
Society for Neuroscience
American Society for Pharmacology and Experimental Therapeutics
Purdue University Neuroscience Program
American College of Neuropsychopharmacology, elected to membership 1996

Awards or Honors:

NDEA IV Predoctoral Fellow
Henry Heine Best Teacher Award, School of Pharmacy and Pharmacal Sciences,
Purdue University 1981.
Fellow, Academy of Pharmaceutical Sciences, 1985
Fellow, American Association of Pharmaceutical Scientists
Listed in Who's Who in America, Who's Who in Medicine and Healthcare, and Who's Who in the
Midwest
Keynote speaker, Annual MIKI Graduate Student Meeting, Iowa City, March 30, 1996

Refereed Publications:

1. F. Antun, J.R. Smythies, F. Benington, R.D. Morin, C.F. Barfknecht and D.E. Nichols, "Native Fluorescence and Hallucinogenic Potency of Some Amphetamines", *Experientia* **27**, 62-63 (1971).
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3. C.F. Barfknecht and D.E. Nichols, "Potential Psychotomimetics, Bromomethoxy-amphetamines", *J. Med. Chem.* **14**, 370-372 (1971).
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8. C.F. Barfknecht, D.E. Nichols, D.B. Rusterholz, J.P. Long, J.A. Engelbrecht, J.M. Beaton, R.J. Bradley and D.C. Dyer, "Potential Psychotomimetics: 2-Amino-1,2,3,4-tetrahydronaphthalene Analogs", *J. Med. Chem.* **16**, 804-808 (1973).

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10. D.C. Dyer, D.E. Nichols, D.B. Rusterholz and C.F. Barfknecht, "Comparative Effects of Stereoisomers of Psychotomimetic Phenylisopropylamines", *Life Sci.* **13**, 885-896 (1973).
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56. R.A. Oberlender, P.J. Kothari, D.E. Nichols and J.E. Zabik, "Substituent Branching in Phenethylamine Type Hallucinogens: A Comparison of 1-[2,5-Dimethoxy-4-(2-butyl)phenyl] and 1-[2,5-Dimethoxy-4-(2-methylpropyl)]-2-aminopropane", *J. Med. Chem.* **27**, 788-792 (1984).
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46. Q.D. Walker, C.P. Lawler, B. Fagg, S. Southerland, J. Bennett, M.H. Lewis, D.E. Nichols, and R.B. Mailman, "Dihydrexidine accumulates rapidly and specifically in rat brain after systemic administration," 20th Annual Meeting of the Society for Neuroscience, St. Louis, November 1990.
47. T.W. Lovenberg, D.E. Nichols, E.J. Nestler, R.H. Roth, and R.B. Mailman, "Regulation of D₁ dopamine receptor function in NS20Y cells: Role of G-proteins," 20th Annual Meeting of the Society for Neuroscience, St. Louis, November 1990.
48. D.E. Nichols, "The discriminative stimulus and neurochemical effects of MDA analogues," ACNP Annual Meeting, San Juan, December 1990.
49. X. Huang, M.P. Johnson, D.E. Nichols, and C.A. Mathis, "¹²⁵I-PIA (p-Iodoamphetamine) may label monoamine oxidase A (MAO_A) in crude rat frontal cortex homogenate," 21st Annual Meeting of the Society for Neuroscience, New Orleans, November 1991.
50. J.R. Taylor, M.S. Lawrence, D.E. Redmond, Jr., J.D. Elsworth, R.H. Roth, D.E. Nichols, and R.B. Mailman, "Dihydrexidine, a full dopamine D₁ agonist, reduces MPTP-induced Parkinsonism in the African green monkey," 21st Annual Meeting of the Society for Neuroscience, New Orleans, November 1991.
51. K.J. Darney, Jr., M.H. Lewis, W.K. Brewster, D.E. Nichols, S. Southerland, and R.B. Mailman, "Behavioral effects of the full efficacy D₁ agonist dihydrexidine in models of dopamine denervation," 21st Annual Meeting of the Society for Neuroscience, New Orleans, November 1991.
52. D.H. Mooney, J.M. Petitto, L.L. Cook, D.E. Nichols, and R.B. Mailman, "Multiple D₁-like dopamine receptors not linked to adenylate cyclase exhibit different affinities for [³H]SCH23390," 21st Annual Meeting of the Society for Neuroscience, New Orleans, November 1991.
53. D.M. Mottola, L.L. Cook, S.R. Jones, R.G. Booth, D.E. Nichols, and R.B. Mailman, "Dihydrexidine, a selective dopamine receptor agonists that may discriminate postsynaptic D₂ receptors," 21st Annual Meeting of the Society of Neuroscience, New Orleans, November 1991.
54. L.L. Cook, D.B. Miller, J.P. O'Callaghan, J.M. Petitto, D.E. Nichols, M.H. Lewis, and R.B. Mailman, "Postsynaptic supersensitivity in striatal D₁ dopamine receptors in MPTP-treated mice," 22nd Annual Meeting of the Society for Neuroscience, Anaheim, CA, October 1992.
55. C.P. Lawler, V.J. Watts, J.H. Gilmore, S.B. Southerland, J.R. Atashi, H.P. Smith, C.A. Mathis, D.E. Nichols, and R.B. Mailman, "Dihydrexidine displays high potency and full efficacy at D₁ dopamine receptors in primate striatum," 22nd Annual Meeting of the Society for Neuroscience, Anaheim, CA, October 1992.
56. M.H. Lewis, J.-L. Gariépy, P. Gendreau, M.A. Mayleben, D.E. Nichols, and R.B. Mailman, "D₁ dopamine receptor activation induces social reactivity in mice selectively bred for aggression," 22nd Annual Meeting of the Society for Neuroscience, Anaheim, CA, October 1992.
57. D.H. Mooney, D.M. Mottola, S.B. Southerland, T.A. Knoerzer, D.E. Nichols, and R.B. Mailman, "Substitutions on the pendent phenyl ring of dihydrexidine alter D₁:D₂ selectivity," 22nd Annual Meeting of the Society for Neuroscience, Anaheim, CA, October 1992.
58. T.J. Schmitt, S.B. Southerland, R.B. Mailman, D.E. Nichols, and M.H. Lewis, "Intracerebral injections of the full efficacy D₁ agonist dihydrexidine: Behavioral effects in the rat," 22nd Annual Meeting of the Society for Neuroscience, Anaheim, CA, October 1992.

59. Q.D. Walker, M.H. Lewis, A.M. Perkins, D.A. Eckerman, D.E. Nichols, and R.B. Mailman, "Discriminative stimulus properties of the D₁ dopamine agonist, dihydrexidine," 22nd Annual Meeting of the Society for Neuroscience, Anaheim, CA, October 1992.
60. V.J. Watts, D.M. Mottola, O. Civelli, R.A. Johnson, D.E. Nichols, and R.B. Mailman, "Dihydrexidine binds differently to human clonal and rat striatal D₁ dopamine receptors," 22nd Annual Meeting of the Society for Neuroscience, Anaheim, CA, October 1992.
61. N.F. Nichols, P.J.K.D. Schreur, M.W. Smith, W.E. Hoffmann, D.E. Nichols, and M.F. Piercey, "Activation of postsynaptic but not presynaptic dopamine receptors by dihydrexidine, a potent D₁ and D₂ receptor ligand," 22nd Annual Meeting of the Society for Neuroscience, Anaheim, CA, October 1992.
62. D. Marona-Lewicka, D.E. Nichols, X. Huang, and M.P. Johnson, "Novel non-neurotoxic and selective serotonin releasing agents," XI Congress of the Polish Pharmacological Society, Gdansk, September 1992. *Polish J. Pharmacology and Pharmacy* (Supplement) **44**:178 (1992).
63. X. Huang and D.E. Nichols, "Further Studies on 3,4-Methylenedioxymethamphetamine (MDMA)-induced Serotonergic Neurotoxicity," Eleventh International Neurotoxicity Conference, Little Rock, Arkansas, September 26-30, 1993.
64. H.P. Smith, C.P. Lawler, A.M. Eaton, D.E. Nichols, and R.B. Mailman, "Vacuous chewing induced by N-n-propyl dihydrexidine: a D₂-like (D₃) selective dopamine agonist," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.
65. J.H. Gilmore, V.J. Watts, C.P. Lawler, E.P. Noll, D.E. Nichols, and R.B. Mailman, "Efficacy of D₁ agonists in human caudate: relationship to parkinsonism," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.
66. M.A. Mayleben, V.J. Watts, C.P. Lawler, D.K. Grandy, O. Civelli, D.E. Nichols, and R.B. Mailman, "Benzo[a]phenanthridines: novel ligands to study D₃ dopamine receptors," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.
67. M.H. Lewis, L.L. Cook, S. Whatley, D.E. Nichols, and R.B. Mailman, "Activation of D₁ dopamine receptors in nucleus accumbens potentiates acoustic startle," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.
68. Q.D. Walker, D.M. Black, D.A. Eckerman, D.E. Nichols, and R.B. Mailman, "Behavioral and pharmacological determinants of D₁ dopamine agonist substitution for the discriminative stimulus induced by dihydrexidine," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.
69. R.B. Mailman, V.J. Watts, C.P. Lawler, Q.-Y. Zhou, O. Civelli, T. Knoerzer, and D.E. Nichols, "Benzo[a]phenanthridines: structurally rigid molecules to examine D₁ dopamine receptor activation," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.
70. V.J. Watts, C.P. Lawler, A.J. Gonzales, Q.-Y. Zhou, O. Civelli, D.E. Nichols, and R.B. Mailman, "Efficacy of D₁ dopamine receptor agonists: the role of spare receptors," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.
71. B.A. Heidenreich, F. Rehman, D.E. Nichols, R.B. Mailman, and T.C. Napier, "Partial and full dopamine D₁ agonists produce comparable excitations among ventral pallidal neurons," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.
72. X. Huang and D.E. Nichols, "5-HT₂ Receptor-mediated potentiation of dopamine synthesis and central serotonergic deficits," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.
73. D. Marona-Lewicka, R. Oberlender, and D.E. Nichols, "The effects of alpha₂-adrenoceptor agonists and antagonists on the stimulus properties of LSD," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.

74. R. Oberlender and D.E. Nichols, "Dextrofenfluramine Drug Discrimination," 23rd Annual Meeting of the Society for Neuroscience, Washington, D.C. November 1993.
75. K. Negash and D.E. Nichols, "Synthesis of some rigid analogues of β -phenyldopamine to evaluate dopamine receptor topography," 207th ACS National Meeting, San Diego, March 1994.
76. S. Vanveravong and D.E. Nichols, "Stereoselective synthesis of trans-2-(indol-3-yl)cyclopropylamines: rigid tryptamine analogues," 207th ACS National Meeting, San Diego, March 1994.
77. D.E. Nichols, "Hallucinogen Research in the decade of the brain: does medicinal chemistry tell us anything?" XIXth C.I.N.P. Congress, Washington, D.C. June 1994.
78. D.E. Nichols, A. Monte, X.-M. Huang, and D. Marona-Lewicka, "Stereoselective pharmacological effects of lysergic acid amides possessing chirality in the amide substituents," Third IUPHAR Satellite Meeting on Serotonin, Chicago, IL July 30-Aug 3, 1994.
79. D. Marona-Lewicka, J.E. Sprague, and D.E. Nichols, "Conditioned place preference effect of 5-methoxy-6-methyl-2-aminoindan (MMAI): A comparison study with entactogens and fenfluramine," 24th Annual Meeting of the Society for Neuroscience, Miami Beach, FL. November 1994.
80. B.L. Wiens, D.E. Nichols, R.B. Mailman, and K.A. Neve, "Multiple structural determinants of agonist efficacy at dopamine D2 receptors," 24th Annual Meeting of the Society for Neuroscience, Miami Beach, FL. November 1994.
81. V.J. Watts, C.P. Lawler, K.A. Neve, D.E. Nichols, and R.B. Mailman, "Binding and functional agonist properties of LSD and N(6)-alkyl analogs at D₁ dopamine receptors. 24th Annual Meeting of the Society for Neuroscience, Miami Beach, FL November 1994.
82. D.M. Black, C.P. Lawler, Q.D. Walker, V.J. Watts, D.E. Nichols and R.B. Mailman, "D₁ Receptors, cAMP synthesis, and the amphetamine discriminative stimulus," 24th Annual Meeting of the Society for Neuroscience, Miami Beach, FL November 1994.
83. J.K. Kilts, V.J. Watts, D.E. Nichols, K.A. Neve, and R.B. Mailman, "Inhibition of isoproterenol-stimulated cAMP accumulation in D_{2L} C-6 glioma cells by hexahydrobenzo[a]-phenanthridines," 24th Annual Meeting of the Society for Neuroscience, Miami Beach, FL November 1994.
84. M.A. Mayleben, V.J. Watts, C.P. Lawler, D.E. Nichols, K.A. Neve, and R.B. Mailman, "Desensitization of the D₁ dopamine receptor expressed in C-6 glioma cells parallels agonist intrinsic activity," 24th Annual Meeting of the Society for Neuroscience, Miami Beach, FL November 1994.
85. Q.D. Walker, D.M. Black, D.A. Eckerman, D.E. Nichols, and R.B. Mailman, "Potentiation of the dihydrexidine discriminative stimulus by phosphodiesterase inhibition and the effect of receptor reserve on D₁ agonist substitution," 24th Annual meeting of the Society for Neuroscience, Miami Beach, FL November 1994.
86. D. Ghosh, D.E. Nichols, V.J. Watts, and R.B. Mailman, "Synthesis and evaluation of novel 8-benzyl-2-aminotetralins as dopamine receptor (D1 and D2) probes," 210th National Meeting of the American Chemical Society, Chicago, IL, August 1995.
87. J.E. Sprague, S.T. Wasti, and D.E. Nichols, "Differential effects of MAOIs on [³H]paroxetine binding in the striatum, hippocampus, and frontal cortex following treatment with MDMA or PCA," 25th Annual Meeting of the Society for Neuroscience, San Diego, CA, November 1995.
88. D. Marona-Lewicka and D.E. Nichols, "Drug discrimination studies of the interoceptive cues produced by selective serotonin uptake inhibitors and selective serotonin releasing agents," 25th Annual Meeting of the Society for Neuroscience, San Diego, CA, November 1995.

89. M.A. Mayleben, A. Monte, W. Roeske, H. Yamamura, R.B. Mailman, and D.E. Nichols, "Methoxyphenethylamine-ergoline "hybrids": novel muscarinic ligands," 25th Annual Meeting of the Society for Neuroscience, San Diego, CA, November 1995.
90. D.E. Nichols, V.J. Watts, C.P. Lawler, D. Ghosh, C. Striplin, and R.B. Mailman, "Dinapsoline: a novel full D1 agonist," 25th Annual Meeting of the Society for Neuroscience, San Diego, CA, November 1995.
91. J.D. Kilts, M.A. Mayleben, D.E. Nichols, K.L. O'Malley, R.D. Todd, K. Suzuki, C.P. Lawler, and R.B. Mailman, "Binding and functional characterization of dihydrexidine and other hexahydrobenzo[a]phenanthridines in D₂- and D₄-transfected MN9D cells," 25th Annual Meeting of the Society for Neuroscience, San Diego, CA, November 1995.
92. H.P. Smith, G.S. Oxford, D.E. Nichols, R.B. Mailman, and C.P. Lawler, "Dihydrexidine demonstrates functional selectivity at D2 dopamine receptor-mediated processes," 25th Annual Meeting of the Society for Neuroscience, San Diego, CA, November 1995.
93. M.W. Lewis, D.E. Nichols, M.A. Ritter, J.S. Verbanac, and R.L. Commissaris, "Effects of acute treatment with indirect-acting serotonergic agonists on anxiety-like (conflict) behavior in maudsley rats," 25th Annual Meeting of the Society for Neuroscience, San Diego, CA, November 1995.
94. J.D. Kilts, C.P. Lawler, D.E. Nichols, K.L. O'Malley, R.d. Todd, and R.B. Mailman, "Functional selectivity: dihydrexidine, a D₂ agonist, acts as an antagonist at dopamine release-modulating D₂ receptors," 26th Annual Meeting of the Society for Neuroscience, November 1996.
95. H.P. Smith, G.S. Oxford, D.E. Nichols, R.B. Mailman, and C.P. Lawler, "Dihydrexidine activates D₂ dopamine receptors coupled to adenylyl cyclase, but not to potassium ion channels," 26th Annual Meeting of the Society for Neuroscience, November 1996.
96. M. Mayleben, C.D. Striplin, C.P. Lawler, S. Kongsamut, D.E. Nichols, and R.B. Mailman, "Differential responses in the rat after chronic administration of D₁ dopamine agonists having different intrinsic activity," 26th Annual Meeting of the Society for Neuroscience, November 1996.
97. P.R. Rau, R.B. Mailman, D.E. Nichols, and C.P. Lawler, "Dopamine D₁ receptor agonist-induced grooming in rats: an examination of the link to adenylyl cyclase," 26th Annual Meeting of the Society for Neuroscience, November 1996.
98. D. Marona-Lewicka and D.E. Nichols, "The effect of selective serotonin releasing agents in the chronic mild stress model of depression in rats," 26th Annual Meeting of the Society for Neuroscience, November 1996.
99. Ghosh, D., D.E. Nichols, C.R. Peck, and R.B. Mailman. 8-(Bromomethyl)benzyl-6,7-dihydroxy-2-aminotetralin derivatives as potential dopamine D2-like receptor alkylating agents. Amer. Chem. Soc. Abstracts 213, MEDI 190, 1997.
100. Andersson C., M.M. Lewis, C.R. Peck, D. Ghosh, D.E. Nichols, and R.B. Mailman. Dopamine-receptor inactivation by a novel D₂-like selective irreversible ligand. Soc. Neurosci. Abstr. 23: 1997.
101. Kilts J.D., D.E. Nichols, R.B. Mailman, and C.P. Lawler. The functionally selective agonist dihydrexidine inhibits adenylyl cyclase in rat striatum via the D₂ dopamine receptor. Soc. Neurosci. Abstr. 23: 1997.
102. Lewis M.M., C.P. Lawler, D.E. Nichols and R.B. Mailman. Drug-induced desensitization of the D_{1A} dopamine receptor dissociates from receptor occupancy and functional efficacy. Soc. Neurosci. Abstr. 23: 1997.
103. Sloan J.L., M.K.-H. Doll, C. Prioleau, C.P. Lawler, D.E. Nichols, R.B. Mailman. Characterization of novel quinpirole and quinlorane derivatives as D₁ ligands. Soc. Neurosci. Abstr. 23: 1997.

104. Blake B.L., J.L. Sloan, C.D. Striplin, M.M. Rasenick, D.E. Nichols, R.B. Mailman, and C.P. Lawler. Activation of G-proteins by full and partial D₂ dopamine receptor agonists in rat striatum. Soc. Neurosci. Abstr. 23: 1997.
105. Hoffman BT, JM Wilson, DE Nichols, SD Wyrick, and RB Mailman. A dibenzosuberane backbone in dopaminergic ligands may mediate selectivity for the D₁ vs. D₅ dopamine receptor. Soc. Neurosci. Abstr. 23: 1997.
106. Marona-Lewicka, D., J. Blair, D. M. Kurrasch, and D.E. Nichols. The effect of ring fluorination on the pharmacology of hallucinogenic tryptamines. Soc. Neurosci. Abstr. 23: 1997.
107. Marona-Lewicka, D. and D.E. Nichols. Structural requirements for amphetamine derivatives with high selectivity to release serotonin versus other neurotransmitters. Soc. Neurosci. Abstr. 24, Abs. 439.1, 1998.
108. Marona-Lewicka, D. M. Kowalska, I. Nalepa, J. Vetulani, and D.E. Nichols. Chronic treatment with the selective 5-HT releaser MMAI induced adaptive changes in rat brain. A comparative study with an SSRI. 2nd European Congress of Pharmacology, PT100, Budapest, July 3-7, 1999.
109. Marona-Lewicka, D. and D.E. Nichols. New therapeutic potentials of the potent and selective 5-HT releasing agent: 5-methoxy-6-methyl-2-aminoindan. 2nd European Congress of Pharmacology, PT101, Budapest, July 3-7, 1999.
110. E.G. Arrington, B.L. Blake, D.E. Nichols, R.B. Mailman and C.P. Lawler, "Functional selectivity of dihydrexidine at dopamine D₂ receptors is not predicted by binding to the high affinity receptor state or stimulation of GTP γ S binding." Society for Neuroscience, Miami, FL, October 1999.
111. M.M. Lewis, B. Hoffman, L.G. Henage, D.W. Miller, R.A. Nicholas, D.E. Nichols, A. Tropsha and R.B. Mailman, "Mutation of the D_{1A} dopamine (DA) receptor reveals specific residues involved in agonist recognition and receptor activation." Society for Neuroscience, Miami, FL, October 1999.
112. S.L. Oxendine, A.M. Qandil, D.E. Nichols and R.B. Mailman, "Dinapsoline (DNS) and its analogs: further insight into the pharmacophores for the D₁ and D₂ dopamine receptors." Society for Neuroscience, Miami, FL, October 1999.
113. J.P. Ryman, C.P. Lawler, D.E. Nichols and R.B. Mailman, "Tolerance induced by infusion of dopamine D₁ receptor full agonists in dopamine-denervated rats." Society for Neuroscience, Miami, FL, October 1999.
114. J.E. Sprague, T. Worst, A. Kanthasamy, D.E. Nichols and M.D. Kane, "Effects of antisense oligonucleotide alteration of MAO-B gene expression on MDMA-induced serotonergic neurotoxicity." Society for Neuroscience, Miami, FL, October 1999.
115. D. Marona-Lewicka, J.R. Selken and D.E. Nichols, "Effects of combined treatment with d-amphetamine and the selective 5-HT releasing agent, MMAI on behavior, thermoregulation, and body weight." Society for Neuroscience, Miami, FL, October 1999.
116. D.L. Roman, J.A. Nichols, D.R. Green, G.J. Rodrigues, F. Rahkshan, D.E. Nichols and E.L. Barker, "Cross-species chimeras identify domains involved with molecular recognition of amphetamines at the serotonin transporter." Society for Neuroscience, Miami, FL, October 1999.
117. D.M. Kurrasch-Orbaugh, J.J. Chambers, M. Parker and D.E. Nichols, "Effect of methoxy group orientation on the pharmacology of novel serotonin 2A and 2C receptor agonists." Society for Neuroscience, Miami, FL, October 1999.
118. A. Kanthasamy and D.E. Nichols, "The GABA transaminase inhibitor gamma-vinyl GABA attenuates MDMA-induced neurotoxicity in rats." Society for Neuroscience, Miami, FL, October 1999.

Invited Seminars:

- "Probing the Hallucinogen Receptor", Indiana University School of Medicine, Northwest Cancer for Medical Education, Gary, IN, March 24, 1977.
- "Progress in Understanding Hallucinogens", Center in Toxicology, Vanderbilt University School of Medicine, Nashville, TN, July 14, 1978.
- "Chemical Probes of Hallucinogen Receptors", Dept. of Biological Sciences, Chicago State University, Chicago, IL, October 16, 1980.
- "Chemical Probes of the Hallucinogen Receptor(s)", Dept. of Chemistry, IUPUI, Indianapolis, IN, January 12, 1981.
- "Structure-Activity Relationships of Hallucinogens", Dept. of Pharmaceutical Chemistry, Univ. California (S.F.) October 23, 1981.
- "Structure-Activity Relationships of Hallucinogens", Dept. of Chemistry, Indiana State University, Terre Haute, IN, March 15, 1982.
- "The Development of Novel Dopamine Agonists", Smith, Kline and French, Philadelphia, PA, August 23, 1982.
- "Chemistry and Structure-Activity Relationships of Hallucinogenic Drugs", Wabash College, Dept. of Chemistry, Crawfordsville, IN, January 24, 1984.
- "Structure-Activity Relationships of Hallucinogenic Drugs", University of Toledo, College of Pharmacy, Toledo, OH, May 11, 1984.
- "Structure-Activity Relationships of Hallucinogenic Drugs," Astra Pharmaceuticals, August 13, 1984.
- "Hallucinogens", Department of Pharmacology, University of Toronto, Toronto, Canada, August 16, 1984.
- "Use of Hallucinogen Analogs to Study Serotonin Receptors", Eli Lilly and Co., Indianapolis, IN, November 19, 1984.
- "Research and Social Impact of LSD", 360 House, Sponsored by Alcohol Issues Committee, Purdue University, West Lafayette, IN, November 20, 1984.
- "Principles of Medicinal Chemistry", Associated Colleges of the Chicago Area, Fall Short Course 1986, 2 Hr. Lecture, September 16, 1986.
- "Hallucinogens: A Medicinal Chemist's Approach", Annual Purdue University Neuroscience Retreat, May 15, 1987.
- "Studies Directed Toward the Development of Selective Dopamine D-1 Agonists and Antagonists," Abbott Laboratories, July 16, 1987.
- "Medicinal Chemistry Approaches to the Study of Psychedelics," Donner Laboratory, Berkeley, CA, August 7, 1987.
- "Hallucinogens and Serotonin Receptors: 14 Years Later," College of Pharmacy, University of Iowa, October 28, 1987.
- "Hallucinogens: Pandora's Box or Technology of the Next Century," *New York Academy of Sciences Seminar Series - Designer Drugs: Problems and Promises*, New York, March 14, 1988.
- "Structure-Activity Studies of MDMA-Like Substances," Dept. of Neuroscience, The Johns Hopkins University, School of Medicine, May 5, 1988.

- "Mechanism of Action of MDMA ('Ecstasy') and Related Compounds," Dept. of Psychiatry, University of New Mexico School of Medicine, Albuquerque, NM, July 21, 1989.
- "The Design of Novel Molecules With Selective Dopamine D₁ Agonist Action," Northeast Wisconsin ACS Section, February 14, 1990.
- "Design and Synthesis of Novel Dopamine D₁ Agonists," College of Pharmacy, University of Toledo, March 6, 1990.
- "Design of Novel Molecules With Selective Dopamine D₁ Agonist Activity," Upjohn Pharmaceuticals, Kalamazoo, MI, January 15, 1991.
- "Hallucinogens: What Are They and How Do They Work?" Olivet Nazarene College, Kankakee, IL, January 30, 1991.
- "I. The Chemistry and Occurrence of Psychedelic Molecules," "II. The 'Chemical Evolution' of Synthetic Psychedelic Molecules," Two lectures given at The Bridge Conference, Stanford University, Palo Alto, CA, February 2-3, 1991.
- "Design of Novel Molecules With Selective Dopamine D₁ Agonist Activity," College of Pharmacy, University of Cincinnati, February 28, 1991.
- "Design of Novel Molecules With Selective Dopamine D₁ Agonist Activity," Wyeth-Ayerst Pharmaceuticals, Princeton, NJ, May 17, 1991.
- "Medicinal Chemistry of Hallucinogenic Agents," School of Pharmacy, University of North Carolina, Chapel Hill, NC, September 9, 1991.
- "The Development of Dihydropyridine, a Novel Full-Efficacy Dopamine D₁ Agonist," College of Pharmacy, University of Tennessee, Memphis, TN, December 12, 1991.
- "The Development of Novel Dopamine Agonists," School of Pharmacy, University of Illinois at Chicago, February 26, 1993.
- "Medicinal Chemistry and Pharmacology of Serotonin Releasing Agents," Department of Pharmacology, University of Pennsylvania Medical School, April 29, 1993.
- "Design of Novel Serotonin Releasing Agents," School of Pharmacy, University Of North Carolina, Chapel Hill, NC, June 11, 1993.
- "Non Neurotoxic Selective Serotonin-Releasing Agents," Dept of Pharmaceutical Sciences, College of Pharmacy, Wayne State University, Detroit MI, September 15, 1993.
- "The Development of Novel Serotonin Releasing Agents," Faculty of Pharmaceutical Science, Khon Kaen University, Thailand, March 14, 1994.
- "Graduate Studies in Medicinal Chemistry in the U.S.A.," Faculty of Pharmaceutical Science, Khon Kaen University, Thailand, March 14, 1994.
- "Dihydropyridine and other Benzo[a]phenanthridines: important new dopamine receptor agonists," Faculty of Pharmaceutical Science, Chulalongkorn University, Bangkok, Thailand, March 15, 1994.
- "Design of Novel Serotonin Releasing Drugs," Faculty of Pharmaceutical Science, Mahidol University, Bangkok, Thailand, March 16, 1994.
- "The Development of Novel Dopamine D₁ Agonists, Dept of Pharmacology and Toxicology," Purdue University, March 29, 1995.
- "Psychedelic Drugs" Magic, Medicine, and the Law, Wabash Area Lifelong Learning Assocn., October 31, 1995.

- "Designing Novel Dopamine D₁ Agonist molecules: potential therapy for late stage Parkinson's Disease," Keynote Address, Annual MIKI Graduate Student Meeting, University of Iowa, March 30, 1996.
- "The Development of Novel Dopamine D₁ *Full* Agonists," GlaxoWellcome Pharmaceuticals, Research Triangle Park, North Carolina, May 30, 1996.
- "The Design and Development of Novel Dopamine D₁ Agonists," Northwestern Drug Discovery Program, Chicago, IL, September 11, 1996.
- "Continuing Studies of the Structure-Activity Relationships of Hallucinogenic Agents," Uruguan Psychopharmacology Society, Montevideo, Uruguay, March 19, 1997.
- "Serotonin Releasing Agents," Southern Summer School in Neuroscience, Punta del Este, Uruguay, March 22, 1997.
- "Continuing Studies of the Structure-Activity Relationships of Hallucinogenic Agents," Dept. of Chemistry, University of Chile, Santiago, Chile, March 25, 1997.
- "Continuing Studies of the Structure-Activity Relationships of Hallucinogenic Agents," Dept. of Behavioral Neuroscience, Oregon Health Sciences University, April 17, 1998.
- "From Eleusis to PET scans: the mysteries of psychedelics," Serotonin Club Dinner, Society for Neuroscience meeting, Los Angeles, November 10, 1998.
- "Designing Novel Dopamine D₁ Agonist molecules: potential therapy for late stage Parkinson's Disease," St. Norbert College, De Pere, WI, March 24, 1999.
- "Psychedelics : Historical perspectives and structure-activity studies," Brookhaven National Laboratory, Long Island, NY, May 4, 2000
- "MDMA (Ecstasy): Mechanism of Action and Studies of its Neurotoxic Effects," Chairman's Grand Rounds, Wayne State School of Medicine, Detroit, MI, May 31, 2000
- "Psychedelics : Historical perspectives and structure-activity studies," University of Kentucky, College of Medicine, October 9, 2000.

Invited Speaker at National or International Symposia

"The Use of Rigid Analogs to Probe Hallucinogen Receptors", Invited participant at the Technical Review Meeting on the Quantitative Structure Activity Relationships of Narcotic Analgesics, Narcotic Antagonists, and Hallucinogens, Sponsored by the National Institute on Drug Abuse, Silver Spring, Md., April 1978.

"Attempts to Develop Novel Dopamine Agonists using Structure-Activity Relationships of Known Series of Compounds", Symposium on Dopamine Receptor Agonists", Stockholm, Sweden April 20-23, 1982.

"The Development of Novel Dopamine Agonists", Symposium on dopamine receptors, 184th National meeting of the American Chemical Society, September 14, 1982.

"Behavioral Techniques in the Study of Neuroreceptors", Minisymposium on Neuroreceptors, Indiana Univ. School of Medicine, Terre Haute Center for Medical Education, Terre Haute, Ind. September 25, 1982.

"Studies of the Relationship Between Molecular Structure and Hallucinogenic Activity", Symposium on New Perspectives on the Pharmacology of Hallucinogenic Drugs, sponsored by American Society of Pharmacology and Experimental Therapeutics, Indianapolis, Ind. August 20, 1984.

"Use of Chemical Approaches to Probe the Serotonin Receptor Topography", VIIIth International Symposium on Medicinal Chemistry, Uppsala, Sweden, August 30, 1984.

"Differences Between the Mechanism of Action of MDMA, MBDB, and the Classical Hallucinogens: Identification of a New Therapeutic Class: Entactogens," Multidisciplinary Conference on MDMA, Oakland, CA, May 17 and 18, 1986.

"Structure-Activity Relationships of MDMA-Like Substances," NIDA Technical Review Meeting on Pharmacology and Toxicology of Amphetamine and Related Designer Drugs, Bethesda, MD, August 2-4, 1988.

"Medicinal Chemistry of MDMA," Panel Member on "MDMA, Dangerous Drug or Useful Adjunct to Psychotherapy," 1988 ACNP Annual Meeting, San Juan, December 1988.

"Structure-Activity Relationships of MDMA and Related Compounds: A New Class of Psychoactive Drugs?" The Neuropharmacology of Serotonin, Sponsored by the New York Academy of Sciences, New York, July 10-13, 1989.

"The discriminative stimulus and neurochemical effects of MDA analogues," Invited panel presentation at 1990 ACNP Annual Meeting, San Juan, December 1990

"Structure-Activity Relationships of Psychoactive Phenethylamine Derivatives," Symposium on Drugs of Abuse, American Association of Pharmaceutical Scientists Meeting, Washington, DC, November 19, 1991.

"Novel Serotonergic Agents," Invited Speaker at Symposium on Neuromedicinal Chemistry G-Protein Coupled Receptors, Sponsored by Swedish Academy of Pharmaceutical Sciences, Lund, Sweden, May 20-22, 1992.

"Lysergamides Revisited," Invited Participant at Technical Review of Hallucinogens, Sponsored by the National Institute on Drug Abuse, Bethesda, MD, July 13-14, 1992.

"Current Status and Perspectives of Hallucinogen Research in the Decade of the Brain," Invited speaker, 2nd International Congress of the European Collegium for the Study of Consciousness, Heidelberg, Germany February 22-25, 1996.

"Contemporary Approaches to Drug Development: Bridging the Gap," Invited Participant in joint Indo-U.S. Workshop on Traditional Medicine, Bangalore, India, October 13-17, 1996, sponsored by NIMH.

"The Transition from Cartoons and Rigid Analogues to Computer-Based Models of the Dopamine D1 Receptor," Mid-Atlantic Pharmacology Society, Raritan, NJ, Nov. 4, 1996.

"Basic Research on the Mechanisms of Action of Ecstasy," Ecstasy workshop of the German Society for Addiction Research and Addiction Therapy, Blaubeuren, Germany, Dec. 12-13, 1996.

"Development of Selective Dopamine Agonists: New Therapeutic Strategies for the Treatment of Parkinson's Disease and Schizophrenia," New Clinical Drug Evaluation Unit Program, Boca Raton, FL, June 12, 1998

"Ecstasy: A serotonin and dopamine releasing agent," Drugs of Abuse Symposium, Forum of European Neuroscience, June 27, 1998, Berlin, Germany.

Research Interests:

- Structure-activity relationships of centrally active drugs; drug design
- The use of rigid analogs to probe neurotransmitter receptors
- Development of pharmacological tools to study CNS function
- Structure-activity relationships of dopaminergic agents
- The structures of G protein-coupled receptors
- Development of novel psychoactive agents
- Hallucinogens/Psychedelics

Research Grants/Contracts Funded: D.E. Nichols, Principal Investigator

- Synthesis of Allyl Benzene Derivatives as Potential Tumor Growth Inhibitors, 1/1/75-12/31/77, \$5,920, Indiana Elks.
- Synthesis of Dopaminergic Agents, 6/1/76-7/31/77, \$2959, University of Chicago.
- Biomedical Research Support Grants, 4/1/76-3/31/83, \$20,000.
- Haptens to Produce Active Immunity Against Potential Endogenous Psychotogens, 2 years, 9/1/78-8/31/80, \$8940, Purdue University, David Ross Grant.
- Rotameric Modes of Binding at Serotonin Receptors, 2 years, 4/1/82-3/31/84, \$13,200, Purdue University, David Ross Grant.
- 2-Amino-3,4-Dihydroquinazolines as Dopamine Agonists, 4/1/79-5/31/81, total direct costs \$50,061 for two years, Total costs \$74,524, USPHS.
- 2-Amino-3,4-Dihydroquinazolines as Dopamine Agonists, supplemental request, 4/1/81-5/31/81, \$3552 total direct costs, USPHS.
- Hallucinogen Analogues: 1,2-Dihydro-2-Naphthylamines, 6/1/78-5/31/81, Total direct costs \$95,100 for three years, Total costs \$141,808, USPHS.
- Synthesis of Isotryptamines and Related Compounds as Potential Dopamine Agonists, 6/1/80-5/31/88, co-p.i. with J.M. Cassady, Total direct costs \$174,156 for eight years, Total costs \$231,886, Eli Lilly and Co.
- Conformational Analysis of Biological Molecules, 1/1/79-12/31/81, H.J.R. Weintraub, p.i., 5% effort, Total costs \$101,978 for three years.
- Predoctoral Training in Chemical Pharmacology, 7/1/80-6/30/85, R.P. Maickel, p.i., 2% effort, \$307,008 direct costs for the three year period 7/1/81- 6/30/84, USPHS.
- Mylan Pharmaceuticals, "Synthesis of Analytical Standards", 6/1/84-expended, \$21,800.
- N-(2-chloroethyl)-norLSD, a Potential New Neurotoxin for Mapping Neurotransmitter Receptor Distribution and Function, 4/1/85-3/31/87, \$13,200, Purdue University, David Ross Grant.
- Development of Selective Dopamine D-1 Agonists and Antagonists, 1/1/88- 12/31/88, one year direct costs \$45,086, Total costs \$59,291, Eli Lilly and Co.

- Development of Selective Dopamine D-1 Agonists and Antagonists, 2/15/89- 5/31/89, Total costs \$15,000, Eli Lilly and Co.
- Development of a Functional Correlation between Phosphoinositide Turnover and Affinity for the Serotonin 5-HT₂ Receptor, 4/1/88-3/31/90, \$15,960, Purdue University, David Ross Grant.
- Structure-Activity Studies of MDMA-Like Substances, 8/1/88-8/31/95, \$673,473 Total direct costs for six years, Total costs \$997,071, USPHS.
- ADAMHA Small Instrumentation Grant, \$5,000, 1989.
- ADAMHA Small Instrumentation Grant, \$7,300, 1990.
- ADAMHA Small Instrumentation Grant, \$6,013, 1991.
- Research on Psychoactive Compounds, 1/1/93-12/31/93, Total cost \$57,841, Neurobiological Technologies, Inc.
- Tryptamine Hallucinogens-Human Neuropsychopharmacology, Subcontract to the University of New Mexico (P.I. Dr. Rick Strassman) 3/1/93-2/28/94 Total costs \$24,205, USPHS.
- Stereochemical Aspects of Hallucinogenesis, 8/1/79-5/31/99, Total direct costs \$1,092,704 for eighteen years, Total costs \$1,560,217 USPHS.
- Basic Research in Dopamine Drug Discovery, (R.B. Mailman, PI), 1/1/95-12/31/95, Total direct costs \$47,455, Hoechst Roussel Pharmaceuticals, Inc.
- Development of Potentially Selective Dopamine Agonists, 4/1/84-3/31/96, \$947,372 total direct costs for twelve years, Total costs \$1,359,221, USPHS.
- BMS/UNC/Purdue Research Collaboration, 12/15/97-9/4/99, \$252,320 2 year total costs, Bristol-Myers Squibb Company.
- **Active.** Novel Serotonin Releasing Agents, 9/30/95-8/31/00; \$138,057 **9th year** direct costs, USPHS.
- **Active.** Stereochemical Aspects of Hallucinogenesis, 6/1/99-5/31/03, \$186,959 **19th year** direct costs, USPHS.
- **Active.** Development of Potentially Selective Dopamine Agonists, 4/1/96-3/31/01, \$130,215 **15th year** direct costs, USPHS.
- **Active.** Receptor Profiles of Lysergamides. 7/1/99-6/30/01, \$27,000 direct costs, Heffter Research Institute.
- **Active.** Mapping the functional topography of the serotonin 2A receptor. 6/1/00-5/31/02, \$25,292, Purdue Research Foundation Grant.

Service Related Functions:

Regional Science Fair Judge, 1975-present
Executive Committee Member, Student Science Training (SST) program, 1980
MARC Supervisor, 1982-1986, 1988-present
AAPS MNPC 1991 Program Committee
AAPS MNPC Fellows Selection Committee, 1992-1994
Medicinal Chemistry Division, ACS, Awards committee 1996, 1997, Chmn 1998.
CIC.GE Predoctoral Fellowships Selection Committee 1996

Contract or Grant Review:

NIMH Extramural Contract Review Panel, July 8, 1980
Small Business Innovation Research Grant Program, ADAMHA Special Review Committee, November 14, 1984
Small Business Innovation Research Grant Program, PHS Special Review Committee, October 11, 1985
Small Business Innovation Research Grant Program, ADAMHA Special Review Committee, March 4, 5, 1986.
Grant Awards for Pharmacy Schools (GAPS) Peer Review Panel (Chmn.) March 7, 1986.
Small Business Innovation Research Grant Program, ADAMHA Special Review Committee, November 18, 1986.
Cellular Neurobiology and Psychopharmacology Subcommittee, NIMH Neuroscience Research Review Committee, October 13-14, 1988 (Ad Hoc).
Cellular Neurobiology and Psychopharmacology Subcommittee, NIMH Neuroscience Research Review Committee, June 8-9, 1989 (Ad Hoc).
Project Concept Reviewer, Neurosciences Research Branch, NIMH, June 13, 1989.
Contract Review Panel, Neurosciences Research Branch, NIMH, August 28, 1989.
Cellular Neurobiology and Psychopharmacology Subcommittee, NIMH Neuroscience Research Review Committee, February 8-9, 1990 (Ad Hoc).
Pharmacology Study Section, February 21, 1990 (Ad Hoc).
NIMH Extramural Contract Review Panel, April 18, 1990.
Reviewer, The Medical Research Council of New Zealand, 1990-
Contract Review Panel, National Institute on Drug Abuse, January 10, 1991.
Cellular Neurobiology and Psychopharmacology Subcommittee, NIMH Neuroscience Research Review Committee, February 6-7, 1991 (Ad Hoc).
Neurological Sciences Study Section, Subcommittee 2, NIH, February 9, 1991 (Ad Hoc).
Small Business Research Review Committee, NIMH, February 25-26, 1991.
Cellular Neurobiology and Psychopharmacology Subcommittee, NIMH Neuroscience Research Review Committee, October 17-18, 1991 (Ad Hoc).
Neuropharmacology and Neurochemistry Review Committee, NIMH, Permanent Member February 1992-1995
NIMH Extramural Contract Review Panel, November 23, 1992.
NIDA Concept Review Panel, January 4, 1994
NIMH SBIR (MHSB) Review Panel, October 29-30, 1995
NIMH Psychotherapeutic Drug Discovery and Development Program Panel, Nov 11, 1995
Board of Scientific Counselors, ad hoc member, review of NIDDK Laboratory, May 1-2, 1996.
Neuropharmacology and Neurochemistry Review Committee, ad hoc reviewer, June 12, 1996.
Neuropharmacology and Neurochemistry Review Committee, ad hoc reviewer, June 27, 1997.
NIMH Contract Review Panel, Sept 25, 26, 1997.
NIMH Contract Review Panel, August 21, 1998.

MDCN 5 Study Section Ad Hoc Reviewer, February 23, 24, 1999
NIDA Special Emphasis Panel, June 29, 1999
CSR Special Emphasis Panel, December 6, 1999
MDCN 5 Ad Hoc Reviewer, June 20, 2000
NIDA Special Emphasis Panel, Site Visit Team, January 10-11, 2001

Consultancies and Advisory Functions:

Consultant, Marion Merrell Dow Pharmaceuticals, Cincinnati, OH, 1993.
Member of Scientific Advisory Board, Neurobiological Technologies, Inc., San Francisco, CA, 1987-1992
Editorial Advisory Board, Drugs and the Pharmaceutical Sciences, Marcel Dekker, 1993-present.
Consultant, Warner-Lambert Pharmaceuticals, 1996-97.
Consultant, Eli Lilly and Company, 1997-2000.
Consultant, Bristol-Myers Squibb company, 1997, 1998.

Departmental Functions:

Department Space Resources Committee, 1976-1985
Graduate Student Advisory Committee, 1975-78, 1983-1985, 1997-
Graduate Student Admissions Committee, 1978-1994 (chmn 1980-1985), 1997-
David Ross Grant Review Committee, 1976, 1978, 1980, 1982, 1985, 1986, 1989
Faculty Search Committee, Chairman, 1977 (Prof. Loudon)
Faculty Search Committee, 1979 (Prof. Weinkam)
Faculty Search Committee, 1981 (Prof. Geahlen)
Curriculum Committee, 1984-1989
Honors Program (MDCH 490) Coordinator, 1984
Editor, Alumni Newsletter, 1986-1994; 1996
Faculty Sponsor, Annual Graduate Student Meeting, 1977-83, 1988, 1989, 1997
Faculty Search Committee, Chairman, 1988 (Professor Davisson)
Executive Committee, 1993-
Faculty Search Committee, Mass Spectrometry, 1994-95
Faculty Search Committee, Neuropharmacology, 1995
Liaison Committee, Purdue Cancer Center, 1996
Liaison Committee, Purdue University Neuroscience Program, 1996-
PRF Grant Review Committee, 1996
Faculty Search Committee, Cancer Pharmacology and Neuropharmacology, 1997 (Dr. Barker)
Faculty Search Committee, Neuropharmacology, 1997 (Dr. Watts, Dr. Hockerman)
Committee to evaluate the Department Head, 1998
Faculty evaluator, Glenn L. Jenkins nominations 1998
Ad hoc committee to revise the Departmental Undergraduate Curriculum 1998-1999
MCMP Teaching Evaluation Committee, 1999
Faculty Search Committee, Chmn., 1999
Faculty Search Committee, 2000

School Functions:

Library Committee, 1976-77; 1977-78
Judge, Glenn L. Jenkins Award, 1978
Undergraduate Counselor, 1975-present
David Ross Grant Review Committee, 1975, 1980 (chmn), 1985
Grievance Committee, 1979 (chmn), 1987-88, 1998 (steering committee)

Recruitment and Retention of students, 1979-80
 Grade Appeals Committee, 1979-81
 Committee to Review David Ross evaluation procedures, 1981 (chmn)
 Faculty Representative, Undergraduate Symposium on Pharmacy Graduate Programs,
 Merrillville, Indiana, October, 1983, 1984, 1986, 1987.
 ACPE Accreditation (1985) Physical Facilities Committee (chmn)
 Curriculum Committee, 1984-1989; 1998-present
 ACPE Accreditation (1992) Student Services Committee
 School Executive Committee, 1994-1996
 Committee to develop school standards for University Faculty Scholars 1998

University Functions:

Purdue Animal Care and Use Committee, 1988-1997
 Purdue University Neuroscience Program, Liaison committee, 1995-present
 Purdue University Neuroscience Program, Executive committee, 1996-present
 Purdue University Reinvestment Program Reviewer, 1996

Teaching Responsibilities:

MDCH 204-205 Organic Chemistry, 3 Cr. Lecture, 1 Cr. Lab, 33-55% of lecture and labs; spring 1975-1978.
 PCTX 642 Neuropharmacology, 3 Cr., taught 2 lectures in spring 1975, fall 1979, 1981, 1983, 1985.
 MDCH 490 Introduction to Research, variable credit, training undergraduates in research techniques: 100 students supervised 1975-present.
 PSYCH 535 One lecture taught, spring 1995, 1996, 1997.
 MDCH 553 Intermediate Medicinal Chemistry, 3 Cr., 33% taught each fall; 1976-1984; 1 Cr. taught 1985-1996.
 MDCH 600 Advanced Medicinal Chemistry, 1 Cr., Spring 1977, 1979, 1981, 1982, 1984, 1986, 1988, retitled "Chemical Pharmacology" and expanded to 2 cr.; 1990, 1992, 1994.
 MCMP 407 Medicinal Chemistry and Pharmacognosy I, 3 Cr., taught 47% of course in fall 1978, 1979, 1980, 31% in 1981, 35% in 1982-1998. 30% in fall 1999 and course coordinator.
 MCMP 408 Medicinal Chemistry and Pharmacognosy II, 2 Cr., taught 30% of course spring 1979 - 1997, taught 37% in 1998 & course coordinator.
 MCMP 442 Introductory Pharmacology, taught 7 lectures in spring 1995, 1996, 1997.
 MCMP 570 Basic Principles of Chemical Action on Biological Systems, 6 lectures, fall 1997, 1998, 1999.
 PHRM 401 Integrated Laboratory III. Coordinated and organized this new course, fall 1997; developed module on Parkinson's Disease; presented module on Parkinson's disease, fall 1997, 1998, 1999.

Teaching Related Talks and Publications:

Talks:

M. Cushman, J.L. McLaughlin, D.E. Nichols and J.E. Robbers, "Undergraduate Medicinal Chemistry at Purdue", 79th Annual AACP Meeting, July 19, 1978; Orlando, Florida.

D.E. Nichols, "The Combined BS-MS Program: How well has it worked?", Teacher's seminar program, Annual AACP Meeting, Washington, D.C., July 17, 1983.

Laboratory Manual:

Laboratory Experiments, Medicinal Chemistry 204-205

John M. Cassady and David E. Nichols, 8th edition, 1975

John M. Cassady, Michael Crider and David E. Nichols, 9th, 10th editions, 1976, 1977

John M. Cassady, David E. Nichols and Marc Loudon, 11th-21st editions, 1978-1988

Course Development:

Reorganization of the laboratory portion of MDCH 204-205 in 1975 with the introduction of four new experiments:

- a. Identification of Drugs by Elemental Analysis and Thin-Layer Chromatography; 3-week sequence
- b. Synthesis of mephenesin
- c. Preparation of estradiol
- d. Preparation and properties of benzalkonium chloride

MDCH 600, Advanced Medicinal Chemistry. Titled: Principles of Drug Design, Designed and structured from "scratch" to cover a variety of contemporary methods used in drug design and to analyze structure-activity relationships. Restructured Spring 1990 and team-taught as a two credit-hour course titled "Chemical Pharmacology," to include pharmacokinetics, prodrugs, metabolism, and several contemporary topics in drug design, as a required course for graduate students receiving support from the Chemical Pharmacology Training Grant. In 1997 elements of this course were integrated into a new course, MCMP 570.

MCMP 570, Principles of Pharmacology. Participated in the development of this new course for the merged department, to provide a basic understanding of principles of drug action to new graduate students with diverse backgrounds. Taught six lectures on QSAR.

MCMP 407, Medicinal Chemistry and Pharmacology I: The nervous system. Participated in the design and development of this course, integrating both medicinal chemistry and pharmacology into a coherent one semester course that covers drugs affecting the central nervous system. First taught in the Fall 1999 semester.

Graduate Students Supervised:

Roy A. Buzdor, M.S. 1977
John E. Toth, M.S. 1977
Bruce A. Hathaway, Ph.D. 1980
John A. Grosso, Ph.D. 1980
Ming C. Yeung, M.S. 1984
David H. Lloyd, Ph.D. 1985
Robert M. Riggs, Ph.D. 1986
Andrew J. Hoffman, Ph.D. 1987
Sumon Sakolchai, Ph.D. 1987
David A. Boyles, Ph.D. 1988
Robert Oberlender, Ph.D. 1989
W.K. Brewster, Ph.D. 1991
Michael P. Johnson, Ph.D. 1991 (PCTX)
Satish Kallam, M.S. 1991
Scott E. Snyder, Ph.D. 1993
Felix Aviles-Garay, M.S. 1993
Nicholas V. Cozzi, Ph.D. 1994 (co-major
with faculty at U.Wisconsin)
Xue-Mei Huang, Ph.D. 1994 (PCTX)

Timm A. Knoerzer, Ph.D. 1994
Suwanna Vangveravong, Ph.D. 1994
Kitaw Negash, Ph.D. 1994
Jon E. Sprague, Ph.D. 1994 (PCTX)
Aaron P. Monte, Ph.D. 1995
Joseph B. Blair, Ph.D. 1997
Matthew A. Parker, Ph.D. 1998
Sunkyoung Lee, Ph.D. 1998
Madina Gerasimov, M.S. 1998
Amjad Qandil, Ph.D. 1998
Russell Grubbs, Ph.D. 2000
Arthi Kanthasamy, Ph.D. 2000
Deborah Kurrasch-Orbaugh, Ph.D. candidate
James Chambers, Ph.D. candidate
Uros Laban, Ph.D. candidate
Karla Cuevas-Licea, Ph.D. candidate
Jennifer Selken, Ph.D. candidate (PUN)
Tom McLean, Ph.D. candidate
Michael Whitesides, Ph.D. candidate

Postdoctorals, Sabbatical Fellows, and Visiting Professors:

Ralph Lagally, 1978-1979
Paresh J. Kothari, 1979-1981
James N. Jacob, 1979-1981
Kiran P. Jadhav, 1981-1982
Ratna Chakraborti, 1988-89
Zbigniew Bonza-Tomaszewski, 1989-1990
Robert Pfaff, 1990-1991
Danuta Marona-Lewicka, 1990-1994

Mary Troconis, 1991
Debasis Ghosh, 1992-1997
David Klopotek, 1995
Eun-Sook Ma, 1996-1997
Martin Doll, 1996-1997
Gianfabio Giorgini, 1996-1997
Tim Sattelkau, 1998-1999
Douglas Armstrong 2000

Summer Minority Faculty Fellow:

John Emmett Simmons, 1990

Visiting Scholars:

Miguel Reyes, Montevideo, Uruguay, 1994
David Vonlanthen, Bern, Switzerland, 1995
Tommy Huijbers, Groningen, The Netherlands, 1997
Alejandra Gallardo, Fulbright Scholar, University of Chile, Santiago, 1999-2000.

Member of Thesis Advisory Committee:

Master's Degree:

F. W. Dekow
S. Evans
K-c. Lin
E. A. Kelly
H. S. Burhlis
J. M. Fox
D. Shimp

G. P. Migliaccio
J. Koren (PCTX)
S. P. Foltis
A. Vazquez
T. Steele (PCTX)
J. Helfrich
L.V. Morales

D. Wainscott (PCTX)
A. Thomson (CHEM)
Q. Bi (PCTX)
C. Bissantz
D. Jones

Ph.D. Degree:

G. Jones
R. Mata
D. L. Darling
R. J. Clay
B. N. Meyer
W. Pfister (PCTX)
D. R. Tocco (PCTX)
D. P. McFadden (PCTX)
P. Persons
D. Foltis
B. Meyer
S. Pummangura
F. M. Cretella
P. Toren
M. P. Koleck
M. Holsapple (PCTX)
D. S. S. Ng (PCTX)
P. Mohan
W.-C. Wong
J. Stimmel
J. P. Mayer
D. W. Kessler
S. E. Klohr

J.-K. Chen
W. Conroy (PCTX)
D.A. Patrick
H. Patel
M. Rieser
R. Peoples (PCTX)
M. Whitelaw (F&N)
C. Chan
I. Jacobsen
T. Steele (PCTX)
M. Patel (Chem)
R. Peoples (PCTX)
M. Whitelaw (F&N)
C. Chan
M. N. Patel (PCTX)
H.-S. Choi
W. Ma
G. Cauchon (PUB)
W. Corbett (Chem)
R. Menezes (Chem)
C.-W. Yang (PCTX)
P. Sun (PCTX)
G. Pavlakovic (PCTX)

E. Lee
I. Lim
S. Firestine
Q. Bi (PCTX)
Y.F. Yong (Chem)
E. Kogut (Chem)
W.T. Johnson
K. Hauer
F. Tian
A. Casimiro-Garcia
L. Rogers
K. Hauer
J. Mihalic
M. Micklatcher
Brian Fox
Hui Liu
D. Roman
G. Rodriguez
T. Vortherms
J. Chen
A. Edsall

George Greer, M.D.
453 Cerrillos Road, Suite E
Santa Fe, NM 87501
(505) 982-0312
February 4, 2001

Michael Courlander
Public Affairs Officer
U.S. Sentencing Commission

Re: Sentencing guidelines for methylenedioxymethamphetamine (MDMA)

Dear Mr. Courlander:

I received word today that the Commission proposes to equate 1 gm of MDMA, MDA, and MDEA to 1 kg of marijuana, rather than 35 gm, 50 gm and 30 gm of marijuana, respectively. I also understand that 1 gram of mescaline is presently equated to 10 grams of marijuana, 1 gram of powder cocaine equated to 200 gm of marijuana, and 1 gram of methamphetamine to 2 kg of marijuana.

I am enclosing a scientific report of my work administering MDMA to patients from 1980 to 1983. I will be reporting on this data in a talk on February 2, 2001 in San Francisco as part of a national conference on Ecstasy, sponsored by the Lindesmith Center and Drug Policy Foundation. From my experience in administering MDMA and the literature on mescaline, I estimate that MDMA (and probably MDA and MDEA) have roughly twice the psychoactive potency by weight of mescaline, or, in relation to the sentencing guidelines for mescaline, equal to 20 gm of marijuana.

In addition, as a clinical psychiatrist, I have conducted comprehensive psychiatric evaluations of 600 patients at a residential treatment center in the past four years, about 90% of whom had a substance use disorder. Though I have no actual numbers available to analyze before the February 5, 2001 deadline, I would estimate that about 40% or so of those at some point in their lives abused or were addicted to the stimulants cocaine or methamphetamine. About 10% of those, or 4% of those with histories of substance abuse/addiction, also took Ecstasy at some point in their lives. (As you probably know, Ecstasy is not always MDMA in street samples.) None of those people were physically addicted to Ecstasy, and their frequency of use was from less than 1% to about 10% of their use of cocaine or methamphetamine. The damage to their lives from cocaine and methamphetamine was so great that the damage to their lives from Ecstasy cannot be meaningfully compared, but was certainly less than 1/100th as damaging. The longest any of my patients used Ecstasy regularly for more than twice a week was a few weeks, and they were fairly well functioning during that time. Most who took it only did so sporadically.

[77]

If MDMA is 1/100th as damaging as methamphetamine, and even less so by weight as methamphetamine is several times more potent in psychoactivity than MDMA, then 1/100th of the methamphetamine guideline of 2 kg of marijuana would also equal 20 gm of marijuana. When compared to powder cocaine, also several times more potent than MDMA by weight, the 1/100th brings MDMA down to an equivalent of 2 gm of marijuana.

I strongly recommend that the Sentencing Commission bring the guidelines for MDMA, MDA and MDEA in line with the actual relative damage to the lives of Americans, which is already exceeded by the current guidelines, and exceeded dozens of times by the proposed 1 kg of marijuana equivalency.

Sincerely,

George Greer, M.D.

George Greer, M.D.
Board Certified Psychiatrist

George Greer, M.D.
453 Cerrillos Road, Suite E
Santa Fe, NM 87501
(505) 982-0312
CURRICULUM VITAE
November, 2000

EDUCATION, LICENSURE AND BOARD CERTIFICATION

Undergraduate: Rice University, Houston, TX, 1968-69.
Vassar College, Poughkeepsie, NY, 1969-72, B.A.

Medical school: University of Texas Medical Branch, Galveston, TX, 1972-76, M.D.

Internship and Psychiatry Residency: San Mateo County Community Mental Health
Services, San Mateo, CA, 1976-79.

Licensure: New Mexico Board of Medical Examiners, license number 81-213.

Board Certification: American Board of Psychiatry and Neurology, Board Certification
in Psychiatry, 1981.

PRESENT AND PAST EXPERIENCE

1998-present: Medical Director, Heffter Research Institute.
1996-present: Psychiatric consultant for the Life Healing Center, residential care facility
for clients with Posttraumatic Stress and related disorders.
1989-present: Psychiatric consultant for Santa Maria El Mirador, Intermediate Care
Facility for developmentally disabled adults serving Santa Fe, Rio Arriba and Taos
Counties.
1982-present: Private practice of psychiatry, Santa Fe, NM.
1992-98: Clinical Director of Mental Health, New Mexico Corrections Department.
1984-1992: Psychiatrist, Penitentiary of New Mexico; Chief Psychiatrist, 1990-1992.
1982-1984: Staff psychiatrist, half-time, Sangre de Cristo Community Mental Health
Services, Raton, Las Vegas and Santa Fe, NM.
1982-1984: Active Staff, St. Vincent Hospital, Santa Fe, NM.
1979-1982: Private practice of psychiatry, San Francisco, CA.
1979-1982: Active Staff, Pacific Medical Center, San Francisco, CA; Executive
Committee, Department of Psychiatry, 1980-81.

PROFESSIONAL ASSOCIATION POSITIONS

Fellow, American Psychiatric Association, 2000-present.

President, Psychiatric Medical Association of New Mexico (APA District Branch), 1996-
1997; Legislative Representative, 1994-1995 and 1997-present.

PUBLICATIONS

Greer, G. & Tolbert, R., 1998. A Method of Conducting Therapeutic Sessions with MDMA. *Journal of Psychoactive Drugs* 30:371-379.

Co-Editor, *Journal of Psychoactive Drugs*, Volume 30, Number 4, October – December, 1998.

Greer, G. & Tolbert, R., 1990. The Therapeutic Use of MDMA. In *Ecstasy: The Clinical, Pharmacological and Neurotoxicological Effects of the Drug MDMA* (Peroutka, S.J., ed.). Boston, MA: Kluwer Academic Publishers.

Greer, G. & Tolbert, R., 1986. Subjective Reports of the Effects of MDMA in a Clinical Setting. *Journal of Psychoactive Drugs* 18:319-327.

Greer G., 1985. Using MDMA in psychotherapy. *Advances* 2: 57-59.

Sunday, February 04, 2001

Michael Courlander
Public Affairs Officer
US Sentencing Commission

Dear Mr. Courlander,

As invited by your commission, I am writing in response to proposed legislation (Under the Ecstasy Anti-Proliferation Act of 2000 (section 3664 of Pub. L. 106-310)) that would make the punishment (federal sentencing) for MDMA (Ecstasy) offenses to be the same as that of heroin.

I am an Assistant Professor at the University of South Florida and I conduct both basic and clinical research in the area of neuropsychopharmacology. Please note that my scientific opinion with regard to the sentencing of MDMA in no way reflects the views or opinions of the University of South Florida or any of its affiliates. Moreover, I do not advocate the recreational use of MDMA or any other controlled substance for that matter and my primary reason for writing this letter is to support "harm reduction."

In my view, any legislation that will ultimately affect the lives of millions of adolescents and young adults must come about after thoughtful and objective consideration of the scientific evidence supporting the need for such legislation as well as the probable consequences of such legislation.

With regard to the scientific evidence, I am not aware of any evidence (other than chemical homology) suggesting that Ecstasy has psychological effects on the user similar to the hallucinogenic effects of mescaline. Over the past 15 years, it has become a well-established scientific fact that MDMA fits into a completely different therapeutic class, known as entactogens (Nichols 1986). Most human reports suggest that MDMA produces feelings of empathy towards others, but without the changes in perception in time and space that accompany most other hallucinogenic drugs. In fact, a recent scientific study by a well-respected laboratory reported that MDMA improved measures of sensory gating in humans, an effect essentially the opposite one sees with other classic hallucinogens (Vollenweider et al. 1999).

It is true that MDMA has some stimulant properties that resemble amphetamine, though it is unclear what this means in terms of comparable health risks. Moreover, the risk of addiction, either physical or psychological, appears less than that seen with other psychostimulants such as nicotine, cocaine, or amphetamine and considerably less than that seen with heroin. In fact, MDMA's lower abuse potential relative to other psychostimulants may be one of the few characteristics that it shares with classical hallucinogens.

In summary, it seems premature to conclude based on the available evidence that MDMA represents a societal or individual health risk equivalent to that of heroin. Thus, there is little or no scientific basis for the need of the proposed legislation.

What is more alarming to me is the apparent lack of consideration of probable consequences that the proposed legislation would have on the future manufacture, importation, and trafficking of Ecstasy. Based on the history of similar legislation aimed at reducing the proliferation of cocaine, heroin, and amphetamine, it is clear that such legislation will only make matters far worse (Ray and Ksir, 1999). That is, the consolidation of Ecstasy manufacturing, importation, and trafficking by larger more powerful organizations using methods already established for smuggling heroin, cocaine, and amphetamine will

surely follow if the proposed legislation is passed. Need I remind the sentencing committee of its own report regarding the adverse impact of strict legislation on crack cocaine?

Based on my assessment of the literature, I would suggest that the penalty should be less than or comparable to that for mescaline (which would result in a marihuana equivalency for Ecstasy of 10 gm). It seems reasonable, that the Drug Quantity Table in §2D1.1 could be revised to provide additional incremental penalties (even exponential quantity increases) so as to punish more severely those offenders who traffic in large quantities (e.g. > than kg quantities) and market to children and adolescents.

The most important recommendation that I can make at this time is not to make a hasty decision based on emotion rather than logic and scientific fact.

Sincerely,

Doug Shytle, Ph.D.

References:

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- Ray and Ksir (1999) *Drugs, Society, and Human Behavior*. 8th edition, McGraw-Hill, Inc.
- Vollenweider FX, Remensberger S, Hell D, Geyer MA (1999) Opposite effects of 3,4-methylenedioxymethamphetamine (MDMA) on sensorimotor gating in rats versus healthy humans. *Psychopharmacology (Berl)* 143: 365-72.

CURRICULUM VITAE

Roland Douglas Shytle, Ph.D.

Offices:

Center for Aging and Brain Repair
Department of Neurosurgery, MDT-78
University of South Florida
College of Medicine
12901 Bruce B. Downs Boulevard
Tampa, Florida 33612-4799
(813) 974-1452
Fax: (813) 974-3223
email: dshytle@hsc.usf.edu

Department of Psychiatry and Behavioral Medicine
University of South Florida
College of Medicine
3515 East Fletcher Avenue, MDT-14
Tampa, Florida 33613

Home:

18416 Sterling Silver Circle
Lutz, Florida 33549
(813) 949-3996

Career

Objective:

Research and Teaching in Basic and Clinical Neuropsychopharmacology

Education:

Ph.D. 1994, Experimental Psychology (Interdisciplinary Specialization in Neuroscience)
University of Wyoming, Laramie WY

B.A. 1990, Psychology
University of North Carolina, Wilmington, NC

Professional

Experience:

June 1996 - Present

Assistant Professor

Departments of Neurosurgery, Psychiatry and Behavioral Medicine,
Psychology and Neuroscience Program
University of South Florida, College of Medicine, Tampa, FL

July 1994 - May 1996

Post-doctoral Research Fellow

Division of Neurosurgery, Department of Surgery,
Department of Psychiatry and Behavioral Medicine &
University of South Florida, College of Medicine, Tampa, FL

August 1990 - June 1994

Graduate Research and Teaching Assistant

Departments of Psychology and Neuroscience Program

University of Wyoming, Laramie, Wyoming

January 1989 - May 1990

Research Assistant

Department of Psychology

University of North Carolina at Wilmington

Grant

History:

October 2000 - October 2001 (Active)

Total Direct Cost: \$150,000

Principal Investigator & Grant Writer

Archie A. Silver (Co-PI)

Layton BioScience, Inc.

Behavioral and Neuropharmacological Profiles of Novel Nicotine Antagonists for Neuropsychiatric Disorders

December 1999 - January 2001 (Active)

Total Direct Cost: \$40,000

Principal Investigator

Roger Papke (Co-PI) at the University of Florida

Layton BioScience, Inc.

Analysis of Mecamylamine Congeners on Human Nicotinic Receptor Subtypes

May 2000 - May 2001

Total Direct Costs: \$7,500

Principal Investigator

Stan Nazian (Co-PI)

USF Creative Young Faculty Award

Role of Nicotinic Receptors in the Hypothalamic CRH Response to Acetylcholine

August 2001 - November 2003 (under review)

Total Direct Cost: \$150,000

Principal Investigator

David Sheehan (Co-PI) & Archie A. Silver (Co-PI)

The Stanley Foundation

Phase II Trial of Mecamylamine for Bipolar Disorder

December 2001 - November 2004 (under review)

Total Direct Cost: \$375,000

Principal Investigator

David Sheehan (Co-PI) & Archie A. Silver (Co-PI)

NIH: National Institutes of Mental Health

Phase II Trial of Mecamylamine for Bipolar Disorder

February 1998 - 1999

Total Direct Costs: \$7,000

Principal Investigator

USF College of Medicine Equipment Grant

May 1994 - May 1998 (completed)

Total Direct Cost: \$337,592

Co-Investigator

Paul R. Sanberg (PI) & Archie A. Silver (Co-PI)

NIH: National Institutes of Neurological Disorders and Stroke NS32067-02

Nicotine/Haloperidol Therapy in Tourette Syndrome

May 1996 - May 1998 (completed)

Total Direct Cost: \$24,300

Grant Writer

Paul R. Sanberg (PI) & Brian McConville (Co-PI)

Tourette Syndrome Association

Transdermal Nicotine and Haldol for Treatment of Tourette Syndrome

July 1996 - May 1998 (completed)

Total Direct Cost: \$18,000

Co-Investigator & Grant Writer

Paul R. Sanberg (Co-recipient of the 1996 Ove Ferno Grant Prize)

Collegium Internationale Neuro-Psychopharmacologicum

Transdermal Nicotine for the treatment of Attention-Deficit Hyperactivity Disorder

May 1996 - May 1997 (completed) Total Direct Cost: \$12,420
Co-Investigator & Grant Writer
Paul R. Sanberg (PI) & Archie A. Silver (Co-PI)
NIH: National Institutes of Neurological Disorders and Stroke NS32067
Minority Supplement Grant for NS32067

July 1997 - June 1998 (Approved but not funded) Total Direct Cost: \$40,000
Grant Writer
Paul R. Sanberg (PI) & Archie Silver (Co-PI)
Tourette Syndrome Association
Transdermal Nicotine Alone for Treatment of Tourette Syndrome

May 1995 - May 1997 (Approved but not funded) Total Direct Cost: \$39,801
Principal Investigator (Post-doctoral Fellowship)
Paul R. Sanberg (Supervisor)
Tourette Syndrome Association
Nicotine Potentiation of Haloperidol: Preclinical Relevance to Tourette's Syndrome

May 1989 - May 1990 (Completed) Total Direct Cost: \$250
Principal Investigator
North Carolina Academy of Science
Effects of Dopamine Antagonists on Avoidance Behavior

**Current
Focus:**

Basic Research

Supervising pre-clinical investigations of a new medication for the possible treatment several neuropsychiatric disorders. Investigations involve evaluation of the racemic as well as the stereoisomers of medication in behavioral and neurochemical experiments conducted in rats.

Clinical Research

Clinical studies evaluating the therapeutic potential of a new medications for Tourette's syndrome, ADHD, and Bipolar Disorder.

Both projects involve collaboration with seven USF employed investigators.

**Teaching
Experience:**

Psychobiology
Drugs and Human Behavior
General Psychology
Physiological Psychology

**Peer
Reviewer:**

Pharmacology, Biochemistry and Behavior
Psychopharmacology
General Pharmacology
Psychological Medicine
Neuropsychopharmacology

CNS Drugs

[81]

Academic

Committees: 2000 -2001 USF College of Medicine Research Committee
2000 -2001 USF College of Medicine Space Committee
2000 -2001 USF College of Medicine Academic Computer Committee
1999 NIH Brain Disorders & Clinical Neuroscience Review Committee
1997-Present Basic and Clinical Research Review Committee
USF Department of Psychiatry and Behavioral Medicine
1995 USF Institute on Aging

Non Academic

Committees: 2001-2002 Medical Advisory Board for the Florida Chapter of the
Tourette Syndrome Association

Professional

Affiliations: Society for Neuroscience
International Behavioral Neuroscience Society
Tourette's Syndrome Association

Awards:

2000
USF Creative Young Faculty Research Award

1997 & 1996
Young Psychopharmacologist Award (Nominee)
American Psychological Association, Section 28

1995
New Investigator Award (Nominee)
NIH: New Clinical Drug Evaluation Unit Program (NCDEU)

1990 - 1994
University of Wyoming's Graduate Research and Teaching Fellowship

1993
University of Wyoming's Graduate Travel Assistance Award

1993
Lillian Porteneir Scholarship

1990
First Place Poster Award at the North Carolina Psychological Association

1989
Communication Workers Association Academic Scholarship

1985

Beta Sigma Phi Academic Scholarship

Patents

Issued:

Sanberg PR; **Shytle RD**; & Silver, AA: Nicotine antagonists for nicotine-responsive neuropsychiatric disorders. United States Patent Office, Patent #6,034,079. Issued 3/7/00.

Patents

Applied:

Shytle RD; Sanberg, PR; Newman M, & Silver AA: WO035279A1: Exo-S-Mecamylamine Formulation And Use In Treatment Of Neuropsychiatric Disorders. Issued/Filed Dates: June 22, 2000 / Dec. 16, 1999

Shytle RD; Sanberg, PR; Newman M, & Silver AA: WO035280A1: Exo-R-Mecamylamine Formulation And Use In Treatment Of Neuropsychiatric Disorders. Issued/Filed Dates: June 22, 2000 / Dec. 16, 1999

Shytle RD; Sanberg, PR; & Silver AA: Method of treating cocaine addiction. United States Patent Office (Filed in 2000).

Shytle RD; Sanberg PR, & Silver AA: Method of treating cognitive deficits in learning and memory. United States Patent Office (Filed in 2000).

Speaking

Engagements:

(1994) SCH23390 and Mecamylamine Prevent the Development of the Sensitized Locomotor Response to Nicotine. Graduate Seminar, Department of Pharmacology, Bowman Gray School of Medicine, Wake Forest, NC.

(1995) Nicotine Therapeutics for Neuropsychiatric Disorders. Presented at the USF Department of Biology Seminars in Neuroscience.

(1995) Nicotine and Tourette's Syndrome. Presented at the First Annual Duke Nicotine Research Conference, Duke University

(1996) Evidence of the Neuroprotective Actions of Nicotine. Presented at the International Behavioral Neuroscience Society Conference, Cancun, Mexico

(1996) Nicotine and Tourette's Syndrome. GRAND ROUNDS, USF Department of Psychiatry and Behavioral Medicine.

(1999) Mecamylamine for Neuropsychiatric Disorders. Board of Directors, Layton BioScience, Inc.

(1999) Mecamylamine for Neuropsychiatric Disorders. Preclinical and Clinical Divisions, Cephalon Pharmaceutical Company, Inc.

(1999) Nicotinic Antagonists for Neuropsychiatric Disorders. Preclinical and Clinical Divisions, Forest Labs, Inc.

(1999) Nicotinic Antagonists for Neuropsychiatric Disorders. Graduate Seminar, USF Department of Pharmacology.

(2000) Nicotinic Medications and Tourette Syndrome. Tourette Syndrome Association (Florida State Chapter).

(2000) Mecamylamine and Tourette Disorder. Departments of Pharmacology and Psychiatry, University of Florida, Gainesville, FL

(2000) Update: Nicotinic Medications and Tourette Syndrome. Tourette Syndrome Association (Pinellas County Chapter, Florida).

**Peer
Reviewed**

Publications:

Borlongan CV, Martinez R, **Shytle RD**, Cahill DW, Sanberg PR (1995). Striatal Dopamine-Mediated Motor Behavior Is Altered Following Occlusion Of The Middle Cerebral Artery. Pharmacology, Biochemistry and Behavior. 52(1):225-229.

Shytle RD, Borlongan CV, Sanberg PR (1995). Nicotine blocks kainic acid induced wet dog shakes in rats. Neuropsychopharmacology. 13(3):261-264.

Borlongan CV, **Shytle RD**, Shajmil DR, Shimizu S, Freeman TB, Cahill DW, Sanberg PR (1995). (-)-Nicotine Protects against Systemic Kainic Acid-Induced Excitotoxic Effects. Experimental Neurology. 136: 261-265.

Shytle RD, Borlongan CV, Cahill DW, Sanberg PR. (1996). Evidence for the neuroprotective actions of nicotine in an in vivo model of excitotoxicity. Medical Chemistry Research. 6/7-8:555-561.

Silver AA, **Shytle RD**, Philipp MK, Sanberg PR (1996). Long-term potentiation of neuroleptics with transdermal nicotine in Tourette's syndrome. Journal of the American Academy of Child & Adolescent Psychiatry 35(12):1631-1636.

Polgar S, McGartland M, Borlongan CV, **Shytle RD**, Sanberg PR (1996). Smoking Cessation Programs are Neglecting the Needs of Persons with Neuropsychiatric Disorders [letter]. Australian and New Zealand Journal of Medicine. 26: 572-573.

Shytle RD, Silver AA, and Sanberg PR (1996). Nicotine, Tobacco, and Addiction [letter]. Nature. 384(6604):18-19.

Sanberg PR, Silver AA, & **Shytle RD** (1998) Treatment of Tourette's Syndrome with Mecamylamine. Lancet. 352:705-706.

Newman, MN, **Shytle RD**, & Sanberg PR (1999) Locomotor behavioral effects of prenatal and postnatal nicotine exposure in rat offspring. Behavioral Pharmacology 10:699-706.

Silver AA, **Shytle RD**, & Sanberg PR (1999) Clinical experience with transdermal nicotine patch in Tourette's syndrome. CNS Spectrums 4:68-76.

Goldman J, **Shytle RD**, & Sanberg PR (1999) Adding behavioral therapy to medication for smoking cessation. JAMA 281:1984.

- Silver AA, Penny E, **Shytle RD**, Sanberg PR & George TP (2000) Clinical relevance of the nicotine receptor antagonist mecamylamine in treating neuropsychiatric disorders. Today's Therapeutic Trends 18-3 255-273.
- Shytle RD**, Silver A, & Sanberg PR (2000) Comorbid bipolar disorder in Tourette syndrome responds to nicotinic receptor antagonist, mecamylamine (Inversine®). Biological Psychiatry 48:1028-1031.
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- Papke R, Sanberg PR, & **Shytle RD** (2000) Analysis on Mecamylamine stereoisomers on human nicotinic receptor subtypes. Journal of Experimental Pharmacology and Therapeutics (in press)
- Silver AA, **Shytle RD**, Sheehan D, Sheehan K, Ramos A, & Sanberg PR (2000) Multi-Center Double Blind Placebo Controlled Study of Mecamylamine (Inversine®) Monotherapy for Tourette Disorder. Journal of the American Academy of Child and Adolescent Psychiatry (submitted)
- Silver A, **Shytle RD**, Wilkinson B, Katherine-Philipp M, McConville B, Fogelson H, & Sanberg PR (2000) Transdermal Nicotine and Haloperidol in Tourette's Syndrome: A double-blind placebo-controlled study. Journal of Clinical Psychiatry (submitted)
- Shytle RD**, Penny E, Goldman J & Sanberg PR: Mecamylamine (Inversine®): An old hypertensive medication with new research direction? (2000) Journal of human hypertension (submitted)
- Shytle R, Newman M, Alvarez F, Potts S, Manresa J, Sanberg P: Mecamylamine Prolongs the Duration of Haloperidol-Induced Catalepsy In Rats. International Journal of Neuroscience (submitted)
- Shytle RD**, Silver AA, Newman MB, & Sanberg PR (2000) Nicotinic receptor function and depression among adolescent smokers. Pediatrics (submitted)
- Shytle RD**, Newman M & Sanberg PR (2000) Mecamylamine and its stereoisomers prevent the development of the sensitized locomotor response to nicotine. Drug Development Research (submitted)
- Shytle RD**, Silver AA, Sheehan K, Sheehan D, & Sanberg PR (2001) Potential mood stabilizing properties of Mecamylamine (Inversine) in children and adolescents with Tourette disorder. Journal of the American Academy of Child and Adolescent Psychiatry (submitted)

- Newman, MB, Manresa JJ, Sanberg PR & **Shytle RD** (2001) Effects of low doses of mecamlamine in two animal models of anxiety. Experimental and Clinical Psychopharmacology (submitted)
- Newman, MB, Manresa JJ, S E. Potts, F Alvarez, P R. Sanberg PR & **Shytle RD** (2001): Nicotine Induced Seizures Blocked By ($\pm$)-Mecamlamine And Its Stereoisomers. Life Science: Pharmacology Letters (submitted)
- Shytle RD**, Newman MB, Alvarez F, Potts SE, Manresa JJ, Sanberg PR (2000) Mecamlamine (Inversine[®]) prolongs the duration of haloperidol-induced catalepsy. International Journal of Neuroscience (submitted)
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- Shytle RD**, Newman M, others, & Sanberg PR (2000) CNS Receptor Screen on the Nicotinic Antagonist, Mecamlamine (Inversine[®]). Psychopharmacology (In preparation)
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**Reviews &
Book Chpts:**

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Sanberg PR, Silver AA, **Shytle RD**, Philipp MK, Cahill DW, Fogelson HM, McConville BJ (1997). Nicotine for the Treatment of Tourette's Syndrome. Pharmacology and Therapeutics 74(1): 21-25.

Shytle RD, Silver AA, Newman MB, & Sanberg, PR: Nicotinic Therapeutics for Tourette Syndrome and other Neuropsychiatric Disorders: From Lab To Clinic (2000) In: Central Nervous System Diseases: Innovative Animal Models from Lab to Clinic Humana Press (eds. DF Emerich RL Dean PR Sanberg) Chapter 22 431-440.

Shytle RD, Baker M, Silver AA, Soloman M, & Sanberg, PR (2000) Smoking, Nicotine and Movement Disorders. In: Nicotine in Psychiatry: Psychopathology and Emerging Therapeutics. Clinical Practice Series (Eds. M. Piasecki and P. Newhouse) APA Press: Halifax: Canada 183-202

Shytle RD, Silver AA, Newman M, Wilkinson BJ, & Sanberg, PR (2001) Nicotinic Medications and Tourette's Disorder. Animal Models in Nicotine Research CRC Press: Boca Raton (in press)

Abstracts:

Shytle RD (1990). The Effects of Specific And Nonspecific Dopamine Antagonists on Avoidance Responding in Rats. The Journal of the Elisha Scientific Society. 106(4): 142-143.

Galizio M, Gregg E, Kelly L, Shriner RL, **Shytle RD** (1990). Timeout From Avoidance: A Novel Test Of Drug Effects On Negatively Reinforced Behavior. Society of Neuroscience Abstracts. 16(2): 1102.

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Shytle RD, Borlongan CV, Freeman TB, Cahill DW, Sanberg PR. (1995) Nicotine blocks kainic acid induced wet dog shakes in rats. Society of Neuroscience Abstracts. 21(1):73.

Sanberg PR, **Shytle RD**, Borlongan CV, Silver AA, Philipp MK, Cahill DW, Freeman TB. (1995) Nicotine, Tourette's Syndrome, and Neuroprotection. International Behavioral Neuroscience Society (Nicotine Satellite Meeting) 1:A2.

Shytle RD. Evidence of the Neuroprotective Actions of Nicotine (1995) International Behavioral Neuroscience Society (Nicotine Satellite Meeting) 2:A5.

- Shytle RD**, Silver AA , Philipp MK, Sanberg PR (1996) Long Term Therapeutic Response to Transdermal Nicotine in Tourette's Syndrome Patients. International Behavioral Neuroscience Society. 5:A201.
- Shytle RD**, Borlongan CV, Sanberg PR (1996) Kainic Acid Induced Behavioral Syndrome: Challenge With Nicotinic Receptor Ligands. Society of Neuroscience Abstracts.
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- Shytle RD**, Silver AA, Sanberg PR (1998) Nicotinic Antagonist Improves Tourette's Syndrome International Behavioral Neuroscience Society, Richmond, VA, pp 46
- Shytle RD**, Silver AA, Wilkinson BJ, Newman MB, Katherine-Phillipp M, Sanberg PR, McConville B, Fogelson H. (1999) Treatment of Tourette Disorder with Transdermal Nicotine and Haloperidol. IBC's 2nd International Symposium on Nicotinic Acetylcholine Receptors, Advances in Molecular Pharmacology and Drug Development. Annapolis, MD.
- Shytle RD**, Silver AA, Wilkinson BJ, Newman MB, Katherine-Phillipp M, Sanberg PR, McConville B, Fogelson H. (1999) Treatment of Tourette Disorder with Transdermal Nicotine and Haloperidol. 3rd International Scientific Symposium on Tourette Syndrome. New York City, NY.
- Shytle RD**, Newman MB, Amiri L, Wilkinson BJ, Diamond DM, Nazian SJ, Silver A., Sanberg PR. (1999) Low Doses of Mecamylamine Produce Anxiolytic and Antidepressant Effects in Rats. 3rd International Scientific Symposium on Tourette Syndrome. New York City, NY.
- Sheehan D, **Shytle RD**, Newman MB, Sanberg PR, Silver AA. (1999) Development of Tourette Disorder Scale (TODS). New Clinical Drug Evaluation Unit Program, 3rd annual Meeting. (Poster 182) Boca Raton, FL.
- Newman MB, **Shytle RD**, Kirstein CL, and Sanberg P.R. (1999) Prenatal and postnatal exposure of nicotine: locomotor effects in rat offspring. Society of Neuroscience Abstracts.
- Shytle RD**, Newman MB, Amiri L, Wilkinson BJ, Diamond DM, Nazian SJ, Silver AA, Sanberg PR. (1999) Low Doses of Mecamylamine Produce Anxiolytic and Antidepressant Effects in Rats. Society of Neuroscience Abstracts.
- Sanberg PR, **Shytle RD**, & Silver AA (2000) Nicotinic Drugs Improve Children with Tourette's syndrome and Behavioral Problems. American Association for the Advancement of Science Abstracts A56
- Jacobs A, Bowersox S, Kisicki JC, Sanberg PR, & **Shytle RD** (2000) Pharmacokinetic evaluation of mecamylamine (Inversine®) in Adults. 10th Neuropharmacology Conference: Neuronal Nicotinic Receptors (Abstract 195)

- Newman MB, Alvarez F, Potts SE, Manresa JJ, **Shytle RD**, & Sanberg, PR (2000) Mecamylamine Prolongs the Duration of Haloperidol-Induced Catalepsy in Rats. 10th Neuropharmacology Conference: Neuronal Nicotinic Receptors (Abstract 196)
- Silver AA, **Shytle RD**, Sheehan DV, Sheehan KH, Ramos A & Sanberg, PR (2000) Safety and Exploratory Study of Mecamylamine Monotherapy for Tourette's syndrome. 10th Neuropharmacology Conference: Neuronal Nicotinic Receptors (Abstract 212)
- Papke RL, Sanberg PR, & **Shytle RD** (2000) Analysis of Mecamylamine Stereoisomers on Human Nicotinic Receptor Subtypes. 10th Neuropharmacology Conference: Neuronal Nicotinic Receptors (Abstract 94)
- Newman MB, Manresa JJ, Potts SE, Alvarez F, Sanberg PR, & **Shytle RD** (2000) Nicotine Induced Seizures are Blocked by ($\pm$)-Mecamylamine and its Stereoisomers. Society for Neuroscience 338.16:901
- Shytle RD**, Newman MB, Potts SE, Manresa JJ, Silver AA, & Sanberg PR (2000) Stereoisomers of Mecamylamine Prevent Induction of Sensitized Locomotor Response to Nicotine. Society for Neuroscience 526.3:1403
- Shytle RD**, Silver AA, & Sanberg PR (2000) Mecamylamine (Inversine[®]) as Proof of Principle for Treating Neuropsychiatric Disorders with Nicotinic Antagonists. American College of Neuropsychopharmacology Meeting San Juan, Puerto Rico.
- Shytle RD**, Silver AA, Sheehan DV, Sheehan KH, & Sanberg PR Potential mood stabilizing properties of mecamylamine (Inversine[®]) in children and adolescents with Tourette disorder. Society for Biological Psychiatry New Orleans, LA

specmind

From: "Donny Gann" <dgann@jhsph.edu>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 8:08 AM
Subject: mdma sentencing guidelines

To the Sentencing Commission: I have worked for the last 7 years as an interviewer and HIV counselor in studies of injection drug users' risks for contracting HIV. In my position, I have had ample opportunity to witness the destructive effects of heroin, cocaine and methamphetamine on the personalities and social relationships of users and addicts. During this time, I have also been aware of the increasing use of MDMA by young people through media reports and through contact with young users. Based on my experience and observation, I am writing in strong opposition to the proposed new sentencing guidelines for MDMA and related substances.

Unlike heroin, cocaine and methamphetamine, MDMA is not physically or even psychologically addictive, as the Commission has heard. Given this, I can see no reason MDMA should be treated as severely as heroin, a drug which is highly addictive, and which compels addicts to behave in severely antisocial ways in order to procure their drug. We simply do not find MDMA users stealing from others, including friends and family, resorting to prostitution or to violence to make money to buy MDMA. All of these behaviors are common among many users of heroin, cocaine and methamphetamine.

I understand that the Commission must increase the penalties due to Congressional mandate. Given that MDMA use is not addictive nor socially destructive, I feel that the increase should be far smaller than that proposed. I feel that MDMA has yet to cause anything like the sort of personal and social destruction we have seen from powder cocaine, and so I believe the penalty should be less than that for cocaine. Under no circumstances should it be greater.

Donald Gann
Johns Hopkins School of Public Health

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2/5/2001



DEPARTMENT OF MOLECULAR & CELL BIOLOGY
DIVISION OF NEUROBIOLOGY

David E. Presti, PhD

LIFE SCIENCES ADDITION
BERKELEY, CALIFORNIA 94720-3200

phone: 510 643 2111
e-mail: presti@socrates.berkeley.edu

February 5, 2001

Dear Members of the Sentencing Commission:

I wish to comment on the Sentencing Commission's pending consideration of the drug-equivalency status of "Ecstasy" (3,4-methylenedioxymethamphetamine or MDMA). My understanding is that the Sentencing Commission does its best to use scientific standards in rating the seriousness of a drug for the purposes of determining drug equivalency.

Despite the illicit use of MDMA in nonmedical settings, which the Commission has been asked to address, MDMA has the potential for substantial medical benefit when used in therapeutic settings and it is anticipated that scientific and clinical research will go forth in this area. The DEA's own administrative law judge recommended the classification of MDMA as a Schedule III rather than a Schedule I substance following a series of hearings in the late 1980s.

My area of scientific expertise is the effects of drugs on the human brain. My area of clinical expertise is the treatment of drug addiction. I believe that to classify "Ecstasy" equivalent gram-for-gram in seriousness to heroin is very much in conflict with all scientific, clinical, and legal evidence. User populations, context of use, risk of addiction, and other potential problematic effects are far different from those of heroin. The effects of MDMA are more similar to those of mescaline, except that, gram-for-gram, MDMA is approximately 3 times more potent than mescaline. Thus the current drug-equivalency status for MDMA is an appropriate one, given the current system.

If I can provide further answers to your questions in this matter, please feel free to contact me.

Sincerely,

David Presti, PhD
Professor of Neurobiology
Licensed Clinical Psychologist, specializing in the treatment of addiction

specmind

From: <Sheigla@aol.com>
To: <rgb@cognitiveliberty.org>
Cc: <Sheigla@aol.com>
Sent: Sunday, February 04, 2001 7:01 AM
Subject: Proposed Ecstasy Sentencing guidelines

It has been represented to the Commission that Ecstasy (i.e., MDMA, MDEA, MDA and PMA) is similar in its hallucinogenic effect on the user to mescaline, and also has been described as having an added stimulant component that can elevate heart rate, blood pressure, and body temperature. It has also been suggested that the drug is neither physically nor psychologically addictive. The Commission invites comment on these representations and on the appropriate penalty structure for Ecstasy. The proposed amendment treats Ecstasy as being of comparable seriousness to heroin, providing a marihuana equivalency for Ecstasy that is the same as heroin. Accordingly, for sentencing purposes, 1 gm of Ecstasy will be the equivalent of 1 kg of marihuana.

Should the Commission alternatively treat Ecstasy comparably to some other major drug of abuse? For example, should the Commission treat Ecstasy as being of comparable seriousness to powder cocaine (which would result in a marihuana equivalency for Ecstasy of 200 gm) or methamphetamine mixture (which would result in a marihuana equivalency for Ecstasy of 2 kg)? Or should the penalty be comparable to that for mescaline (which would result in a marihuana equivalency for Ecstasy of 10 gm) or some multiple of the penalty for mescaline? Comment also is requested regarding whether the Drug Quantity Table in §2D1.1 should be revised with respect to Ecstasy to provide additional incremental penalties (perhaps with exponential quantity increases) so as to punish more severely those offenders who traffic in larger quantities.

Dear Federal Sentencing Commissioners,

I am a Medical Sociologist who has been conducting studies of various drugs in the San Francisco Bay Area since 1974. I received my doctoral training at the University of California at San Francisco. In a separate email I will attach my curriculum vita which will provide you with information as to the breadth of my experience of conducting National of Health particularly National Institute of Drug Abuse funded studies of cocaine, heroin, methadone, marijuana and ecstasy. Most of my research has been epidemiological and has consisted of surveys as well as indepth interviews with both users and discontinuers of these various (as well as other) illicit drugs.

In fact I am in the process of preparing an application to the National Institute on Drug abuse in response to their RFA regarding Ecstasy Use and Other Drug Trends (April 25, 2001). It is our plan to study ecstasy sellers conducting an exploratory and ethnographic study of MDMA and other club drug sales at raves, clubs and private parties. It is my considered opinion that our knowledge of the effects of MDMA have not been sufficiently researched in order to be able to effectively evaluate either the immediate effects on MDMA

users or the potential long term effects.

I do know from our interviews with MDMA users (usually as a part of studies of focussed on the use of other drugs) that while many particularly younger drug users experiment with MDMA most do so in a relatively moderate fashion and the smaller percentage who use MDMA more regularly (more than once a week) go through a period of heavy MDMA use and then after a few months sometimes as long as a year they discontinue or greatly reduce use. For most people MDMA seems to have very low abuse liability because if you use too much or too often the desired effects are no longer achieved.

So for this reason, in order to keep experimenting teenagers and young adults from ending up with long prison sentences much like those given to convicted heroin addicts, I would recommend that MDMA sentencing be more in line with marijuana sentencing guidelines regarding small sales (under 10 doses) or possession.

As far as trafficking wholesale doses of the drug, once again the jury is still out. Until NIDA, NIJ and other appropriate research funding agencies have had the opportunity to fund projects (like the one I am proposing which if funded could begin by September 30, 2001) the commission choose a conservative sentencing structure again that mirrors marijuana trafficking guidelines. At least until the scientific community has had the opportunity to provide the commission with some evidence upon which to make informed and just decisions. Please don not hesitate to contact me for further information.

I

Sincerely,

Sheigla Murphy, Ph.D
Director, Center for Substance Abuse Studies
Community Health Works
Institute for Scientific Analysis
2595 Mission Street, Suite 200
San Francisco, California 94110
(415) 647-4200
(415) 647-4204

VITA

SHEIGLA B. MURPHY, Ph.D.

Director, Center for Substance Abuse Studies
Community Health Works
Institute for Scientific Analysis
2595 Mission Street, Suite 200
San Francisco, California 94110
(415) 647-4200 TELEPHONE
(415) 647-4204 FAX
Sheigla@aol.com E-MAIL

EDUCATION

- 1973: B.A., San Francisco State University, Interdisciplinary Social Sciences
1992: Ph.D., Medical Sociology, University of California, San Francisco

RESEARCH GRANTS

- 1998-2001 Institute for Scientific Analysis, San Francisco. NIDA Grant R01 DA12073
"A Study of Young Heroin Users," Principal Investigator.
- 1995-2000 Institute for Scientific Analysis, San Francisco. NIDA Grant R01 DA09827,
"An Ethnography of Victimization, Pregnancy and Drug Use," Principal
Investigator.
- 1997-2000 Institute for Scientific Analysis, San Francisco.
NIDA Grant R01 DA08322, "AIDS Prevention: Needle Exchange and
Ancillary Services," Principal Investigator.
- 1995-1998 Institute for Scientific Analysis, San Francisco.
NIDA Grant R01 DA9665, "An Ethnographic Study of Drug Use and Health
Care," Principal Investigator.
- 1995-1998 Institute for Scientific Analysis, San Francisco. NIDA Grant R01 DA09827,
"An Ethnography of Victimization, Pregnancy and Drug Use," Principal
Investigator.

- 1993-1996: Institute for Scientific Analysis, San Francisco.
NIDA Grant R01 DA08322, "AIDS Prevention: An Ethnography of Needle Exchange," Principal Investigator.
- 1991-1994: Institute for Scientific Analysis, San Francisco.
NIDA Grant R01 DA06832, "An Ethnographic Study of Pregnancy and Drugs," Co-Principal Investigator.
- 1989-1992: Institute for Scientific Analysis, San Francisco. NIDA Research Grant R01 DA05332, "Women and Cocaine," Co-Principal Investigator.
- 1987-1989: Institute for Scientific Analysis, San Francisco. NIDA Research Grant R01 DA04535, "Gay Prostitution, IV Drug Use and AIDS," Associate Project Director.
- 1987-1989: Institute for Scientific Analysis, San Francisco. National Institutes of Justice Research Grant #7-063-9-CA-IJ, "An Exploratory Study of Indirect Criminal Justice Pressures on Cocaine Sellers," Project Director.
- 1986-1987: URSA Institute, San Francisco/Los Angeles. California State Office of AIDS Contract, "AIDS Community Effectiveness Evaluation Program," Senior Research Associate.
- 1985-1989: Institute for Scientific Analysis, San Francisco. NIDA Research Grant R01 DA03804, "Methadone Treatment: A Study of a County Policy Change," Project Director.
- 1985-1987: URSA Institute, San Francisco, NIDA Research Grant R01 DA03791, "Cocaine Cessation: Treated, Untreated and Early Discontinuance," Senior Research Associate.
- 1983-1985: Institute for Scientific Analysis, San Francisco. NIDA Research Grant R01 DA02442, "Getting Off Methadone," Research Coordinator.
- 1983: URSA Institute, San Francisco. NIDA Research Grant R01 DA03391, "Youth Environment Study," Interviewer.
- 1980-1982: Institute for Scientific Analysis, San Francisco. NIDA Research Grant R01 DA02442, "Women on Methadone," Research Coordinator.
- 1977-1979: Institute for Scientific Analysis, San Francisco. NIDA Research Grant R01 DA01793, "The Career of the Woman Addict," Research Analyst.

Rosenbaum, M. and Murphy, S. "How We did the Pregnancy and Drug Use Study," in Tim Knodes editor Qualitative Methods and Drug Research: An International Perspective. London. Routledge. forthcoming, 2000.

Murphy, S. and Arroyo, K. "Women as Consumers in Drug Markets," In Natarajan, M. and Hough, M. (eds.) Illegal Drug Markets: From Research to Policy, Crime Prevention Studies Volume 11, Monsey, NY: Criminal Justice Press, 2000.

Regen, M. and Murphy, S. "Drug Users' Lay Consultation Processes: Symptom Identification and Management," in Judith Levy, Editor in Advances in Medical Sociology Greenwich, Connecticut:

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Martin's Press, 1993.

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Murphy, S. and Rosenbaum, M. "Women Who Use Cocaine Too Much: Smoking Crack vs. Snorting Cocaine," Journal of Psychoactive Drugs, 24(3):381-387, July-September 1992.

Murphy, S. Book Review, Cocaine: White Gold Rush in Peru by Edmundo Morales. International Journal of the Addictions, 1991.

Murphy, S. and Waldorf, D. "Kicking Down to the Street Doc: Shooting Galleries in the San Francisco Bay Area," Contemporary Drug Problems 28(1):9-29, Spring, 1991.

Waldorf, D., Reinerman, C. and Murphy, S. "Needle Sharing, Shooting Galleries, and AIDS Risks Among Intravenous Drug Users in San Francisco: Criminal Justice and Public Health Policy," Criminal Justice Policy Review, 3(4):391-406, 1990.

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Waldorf, D. and Murphy, S. "IV Drug Use and Syringe Sharing Practices of Call Men and Hustlers." In M. Plant (Ed.), AIDS, Drugs and Prostitution, London, England: Routledge, 1989.

Rosenbaum, M. and Murphy, S. "Opiates." In R.C. Engs (Ed.), Women: Alcohol and Other Drugs. Washington, D.C.: Alcohol and Drug Problems Association, August 1989.

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Rosenbaum, M., Irwin, J. and Murphy, S. "De Facto Destabilization as Policy: The Impact of Short-Term Methadone Maintenance," Contemporary Drug Problems, 15(4):491-517, 1988.

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Macdonald, P.T., Waldorf, D., Reinerman, C., and Murphy, S. "Heavy Cocaine Use and Sexual Behavior," Journal of Drug Issues, 18(3):437-455, Summer, 1988.

Reinerman, C., Waldorf, D. and Murphy, S. "Scapegoating and Social Control in the Construction of a Public Problem: Empirical and Critical Findings on Cocaine and Work." Research in Law, Deviance and Social Control. A Research Annual, 9:37-62, 1988.

Murphy, S. "Intravenous Drug Use and AIDS: The Social Economy of Needle Sharing," Contemporary Drug Problems 14(3):373-393, Fall, 1987.

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Rosenbaum, M. and Murphy, S. "Not the Picture of Health: Women on Methadone," Journal of Psychoactive Drugs, 19(2):217-225, April-June 1987.

Rosenbaum, M., Murphy, S. and Beck, J. "Money for Methadone: Preliminary Findings of a Study of Alameda County's New Maintenance Policy," Journal of Psychoactive Drugs, 19(1):13-19, January-March 1987.

Rosenbaum, M. and Murphy, S. "Always a Junkie?: The Arduous Task of Getting Off Methadone," Journal of Drug Issues, 14(3):527-552, Summer, 1984.

Murphy, S. Review of G. Beschner, B. Reed, J. Mondanaro (Eds.), Treatment Services for Drug-Dependent Women. Volume II, NIDA (ADM) 82-1219, 1982. In Journal of Psychoactive Drugs, 15(4), October-December 1983.

Rosenbaum, M. and Murphy, S. "Getting the Treatment: Recycling Women Addicts," Journal of Psychoactive Drugs, 13(1):1-13, January-March 1981.

Murphy, S. "Glossary." In M. Rosenbaum, Women on Heroin, New Brunswick, New Jersey: Rutgers University Press, 1981.

Research Reports

Murphy, S., Murphy, T., Sales, P., Regen, M., Duterte, M., O'Neil, S., McKearin, G., Wenger, L., and Shade, S. "Community Health Works: An Ethnographic Study of Drug Use and Health Care." Final Report to the National Institute on Drug Abuse (DA09665) June 1, 1999.

Murphy, S., Wenger, L., Kelley, M., et. al., "An Ethnographic Evaluation of San Francisco's Needle Exchange Program," Final Report to the National Institute on Drug Abuse. #R01 DA08322

Rockville, Maryland: National Institute on Drug Abuse, September, 1996.

Rosenbaum, M. and Murphy, S. "An Ethnographic Study of Pregnancy and Drugs. Final Report to the National Institute on Drug Abuse, #R01 DA06832, Rockville, Maryland: National Institute on Drug Abuse, May 1995.

Murphy, S. and Rosenbaum, M. "It Takes Your Womanhood:" Women on Crack. Final Report to the National Institute on Drug Abuse, Grant #R01 DA05332, Rockville, Maryland: National Institute on Drug Abuse, June 1992.

Rosenbaum, M., Murphy, S., Irwin, J., McDonnell, D., and Watson, L. Money for Methadone: A Study of a County Policy Change. Final Report to the National Institute on Drug Abuse, Grant #R01 DA3804, Rockville, Maryland: National Institute on Drug Abuse, 1990.

Waldorf, D., Murphy, S., Reinerman, C. and MacDonald, P.T. "Doing Coke, Quitting Coke: Final Report of the Cocaine Cessation Project." NIDA Grant #R01 DA03791-02, June 1987.

Waldorf, D., Murphy, S., Reinerman, C. and Joyce, B. Doing Coke: An Ethnography of Cocaine Users and Sellers. Washington, D.C.: The Drug Abuse Council, Inc., 1977.

PRESENTATIONS

Murphy, S. "Battered Pregnant Drug Users: How Can We Reduce Their Harms?" Bridging the Gap: Research, Practice and Policy, San Francisco, California, January 12, 2001.

Murphy, S. "What Exactly is a Heroin Overdose?" Community Epidemiology Work Group Meetings, San Francisco, California, December 12-15, 2000.

Murphy, S. and Rosenbaum, M. Author Meets Critics: Pregnant Women on Drugs: Combating Stereotypes and Stigma. American Society of Criminology, San Francisco, California, November 17 - 20, 2000.

Sales, P., Murphy S. and Choe, J. "A Secondary Analysis of Two Data Sets on Pregnancy, Drug Use and Violence," American Society of Criminology, San Francisco, California, November 17 - 20, 2000.

Murphy, T., Sales, P., Choe, J. and McKearin, G. and Murphy, S. "The Dynamics of Needle Exchange and Other Service Provision," American Society of Criminology, San Francisco, California, November 17 - 20, 2000.

Duterte, M., Hemphill, K. Murphy, T, McKearin, G. and Murphy, S. "An Ethnographic View of Young Heroin Users" American Society of Criminology, San Francisco, California, November 17 -

20, 2000.

Murphy, S., Murphy, T. and Sales, P. "What Exactly is an Overdose?" 3rd National Harm Reduction Conference, Miami, Florida, October 21 - 25, 2000.

Sales, P. and Murphy, S. "Battered Pregnant Drug Users: How Can We Reduce their Harms?" 3rd National Harm Reduction Conference, Miami, Florida, October 21 - 25, 2000.

Guiliano, R. and Murphy, S. "'Street Docs' in Action": Overdose Trainees from the San Francisco Needle Exchange," 3rd National Harm Reduction Conference, Miami, Florida, October 21 - 25, 2000.

Murphy, S. and Murphy, T. "The Social Construction of AIDS and Hep C among Young Heroin Users," American Sociological Association, Washington, DC, August 12 - 16, 2000.

Murphy, S. and T. Murphy "How Does the Provision of Ancillary Services Impact Needle Exchange?" Society for the Study of Social Problems, Washington, D.C. August 11 - 13, 2000.

M. Duterte, K. Hemphill, S. Murphy and T. Murphy. "The First Time: The Initiation of Young Heroin Users," Society for the Study of Social Problems, Washington, D.C. August 11 - 13, 2000.

Sales P., Murphy, S. and Choe, J. "Secondary Analysis of Two Data Sets on Pregnancy, Drug Abuse and Violence," Society for the Study of Social Problems, Washington, D.C. August 11 - 13, 2000.

Murphy, S., Sales, P. and Choe, J. "The Social Construction of a New Drug Problem: "Meth Babies," Drug Policy Foundation XIII, Washington, D.C., May 16 - 20, 2000.

Murphy, S., and Duterte, M. "An Ethnographic Study of Young Heroin Users." International Harm Reduction Conference, Jersey, Channel Islands, United Kingdom, April 8 - 13, 2000.

Murphy, S. and Murphy T. "Needle Exchange and Ancillary Services: Preliminary Ethnographic Findings," National Syringe Exchange Conference X, Portland Oregon, April 27-29, 2000.

"The Health Practices of San Francisco Drug Users" at the Society for Social Problems San Francisco, California, August, 1998.

Murphy, S., Ferreboeuf, M. and Shade, S. "Reduce the Violence, Reduce the Drug Use During Pregnancy," American Society of Criminology, San Diego, California, November 19-22, 1997.

Murphy, S. "What's Drugs Got to Do With It? Pregnancy and Violence," Society for the Study of Social Problems, Toronto, August 8-10, 1997.

Murphy, S. "Pregnancy, Drug Use and Violence: Preliminary Findings," International Conference on the Reduction of Drug Related Harm, Paris, 23-27 March 1997.

Wenger, L. and Murphy, S. "The Effects of Drug of Choice on Utilization of Needle Exchange Program Services: The Push Me Pull You Effect," American Public Health Association, New York, New York, November 1996.

Shade, S.B., Wenger, L. and Murphy, S. "How Does Drug of Choice and Method of Administration Impact the Health Status of Injecting and Non-Injecting Drug Users?" American Public Health Association, New York, New York, November 1996.

Murphy, S. "An Ethnography of Needle Exchange: Secondary Exchangers," American Society of Criminology, Chicago, Illinois, November 1996.

Murphy, S. "Pregnancy, Drug Use and Violence: Which Comes First, Drugs or Violence?" American Society of Criminology, Chicago Illinois, November 1996.

Murphy, S. "An Ethnography of Victimization, Pregnancy, and Drug Use" San Francisco Research Treatment Center Colloquium on Violence and Drug Use: Treatment and Research Developments, University of California San Francisco, August 23, 1996.

Murphy, S. "Pregnancy, Drug Use and Violence: Which Comes First, Drugs or Violence?" The Society for the Study of Social Problems, New York, New York, August 1996.

Kelley, M.S. and Murphy, S. "A Comparison of HIV/AIDS Risk Behaviors Between Old and New Injection Drug Users," Society for the Study of Social Problems, New York, New York, August 1996.

Murphy, S. "An Ethnography of Victimization, Pregnancy, and Drug Use," San Francisco Research Treatment Center Colloquium on Violence and Drug Use: Treatment and Research Developments, University of California San Francisco, August 23, 1996

Wenger, L. and Murphy, S. "Barriers to Needle Exchange: A Case for Expansion of Services and Legislative Reform," 123rd Annual Meeting of the American Public Health Association, San Diego, California, October 1995.

Murphy, S. "They're Not Just Giving Out Needles: The Public Health Impact of Needle Exchange on the San Francisco Injection Drug Using Community," AIDS Update, San Francisco, California, February 1 - 3, 1995.

Murphy, S. "Let's Get Personal: Becoming Emotionally Involved in Research," American Society of Criminology Meetings, Miami, Florida, November 1994.

Murphy, S. "Women and the Drug Crime-Nexus at NIDA," American Society of Criminology Meetings, Miami, Florida, November 1994.

Wenger, L. and Murphy, S. "They are Not Just Giving Away Needles: The Impact of Needle Exchange on the San Francisco Injection Drug Using Community," American Public Health Association Meetings, Washington, D.C., October 1994.

Murphy, S. "Needle Exchange Panel," Community Epidemiology Work Group, National Institute on Drug Abuse, San Francisco, December 14-17, 1993.

Murphy, S. "Entree Issues in Needle Exchange Evaluation Research," National Institute on Drug Abuse Second National Conference on Drug Abuse and Research and Practice: An Alliance for the 21st Century, Washington, D.C., July 14-17, 1993.

Kearney, M., Murphy, S., Irwin, K. and Rosenbaum, M. "Struggling Toward the Positive: The Trajectory of Pregnancy on Crack Cocaine," Western Society for Research in Nursing, Seattle, WA, May 1, 1993.

Kearney, M., Irwin, K., and Murphy, S. "Crack Cocaine Users and Prenatal Care," Annual Meeting of Association of Women's Health, Obstetric and Neonatal Nurses, Reno, Nevada, June, 1993.

Kearney, M. and Murphy, S. "At Least I Feel Guilty: Emotions and Reflexivity in Pregnant Drug Users' Accounts," American Sociological Association, Miami, FL, August 1993.

Kearney, M., Murphy, S., Irwin, K. and Rosenbaum, M. "Salvaging Hope: Pregnant Crack Users' Conflicts and Strategies," ANA Council of Nurse Researchers 1993 Scientific Session, Washington, DC, November 1993.

Murphy, S. "The Crack Experience for Women," Society for the Study of Social Problems, Miami, Florida, August 1993.

Murphy, S. "The Crack Experience for Women," American Society of Criminology Meetings, Phoenix, Arizona, October 1993.

(With Katherine Irwin) "Fuck the Bitches: Gender Roles and Crack Use," Society for the Study of Social Problems, Pittsburgh, Pennsylvania, August 1992.

(With Margaret Kearney) "Running From Room to Room: Mothering on Crack," American Society of Criminology Annual Meeting, San Francisco, CA, November 1991.

(With Brandy Britton) "Stressed and Depressed: Reconceptualizing the Costs and Benefits of Informal Caregiving," American Sociological Association Annual Meeting, Washington, D.C., August 1990.

(With Dan Waldorf and David Lauderbach) "Cocaine Sellers: Self-Reported Reasons to Stop Selling Cocaine," American Society of Criminology Annual Meeting, Reno, Nevada, November 1989.

Panel Participant, "Prohibition's Secret: Controlled Drug Use," Drug Policy Foundation Annual Conference, Washington, D.C., November 1989.

"Needle Sharing Among Street Youths," Public Health Service Bi-Regional Consensus Conference: HIV Prevention Strategies for Runaway and Homeless Youth, San Francisco, California, October 11-13 1989.

"Living with the Dirty Secret: Problems of Disclosure for the Methadone Maintained," Society for the Study of Social Problems Annual Meeting, Berkeley, California, August 1989.

(With Dan Waldorf, David Lauderbach, Craig Reinerman and Toby Marotta) "Needle Sharing Among Male Prostitutes: Preliminary Findings of the Prospero Project," American Sociological Association Annual Meeting, Berkeley, California, August 1989.

(With Dan Waldorf) "IV Drug Use and Syringe Sharing Practices of Call Men and Hustlers," Symposium on Prostitution and Psychoactive Drugs, Scottish Health Group, Edinburgh, Scotland, February 20-23, 1989.

(With Marsha Rosenbaum and Jeanette Irwin) "Across the Board: Uniform Methadone Maintenance Policy Affecting Three Types of Clients," American Society of Criminology Annual Meeting, Chicago, Illinois, November 1988.

(With Dan Waldorf, Craig Reinerman and Toby Marotta) "IV Drug Use and Needle Sharing: Bar, Erotic Bookstore and Street Hustlers," American Society of Criminology Annual Meeting, Chicago, Illinois, November 1988.

(With Dan Waldorf) "Perceived Effects and Criminal Justice Pressures on Ex Cocaine Sellers," American Society of Criminology Annual Meeting, Chicago, Illinois, November 1988.

(With Craig Reinerman and Dan Waldorf) "Cocaine Cessation: Motivations and Actions to Quit," Society for the Study of Social Problems Annual Meeting, Atlanta, Georgia, August 1988.

"Women and Addiction: Process, Treatment, Outcome," National Institute on Drug Abuse Technical Review Meeting on Collection and Interpretation of Data from Hidden Populations: Qualitative Research Designs, Washington, D.C., July 13-14, 1988.

"Limited Funding for Methadone Maintenance: Preliminary Findings of an Alameda, California Follow-Up Study," Society for the Study of Social Problems Annual Meeting, New York City, New York, August 1987.

"Community Resources for Social Services," AIDS and ARC Update Conference, San Francisco, California, July 17, 1987.

"Needle Sharing Among Women in San Francisco and Los Angeles," Bay Area Researchers Conference on Women, Children and AIDS, San Francisco AIDS Foundation, San Francisco, California, March 6, 1987.

(With Dan Waldorf and Craig Reinerman) "Cocaine in the Workplace," Society for the Study of Social Problems Annual Meeting, New York City, New York, August 1986.

"Preliminary Findings of a Study of Methadone Maintenance Policy," UCLA Department of Psychology Colloquium, Los Angeles, California, February 3, 1987.

(With Dan Waldorf and Craig Reinerman) "Ten Years After: A Follow-Up of Cocaine Snorters," Society for the Study of Social Problems Annual Meeting, New York City, New York, August 1986.

(With Marsha Rosenbaum) "Limited Duration Methadone Maintenance: Preliminary Findings from a Study of Alameda County's New Policy," Western Criminological Association Annual Meeting, Newport Beach, California, February 27-March 2, 1986.

"Cutting the Coke: Motivations and Strategies for Cessation of Cocaine Use," American Society of Criminology Annual Meeting, San Diego, California, November 13-16, 1985.

CONSULTATIONS

Member NIH OBSSR NIH Office of the Director Qualitative Advisory Working Group September 30 - October 1, 1999.

Standing Member Peer Review Committee National Institutes of Health Center for Scientific Review ZRG1 Research and Prevention of Health Behaviors June 1999 - 2003.

Standing Member Peer Review Committee, National Institute on Drug Abuse, Epidemiology and Prevention Branch, June 1993 - 1997.

Chair, Special Review Committee, National Institute on Drug Abuse, Epidemiology and Prevention Branch, March 1994.

Special Review Consultant, National Institute on Drug Abuse, AIDS and Drug Abuse, February 1994.

Special Review Consultant, National Institute on Drug Abuse, AIDS and Drug Abuse, April 2-3, 1991.

Special Review Consultant, National Institute on Drug Abuse, AIDS and Drug Abuse. January 14-15, 1991.

Consultant, URSA Institute, San Francisco, 1985-Present.

PROFESSIONAL ACTIVITIES

American Sociological Association Council Member, August 2000-2001.

Chair, Drugs and Crime, Division of Deviance and Crime American Society of Criminology, San Francisco, California, November 1999-2000.

Reviewer, Contemporary Drug Problems 1989 - present

Reviewer, Journal of Contemporary Ethnography 1990- present

Reviewer, Qualitative Health Research 1995 - present

Secretary and Board Member of the Santa Cruz Needle Exchange 1997 - present

Program Coordinator, Drugs and Crime Division, American Society of Criminology Annual Meeting, Boston, November, 1994-1995.

Local Arrangements Chair, American Society of Criminology Annual Meeting, San Francisco, November, 1990-1991.

Member, Research Task Force, City and County of San Francisco Substance Abuse Services, 1983-1985.

Member, Council on Pregnancy and Chemical Dependence, City and County of San Francisco Substance Abuse Services, 1983-1985.

PROFESSIONAL ASSOCIATIONS

American Sociological Association
Society for the Study of Social Problems
American Society of Criminology
National Institutes of Health Alumni Association

specmind

From: "Nora Callahan" <nora@november.org>
To: "John Gilmore" <gnu@toad.com>
Cc: <rickmaps@eff.org>; <sylvia@dancesafe.org>; <ah@well.com>; <enadelmann@sorosny.com>;
 <owlswan@eff.org>; <rgb@cognitiveliberty.org>; "John Chase" <chaseng@mindspring.com>
Sent: Friday, February 02, 2001 2:22 PM
Subject: Re: Comments on MDMA sentencing - for the Commission
 2 February 2001

U.S. Sentencing Commission
 Michael Courlander, Public Affairs Officer
 One Columbus Circle, N.E.
 Washington, DC. 20002-8002

RE: Comments for the Sentencing Commission on Ecstasy emergency re-sentencing

Dear Mr. Courlander:

Congress has mandated an emergency review of Ecstasy sentencing provisions. The November Coalition is very concerned that the request of Congress, is yet another reactionary response to what congress perceives as an increase in dangerous drug use. Any increase of rates and length of incarceration on the federal level, will probably cause more harm to the enforcement targeted persons, Bureau of prisons staff morale and safety, and to society as a whole, than the use of these substances would ever effect.

We question the so-called emergency nature of this congressional request, there being little time for public comment, wherein physicians, chemists and other experts and professionals could have a true public discussion. Too many times since the war on drugs was declared over 30 years ago, we have seen the prison sentences increase with little input from the public and leaders alike.

In April 2000, Katherine Hawk, the director of the Federal Bureau of prisons testified before the Senate Subcommittee on Criminal Justice. We will include portions of her statement as our part of our comments on Ecstasy emergency re-sentencing:

"Overcrowding in BOP facilities is 34 percent over capacity system wide. At medium and high security facilities overcrowding levels are at even more dangerous proportions, 55 percent at medium security facilities and 51 percent at high security facilities. We must reduce overcrowding at those facilities for the security of staff, inmates, and the surrounding communities. With the resources Congress has already provided, we are making substantial progress with 22 new prisons funded. However, we need to do more . . . over the past 5 years we have had substantial decreases in both inmate suicides and inmate misconduct, including assaults. However, such successes cannot be expected to continue in the face of the dramatic population increases and record setting overcrowding we project will occur in the next several years. Without the resources we have requested to bring

additional bed space capacity on line, our record of service may be in jeopardy."

There are over 95 federal penal institutions and contract confinement facilities at present. Increased penalties will require an overburdened prison system to grow more and more unstable.

We urge the Sentencing Commission to return to Congress and share Katherine Hawk's recent comments once again. Bureau of Prison staff and prisoner safety "cannot be expected to continue in the face of the dramatic population increases and record setting overcrowding that is expect to occur in the next several years."

The November Coalition is an organization of thousands upon thousands of prisoners, their loved ones and other concerned citizens nationwide. We know firsthand of mounting tension in our prisons-due to overcrowding, only one of the problems prisoners and staff must endure. Add to that tension, sentences that last decades with no hope of earned release, little hope of good outcome as family units unravel under the strain of incarceration and separation from those we love. These are not laws that serve society well. This is not the opinion of our organization-this statement embodies the many conclusions of numerous studies, some which have been sponsored by the federal government.

To recommend harsher penalties when we know that public education is less expensive and holds more promise of resolution than a rush to incarceration, is questionable from the start. We are the world's leading jailer, certainly America can find better solutions to our social needs.

Prison cells built for one became two man cells last decade. Those one man cells are now being converted to house three men or women. Rooms previously used for education, recreation and rehabilitation are converted into "dorms", temporary "units" and still the rush to imprison does not abate. Our leaders must find a better path in our society for our citizens-a better path than the dead end of prison. We know that these laws will target young people primarily. The emergency we see, is an overburdened federal prison system, not the use of a particular substance by a particular group of our society's citizens.

The war on drugs is a failure, and to continue to wage it unchecked as this "emergency review" suggests, is immoral. This is not a time to rush to more imprisonment, but a time to re-examine every aspect of the war on drugs, and that includes the penalties for club drugs. De-incarceration should be our goal, and would serve justice-not the reverse.

Thank you for considering our hurried comments. Had there been more time, an appropriate time given citizens to respond, I am sure that you would have far more comments to consider.

Sincerely,

[113]

Nora Callahan
Executive Director

The November Coalition
795 South Cedar
Colville, WA 99114

509 684-1550

[114]

2/4/2001

February 1, 2000

The Sentencing Commission

RE: "ecstasy"

Dear Fellow Citizens,

As a professor of philosophy I wish to raise the issue of ethics in regards punishment for the personal use of the contraband drug popularly known as ecstasy. Punishment must be fair and proportionate to the crime. Can hard treatment (deprivation of wealth, liberty or life) be morally justified as punishment for drug use? No ethicist argues that it is. A search of the philosophical literature turns up a dearth of justifications for the current hard treatment for drug possession. On the contrary, philosophers (i.e., educated people who take moral issues seriously and rationally) find hard treatment for drug use to be *unjustified*, which is to say that the current punitive measures being taken by our government is immoral. To head in the direction of greater "hardness" of treatment is to go deeper into an immoral practice. Rather than producing good, such a policy not only fails to prevent bad (not only is the deterrent factor of hard treatment empirically unsupported, but the theory of deterrence is a contradictory basis for morality insofar as it condones cruelty) but actually increases bad consequences for citizens (we have more citizens in prison now than the combined populations of Alaska, Montana and Vermont). Specific arguments in support of my contention can be found in my enclosed essay. Although the essay addresses the morality of marijuana use, the arguments apply *mutatis mutandis* to the use of ecstasy.

Ethical analysis of the morality of hard treatment can be found in the following two essays, both of which are included in *A Reader On Punishment*, R.A. Duff and D. Garland, eds. (OUP, 1994): Joel Feinberg, "The Excessive Function of Punishment", and A. von Hirsch, "Censure and Proportionality"

Sincerely,
Daniel Kealey, Ph.D.
Associate Professor
Department of Philosophy & Religion
Towson University
Towson, MD 21252

Marijuana and Morals

Daniel Kealey, Ph.D.
Philosophy
Towson University
Towson, MD

It stands to reason that if a behavior is to be prohibited by law and punished severely it must be widely and clearly judged to be immoral. Given the draconian measures taken by the U.S. government to suppress marijuana smoking one would expect that the immorality of this behavior has been soundly established. Amazingly, however, a rational analysis defending the thesis that marijuana smoking is a moral vice is very difficult to find. In fact, I have found none; but negative moral judgements are frequently found in prohibitionist literature. Rhetorical opinions made on the morality of marijuana smoking without the backing of rational analysis are specious, however, even if they

suffice to persuade congressmen to vote for prohibition. There may be nonmoral reasons that justify prohibition, but the war on marijuana is patently not based on rational moral reasoning. My purpose here, however, is not to pick apart the smattering of moralistic statements made by defenders of prohibition, but rather to delineate ways in which one could rationally justify the choice to smoke marijuana. If one can rationally demonstrate the possibility of using marijuana in a way that is consonant with or enhances human virtue rather than vice, then it will become much more evident that the present U.S. policy of prohibition is not only unjust and dysfunctional as others have argued, but also immoral.

Judgements about the morality or immorality of a behavior must be based on rationally defensible standards applied to the practice while considering relevant cultural and socio-historical contexts that give meaning to the behavioral practice. Moral philosophy supplies several standards upon which to base moral reasoning. Drawing upon such standards central to Kantian, utilitarian and virtue ethics, I will deliberate on the moral implications of marijuana use. Insofar as I succeed in demonstrating that marijuana use can be compatible with the choice to live a morally virtuous life, to that extent will my argument go beyond that approach which concedes to the prohibitionists that marijuana smoking is a moral vice (albeit relatively harmless) like tobacco and alcohol use but which should be left as a personal choice and not proscribed by law. That approach has resulted in a stalemate between prohibitionists, including a highly inflated government apparatus deeply invested in policing on the one hand, and the legalization movement on the other, which claims the War on Drugs is a failure. The main contention seems to concern the consequences of perpetuating or ending the War on Drugs, with each side painting a dire picture of American society's future should the other side prevail.

If, however, it can be determined that marijuana smoking is not inherently a vice and that it can be used in a responsible way, then, perhaps, we can shift the debate away from this stalemate to considerations of harm reduction. To that aim I will make a policy proposal that seriously addresses the moral implications of marijuana use. I confine my analysis to marijuana use although it would also be applicable to policy considerations of psychedelics. Ironically, marijuana has been dubbed the gateway drug by prohibitionists as a last resort justification for proscribing it. Their use of the image only considers its function as an open gate, neglecting that the predominant use of a gate is to keep out. I believe that rationalizing our marijuana policy and the corresponding raising of the quality of drug and marijuana education to the highest standards of liberal arts and sciences education will make a significant contribution to closing the gate on the drug problem.

Moral Justifications

This being an exercise in applied rather than theoretical ethics, my aim in this section is not to showcase a particular theory of normative ethics or to make an exhaustive ethical analysis, but to demonstrate how any rational person can draw on normative theories to deliberate on the morality of marijuana use. The main normative theories to be considered are utilitarian, deontological and virtue ethics.

Utilitarian Ethics

Most of the current debate on marijuana use is utilitarian insofar as it focuses on the consequences of the behavior rather than the intent of the user. The utilitarian principle holds that an action is morally good to the extent that its beneficial consequences outweigh the negative ones, taking the general welfare of all into account. Conversely, if an action produces more negative than good consequences for all concerned, then it is morally vicious. In applying the utilitarian principle we are asked to make a thorough, objective analysis of the effects of marijuana use. A frequent criticism of prohibitionist arguments is that the evidence its advocates muster to demonstrate the overwhelming negative consequences of marijuana smoking are neither thorough nor objective. Negative effects are blown out of proportion. Toxicity reports based on exceedingly high dosages fed to animals are inappropriately applied to humans who would never consume such quantities of marijuana. Prohibitionists claim that marijuana smoking causes an amotivational syndrome, but three decades of scientific research has failed to substantiate this. This pattern of distortion has been thoroughly exposed by Lynn Zimmer's and John Morgan's review of the scientific evidence in their book, *Marijuana Myths, Marijuana Facts*.¹

Although the negative effects of marijuana smoking have been greatly exaggerated, this is not to say that there are no negative effects. Aside from the relatively rare cases in which someone with a borderline psychotic syndrome is triggered into active psychosis under the effects of marijuana, most negative effects of marijuana smoking are due to inappropriate use. Prohibition obscures the distinction between appropriate and inappropriate use because all use is *de jure* inappropriate. Moral deliberation, however, requires that we do make that distinction in order to avoid producing negative consequences of marijuana smoking. I will develop this line of thought later. Many of the negative effects attributed to marijuana are actually due to preexisting dysfunctional behaviors and immature traits that in some cases are accentuated by marijuana but are not caused by it. Prohibiting marijuana for these reasons would be like aggressively suppressing a symptom while letting the underlying disease rage untreated. This apparent "negative" effect of marijuana can better be regarded as one of its positive effects insofar as it serves the maieutic function of bringing dysfunctional thinking and behavior more to the surface where awareness, especially with proper mentoring or counseling, can initiate steps to psychological maturity. Although marijuana is not addictive, it is possible to use it excessively and compulsively, in which case the reasons are to be found in the addictive complex of one's personality that one is self-medicating with marijuana. Fortunately it is much easier to separate the psychological issues from the substance abuse in the case of marijuana than in addictions of such other substances as alcohol and cocaine. In sum, by far the majority of negative effects attributed to marijuana smoking can be eliminated or effectively mitigated by rational discrimination and responsible use.

Researchers have observed that many of the effects of marijuana, being so varied and idiosyncratic, are due to intentional, circumstantial and learned behavioral factors rather than to the chemistry of the herb. This is a key to understanding the positive effects of the marijuana high. Even the most universally noted characteristic of the marijuana high, namely euphoria, is not a necessary effect of its chemical properties but is largely dependent on subjective, intersubjective and environmental factors at the time

of smoking. Marijuana smokers soon discover that the high enhances not only recreational experiences but their involvement in artistic, intellectual, athletic, spiritual, literary, psychological, relational/dialogical and other disciplined pursuits. Many of the benefits of marijuana are therefore dependent on the smoker's intention, psychological state, personal qualities, aptitudes, knowledge, skills and experience with the drug. So long as these smokers refrain from using marijuana in self-defeating ways they find that the benefits far outweigh the negative consequences, even the artificially exacerbated negative risks introduced by prohibition. In answer to the prohibitionists' charge that their risking years of imprisonment and loss of their property is indicative of irrational behavior caused by an addictive drug habit, marijuana users can reply that the private nature of the behavior makes apprehension by the police unlikely and so is rather a testimony to the uncontestedly greater balance of good over possible bad effects in their utilitarian calculus. A majority of Americans born between 1950 and 1970 have been labeled as criminal for following this utilitarian logic in regards marijuana smoking.

Deontological Ethics

Deontological ethics determines the moral worth of an action by evaluating the actor's intention rather than the consequences of one's act. Given the difficulty of always having our true motivations completely transparent to consciousness, Kant provides us with criteria to measure the purity of our intent. Naming these criteria as categorical imperatives, Kant formulated three versions, each of which rely on the principle of contradiction:

1. Universalizability: Act only on that maxim through which you can at the same time will that it should become a universal law.
2. Means/ends: Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.
3. Autonomy: Act so that you treat the will of every rational being as a will which makes universal law.

In Kant's deontological ethics one's intent is moral if it is rational, and to be rational one's intent must be found without any contradiction in it. Thus I cannot rationally will to lie without contradiction because if I command that lying be a universal law then there would no longer be any utility for me to lie because no lie would be believed. This application of the first version of the categorical imperative is the least relevant to an evaluation of marijuana smoking. This is because people use marijuana for its effects, and so according to this line of reasoning the choice to smoke marijuana *or not to smoke* it does not fall in the realm of morality but is merely a practical decision. The other two versions of the categorical imperative are more helpful for our inquiry, however.

The principle of autonomy is a central contention of the drug problem today. Prohibition is paternalistic and paternalism is a violation of the principle of autonomy. Paternalism can be justified in cases where the moral agents are demonstrated to be incapable of autonomous decisions, people in comas, psychotics and young children, for example. In these cases those with authority act in the best interest of those whose

autonomy is being overridden. Ethicists have no problem with this *soft* paternalism, which hardly requires any justification. *Hard* paternalism, by contrast, violates people's right to self-determination and can only be justified by appeal to more substantial ethical reasons. The American policy of prohibition fails to provide such ethical reasons and is therefore morally unjustified because it violates the principle of autonomy which is the essential prerequisite for moral action. Not all paternalism is bad; in fact, in my policy proposal I will argue for a form of *weak* paternalism for which I will provide justification. Advocates of hard paternalism, however, who want to control what they deem to be self-destructive, immoral or irrational behavior by agents who otherwise seem to have an unimpaired free will and whose actions cause no harm to others, inevitably justify their authoritarianism with specious reasoning that is unacceptable to rational ethicists.² There is nothing inherently irrational about smoking marijuana, certainly no more than the choice to drink coffee. Even while one is under the influence of marijuana, one's reasoning *need* not be any more impaired than when one is not under the influence. The temporary alteration of consciousness may cause some negative reactions in inexperienced or mentally dysfunctional users. In such cases, the alternative moral regards are either to leave these people alone to learn from their mistakes or to provide them with help, which is weak paternalism. At the very least, after the marijuana high leaves off one's reasoning is not distorted and one can rationally decide whether or not to smoke again, for the marijuana high is not so compelling that it would sabotage one's reasoning ability. But to deprive people of their right to exercise self-determination is simply a cynical undermining of morality in the name of morality.

Kant's second version of the categorical imperative, to treat others as ends in themselves and not merely as means to our own ends, has a special relevance in regards the morality of marijuana smoking. This imperative is historically related to the Golden Rule and like it has a negative interpretation as well as a positive one. The negative version is synonymous with the principle of autonomy insofar as it enjoins us to respect the individual autonomy of persons and not to treat them as slaves, children, animals or things. The positive version exhorts us to elevate our regard of others to the point we can either perceive, or, in any case, to honor the *essence* of fellow humans. The positive version demands more of us ethically than the negative. Philosophical attempts to describe this edified relationship with others have been developed by Buber in his concept of the I-Thou relationship and by Levinas in his concept of the otherness of the Other. The special relevance to the marijuana question is that the altered consciousness of the marijuana high is frequently reported to enable one to perceive the essence of other persons.³ To the extent that smoking marijuana can help one to cultivate this perception of the other, to that extent is the choice to smoke marijuana morally commendable. Along the same line of thought, many ethicists state that rational deliberation of ethical reasoning must be complemented by moral intuition. Marijuana stimulates the intuitive ability of the mind and can thus be recommended as an optional pharmacological aid in a program of moral education.

Virtue Ethics

Virtue ethics focuses on the development of the agent's moral character rather than on the intention or consequences of his actions. There is a widespread assumption among prohibitionists that marijuana smoking leads to degradation on one's moral

character. There is no scientific evidence to support that belief but such innuendoes slip easily from the lips of drug czars and other prohibitionists. To support this belief they refer to the association of marijuana smoking with criminals and juvenile delinquents. This association of marijuana and antisocial activity is ironic because marijuana actually decreases aggressiveness and can help to improve the quality of social behavior as I argued above. Social scientists have found no causal relationship between marijuana smoking and antisocial behavior and that any relationship between them is purely accidental. By far the greatest cause of criminality associated with marijuana is prohibition itself. In traditional societies where marijuana and psychedelics are accepted (such as the Amazon and South Asia) there is no correlation between getting high and antisocial behavior. On the contrary, they are used sacramentally as part of a program of moral development. In India, for example, marijuana is used in the practice of yoga, which is a tradition of moral, mental and spiritual development.⁴

Virtue ethics frees the moral dialogue from the stalemate-grip of the War on Drugs paradigm of Right and Wrong, black and white thinking. The marijuana phenomenon is much more complex than what it is reduced to by such dualistic thinking, which can, therefore, never "solve" it. Don't look to virtue ethics to tell you whether smoking marijuana is good or bad. Instead, virtue ethics will prompt you to ask such questions as: "How does pleasure relate to happiness?" "Am I practicing the Golden Mean of temperance in regards my marijuana smoking? Or, where am I on the scale from greedy to anorexic with it?" "What is the weakest part of my moral character and how is it affected by marijuana?" "How does it affect my virtues of honesty and truthfulness?" "Am I engaging myself in escapism and self-deception?" "In what ways *can* vs. *is* my habit furthering my self-knowledge and integrity?" "Is my marijuana habit causing me to associate with people who are morally edifying or people who distract me from my own moral development?" "Does marijuana push me more toward the extreme of deficit or toward the extreme of excess in relation to such virtues as respect, pride and politeness? What about courage, patience and perseverance?" "Am I growing in contentment or is marijuana a smokescreen for my lack of it?"

According to virtue ethicists, the same act, such as smoking marijuana, could be a morally good behavior if performed by a virtuous person, and a vice when performed by a person of flawed character. Exactly what defines a virtuous person is not completely up to the individual but grows out of one's social context. Philosophers may generally agree on what the most essential virtues are, but the art of living consists in expressing these virtues appropriately, which varies according to social context. This is known as practical wisdom. The moral agent is in symbiotic relationship with society, a relationship that begins with moral training in the family and continues in the various institutions of society. Societies differ in the degree to which they provide a context and opportunities for moral flourishing. The War on Drugs in America reflects the crisis in values that marks our societal shift from the modern to a postmodern worldview. The values of the modern worldview are inadequate to deal with such contemporary problems as the environment and drugs, but rather than courageously experimenting with the new values of an emerging multicultural and integral worldview, the government is fanatically holding on to a course of desperation. Marijuana smokers are the scapegoats in a

paradigm war.⁵ Ostracized from mainstream society they are given no encouragement or opportunity to learn how to use marijuana in ways that will nurture their moral development. This places a tremendous obstacle in the way of ameliorating our societal problem with marijuana. Prohibition prohibits a moral solution to the problem.

This brief exercise in moral deliberation concerning marijuana smoking, though not exhaustive, makes it sufficiently clear that the issue cannot be settled by fiat as the U.S. government is trying to do. A rational person can always choose to smoke marijuana in a way that is morally defensible. People can also choose to smoke it irresponsibly and incur moral debt. To close the door on dialogue, treat it as a criminal problem and resort to coercion is to tear at the moral fabric of society as a whole.

A Moral Drug Policy

If the American people and the leaders who represent them decide to take the moral dimension of the marijuana issue seriously then they must set aside their insistence that they are absolutely correct and open up to dialogue with those who believe differently. Prohibition has failed to resolve the drug problem. I propose that we let the marijuana smokers try to resolve the problem. The solution I am proposing is a middle way between prohibition and legalization. The licensing approach has been proposed by others,⁶ but I am proposing a system that goes considerably beyond the concept of a regulated distributing system. Many licenses require that one take the requisite training before it is granted to one. Before being licensed to buy and smoke marijuana, a person would have to graduate from a course of study that covered such topics as safety, training in moral competence, how to smoke marijuana for best results, how to counsel those who are having bad experiences, exposure to methods of self-inquiry and meditation, symptoms of addiction and how to get help, etiquette, relationship and emotional skills, etc. Schools for such education could be formed by professionals from various fields such as psychology, medicine, philosophy, religion, art and the social sciences. Interested parties, including government representatives, could dialogue over the internet and conferences to develop curriculum protocols before the licensing goes into effect. Schools could then be set up in the private sector (local and state government supported institutions would also be welcome to participate) which would charge students wishing to be licensed for tuition. The schools could also provide counseling and other services for graduates and provide them with opportunities to mentor novices. A national organization of schools could handle accreditation procedures. The government could retain the right to inspect the schools and recall the licenses of irresponsible individuals and schools. The program would essentially be self-financed with minimal government expenditure.

I am presenting this proposal in sketch form as an invitation to dialogue. I think that it is only through dialogue that both sides (the government and the tokers) step up to the moral level. Whether we are ready to embrace this mature level of morality or choose to continue to abuse the name of morality to dehumanize each other remains to be seen.

Endnotes

⁵ There are many accounts of this paradigm war. See M. Woodhouse, *Paradigm Wars: Worldviews for a New Age* (Berkeley: Frog, 1996).

¹ Zimmer, L. and Morgan, J. *Marijuana Myths Marijuana Facts* (NY: Lindesmith Center, 1997). See also, Grinspoon, L. *Marihuana Reconsidered* (San Francisco: Quick American Archives, 1999).

² The three types of arguments for this *strong* form of paternalism are based on utility, morality and rationality. The appeal to utility employs a crude interpretation of utilitarian reasoning that claims that the welfare of the greater society is maximized by the suppression of the rights of a minority (marijuana smokers, for example). This same argument would justify slavery or ethnic cleansing. Honoring the principle of autonomy is necessary for liberal democracy lest it become a tyranny of the majority. The second method by which strong paternalism is defended is by appeal to morality. The assumption is that any decent person knows that marijuana smoking is immoral and that such immoral activity is not self-regarding. In other words, what I do in the privacy of my own home corrupts the moral fiber of society even if no one else is directly harmed by me and no one else knows that I have smoked marijuana. This is prerational, magical (and dysfunctional!) thinking. The final attempt at justification is similar to the previous two except the appeal is to rationality. Smoking marijuana is *irrational* regardless of whether it is moral or immoral or whether or not it affects others. Where the normal institutions of society such as the family, school and church fail to make citizens sufficiently rational to avoid the temptation to engage in such irrational activities as smoking marijuana then the state must intervene lest our society veers into irrational directions as a whole. This argument begs the question of what is irrational, which is a logical fallacy. It also relies on a slippery slope argument, another logical fallacy. All three attempted justifications for strong paternalism, as embodied in the U.S. government War on Drugs for example, fail to qualify as rationally moral.

³ "Stoned thinking is the mirror of straight thinking. When we step into nonordinary reality even for a moment, we experience things directly, see inner contents rather than external forms, and suddenly find ourselves able to participate in changing things for the better. This other way of interpreting perceptions comes first as episodic flashes, unpredictable, discontinuous. But the more flashes of it one has, the easier it becomes to maintain." Andrew Weil, M.D., *The Natural Mind* (Boston: Houghton Mifflin, 1972) p.149.

⁴ Several millions of Americans have taken up the practice of Yoga (a 1978 Gallup survey found 10 million). Practicing Yoga is the practice of religion. Despite the trumpeting of itself to the world as the upholder of religious freedom, the U.S. government will not allow Americans the freedom to practice Aushaddhi Yoga although its practice harms no one and it violates no law other than the prohibition to smoke marijuana.

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⁶ For example, M.Kleiman, *Against Excess* (NY: BasicBooks, 1992).

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⁶ For example, M.Kleiman, *Against Excess* (NY: BasicBooks, 1992).

specmind

From: "John Gilmore" <gnu@toad.com>
To: <rgb@cognitiveliberty.org>; <gnu@toad.com>
Sent: Friday, February 02, 2001 4:19 AM
Subject: Comments on MDMA sentencing - for the Commission
 John Gilmore
 PO Box 170608
 San Francisco, California, USA 94117
 +1 415 221 6524 voice
 +1 415 221 7251 fax
gnu@mdmasen.toad.com

Comments for the Sentencing Commission
 on Ecstasy emergency re-sentencing
 2 February 2001

Executive Summary: There is no need for an "emergency" change to the sentencing provisions for Ecstasy; democracy requires full public participation. Congress did not mandate an increase in penalties; it mandated a review of penalties to make them appropriate. The penalties for use or sale of MDMA should be decreased, not increased. The discovery, manufacturing and distribution of MDMA has provided positive benefits to millions of citizens. Sentencing guidelines penalizing MDMA use are an unconstitutional regulation of the freedom of thought that underlies many cherished freedoms, and should be eliminated. The re-sentencing of MDMA is part of a misguided attempt to "lock up the truth" -- or at least to lock up the truth-tellers -- about MDMA.

1. There is no need for an "emergency" change to the sentencing provisions for MDMA and related substances ("Ecstasy"); democracy requires full public participation. Such an "emergency" rescheduling provides minimal opportunity for input from the affected public (ten days maximum, more than half of which had expired before most of the community even noticed that the re-sentencing action was in progress).

I believe that the change is being done this way to avoid substantive public comment -- to evade public comment. The public already commented in great detail to Congress as it attempted to pass the Ecstasy Anti-Proliferation Act of 2000, and the result is that Congress significantly reduced the penalties originally provided in the Act. Drug warriors could reasonably conclude that they have a better chance of passing inappropriate and harsh regulatory changes if the public has little chance to comment.

I believe that there are millions of people who have used MDMA, and who neither desire that they themselves be subjected to increased penalties, nor that the people who sold it to them be penalized. Many millions of other citizens of good will (perhaps among them the

specmind

From: "Rene Alvarez M.D." <alvarez@itsa.ucsf.edu>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 11:36 AM
Subject: sentencing

to whom it may concern,

As a medical doctor who has worked in several busy emergency rooms, I find it deplorable and tragic that ecstasy may be equated to heroin for sentencing. While I have seen many deaths related to heroin, not just from overdose, but also soft tissue infections, AIDS, and Hepatitis C. Ecstasy has had no impact on our emergency room at all. From a medical standpoint, it is safer to take ecstasy than drink alcohol or be a regular tobacco user.

Rene Alvarez M.D.

San Francisco General Hospital, Ward 83

alvarez@itsa.ucsf.edu

Michael Courlander
Public Affairs Officer
Office of Public Affairs
U.S. Sentencing Commission
One Columbus Circle, N.E.
Washington, DC., 20002-8002.
(202) 502-4500

Dear Sir,

I am writing to express what one could term frustration, with the proposed new sentencing guidelines regarding 3,4-methylenedioxy methamphetamine (MDMA) and chemicals similar to that structure or producing effects similar in nature. First I would like to detail a few errors regarding the Commission's beliefs regarding this substance. Then I would like to discuss the proposed new sentencing with respect to the chemical itself and that chemical's effect upon society.

Let me first provide the Commission's own words to describe what their perception of MDMA and its derivatives.

"It has been represented to the Commission that Ecstasy (i.e., MDMA, MDEA, MDA and PMA) is similar in its hallucinogenic effect on the user to mescaline, and also has been described as having an added stimulant component that can elevate heart rate, blood pressure, and body temperature. It has also been suggested that the drug is neither physically nor psychologically addictive." (Page 10, Volume II: Proposed Amendments to the Sentencing Guidelines (January 24, 2001)).

3,4-methylenedioxy methamphetamine is unlike other "hallucinogenic" amphetamines in chemical structure, and also in action upon the brain. To even call it a hallucinogenic compound is erroneous. In no way can MDMA be considered similar in effect as that of mescaline. Simply because both chemicals share an amphetamine ring as their chemical base does not in any way determine the bio-neurological effects upon the body. In considering the "added stimulant component that can elevate heart rate, blood pressure, and body temperature," one must look beyond a generalization. Low doses of MDMA (<1.0mg/Kg of body weight) do not produce a stimulant effect upon the body. Also, as shown by research performed by Jessica Mahlberg at the University of Chicago, MDMA does not elevate body temperature but in fact lessens the body's ability to regulate body temperature. To further clarify the non-addictive statement regarding MDMA, regular intake of MDMA causes a decreased pharmacologic response, meaning if users continually take MDMA, the subjective effects, which one would guess their reason for taking this compound, substantially decrease, eventually becoming non-existent after a few days of continual ingestion. Hardly a viable compound for compulsive use.

To equate this drug with heroin for the purposes of sentencing, on its face, is simply wrong. The effects of heroin on the user are completely different, almost contradictory, from the effects of MDMA, and the potential for abuse is also absolutely different. The whole concept of "equating" drugs and finding equivalent measures is absurd. Each of these compounds causes different reactions in each person. Each of these compounds interacts with society at large in different ways. MDMA has therapeutic values far beyond that of heroin, and to deny researchers the ability to use this chemical is wrong, but to go so far as to form excessive penalties for its possession or use is unacceptable.

I hope you heed the intelligence of the society that you are charged with protecting by not increasing the penalty for MDMA.

Sincerely,

Jeff Hjelt
215 Athol Ave #3
Oakland, CA 94606

specmind

From: <poemelyric@mediaone.net>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 9:41 PM
Subject: The Commission's Proposed Amendment Equates MDMA to Heroin
 Dear Sir or Madame,

I am writing to let the Commission know my stance on the Amendment to make MDMA the equivalent to heroin that is before the commission.

First off, I would like to state that MDMA is not an addictive drug as heroin is. It is absurd that this commission would EVEN consider classifying MDMA in this group. Heroin and Cocaine addiction is a very serious issue in this country and to put MDMA in this class is downplaying the seriousness of addictive drugs.

MDMA should carry the same drug penalty as Marijuana. MDMA isn't addictive like heroin and it doesn't alter peoples minds like LSD or cause violent outbreaks like Crystal methamphetamine. It is by no means a hallucinogenic and doesn't alter the users reality. On <http://www.esctasy.org>, a reader sent in a question about hallucinogenic properties of E and the scientific response was "I expect it was strong MDA, 2CB or possibly a mixture containing LSD. You could probably tell by how long it lasted: in order, MDMA is shortest then 2CB then MDA then LSD which is up to 8 hours". There is no scientific basis to consider MDMA on the same level as heroin and cocaine. Scientists aren't even sure what the long term drawbacks to MDMA is.

People are treating MDMA like it causes people to do injury to themselves or to others. With knowledge of how MDMA works in the human body, the user can come away from the experience with a enlightenment and a perspective to things that they wouldn't have discussed or thought about before. MDMA expands the horizons that people close off due to the harsh realities of interpersonal relationships. This is a drug that can benefit humans if used to its full potential as a psychiatric drug. By making it illegal, the Federal Government has only succeeded in making it one of the most unpredictable street drugs. Now, people don't know if they are receiving Ecstasy or if they are getting the dangerous and cheaper to make alternative, DMX and it's largely due to the fear of being arrested due to the erratic drug laws. The drug quantity table should also be altered so that if you do hold MDMA in the same respect as Heroin, jail terms should only be dispensed for high quantities of MDMA. A five year prison term shouldn't be dispensed for 2 pills of Ecstasy. Not only would that cause more prison overcrowding for a non addictive drug, it would drive production of the drug up once again and it would cause a flood of dangerous batches of DMX.

Secondly, MDMA was initially a drug that was used by psychiatrists to cure violent mentally ill patients. Like any antidepressant, there are drawbacks to usage of this drug. When I was taking dizipramine, I was told to drink water often, about 8 oz. an hour or so. Even with Prozac, I was given this suggestion. And I ask this question: What makes MDMA illegal and Xanax not? Xanax is also an abused psychiatric drug that has a higher street value than Ecstasy. Why ban one and not the other? While it is true that MDMA has been the cause of death by teenagers, the amount of kids being hospitalized is no greater than thoses being brought in for alcohol poisoning. With MDMA, knowledge is power and many kids are riddled by the press about what they believe to be the truth about it but they never are given accurate information about it or what to do or not to do. I recall watching a local news

program in Boston that stated that parents that find their kids "high" on Ecstasy should give their children lots and lots of water because it will dilute the MDMA in their systems. This was totally false information that could potentially kill because MDMA depleats the salt in the human body which makes it difficult to absorb the high rate of water that is being taken in. Either that or kids are told not to drink water which causes dehydration.

In all truth, there wouldn't be an Ecstasy problem if the press didn't keep glorifying the "rave scene". Before the Ecstasy craze, you would see one or two people selling at a rave, now because of all the press being dug up, the clubs are being over run with "E" dealers. If the press didn't constantly keep hitting teens with the image of partying "X'ed" out 20-somethings dancing the night away. In my opinion, that's what's is causing the rise of Ecstasy use.

I thank you for taking time to read this letter.

Thanks again,

Karen Fouche
70 Alder St
Waltham, Ma 02453

"Don't you try to save that anchor from drowning cause it won't work..."-Scarce

specmind

From: "Jeremi Finn" <elfinn3@hotmail.com>
To: <rgb@cognitiveliberty.org>
Sent: Sunday, February 04, 2001 10:01 PM
Subject: MDMA = Heroin
Sentencing Commission,

I have been an advocate of harm reduction programs almost all of my life. When the AIDS epidemic surfaced in my home town high school a few years ago, I was one of the few Protestants who recognized the futility of pushing abstinence. I supported realistic solutions to the problem of promiscuous sexual activity among teenagers. I pushed for a condom distribution program and encouraged my fellow students to educate themselves about the dangers of unprotected sex so that they could make informed decisions. Many people in the Christian community looked down on me for "encouraging" such behavior. But what they didn't realize is that those kids were going to have sex no matter how hard we pummeled them with doctrines of abstinence. I am convinced that probably more than a few lives were saved by making condoms available at my high school.

When I read that congress wants to increase the penalty of trafficking and selling ecstasy to a level equivalent to heroin I had a terrible vision of ecstasy producers putting all kinds of dangerous, less expensive chemicals into their pills. Yes, some of them might be intimidated to the point where they quit making ecstasy, but those are the ones with some moral values. The rest of the ecstasy manufacturers are simply going to look at the ecstasy anti-proliferation act and say to themselves, "hey, I could put cheaper products into my pills and still have the same penalty if I get caught."

As of right now, we know enough about ecstasy to know that the dangers of taking real MDMA are less than those of taking fake pills. Many pills containing DXM (a legal but more dangerous drug than MDMA) or speed (a far more addictive and dangerous drug than MDMA) are being sold already as ecstasy. The solution to this problem is not to make the penalty for the safer drug equivalent to the more dangerous. The solution, like with the AIDS epidemic, is to educate people on the real dangers of each drug and give them the freedom to make an educated decision. People are going to buy pills and take them. It would be better for everyone if the pills they take are real MDMA rather than speed, ketamine, PMA, DXM, or heroin.

My plea is that you will look at the actual evidence for MDMA neurotoxicity, possibility of addiction, and long term effects, physical and psychological (which, by the way, you'll find are almost all remarkably positive despite temporary lower levels of serotonin), and compare these to the other schedule one (or two, or three) drugs before you assign the sentence for trafficking this substance. Keep in mind that by increasing the penalty for trafficking MDMA you are encouraging manufacturers to use less expensive, more dangerous chemicals, effectively flooding the black market with adulterated pills. This would cause far more problems than it would solve.

First of all, there would be a higher rate of ecstasy related deaths. The current number of ecstasy related deaths per year is remarkably low

given the number of people who use ecstasy, especially when compared to other drugs like heroin, alcohol, speed, and tobacco. The few ecstasy related deaths that have been reported were almost all caused by adulterated pills. The six "ecstasy related" deaths in Florida last year, and the three before them in Chicago, were all caused by PMA, a non-ecstasy like substance. In fact PMA is not a recreational drug; no one would willingly take PMA if they knew it wasn't real ecstasy.

Second, many people would become addicted to the non-MDMA substances being sold as ecstasy. MDMA is not itself physically addictive. There are people who may develop psychological "addictions" but even these must fade. The effects of MDMA wear off if it is taken too often. However, other chemicals which are cheaper and easier to manufacture will produce chemical dependency if they are sold as ecstasy. This is definitely a step in the wrong direction, especially when combined with the influx of deadly non-MDMA pills discussed above.

The solution does not lie in the idealist principles of abstinence. What we need is a realistic solution, and increasing the punishment for not being abstinent is not realistic. Harm reduction programs, such as Dance Safe, are a step in the right direction. They recognize the reality of the situation--people are using drugs--and they work to educate those people, providing accurate information and realistic safety procedures for those to whom "just say no" is not a practical alternative.

If the world were an ideal place, people would do everything they wanted to do, want only what was beneficial to everyone, and have all that they wanted. But it is not. And idealist principles do not result in effective action in the real world. Please consider the facts about MDMA, compare them to the facts about other drugs, and make a fair decision. To pretend MDMA is as dangerous as heroin is to effectively make it so. Please exercise caution and work towards a real good. Reduce harm, don't just legislate against it.

Jeremi Finn

Get your FREE download of MSN Explorer at <http://explorer.msn.com>

specmind

From: <juliano@cwctv.net>
To: <rgb@cognitiveliberty.org>
Sent: Thursday, February 01, 2001 6:22 AM
Subject: punishment is not the intelligent answer

i live in england, and am a voluntary project worker. i work in a needle exchange which provides advice and support for people with substance misuse problems.

this service is vital! not only does it protect clients, and the rest of the community from the spread of diseases such as HIV, AIDs, Hepititus, etc., but it allows people whose only "crime" is being physically addicted to a substance to be dealt with with respect, and a friendly caring attitude.

such respect has its own results. what systems of punishment do is create paranoia, and disrespect for authority. not only from the pople who are persecuted, but also from young people who being astute will detect the double standards regarding what society allows and what it condemns. For example alcohol and tobacco are tolerated.

regarding Ecstasy being similar to heroin? false. Heroin is a narcotic whih in its extreme use will provide sleep, and death, whist E is a stimulant, used by youth as part of the rave culture.

i have chosen to approach this issue in my way because i'm not trusting in playing the formal game. the whole premise of the "war on drugs2 is a false one, and in fact encourages what it claims it seeks to avoid. which is driving people TO drugs.

Filling up prisons with the disaffected, and persecuted minority/majority is only a "putting off2 what culture will sometime HAVE to face. the whole question of why people do drugs needs a radical revision of how we ALL are with our culture

Julian (throw a pebble in a pond and see what happens)

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2/4/2001

specmind

From: "Chris Rivas" <thinctwo@mail.utexas.edu>
To: <rgb@cognitiveliberty.org>
Sent: Wednesday, January 31, 2001 9:27 PM
Subject: Ecstasy Anti-Proliferation Act of 2000 (section 3664 of Pub. L. 106-310),
Hi

News of having similar punishment for 'ecstasy' possession as for heroin is very discouraging in the U.S.'s anti-drug stand. I can understand the laws concerning the stiffness for possession of heroin; I have seen many people destroyed by the drug. While I do know a few 'e-tards', most ecstasy users I know are fairly responsible and reliable individuals, certainly not the miscreants heroin use seems to breed. It is a safer drug than heroin; 100mg of mdma will not injure, while that much heroin is a very stout dose, and liable to injure.

Its risk per gram is much less than that of heroin.
It does not cause as much deterioration of society.

Of course I have no numbers, I just report what I see. Were I to study this more, I would look at users of each, although it would be hard to get the middle class, college students, and responsible users to admit use.

If I were to outline new punishments, I would recommend an exponential curve, as many possess smaller amounts ranging up to 1-3 grams without being distributors in the way that someone in possession of 3 kilograms of marijuana would be a distributor.

my two cents.

chris r

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2/4/2001

specmind

From: "Kenneth Kron" <kkron@IPRG.nokia.com>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 8:19 AM
Subject: MDMA sentencing guidelines
To whom it may concern

Please reconsider the proposed action on the Ecstasy Anti-Proliferation Act of 2000. In particular I have a problem with the the phrasing

"that has either a chemical structure similar to MDMA or an effect on the central nervous system substantially similar to or greater than MDMA."

The phrase "greater effect" on the nervous system does not constrain itself to health risks.

So first I ask you to send the Ecstasy Anti-Proliferation Act of 2000 back to congress for clarification. I would support efforts to control the distribution for human consumption of any dangerous poisons but am concerned about the potential for abuse of laws that could be used against well informed and well intentioned health care providers. Traditional medical practitioners have at their disposal very potent herbal concoctions which "large pharmacy" could use this law to stifle.

I'll also ask you to consider the following quote from John Gilmore.

"The fundamental problem with outlawing consensual crimes is that none of the participants will report them. To make them enforceable you need a societal mechanism for monitoring consensual behavior and reporting it to the police. This is not conducive to privacy."

John Gilmore -- excerpted from a message on the politech mailing list <http://www.politechbot.com/p-01561.html>

It is obvious to me that giving MDMA a heroin equivalence will result in massive privacy invasions and police raids on what are otherwise legally organized social occasions.

While I do not take lightly the reported deaths from MDMA usage, negligent homicide is already prosecutable under the law. It is not the function of our government to protect it's citizens from every dangerous situation. The United States is said to be founded on a free and open society. With this freedom comes responsibility ,only by accepting the responsibility do we earn the freedom. When you protect us from responsibility for our actions you take away or freedom to act.

Sincerely.

Kenneth Kron

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2/5/2001

specmind

From: "Virskus, Joe" <Joe.Virskus@caspiangroup.com>
To: <rgb@cognitiveliberty.org>
Sent: Thursday, February 01, 2001 12:28 PM
Subject: Ecstasy Sentencing Alert

I would like to make some comments on the Ecstasy Anti-Proliferation Act of 2000. First, for background, I am 21, a computer programmer, and catholic. I rarely drink alcohol, and the only drug I use on occasion is MDMA. In the past (in high school), I experimented with a variety of drugs, from Marijuana, to LSD, to Mescaline, to Mushrooms, to Cocaine, to DXM, to Methamphetamines. I make it a point to research the effects and side-effects of all of these drugs prior to taking them, so that I may make an informed decision about what types of things I put into my body. Over the years, I have come to the decision that in general, most of these drugs are bad for me, and that is why I no longer use them. MDMA is the only one I continue to use, and the one I feel is the least harmful.

Reasons Mescaline is worse than Ecstasy:

- Mescaline lasts for hours, at least twice as long as MDMA.
- Mescaline can result in a "bad trip"... MDMA never will.. only positive feelings arise.
- When on Ecstasy, you pretty much just act like yourself. The drug itself is very subtle in it's effects. General euphoria, empathy, and other subtle effects creep over you, but you still generally appear to be yourself. Mescaline, on the other hand, can dramatically change your personality... making you seem strange and foreign... alienating people... and possibly permanently affecting your personality (if not clinically, then just through new perspectives you have gained from your trip).
- Ecstasy becomes less potent the more you take. If you take one pill earlier, and then continue to take more later.. they will not affect you as strong as the first (because your reaction to the pills is limited by your serotonin levels). With Mescaline, you will go farther and farther into your trip.. perhaps to dangerous levels.
- Ecstasy is commonly used in clubs and legal raves.. where medical personal are on site, and ready to take care of OD cases if they occur.

Reasons Heroin is FAR worse than Ecstasy:

- The OD rate for Heroin is WAY higher than Ecstasy.
- Heroin users are generally addicted, or at least habitual. It is very common for Ecstasy users to try it only a handful of times.. with people they trust.
- Heroin can spread blood transferable diseases, Ecstasy can't.
- Too many more to list.. and I am sure others will cover this topic better than I could.

What it comes down to, is that I use Ecstasy, my conservative-republican-catholic mother knows it, and she is ok with it because she knows I am responsible. I think the best effect of Ecstasy

is that it has turned dance clubs and raves into events that are safe. No longer are they full of drunk and angry punks.. but instead, sedated and empathetic punks. I will continue to make my decisions based on my own judgment, and not on yours, so this law does not affect me... but I would encourage you to try to keep an open mind when making YOUR decision.

Thank you,
-Joe Virskus
San Francisco, CA

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2/1/2001

specmind

From: "Joseph Illescas" <joeill@mediaone.net>
To: <rgb@cognitiveliberty.org>
Sent: Sunday, February 04, 2001 8:41 AM
Subject: Innacuracies
 To whom it may concern,

As a former drug user and current professional that advocates a clean and healthy lifestyle, I am against any drug use. This is especially true for the use of the legal recreational drugs alcohol and nicotine, which ironically kill more people every year than illegal recreational drug use. This letter is to help clear up any misconceptions in order to help achieve accuracy in all ecstasy related information and fairness in sentencing.

To begin with, the effects of ecstasy are nothing like mescaline. Mescaline produces a "trip"- like effect - hallucination and a sense of complete detachment from reality. This can be very dangerous as laws of physics as well as the laws of government can seem irrelevant. Never have I hallucinated or have known anyone else to have hallucinated from the use of MDMA.

Cocaine and heroin have most often been compared but this is completely asinine. These drugs are, without question, addictive in nature leading them to be much more grave. An addict will do "ANYTHING" for their next hit - steal, kill,.... Moreover, these drugs can also be abused to the point of overdose and consequential death. These consequences are much more severe to individuals and society than ecstasy and should therefore not be compared in any way to ecstasy.

Ecstasy produces a sense of empathy, love, and euphoria with a combined rush from accelerating the heart and a heightened sense of touch. This is the complete opposite of the effects of marijuana or, more specifically, THC, which promotes apathy, and sedation. The effects of MDMA are, as you may well know, the consequences of a mass release of serotonin in the brain and the amphetamine nature of the drug. They lead to wanting to dance or "become one with the music" and be social and touched. In an environment of ecstasy users everyone wants to be friends and help each other and has been compared to the free-love atmosphere of the '60s. I have also read how psychologists in the late '70s and early '80s would take MDMA to foster their sense of empathy and therefore become better able to diagnose and treat their patients.

Ecstasy is not addictive and its only side effects are dehydration and exhaustion usually from the combined effects of an accelerated heartbeat and dancing. These effects are not any different from caffeine or diet pills. The abuse ecstasy (by this I mean those individuals taking 10-30 pills over a day or two - an analogy (as the government seems to love those in matter of drugs for some reason) would be a few drinks (a dose, or pill) of ecstasy) vs. a case of vodka (over use)) leads to irregular sleeping patterns and depression from damage to the brain's ability to re-uptake serotonin. Death from ecstasy has been linked to "bad ecstasy" such as the use of PMA or DXM instead of MDMA. I've read that in some rare cases severe dehydration and pre-existing heart conditions caused death in individuals taking ecstasy. Again though, these can cause death in individuals taking caffeine, diet pills, or any other substance containing amphetamines.

I would suggest that any official given the power to create laws regarding ecstasy, or any other non-addictive drug with no side effects if a mild dose is taken, to take a mild dose. How else can one accurately know and report on something except from a personal experience?

Lastly, as far as sentencing goes, the important issue here is to realistically weigh the cost of ecstasy use to society vs. the cost of increased punishment (including the cost (time and money) relating to police, courts, taxpayers, jails, government officials and the lives of individuals). Then is the projected decrease in use worth the cost to society and is it fair given the effects if the drug? We have seen from history what increasing punishment has done to the cocaine market, for instance, where cocaine is much more pure and plentiful today than in the past. The same goes for heroin. The only real solution to any drug related problem is education and better alternatives to drug use. Meeting drug problems with an extreme right wing solution makes it seem as though it is the politicians who are detached from reality.

Sincerely,

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2/4/2001

Joseph Illescas

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specmind

From: "weaselynn" <weaselynn@email.msn.com>
To: <rgb@cognitiveliberty.org>
Sent: Sunday, February 04, 2001 4:43 PM
Subject: Response to Commission's Amendment
 To whom it may concern,

This letter is in response to the Commission's proposed Amendment to equate Ecstasy with Heroin for the sake of sentencing.

I am a 21 year old female, engaged to be married. I own my own house and car, and pay all my bills. I work full-time with mentally disabled children, which is sometimes very stressful. On my weekends off, my fiance, and I will go out to the club, or go down to the city to a big rave to dance and have fun. I usually take just 1 pill a night, but have never taken more than 4 pills in a whole weekend, and I have been doing this just about every week for almost 9 months.

When I am on Ecstasy, it is the best feeling in the world. I become more open to people and to myself, and everything just feels good and right. I'll sit down and look at all the other people having fun, and smile. Because that's what it is. It makes everybody happy and love each other, and if used safely, it will never take anyone's life.

I have never had a bad experience while "rolling." And I have never felt depressed or sad the next day. Actually I still feel like I'm coming down from the roll; relaxed and warm. A very happy feeling, almost like you're glowing. And if excessive, continuous use of Ecstasy will lead to a decrease in serotonin axons, then you must have to eat several pills a day, for several weeks in a row, because I have not noticed any changes in mood or memory in myself or anyone else.

Ecstasy is not a hallucinogen or a stimulant. It is in a category called Entactogens, which literally means "touching within." It lowers your fear response, so that you can connect with people you never thought you could.

It should never be placed in the same category as heroin, crack, cocaine, or any other drug like these, because it simply is not the same. It is not addictive, and when used safely, you will never die from it. You will only die from the fake pills that are being made everywhere.

So, being an adult, who has enjoyed using Ecstasy responsibly, I pose a question to anyone who thinks that it should be illegal...WHY??????????

Because people are dying from it???.....WRONG!!!!!!

Anyone who has died from using Ecstasy died because they either 1) combined it with other more dangerous drugs (ketamine, GHB, speed, or coke), 2) did not follow the safety precautions such as drinking water, and taking breaks from dancing to cool down (following these safety precautions are equivalent to not drinking and driving, except that is worse because the lives of everyone else on the road are at stake) 3) ingesting 14 pills or more all at once, because that is considered a lethal dose (what would happen to a small child if they got into a bottle of aspirin and swallowed the same amount? Probably a lethal dose as well) or 4) took a pill that was actually something else, such as DXM, PMA, or DOB. All it takes is one of these pills to kill you. I have never allowed my fiance, or anyone else that I know to take a pill without me testing it first. I bought a test-kit through DanceSafe, and it has saved our lives more than once.

Also, if Ecstasy was manufactured legally by the government, this would not be an issue. All the pills would be regulated by the FDA, and then nobody would have to die.

In addition to these facts, the government claims that MDMA has no therapeutic use in the medical world, yet they continue to keep it in Schedule I, which outlaws any research or medical testing. Wouldn't it be a better idea to place it in Schedule III, allow for research on the therapeutic uses as an adjunct to psychotherapy, instead of just testing for negative effects on rats? Which, by the way, rats have a brain about the size of a gumball, so any effects that MDMA has on them is really unrelated to the actual effects on people.

I would also like to point out a few more flaws with the placement of certain drugs in this society. The government will not allow responsible adults to use a non-addictive, relatively safe substance that makes people happy and content, but they will allow people to drink alcohol which for alcoholics, is more addictive than heroin. These people will then start to get sick with cirrhosis of the liver, jaundice, and Hepatitis B. My father was an alcoholic who eventually needed to be put in detox for 6 months because the addiction was so bad. And 10 years later, with more drinking his liver gave out and he needed a liver transplant. But this "safe" drug is still legal and is easy to get into the hands of any child. I drank my first beer at the age of 10, and was drunk for the first time at 13, yet Ecstasy seems to be a huge epidemic.

The drug of choice for my father was really cigarettes. And this eventually killed him. He would smoke 2 packs a day, but at the time it seemed like alcohol was more of the enemy. Two years after his liver transplant (it was successful, but our insurance wouldn't cover it because it was alcohol related, my mom had to come up with \$500,000.00 for just the operation, not including the \$300.00 worth of medicine he had to take a day to keep his

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2/4/2001

body from rejecting the liver) my Dad was diagnosed with lung cancer. They tried one operation to remove the portion of the lung with the tumor, but by that time it had already spread to his other lung. They gave him a month to live. He lasted 5 days. I was 12 years old.

Cigarettes have absolutely no medical uses at all. And Quite the contrary, regular smokers will die of some kind of smoking related disease. Does't anyone read the labels??? Smoking will cause lung cancer, emphysema, heart disease and fatal birth defects. People die from these, every minute, of every day. Second-hand smoke is probably more likely to kill someone than 1 pill of Ecstasy.

I am in no way suggesting that alcohol and cigarettes be illegal as well, it won't work anyway (look at prohibition in the early 1900's) also the government would hate to lose those taxes on these DRUGS. But doesn't anyone see, that even though more money is going into all these Anti- Club Drug Acts, and the sentencing times are increasing, that the amount of production, importation, selling, buying, and using of Ecstasy is still climbing steadily.

Not only is the government not winning the war on Ecstasy, it appears to be making it worse. The culture surrounding this drug used to be strictly the gay community during the 1970's and early 1980's. That is when it was still legal. Once DEA Administrator Lawn pushed it into Schedule I in 1986, it disappeared and then started showing up in the underground rave scene. But today it has spread even further than that. You can hear 2 of America's most popular rappers have new songs that mention Ecstasy use; Eminem and Jah Rule.

Perhaps the answer is not in the tightening of controls on the substance, but in the loosening and understanding of it. Maybe if we take the time to look at both the positive and negative effects (not just the negative) of MDMA, and see where it's place is in modern medicine, then maybe it will be a little more respected by society. And then maybe the government won't feel so obligated to put scare tactics on the people of America, because Ecstasy won't be that scary any more. (By the way, all the "negative" effects of Ecstasy that are listed on the NIDA (National Institute of Drug Abuse) website are no worse than any of the side effects of the drugs that are in the Physician's Desk Reference; they also coincidentally do not name any of the positive effects of MDMA, especially the feelings of empathy and love... go figure!!)

There will always be a demand for MDMA, whether it is for it's therapeutic use in some psychiatrist's office, or to go to a rave and enjoy yourself and the company of others. I just feel that it is unjust to not allow those who can act responsibly to use a substance that they feel has total positive effects. Doesn't the phrase "Freedom of Choice" mean that you have the right to decide for yourself??? Think about it. Thank you.

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specmind

From: <Thescarletstar@aol.com>
To: <rgb@cognitiveliberty.org>
Sent: Sunday, February 04, 2001 9:45 AM
Subject: correct information

I am writing in response to the inaccuracies in the proposed ecstasy law. It has been represented to the Commission that Ecstasy (i.e., MDMA, MDEA, MDA and PMA) is similar in its hallucinogenic effect on the user to mescaline. Also it has been described as having an added stimulant component that can elevate heart rate, blood pressure, and body temperature. It has also been suggested that the drug is neither physically nor psychologically addictive. The proposed amendment treats Ecstasy as being of comparable seriousness to heroin, providing a marihuana equivalency for Ecstasy that is the same as heroin. Accordingly, for sentencing purposes, 1 GM of Ecstasy will be the equivalent of 1 kg of marihuana. I think it is ridiculous to treat ecstasy in the same manner as heroin. They are in no way alike, and in no way equally serious the Commission treat Ecstasy as being of comparable seriousness to powder cocaine (which would result in a marihuana equivalency for Ecstasy of 200 GM) or methamphetamine mixture (which would result in a marihuana equivalency for Ecstasy of 2 kg). Still incorrect. Ecstasy is not comparable to cocaine either. The penalty, I think, should be comparable to that for mescaline (which would result in a marihuana equivalency for Ecstasy of 10 GM). Regarding whether the Drug Quantity Table in section 2D1.1 should be revised with respect to Ecstasy I think that all of these laws and revisions of laws and charts will not help. We need to provide education to the public about the risks and effects of the drug. This will scare away some, and those who will do it anyway will have the information to be safe as they do it.

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specmind

From: "Danny Yavuzkurt" <ady1@psu.edu>
To: <rgb@cognitiveliberty.org>
Sent: Sunday, February 04, 2001 10:02 AM
Subject: Ecstasy sentencing guidelines are patently ridiculous
 The new Ecstasy sentencing guidelines being considered are patently ridiculous and should never have been proposed in the first place.

Ecstasy is in no way comparable to marijuana, cocaine, heroin, methamphetamines (even though it is chemically similar), or any other drug. Ecstasy is what cognitive scientists refer to as an "empathic entheogen," meaning that the main function of the drug is to increase empathy and interpersonal relations, making the user feel "at one" with everyone around him/her. There is no causal relationship between Ecstasy use and:

- violence
- physical addiction
- danger to self and others in general,

EXCEPT for its well-known and easily combated hyperthermic effects. Many of the deaths attributed to 'Ecstasy' were in fact caused by PMA or other drugs masquerading as E. In effect, by treating E as if it were responsible for the deaths, and thus as 'dangerous' as heroin, the Sentencing Commission completely disregards the truth in this matter, and is acting more out of a desire for political capital - seeming to 'crack down' on drug use is always desirable when a new presidential administration comes to power, especially one as in need of legitimacy as Bush's.

This new sentencing guideline, that will put thousands or tens of thousands of nonviolent, nonaddicted people, most of them young, college-age or younger, behind bars for years, is nothing more than a crass political machination, and takes advantage of a shortened public comment window and the calculation that many of those affected by this new law will never know of its existence until it is too late. It is truly shameful to enact a guideline that will massively increase criminality of a drug that is only dangerous to the user him/herself, putting young people behind bars for much of their lives, simply to further a political agenda of looking 'tough'.

The Sentencing Commission, if it truly believed in protecting the public interest, would concern itself with finding ways to stop nonviolent, nondangerous drug use before it starts, and treat it, when it occurs, not as a criminal act, but simply as a recreational act, like smoking, that comes with its own set of dangers and consequences, which individuals may consider consciously, and act of their own free will in deciding how to use their bodies.

Enacting this guideline is nothing short of declaring war on a generation, nothing short of seeing the world through black-and-white glasses, where everything labeled a 'drug' is evil, and those who use them are forever labeled 'criminals'. You cannot change the hearts minds of the people

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through threats and force - and that you have chosen, once again, to fight the 'war' against drugs' as if it were a war against the citizens.

Shame on you.

Danny Yavuzkurt

Student, Penn State University, department of Information Science and Technology

ady1@psu.edu

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2/4/2001

specmind

From: <ZenMichael@aol.com>
To: <rgb@cognitiveliberty.org>
Sent: Sunday, February 04, 2001 10:26 AM
Subject: Notes to Sentencing Commission
Dear Madam or Sir,

I am a former ecstasy user and would like to comment on the information submitted to you.

- 1) Ecstasy is not a hallucinogenic drug. It does not alter visual perception in any way.
- 2) Ecstasy is psychologically addictive to some people, but no more so than alcohol. Your sources are correct that Ecstasy is not physically addictive.
- 3) The potency of ecstasy as a mood enhancer is analogous to marijuana. It does not approach heroin, cocaine or even mescaline in its ability to alter mood. Sentencing should reflect that one dose of ecstasy (approx. 150 mg) = one dose of marijuana (? g)

Sincerely,
Michael Foster
2401 Park Blvd. #6
Oakland, CA 94606-1576

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2/4/2001

specmind

From: "kim hanna" <onegreenday@hotmail.com>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 10:17 PM
Subject: letter for Sentencing Commission
 Dear Sentencing Commission,

I would urge you NOT to make the penalties for Ecstasy on a par with heroin; as they are not even remotely related in terms of drug danger. Once again our Congress clamors for tougher prison terms as a means to control drug use; when all such past attempts have failed miserably. We've got prisons full (2million) of drug offenders yet America has more pure, more kinds and cheaper drugs available; than ever before. That plan has failed and I don't want Ecstasy penalties equal to heroin.

If you must increase the penalties, I would equate Ecstasy with mescaline and treat it the same; Ecstasy of 1 gram equal to 10 grams of marijuana.

Switzerland's highest court ruled that Ecstasy was not a dangerous drug and was by most accounts used responsibly by people, without promoting criminal acts.

They said Ecstasy should be considered a 'soft drug', less dangerous than heroin or cocaine dangerous.

If you take some time and read the accounts of Ecstasy used in psychological therapy here in the U.S., when it was legal; you'll find that it had much success and had minimal side effects (when used properly) or dangerous reactions.

At this moment, Spain is either testing or setting up testing for Ecstasy in trials to see if it should be made available to the public under doctor supervision. Here our Congress wants to lock you up and toss the key away.

Rick Doblin a graduate of Harvard's Kennedy School of Government who founded the Multidisciplinary Association for Psychedelic Studies said: Ecstasy 'helps people accept difficult emotions and it helps us learn about self love, openness to others, and openness to critical feedback. We shouldn't push this underground; we should study this intensely.'

I once again urge the Sentencing Commission to refrain from drug war hysteria and look to the science for the purported danger of Ecstasy vs it's many reported successes. Thank you.

Sincerely,

Kim Hanna, 3 Eames Road, Worcester, MA 01606

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2/4/2001

specmind

From: [REDACTED]
To: <rgb@cognitiveliberty.org>
Sent: Sunday, February 04, 2001 1:29 PM
Subject: Ecstasy Sentencing
Dear Sir,

Please consider this as my written statement concerning the Sentencing Committee's upcoming decision concerning the sentencing of those convicted of possessing or trafficking in MDMA (and similar drugs). Also, are these comments anonymous? If not, can this comment be made anonymous? If anonymity is impossible though, please submit my response anyway.

thank you,

[REDACTED]

Members of the Commission,

These comments are in response to the proposed alteration of the Drug Schedule to increase penalties for possession and trafficking of MDMA, MDEA, MDA, and PMA. Under the proposal, these drugs will be equated with heroin for sentencing purposes. Please reconsider this decision, as MDMA and heroin are clearly in two different leagues.

MDMA is not hallucinogenic, as is stated in the Commission's report. Of the various people I know who use or have used MDMA in pure form, none have ever experience hallucinations and neither have I. A drug that acts the way MDMA does should not be treated as heroin. I have never tried heroin, and I never plan to try heroin. Heroin is highly addictive and severely damaging to the body. Of the MDMA users I know, none have ever even considered using heroin. On the other hand, MDMA is not physically or psychologically addictive. MDMA use results in an intense euphoria and a general acceptance of everyone and everything around. MDMA users are not violent, in fact, users tend to be very loving and open about their emotions. MDMA is non-lethal. Fake "ecstasy" though, can be cut with anything including, but not limited to, heroin, cocaine, ketamine, and PCP. Any pill passing as ecstasy that contains these drugs is dangerous to the user. MDMA, however, is not. Other ecstasy-like drugs such as MDEA, MDA, and PMA however, can be fatal. In your final decision, please bear in mind that MDMA is non-addictive and non-fatal. I would like to see penalties increased for MDEA, MDA, and PMA, as they are dangerous. Of the three, PMA is the most dangerous and should receive the largest increase of the drugs. If an increase is inevitable, please consider equating these drugs with mescaline because, clearly, MDMA falls well short of drugs such as cocaine and heroin.

Thank you for considering these comments.

Sincerely,
A

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2/4/2001

specmind

From: "Debi Jasen" <debif@hotmail.com>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 8:46 AM
Subject: Ecstasy

Dear Sentencing Commission:

As a third year college student, I have seen a tremendous amount of drug use. As you may know, heroin is gaining popularity in the Northwest region of the U.S. I went to school in that area, and I can tell you all about the damage done by heroin. Although I spent the first twenty-one years of my life in a suburb of D.C, I have never seen as many addicts as I did in the Northwest. My friends would try all sorts of "cool" drugs, and ecstasy was one of them. Not one of my friends, roommates, or acquaintances became addicted to ecstasy. However, we did have some serious problems with heroin addiction. Ecstasy was a temporary high. Some of my friends would take it to help with their studies, others took it when they were going to a club or a party. Ecstasy was a group drug for them. However, heroin, in my experience, became more of a private drug. Many of my friends wouldn't touch heroin because they were afraid of becoming addicted. There is a tremendous difference between heroin and ecstasy: a difference in the effects, a difference in the addiction rate, a difference in the impact it has on one's life. If you treat ecstasy as heroin, with the same punishments, and act as though it's just as scary and evil, you will lose even more of your war on drugs. Young people don't trust the government's message very much these days. They've learned that marijuana isn't going to destroy them. They've learned that a hit of acid won't put them in the psycho ward. And they've learned that they have little to fear from Ecstasy. If you tell them that Ecstasy is as evil as heroin, they will believe that heroin isn't so bad after all. You will lose even more young people than you already have lost. Please, do more research on these drugs, and discover the major differences yourself.

Sincerely,
Debi Jasen
Maryland
debif@hotmail.com

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2/5/2001

specmind

From: "Kathy McLeod" <klmcleod@ev1.net>
To: <rgb@cognitiveliberty.org>
Sent: Thursday, February 01, 2001 1:12 PM
Subject: Ecstasy Sentencing

I am opposed to the increase of punishment for MDMA offenses. This substance is not the same as heroin and is not an addictive substance as heroin, we know, is. There is no justification whatsoever to classify this substance in the same category as heroin and impose such punishment.

I am vehemently opposed to this proposed punishment increase.

Kathy McLeod
Houston, TX.

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specmind

From: "Eddie Codel" <eddie@eddie.com>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 9:38 AM
Subject: MDMA public comments

Dear Sentencing Commission,

This past weekend I attended a conference on 'The State of Ecstasy' in San Francisco, California. After listening to a number of medical doctors, psychologists and researchers present their results of research into MDMA, I am convinced that this a drug with definite medical potential, and not nearly as dangerous as is often represented in the media and by our Congress. Much work needs to be done yet to accurately determine how MDMA affects human beings and what the long-term consequences of abuse are. Nonetheless, I am convinced this is a drug that needs balanced consideration before determining that it's worth taking peoples' lives away for its abuse.

Given the evidence and record to date, it would be inhumane to classify MDMA at the same level as heroin. Heroin is by far, a much more dangerous drug, both in physical and emotional addiction. It would be more fair to classify MDMA at the same level as mescaline, for several reasons. From all accounts MDMA, does not appear to be physically or emotionally addictive, and it has been reported that it has some similar hallucinogenic effects.

Please consider this issue fairly and without prejudice as we have much to learn and little to gain for locking up more people for longer periods of time for something we know too little about.

Thank you for your time in this matter.

Eddie Codel
San Francisco, CA

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2/5/2001

specmind

From: "Kristen Calvo" <kristenlia@hotmail.com>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 9:52 AM
Subject: MDMA in a class of its own.
Hi,

My opinion on the drug ecstasy is this. . . I have talked to many doctors on the subject of MDMA and the long term effects of the drug, which none have been found. I have also talked to doctors about the addiction part of it for this particular drug there has found to be no addictive characteristics. So I do not understand how you guys are trying to say that it is on the same level as heroin. MDMA is not addictive. MDMA has never been proved a killer. All MDMA does is give people a false feeling of euphoria. If you are going to try and find a mind altering substance that has the closest effect you'd be better off comparing it to alcohol minus the violence alcohol incurs among some individuals. So I really don't understand why you don't just restrict MDMA as you have with alcohol. Even though Alcohol is addictive and has been proven to kill still it remains legal. While MDMA is non-addictive and has never killed anyone it remains illegal. If you want MDMA to remain illegal until more is found out than you should class it with Marijuana or in a class of its own.

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2/5/2001

specmind

From: "Robert Cashion" <trebor@justice.com>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 9:59 AM
Subject: De-criminalize Ecstasy

Ecstasy far less dangerous than Heroin. You don't shoot it with a needle. No matter how much you do it doesn't get you high after more than 2 days. Most users use 1 or 2 pills at an event and many only every few weeks or even months. Heroin, even if your chipping is used at least several times a week, usually several times a day. It is often injected with needles. The high hits you so fast you can OD on the spot. Heroin is bought on the streets from people who try to gaffle you even knowing that you'll get sick physically if you don't get more. Ecstasy is distributed amongst friends through safer channels. It is consumed at events that can watch out for someone should something happen (just as bars watch all the drunks). People can do E and go to bed and go to work. If you're doing Heroin there is an adjustment period - you either get sick, depressed or both or you do more and boom you get hooked.

I have never heard of an EUI but there are 1000's of DUI's why is alcohol not banned (and cigarettes and caffeine) it causes violence and disease and deaths? You have drunkards running through the neighborhood peeing and puking and kicking things. I would much rather have a bunch of people dancing, laughing and hugging at a club, party event, rave.

Robert Cashion

1230 Market St. #629

San Francisco, CA 94102

trebor@justice.com

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2/5/2001

specmind

From: "Dan Aeberhard" <dan@aeberhard.com>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 9:43 PM
Subject: Penalty Structure for Ecstasy

Dear Commission Members,

I and most of the people I know are very, very concerned about the current situation with relation to the upgrade of sentencing guidelines for Ecstasy offenders and the current status of Ecstasy as a schedule I narcotic. My feeling is that small (under 5KG) Ecstasy offenders should be treated no more seriously than Marijuana offenders and that putting Ecstasy offenders on par with serious hallucinogenic substances like LSD and ultra-addictive and dangerous drugs like PCP and Heroin is a major mistake and will only increase the number of small-time offenders that will go to jail with major-offender sentences.

More specifically, I urge you to keep small amounts (under 5G) of Ecstasy on par with Marijuana at Level 6 (250G).

ONLY people carrying LARGE (above 5KG) amounts of Ecstasy should be punished severely (comparable to a narcotic like Heroin) for intent to traffic and distribute at a high level, as these people carry the real danger for society and our fellow citizens.

I thank you for your consideration of my thoughts and opinion.

respectfully,

Dan Aeberhard
Los Angeles, California

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2/4/2001

specmind

From: <Junglegurley@aol.com>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 8:48 PM
Subject: a note on the new MDMA proposation

Hey..... I just want to add my comments on the new amendment that is being proposed regarding MDMA and what other drugs it is compared to (the new bill that would make 1 gram of MDMA equal to 1,000 grams of marajuna). Now, I know you do not care what I have to say, and anything that I have to say is not going to amount to anything anyways. But, I think this is completely silly. Yes, drugs are a problem in America. Yes, drugs are bad for you. I'm not about to argue with you on those issues. However, I feel that this is just taking the drug war a little bit too far. All drugs are different and carry different side effects and it is silly to compare MDMA to heroin. I am well aware that there are dangerous effects to the drug(as with alcohol and cigarettes and cholesterol and sodium, etc., etc.) However, if people want to make educated choices, **THAT DO NOT HURT ANYONE ELSE (IM NOT TALKING ABOUT GOING OUT AND SELLING DRUGS TO SCHOOL KIDS)**, but the choice of what they put into their own body, as long as it does not hurt anyone else, then that is their choice. Most people know the risks, but what is it the concern of anyone else really? Plus, MDMA does have certain therapeutic value, and was once legal and used for those things. Many well-educated psychotrists and doctors experimented with it, and there have been known positive effects, just like negative effects. Just like sunlight is good for you, but too much sun can cause cancer. Now, just on a closing note, I'm not arguing over whether drug use is good or bad, but I'm saying more money and time should be put into education about the subject, instead of harsher consequences, which pretty much result out of fear.

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2/4/2001

specmind

From: "Gustafson, Jonathan W" <Jonathan.W.Gustafson@uwsp.edu>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 12:34 PM
Subject: regarding ecstasy

To whom it may concern (besides myself)

A little about my self first. I'm currently going to college. I don't drink and I don't use tobacco and I'm in great health. I don't feel that ecstasy is anywhere near as serious as heroin, and I think that to make it the equivalent of heroin would be a serious mistake. I've tried this drug, but I haven't tried heroin (nor do I ever intend to). Ecstasy when taken in normal doses just induces a feeling of love and compassion (not sex, but peace), it doesn't make people go mad, it doesn't even make them drive bad. The only real side effect I noticed was I wasn't quite as happy the next day (the ecstasy version of a hangover) but that soon went away.

It seems that there's a pattern here, when they (the government) wanted to first make marijuana illegal and then again in the late 70's crack down on it they rolled out with many of studies on how horrible it was, and all the dammaging side-effects, while at the same time (in the 70's) the American Medical Association (one of the few truly impartial organizations, at least back then) was calling for immediate legalization. Now it's happening again.

It doesn't matter what the consequences are, the word that's spread among teenagers is that this is a relatively benign drug when used occasionally so many will still want to try it, and the supply will still strive to meet the demand. The only result I can see coming of this will be overcrowded prisons full of harmless people being put next to child molesters and killers. I'm just submitting this because I'd hate to see this happen, to have so many peoples lives ruined not by occasionally looking for an experiance but by the consequences an unknowing government puts down on its' people. I urge you to reconsider this step that may be taken. It's time we called a truce in the war on drugs, a war on our own people, and try to work with them instead of against.

Thank you for hopefully taking this into consideration,

Jon Gustafson

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2/4/2001

specmind

From: "John Mullican" <John_Mullican@UPN.com>
To: <rgb@cognitiveliberty.org>
Sent: Friday, February 02, 2001 1:08 PM
Subject: Penalties for Ecstasy use
February 2, 2001

To Whom It May Concern,

The penalties of making "Ecstasy" equivalent to heroin is an outlandish and ridiculous proposal for many reasons, but primarily the basis of this proposed amendment's math does NOT compute with other federal drug offenses.

To prove this point statistically, currently 1 gram of mescaline is equated to 10 grams of marijuana for the same federal punishment by law. Now, to equate 1 gram of MDMA ("Ecstasy") to 1000 grams of marijuana for the same punishment? This sends a ridiculous message of choosing the lessor of two substances for ultimately the same effect. Ecstasy is bad, but marijuana is okay? This hypocritical approach with federal measurements of Ecstasy is clearly a political move to the current media hunger for Ecstasy news because of the drugs growing popularity within our culture.

Sadly, statistically this proposed amendment will do nothing but scare more people to hide than to seek treatment. Because of its obvious imbalance of measurement to other federal drug policies, I urge this proposed amendment NOT be approved.

Sincerely,

John Mullican
400 S. Ogden Dr.
LA, CA 90036

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2/4/2001

specmind

From: <ALifeLessOrdinary@aol.com>
To: <rgb@cognitiveliberty.org>
Sent: Thursday, February 01, 2001 10:21 PM
Subject: New Ecstasy Law

Hello, my name is Scott Jackson and I am a Psychology major for my third year at Modesto Junior College. I don't believe that Ecstasy should be considered on the same level as Heroin for several reasons addressed below.

First of all, I believe that this law is being passed in favor of Middle Class America, who, for the majority, believe that drugs cause nothing but harm. Which, in most cases are true, but there are some exceptions that can't be ignored (I'll talk about that below). Back to the subject, raves and Ecstasy have not been in the limelight until millions of teenagers from Middle Class America started rampaging blindly into the scene. Then, you started having tons of overdoses and deaths. But in reality, it wasn't the drugs that were killing them, it was irresponsibility and poor judgement. The media and the American public generally do not care about problems occurring in the country until it affects them. Schools in low income urban areas have been full of violence such as stabbings and shootings for a very long time, no one made a big deal about it until it happened at Columbine, the average-American type of high school. Then it became a tragedy, then the American public started to take notice, and sadly, no one really cared until it affected them, as Columbine did. The same is true with the rave scene and Ecstasy. When it was really underground, and it was a selective elite group of urban dwellers that went and actually combined it with Ecstasy responsibly, no one cared, but once they became more mainstream and hordes of Middle Class high schoolers were disappearing all night long and coming back warped out of their minds, that's when people started to care.

When the Columbine killings happened, it became a media frenzy, and suddenly schools all across the country (including mine) were receiving bomb threats. The media had created a disaster. In this same way, the media had a large part to do with the drug problem with the rave scene, now. Specials like 20/20 and Dateline started doing specials on the "Killer Rave Scene", they basically put out the message that raves were free-for-all drug-fests. In turn, this attracted millions of people who thought that drugs were what raves were all about (As a side note, anyone who really knows what's up on the rave scene knows that it is not about the drugs. People who come for the drugs are the misinformed results of the media coverage, who are ruining it for those who actually want to go there to dance.). When millions of teenagers started turning to raves because they thought it was all about drugs, it filled them with even more drug sellers and drug users. This caused more over-doses, deaths, drug dealers, etc. So once the problem escalated, they do more reports on how bad the drug scene is. Again, they advertise it like a drug fest and it attracts more people who come for the drugs, and it works in a vicious circle.

So now, people are wanting to crack down on Ecstasy sellers and users. What I think the general public is unaware of, is that a law like this will be putting their own teenagers in jail. Drug dealers don't fit into a stereotype. They don't consider themselves 'drug dealers' in the same way that Law Enforcement does. They look at it like doing their friends a favor,

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2/4/2001

who want it and making some easy money on the side. I've seen 15 year olds selling Ecstasy at raves, before. I've seen a 13 year old selling weed. They don't look at it as a major crime like the rest of America does. To pass this law on Ecstasy will put a lot of teenagers behind bars and destroy a lot of families. But I guarantee you one thing; if this law does get passed, you're going to see a whole lot of young Middle American youth get put behind bars and the parents who voted for a law like this to get passed will start to wonder what the hell they just did. Their whole "Do it for the children" campaign that seems to be going on will suddenly be under serious restructuring because what most people don't realize is that it is **THEIR** children that are doing it!

To summarize all that, the media chooses to focus on things the general middle class American public cares about. The general public doesn't care about anything until it affects them and their families. They've been led to believe that a crackdown on drugs, especially in the rave scene will save their children, when all it will do is put more of their children in jail because there are a lot more teenagers out there, especially in high school, that are doing these things behind their parents' backs. When parents think of a crack-down on drug dealers, most of them think of the stereotypical drug dealer, usually a gang member or a thug, etc. I think that these parents would be shocked to find out that the very people they're trying to put behind bars. . . are their own children.

On a second note, I have seen Ecstasy turn some people's lives completely around for the better. Those who know how to use it responsibly (not 13 year old girls who don't drink enough water and don't know when their limit is) have actually been able to learn from it and make very positive changes in their lives. The textbook descriptions of Ecstasy's effects do not come close to explaining how it actually feels. You are not self-conscious about anything, you are no longer shy, you do not feel anxiety and you feel like you have more self esteem at that moment than in your entire life. People who suffer from Depression and taken felt like they finally got woken up out of their mental prison. They finally got a glimpse of what it felt like to feel good about themselves. And it motivated them to start changing in order to feel that way without the drug. I have seen people who were completely thugged-out, always trying to look tough and act like something short of Conduct Disorder. And once they got introduced into the rave scene, and Ecstasy, it completely changed their entire perspective of life, for the better. He dropped the thug act, he became a lot more outgoing and friendly, and even accomplished the biggest taboo in America: accepting gays as people! His experience with that drug opened his eyes to the positive aspects of life and made him realize that the mean and tough thug act is completely ridiculous! These are just some examples of the positive aspects of these drugs.

To be fair, I have also seen it consume people. I have seen people ruin their lives because of this drug, but it was not because of the drug, it was because of their irresponsibility. People can learn from drugs like Ecstasy, or they can use it as an escape from reality. People who try to learn from their experience and use it to motivate them for positive changes in their lives have done so very successfully. Those who want to use it as an escape from reality, also do it successfully. So much, in fact that they lose all touch with reality and permanently destroy their lives for ever. It

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is a very sad thing to see, especially when you see that happen to your friends, but again, it is not a drug problem, it is a lack-of-awareness and irresponsibility problem.

I also believe that with the ammount of Congressmen, ex-Presidents, Law Enforcement, etc. that are closeted drug users, I feel that it would be very hypocritical to pass a law like this. I think that doing so would basically just send the message that they can do it because they're above the law, but we can't because we are simply citizens.

In conclusion, I believe that passing a law like this will not stop drug use or its traffic, it will simply put more people in jail, and I think we have enough people in them already. I think that jails should be reserved for those with a violent crime. Building more schools than prisons would be a nice alternative. A real drug awareness program that could succeed where DARE failed, would be another alternative. I also believe that it is a person's right to do to their body what they want to. People know that Ecstasy is bad for them. We know that it screws up the brain, so if it's thier body, why can't they do what they want with it? Of all the drugs in the world, Ecstasy is absolutely on the bottom of the list as far as causing violence. Ecstasy makes you want to be friendly and peaceful. Alcahol has been proned to instigate violence, and it is even worse for your memory than marijuana, yet it is legal. Ecstasy is bad for you, I'm not saying otherwise, but I believe that if people want to screw up their lives like that, let them. It is their choice. People can screw up their lives real quick by gambling or drinking, yet they are considered American Pasttimes! To put a euphoria-inducing drug such as Ecstasy on the same level as Heroin is completely rediculous. People on Heroin are on it becaues they are addicted. People take Ecstasy because they enjoy the euphoric feeling it brings and the freindly attitude it gives them. Why make a drug like that more illegal when alcahahol incites violence?

I hope that whoever reads this has made it this far, and I'm not sure whether or not this letter will make a difference, but I hope that you understand the points that I am trying to make and will actually think about what I have said. I believe strongly in everything I've said and I hope that this letter becomes the one drop in the bucket that changes the scales against passing this new law. Thank you for your time,

Scott Jackson

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2/4/2001

specmind

From: "E&P File Server" <TimothyM@Divanet.net>
To: <rgb@cognitiveliberty.org>
Sent: Thursday, February 01, 2001 5:43 PM
Attach: ATT00235.dat; resum_.dat
Subject: ecstasy sentencing
Sentencing Commision,

I have been opposed to the war on drugs since i was a child. I believe it puts non-violent drug offenders behind bars for far to long and actually a conspiracy to ensure that people of color and youth do not have the chance to educational, career and voting rights. I have been working in the field of drug addiction for six years and have yet to come across an abuser of ecstasy. I blieve that all drugs should be decriminilazied and treatment on demand should be available to anyone who desires it. I also feel that drug substitute thaerapy is an avenue that has not been explored. At bottom i think that the cange in sentencing laws around ecstasy are an effort to ensure that the powers that be continmue to make money in the recording industry and alternative forms of music are made inaccessible.

sincerely - timothy maroni

[179]

2/4/2001

specmind

From: <Jmraspa@aol.com>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 9:17 PM
Subject: New MDMA Regulations

I think that your new proposal for treating MDMA as a drug equivalent to heroin is ridiculous. Heroin is a drug that stays in your system for life, causing a person to continually crave it for the rest of their life. MDMA, on the other hand, is not addictive, a one time drug, that a person can live without. The longterm effects of MDMA are minimal compared to the longterm effects of heroin. it does not take another powerful drug to help someone stop using MDMA. Heroin requires iron determination, or a methadone script, which can be worse than heroin. Also, treating drugs like marijuana or tobacco as a less harmful or addicting substance is another example of the government's blind eye toward recognizing a potential threat to society. One of my friends is addicted to marijuana, and has ruined his life. Many of my other friends take MDMA, and I have not seen an effect on them equal to the effect marijuana has on my friend. if the government decides to crack down on drugs, they should start with drugs that lead to worse, more ruinous drugs, like marijuana, tobacco, alcohol, and other substances that are more accessible than MDMA, and is more prevalent in the U.S. MDMA is like having cake at a party. We eat it rarely, but when we do, it's something to enjoy, not to abuse. A gram of heroin does much more damage than a gram of MDMA.

Sincerely,

The Concerned Public

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2/4/2001

specmind

From: "Norm Silverman" <normsilver@pdq.net>
To: <rgb@cognitiveliberty.org>
Sent: Thursday, February 01, 2001 5:37 PM
Subject: ecstasy

Ecstasy should be punished per abuse unit. Ecstasy has a very narrow dosage window i.e. – not enough and the user experiences no effect – too much and it doesn't substantially alter the effect. I believe the threshold for effectiveness is about 100 mg. Ecstasy should therefore be punished like LSD: by dosage unit. It is in no way in the same ball park as heroin. It is not addictive – in fact it has been used by psychotherapists to treat alcoholism and other addictions in the therapeutic environment. Its success in this respect is due to the insight it provides users. While its long term effects are not known, Ecstasy does not really lend itself to habitual usage like cocaine or meth, so it's much less likely to be physically harmful. Andrew Weil and others have written at length regarding ecstasy's beneficial potential in the field of psychotherapy. I will try to find sites for the articles and refer them within the time allotted.

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2/1/2001

specmind

From: "Wayne Radinsky" <wradinsky@yahoo.com>
To: <rgb@cognitiveliberty.org>
Sent: Thursday, February 01, 2001 9:10 PM
Subject: Re: Ecstasy Sentencing Alert

Hi. I'm responding to the request for public comments on ecstasy (MDMA) sentencing.

What I would like to say is that, to my knowledge, ecstasy is either nonaddictive or much less addictive than heroin, which is one of the most addictive drugs that exists. It does not cause violent behavior, like drugs such as cocaine or methamphetamine. And while research into its health effects are ongoing, and it is not clear how much harm a given amount of the drug or the frequency of use actually causes, it does seem very clear that ecstasy is not as harmful to its users' health as heroin. If it were, there would be much more evidence of harm from the research community than we actually see.

It seems to me that in order to justify harsh punishment, either a drug must be extremely addictive, or extremely harmful, or cause its users to behave in ways that make them a danger to others. There are drugs that do those things, but to the best of my knowledge, ecstasy is not one of them.

It seems to me like ecstasy is more appropriately classified with mescaline, or perhaps LSD. Ecstasy is not related to heroin chemically or in its effects in any way. I would encourage the commission to view ecstasy as more related to mescaline, or possibly to LSD, in its effects, and chemistry. Comparisons to heroin are completely inappropriate.

Sincerely,
Wayne

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February 3, 2001

To whom it may concern:

Interesting, yet ridiculous efforts by the Sentencing Commission when you consider how many *innocent* people are killed each year by drunk drivers in the namesake of their drug, alcohol; and by cigarette smokers in the namesake of their drug, nicotine - which has been deemed as difficult to quit as heroin. Regrettably, I guess it helps to have your own political lobby in Washington.

If you truly care about lives, put your efforts and money into better causes like rehabilitation and education. So much more could be accomplished by letting people make truly educated decisions about their own bodies. Each person has the liberty to do with their body what they desire, as long as it does not hurt me in the process. Please stop wasting my tax dollars on a drug war and scare tactics using outlandish sentencing, when it is obviously a no win situation and never could be - ie. prohibition.

Please consider appropriate sentencing based on the effects of actions upon other's and not ourselves. I see Ecstasy as no more of a threat than being caught under the influence of alcohol, nor should it be any more severe than that.

Thank you for your time.

Sincerely,

A concerned American citizen.

Keith B. Molter
Chicago, IL

specmind

From: [REDACTED]
To: <rgb@cognitiveliberty.org>
Sent: Friday, February 02, 2001 12:32 PM
Subject: xtc Sentencing

Please fwd my thoughts to the appropriate peoples... please do not include my email address.

MDMA in the last few years has shown a huge outbreak in urban/suburban America. Who is doing Extacy, why, and who is supplying it? I can only say what I know to be true. People who use extacy moderatly find that it changes their lives in the most positive of ways. This drug helps people understand themselves better than any prozac or doctor ever could. It only helps peoples' lives who use it responsibly. Those who abuse it do so not because it is addictive but because they will abuse anything since their attitude toward life is one of escape instead of expansion. Illegalizing MDMA and stronger sentancing will not help the underlying problem of these people. It prevents the theraputic effects that so many intelligent people achieve with it's help. You then offer no other alternative to MDMA. The next issue is

"Who is providing it?" MDMA used to be provided through responsible doctors to those who could benifit from it's effects. Since it's scheduling, pure MDMA has become very rare. It is not the threat you fear so greatly. Large organized crime families have caught onto the trend of Extacy Pills and from out of the country they press any amount of impure and destructive chemicals into a pill that they sell on the streets of America as Extacy (hardly ever MDMA.) All of this has come about since the scheduling of MDMA. Now use is on the rise. Not because of MDMA, but because the government has scheduled MDMA, and more unhealthy substitutes have been flooding this country advertised as MDMA. This is the problem. MDMA is not the problem. Pure MDMA has never shown unhealthy effects in any moderate user. ever. To say you have evidence otherwise is falty and inaccurate. The only time negative effects are shown is when it is really not MDMA or it is mixed with other posing drugs advertised as MDMA. Education(not propaganda) and de-criminalization are the only tools you can ever use to help people. It is commonly known that the criminalization of psychedelics is not done out of rationalization and understanding. It is ovious that it is done out of extreme ignorance and fear. It is hastily legislated by those who misunderstand the situation completely. It is done by those who act out of theory instead of experience. The scheduling of psychedelics is legislated by those who have never tried the drug and know nothing about the reality of the situation while insisting on preventing others from exploring themselves. The criminalization of individuals who use drugs is an effort to warehouse those in our society that are thinking for themselves and expanding their minds. The goal of criminalizing drugs is to turn these self-determined, innocent, and harmless people into a salve work force in our us prison system. All of these actions on behalf of the rule-makers in our government have been made out of fear and hysteria. Please do not make the sentancing of MDMA any worse than it already is. Those who sell real MDMA and use real MDMA are not criminals. There would not be crime if there were no legislation against it's existance. Your laws are ruining people's lives. Yours, mine, and every other global citizen on this planet. Please fallow you heart and not your fears.

Thank you,

Rocky Draughon

Boulder, CO

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2/4/2001

It is my belief that Ecstasy should simply be legal. No serious health risks have been shown to exist, nor was there any link between criminal activity and Ecstasy use prior to its criminalization. Even today the only criminal activity Ecstasy users are likely to engage in is consuming Ecstasy. It is not destructive, dangerous, or harmful in any way. Criminalizing it was a foolish decision, and there is no good reason for perpetuating this mistake any further.

If this mistaken decision is not yet to be corrected, we should at least have rational sentencing laws, and equating Ecstasy with heroin is about as rational as equating BB guns with atom bombs. Heroin is a dangerous, addictive substance which destroys lives. Ecstasy is a recreational antidepressant whose users regularly report positive emotional, spiritual, and psychological transformations as a consequence of its use.

Please stop this foolishness.

Thank you,
Giles Bowkett
1458 Page St., #8
San Francisco, CA 94117

specmind

From: "Larry Seguin" <larseguin@northweb.com>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 6:35 PM
Subject: penalties for Ecstasy

How federal Ecstasy offenses should be punished? No punishment!!!!
I see it as an escalation of the drug war that will only fill prisons with non-violent offenders and continue at the destruction of our Constitution.

At the drug scheduling hearings (1985) on Ecstasy by the Drug Enforcement Administration (DEA) their own Administrative Law Judge (ALJ) heard testimony from 33 witnesses and received 95 exhibits into evidence. Based on all the evidence the ALJ ruled that Ecstasy be placed in Schedule III.

In June of '99 Switzerland's supreme court ruled that there is no evidence that Ecstasy poses a serious health risk and doesn't generally lead to criminal behavior.

They said that dealing in the drug Ecstasy is not a serious crime and that Ecstasy is mostly used by 'socially integrated people'. They categorized Ecstasy as a 'soft' drug.

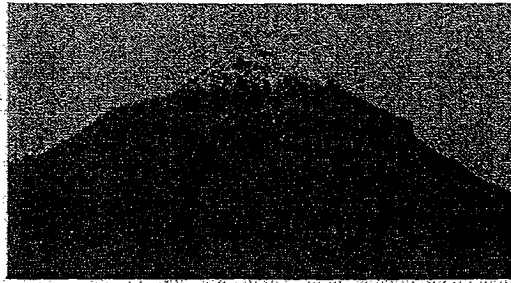
In March 2000 The Police Foundation of Britain also said Ecstasy should be treated as a soft drug. They said further that jail terms should be abolished for Ecstasy.

The Police Foundation said this after more than 2 years of study.

Respectively
Larry Seguin
288 Cold Spring Rd.
Lisbon, New York 13658-3208
315.393.7375

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2/4/2001



North Mountain Publishing

Sheldon Norberg
President/Dope Dealer ret.

U.S. Sentencing Commission

February 4, 2001

Re: *Ecstasy Sentencing Discrepancy*

Sirs,

I'm writing this from my position as a retired drug dealer, author and scholar of the drug world. The proposed alteration in sentencing that would equate the drug MDMA with heroin is not just irresponsible, it is insane. With the incredibly profitable black market already created by the government's unstudied and apparently intractable position, these sentencing alterations are unlikely to create much difference in the supply side. The demand has proven itself for some time now, and as any student of history can tell you, the increased penalties that various drug hysterias have created have done nothing to stem the use of any scheduled or non-scheduled drug.

What these penalties will do, however, is send thousands of children & young adults to prison for lengthy stays, based on the use of a drug with no addictive potential, no association to violent crime, and no conclusive evidence of cognitive disturbance.

These are your children. Believe me, I know. I sold drugs for a dozen years, MDMA included, to upper middle class white kids like yours. The conservative elements would have you believe (despite a lack of psychological evidence) that MDMA wastes the potential of young minds. There can be no doubt that extended incarceration does exactly that. Please weigh this thought, when thinking about gram penalties.

Sincerely, Sheldon Norberg

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POB 225265 SF, CA 94122-5265 (415) 666-3939 fax 666-3936
books@northmountain.com www.northmountain.com/publishing.html

specmind

From: <ThirdEyeProd@aol.com>
To: <rgb@cognitiveliberty.org>
Sent: Friday, February 02, 2001 11:05 AM
Subject: ecstasy law

I am writing this letter to show my disapproval for the proposed sentencing guidelines concerning ecstasy. I agree that the sale and use of ecstasy in our country has become a major problem over the past few years, but I also feel that changing the sentencing guidelines so that ecstasy falls under the same class as one of the most addictive and dangerous substances that our country is plagued with is outrageous. Personally I feel that education not increased jail time is the key to decreasing the recent public fascination with ecstasy. One site that I've found particularly useful is <http://www.dancesafe.org>.

Thank you for your time and consideration,
Scott Petty
Third Eye Productions
Denver, CO

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2/4/2001

specmind

From: "gangrene jurgis" <djmoktar@hotmail.com>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 8:59 AM
Subject: mdma sentencing
To whom it may concern,

The purpose of this letter, is to feel as though I have done what I can to stop an immense injustice.

The proposed amendment to equate all forms of ecstasy with that of heroin. To do so would be to lessen the fear of such poisons as heroin. It would also overlook the proven therapeutic properties of this substance.

To compare substances which have never been proven to be addictive in any form, and which has been lauded by a wide and diverse group of people for it's many properties would be, to submit to an alarmist reaction that comes from the anti-rave community McCarthyism in the twenty first century.

MDMA and it's analogues have led to many life affirming revelations and it's blacklisting from the scientific research community would be a mistake born of mis education and media hype.

Instead of putting such laws into action, Why not stop feeding the drug wars fire, for it has not proven it's worth while ecstasy use grows exponentially and prisons swell with non violent drug offenders. create a system that will educate and council those who choose to use this chemical. Safe, tested pills would lead to safer parties, less overdoses and more cooperation with police and authorities. We can help each other make this a positive learning experience.

PLUR---

JARED C. BIANCHI

P.O. Box 251

E.corinth Vt.

05040

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Get Your Private, Free E-mail from MSN Hotmail at <http://www.hotmail.com>.

2/5/2001

specmind

From: "E&P File Server" <TimothyM@Divanet.net>
To: <rgb@cognitiveliberty.org>
Sent: Thursday, February 01, 2001 5:43 PM
Attach: ATT00160.dat; resum_.dat
Subject: ecstasy sentencing
Sentencing Commision,

I have been opposed to the war on drugs since i was a child. I believe it puts non-violent drug offenders behind bars for far to long and actually a conspiracy to ensure that people of color and youth do not have the chance to educational, career and voting rights. I have been working in the field of drug addiction for six years and have yet to come across an abuser of ecstasy. I blieve that all drugs should be decriminilazied and treatment on demand should be available to anyone who desires it. I also feel that drug substitute thaerapy is an avenue that has not been explored. At bottom i think that the cange in sentencing laws around ecstasy are an effort to ensure that the powers that be continmue to make money in the recording industry and alternative forms of music are made inaccessible.

sincerely - timothy maroni

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2/5/2001

specmind

From: "Lawrence Foard" <entropy@virek.vwis.com>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 8:00 AM
Subject: MDMA sentencing

I would like to state that I know a number of MDMA users, as well as a number of heroin users. None of the MDMA users have gone on to have serious problems as a result, where as all but one of the heroin users (he never moved onto injected heroin), had severe problems. Heroin resulted in addiction, loss of jobs, in cases where people turned there lives around they where generally only able to do so with treatment. I have never seen individuals exhibiting signs of long term damage from MDMA.

Some people theorize that MDMA may be toxic in humans, studies have failed to show any significant toxicity in humans. On the otherhand we know what long jail sentences do to people.

Long jail times will only remove the fairly non violent dealers from the business, leaving MDMA users to buy MDMA from the same dealers who deal in much more dangerous drugs like Cocaine, Speed and Heroin. Much like the pot crack down of the 80's helped to popularize Crack, as it drove the less violent hippy dealers out of the business.

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2/5/2001

specmind

From: "Bobby, Susan (ISFPC)" <Susan.Bobby@ispat.com>
To: <rgb@cognitiveliberty.org>
Sent: Thursday, February 01, 2001 12:04 PM
Subject: Ecstasy - DO NOT treat as Heroin

As a voting Republican woman and a proud American citizen, I demand that this failed and ineffectual 'war on drugs' not be expanded by yet another anti-American and unworkable law. Please do not make the mistake of treating Ecstasy like Heroin. This would be like an expansion of the Vietnam War even though everyone knew the cause was lost and the war should be abandoned. The war on drugs is actually a war on the American people, and falls particularly hard and unfairly on minority groups. Historical shame would be the only result of treating Ecstasy like Heroin.

Susan Bobby
207 Elmhurst ST.
Valparaiso, IN 46385
219-531-2810
219-399-4137

[192]

2/4/2001

To Whom It May Concern,

I am writing the U.S. Sentencing Commission in regards to the proposed increase in penalties for ecstasy possession and trafficking. I will respond to each of the Commission's points in order. The official notice states that ecstasy is similar in its hallucinogenic effects to mescaline. This is not accurate. Mescaline is a much more visual drug and cause many and much more intense visual hallucinations than ecstasy. When on ecstasy, the user's vision is only greatly stimulated and any hallucinations are very mild. Ecstasy does act as a stimulant and is neither physically or psychologically addictive. It is not prudent to categorize ecstasy as similar to mescaline in regards to relative harm and sentencing. Should the Commission alternatively treat Ecstasy comparably to some other major drugs of abuse such as cocaine, methamphetamines or heroin? No. The commission should not increase penalties for ecstasy to the levels of these other drugs. Not enough is known about ecstasy to warrant the penalties akin to cocaine, meth or heroin. It has not been shown that ecstasy has the severe addictive or abusive properties of these drugs. The harm of ecstasy is not known and sentencing for ecstasy ought to reflect the relative harm possible to all parties from ecstasy use. To group ecstasy with these other drugs is harmful, misguided and wrong. Furthermore, to increase exponentially the penalties for larger amounts of ecstasy would not deter people from trafficking the drug. It can only help to make the drug trade more lucrative and profitable, as the increased consequences for trafficking will only serve to drive up street prices. Severe sentencing for other drugs has not been effective in deterring drug use among youths nor overall. It is only harmful to increase the penalties for ecstasy as more people will fill our jails at tremendous cost to society while people will continue to use drugs regardless of penalties. This fact has been shown repeatedly throughout the history of prohibition of alcohol and our current, and failing, war on drugs. Please consider these comments seriously before you act. I speak for many Americans who feel this way.

Respectfully,
Justin Reid

[193]

specmind

From: "Eric Heitzman" <Eric_Heitzman@hmc.edu>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 4:53 AM
Subject: To be forwarded to the Sentencing Commission
 To the Sentencing Commission,

I know you are going to get a lot of these letters, so I will be brief.

Here is what is in this letter:

1. Who am I?
2. What do I recommend?
3. Conclusion

1. Who am I?

I am a 21 year old university student from California. I have many close friends and acquaintances who use ecstasy, and because I am a nerd, I have gone out of my way to read all of the available material on the drug. I have read everything that is collectively posted on NIDA, DanceSafe, Erowid (which is a lot), MAPS, and the DEA's sites. Most of this material is comprised of descriptions of how the MDMA works, studies on the effects of MDMA (including possible neurotoxicity, long term, and short term effects), usage statistics, injury statistics, etc. I consider myself to be extremely knowledgeable with regards to MDMA, but I do not have any formal pharmacological training in this area.

Additionally, I have some level of understanding of the drug's effects on our culture. I have personal experience with friends and relatives who use the drug, and have spent a considerable amount of time reading the media's interpretations of "the latest drug craze," which I feel is predominantly hype.

My writings are meant to provide an additional perspective from the other writings you will probably receive. Most of the people who write to you will probably be distinguished lawmakers, policymakers, doctors (or other medically trained professionals), or members of the pro-ecstasy community (such as DanceSafe, MAPS, Alchemid, etc). You will probably also get letters from users of the drug - people who are well intentioned, though quite possibly under-informed about the drug's ill effects. I am unique, in that I am not affiliated with the government or any organization, and that I am also extremely informed about legal, medical, safety, and cultural issues surrounding MDMA.

2. What do I recommend? (and why?)

Based on experience and prior readings, I can say the following things about ecstasy use:

- a) "It has been represented to the Commission that Ecstasy (i.e., MDMA, MDEA, MDA and PMA) is similar in its hallucinogenic effect on the user to mescaline." Ecstasy is not, by any stretch of the imagination, a

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hallucinogen. People under the influence of ecstasy do not see things. They are not prone to visual hallucinations any more than, say, someone who is under the influence of alcohol is prone to visual hallucinations (which is not very much, obviously). You probably know this already, but briefly: Ecstasy is an empathogen, meaning that users feel more friendly and positive (empathic) about the people around them, and is also an entactogen, meaning that tactile stimulation is heightened. Neither of these effects are dangerous to the user, or to the people around the user, in the same way that visual hallucinations are. No one on ecstasy would ever jump off of a building or in front of a car in the manner in which people who have taken hallucinogens are prone to doing.

b) "[This class of drugs] has been described as having an added stimulant component that can elevate heart rate, blood pressure, and body temperature." Although MDMA is chemically similar to methamphetamine, it is a different drug. Only true stimulants, such as amphetamines and methamphetamines, would increase heart rate and blood pressure. Pills sold as "ecstasy" would only elevate heart rate and blood pressure if they were cut with one of these stimulants. On it's own, pure MDMA does neither of these things. It is true, however, that MDMA causes an increase in body temperature. This change is fundamentally different (neurologically speaking) from the effects of stimulants. Body temperature is increased because the serotonin system controls body temperature (among other things), and that is the system that MDMA affects primarily. Note that this effect is greatly exaggerated in media reports - body temperature is not increased substantially unless someone is grossly abusing the drug. To summarize: ecstasy is not a stimulant, but it does elevate body temperature (but not by much).

c) "It has also been suggested that the drug is neither physically nor psychologically addictive." Heroin is addictive. Why would the Sentencing Commission equate (in sentencing terms) a physically and psychologically addictive drug, such as heroin, with a drug which is not addictive?

My recommendation is that Ecstasy be rescheduled in the most lenient manner possible. It is well known that ecstasy is far less dangerous and addictive than heroin, so the suggestion that ecstasy be given the same 1kg marijuana equivalency that is afforded to heroin seems ludicrous. I have already discussed (and attempted to dismiss) the notion that ecstasy has visual hallucinations similar to those caused by mescaline, so one might think that ecstasy should not even be scheduled as heavily as mescaline is scheduled. However, ecstasy does elevate body temperature when consumed in great volume (an abuse quantity). I can not impress upon the commission enough how greatly this effect has been exaggerated by the popular media in the last year. However, I realize that the commission is responsible to that same media, and ultimately to the American public. For this reason, I concede that MDMA (and the other drugs mentioned) should be scheduled as strictly as mescaline is currently scheduled. This is, to my understanding, the most lenient of the positions currently being examined by the commission.

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3. Conclusion

Medically, it has not yet been determined that ecstasy is as dangerous as the media has portrayed it over the course of the last year. The lack of research in this field, combined with the sensationalist tactics of the modern media has served to provide us (the people), and you (the lawmakers) with little to no information of any quality or accuracy. I sincerely hope that in the course of your deliberations, you have the time to consider the sources of your information. The DEA and NIDA funded have managed to generated an astounding amount of misinformation on the subject of MDMA (which is truly remarkable considering they haven't been doing any legitimate research on it).

In addition to my suggestion that there is a lack of scientific and medical information to go on, I would like to make a more personal plea. The MDMA users I know are a very responsible crowd. I know it must sound ridiculous to think of drug users as responsible, but I genuinely feel that in this particular case, that sentiment is correct. As a drug, MDMA is frequently consumed at close personal gatherings, usually by close friends, usually with sober people around, usually in a safe environment, and usually in moderation. These kids are breaking the law every time they do this, and they know it. They feel guilty about breaking the law, but feel that it is the law that is in the wrong, and that the medical evidence supports their decision to use responsibly. Stricter drug laws only serve to further criminalize the people who choose to use these drugs in safe, responsible settings.

Heroin is a hard drug. A hard, scary, dark drug. There is no responsible way to use heroin, both because of its outrageous addiction potential and because of its incredibly capacity for destroying the human body. None of these sentiments can be used to describe ecstasy, which as a drug, is a soft drug which can be used responsibly and in moderation (or at least this is more true for ecstasy than it is for heroin!).

I'm opposed to changing the punishment for ecstasy possession at all. But since you must change it, change it by as little as you can get away with. If you can, allow for a 'personal use' amount, or define a tiered sentencing schedule so that individual kids don't have their lives ruined by a heroin-sized felony conviction rather than a minor conviction like possession marijuana.

Alright, that's the end of the official letter I composed hours before the official deadline. I'm not really happy with it overall. I sincerely wish I could provide the Commission with a more clear understanding of how the drug works, what it does, who uses it, and how it's used. I'm afraid that important decisions are being made with less than a complete presentation of all the needed information (both because the information is hard to come by, and because it's difficult for people who know this sort of information and are unbiased to come and present). I would absolutely love to aid the Commission in understanding these complicated issues, but I'm afraid that a

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2/5/2001

one-way e-mail isn't really a sufficient method for accomplishing that.
Please contact me if you think I could be of any use to you whatsoever, my
time just isn't all that valuable.

Thank you,

Eric Heitzman
Eric_Heitzman@hmc.edu
(909) 607-1442

[197]

2/5/2001

Dear Sir or Madam,

I am writing to express my concern over the possibility of ecstasy being considered comparable to heroin under the Sentencing Commission's proposed amendment. I am no expert on pharmacology or the legalities of ecstasy and other drugs, but I hope that I may be able to provide a perspective of the people who may be affected by the new policies. I think anyone who knows anything of the effects of ecstasy know that it is unlike the effects of any other drug. I would ask the committee to take into account the effects, both long and short term, of ecstasy use. While I cannot say that I am an avid ecstasy user, I am acquainted with several people who have had considerable experience with the drug. To point out the immediately obvious differences between ecstasy and heroin, ecstasy is not physically addictive and for most people is not psychologically addictive. Heroin is immediately addictive, so that many people develop a severe addiction after their first time trying the drug. They become so dependant and obsessed, that acquisition of heroin becomes their only concern, destroying the life they had before and causing great pain to all those around them who must see their downfall. Heroin destroys families, friendships, and lives. I do not believe ecstasy should be placed in the same class as any other drug. While ecstasy may have some mild hallucinogenic effects, the effects are nowhere near that of LSD, mescaline, or other such substances. The stimulant effects are considerably milder than cocaine and amphetamines, and the feelings similar to those caused by narcotics are considerably weaker and much less addictive. Ecstasy users do not become physically addicted to the drug, and in my experience only those people who have a tendency to take everything to the extreme become psychologically addicted. Its use, which almost always remains occasional if not very rare, does not have the devastating effect on the life of the user and those around him that other more addictive drugs tend to have. While in very extreme cases there may be health problems associated with ecstasy use, vomiting overheating, and other problems usually associated with the environment in which it is used, it does not consume the life of the user so that they focus on the drug and neglect their health. The number of incidents where a user is hospitalized is relatively low. The patterns of ecstasy use among high school students seem to be more similar to the patterns of alcohol and marijuana use than to cocaine or heroin. Users may occasionally take the drug on weekends, not usually in large quantities, and are not prone to loss of ambition or self-control. While students are aware that ecstasy is far from "harmless," they are also aware of the difference between the effects of occasional ecstasy use and the devastating effects of the many far more dangerous and addictive drugs that are available.

I think assigning penalties comparable to or the same as those of heroin will lead to long prison terms to individuals who are relatively harmless. I have heard of relatively little violence associated with the sale or use of ecstasy. Congress has been affected by the politics of the media circus associated with the "new drug sweeping the nation," and I'm sure it would look horrible to oppose stiffer penalties for the drug when it came time for re-election. However considering the realities of the drug, that it is not addictive and does not lead to violence, I think the only way it could devastate a life is if someone was sent to prison for a long period of time. I do however believe that other drugs sold as ecstasy, such as MDA, DXM, PMA, etc. should carry the same penalties. These designer drugs are often manufactured and sold as ecstasy because those involved know that many of them carry less severe penalties. However many of these are far more dangerous than ecstasy, especially PMA, and therefore should carry penalties that are at least as stiff.

In conclusion, I would ask that although it is important to discourage illegal drug use, it is also important when establishing appropriate punishments to consider both the effect the drug has on society and the lives of the user, as well as the potentially devastating effects on the lives of very few people who will actually be caught. As unfortunate as it may be, I can honestly say that the average user/small distributor will most likely not be discouraged by stiffer penalties, however if caught the effects on life and personality of the individual might be more devastating. I think overly stiff penalties would not be nearly as helpful to either the general population or the ecstasy-using population as efforts to educate the public of the risks and harms of ecstasy use would be. Long prison terms will not have a major effect on the greater problem, but would only serve to destroy the lives of a few very unlucky individuals.

Michael Doyle
mtdoo7@aol.com

To the Sentencing Commission:

I am responding as a concerned citizen to the proposed amendment to the Sentencing Guidelines regarding "Ecstasy."

According to your official notice, the proposed amendment will treat Ecstasy as being of comparable seriousness to heroin. I believe this to be unduly harsh, for the following reasons:

1. As you note in your official bulletin, Ecstasy is neither psychologically nor physically addictive. Heroin is extremely addictive. Other possibilities listed in the official bulletin include equivalencies to cocaine or methamphetamine, both of which are extremely addictive. Ecstasy, again, is not.
2. Though Ecstasy is not currently sanctioned for this purpose in the United States, significant numbers of mental health professionals have questioned Ecstasy's placement on Schedule I, arguing that Ecstasy has great therapeutic value. Demonizing the drug as "equivalent to heroin" belittles the professional opinions of said therapists, and makes public debate about the drug's medicinal value even more difficult than it already is.
3. When given the opportunity in recent years, American voters have strongly favored new approaches to the drug war (consider the recent successes of ballot initiatives like California's Proposition 36 and the medicinal marijuana initiatives that have passed in many states). Dramatically increasing the federal penalties for Ecstasy may have the support of Congresspeople afraid to appear "soft on crime," but it is increasingly doubtful whether the voting public offers similar support.
4. The War on Drugs is an unequivocal failure, costing the United States billions of dollars with the primary effect of putting millions of our citizens into prison, while having almost zero success stopping the flow of illegal narcotics into our country. It is time to base decisions not on fear-mongering rhetoric but on rational thought processes. Equating Ecstasy to heroin is fear-mongering, plain and simple.

Considering the above points, Ecstasy should not be considered comparable to any of the seriously addictive substances considered in the official bulletin. If the penalties are to be increased, comparison to mescaline makes the most rational sense. However, I urge the Sentencing Commission to consider making any increase in penalties as small as possible. Now is the time to start to end the great damage caused to our nation not by the drugs themselves but by the drug war.

Sincerely,

Benjamin Lanin
Los Angeles, CA

MDMA and Society

It is said that the increase in popularity of the MDMA, also known as ecstasy, is greater than any other drug in history. In the space of just 10 years, it has gone from being virtually unknown to being one of easiest illegal substances to obtain. This incredible growth rate is largely due to the nature of ecstasy; It provides the user with an unique and pleasurable state of consciousness, with few negative side-effects.

MDMA is a very unique drug. Discovered long ago in 1914, it has only recently generated new interest, primarily being adopted by youth interested in electronic music. Due its empathic, energizing and mood stimulating effects it most often used in social settings, especially those involving dancing. It makes the user incredibly happy, with increased sensations of touch, and feelings of contentment. These effects are primarily caused due to MDMA's effect of increasing amounts of the neurotransmitter serotonin in the brain. While MDMA does have mildly hallucinogenic properties, its primary effects are empathogenic. The drug makes the user emotionally much more open, and socially outgoing. As anyone who has tried it will tell you, in many ways it feels just like falling in love. Along with all these positive effects, there are a few undesired physiological side-effects. It is known to increase the heart-rate, place some strain on the liver, and increase the risk of dehydration.

While MDMA is definitely a serious drug that must be regulated in some manner, increasing the penalties for its possession and manufacture are not the answer. The proposed legislation will treat the offense of the possession of MDMA on par with heroin, despite it has barely anything in common with it aside from it being a chemical which acts on the mind. Heroin is an incredibly addictive, dangerous drug that is rarely used recreationally. Heroin users become so physiologically addicted to the drug that they almost always increase usage, and ruin their lives. Ecstasy users do not behave in this manner. Since MDMA is not physically and only mildly psychologically addictive, most users will use the drug only once or twice a month, and almost always at parties or clubs. The fact it has gained such great popularity is not from a small number of people who use large quantities of the drug, but from a very large number of light. While you do hear stories of many users taking multiple pills per night, almost every weekend, this is the exception. Due to tolerance effects such usage rarely persists and users drastically reduce their consumption of MDMA after such a high-use period. The much more common scenario is the 18-25 year old middle-class youth, who occasionally uses MDMA to enhance a party experience.

MDMA use has now spread to such a wide segment of the population that the government should seriously reconsider how its users and suppliers should be treated. Increasing the penalties will unlikely decrease the consumption of MDMA for several reasons:

1. It is in high demand, by individuals in all segments of american society.
2. It is easily smuggled, due to its compact size and low average per person quantities
3. It can be synthesized with only basic knowledge of chemistry and proper instructions

Over the next few years we will likely see that the demographic profile of MDMA users become even more varied. You will be as likely to find a young business executive consuming it on a recreational basis as a disillusioned 14 year old boy. This is already happening, and will become even more common. MDMA offers the user a feeling that is universally desired. It does not just offer the user a high, it offers the user an experience, something they will never forget. From personal and second-hand accounts, I can say this experience is so powerful and so revered, that I highly doubt anything short of capital punishment for its distribution will stop people from catering to this demand. I estimate that soon it will likely appeal to and occasionally be taken by any individual who feels comfortable taking a drug to alter their consciousness. With this increase in usage, so will demand for MDMA, even if the penalties for production and distribution are raised.

I believe that instead of increasing the penalties for usage of MDMA, attention should be focused on its safety. Since its effects are so desirable usage will continue even though it has mild neurotoxic effects. For many people, this small amount of possible long-term damage is worth the experience it offers. I doubt that is mind-set will change, so it is likely that many people are going to suffer some neurological damage due to MDMA usage in the next few years. If the government is primarily interested in protecting the public, and not instituting unrealistic prohibitionist schemes, it is imperative that their attention be focused on harm reduction instead of increased incarceration. Studies show that if MDMA is conjunction with strong anti-oxidants and anti-depressant medications know as Selective-Serotonin-Reuptake-Inhibitors (SSRI's) its neurotoxic effects can be eliminated. I feel that the extra money that would be spent imprisoning users and distributors of ecstasy, who are for the most part productive and responsible members of society, should instead be spent on investigating such methods of possible harm reduction.

[200]

Mother nature has genetically programmed us to be hedonists, and instituting stronger punishments will not change this aspect of human nature. The consumption of MDMA is simply the latest and most effective method of chemically-inducing happiness. Putting more people in jail for the "pursuit of happiness" is not the answer. Making sure that people are safe in their attempt is.

Written by a 22 yr old University Student

[201]

Dear Sir/Mme,

I write you regarding your review of sentencing guidelines of the drug MDMA. I hold no credentials in the field of pharmacology or drug/use abuse so my message may mean little to you. I write anyway, in hope that a preponderance of those who share my view have also written, thereby making a louder if not a more expert, plea.

A few words about my background for context: I am a 39 year old white male, CEO of a company which I began in 1982. We are a growing company, based in Bloomington, Indiana. We employ slightly more than 200 people in six restaurants, which we operate there. By most any measure, our businesses could be considered quite successful, even to the extent that my partner and I were named Bloomington's "Small Business People of the Year", by our Chamber of commerce, last year. I am a productive member of my community and our nation. I am also an occasional of MDMA and other psychedelic drugs and have been since age 16.

The legality or sentencing severity of these drugs has never had an impact on my choice of their use. I am certain that legal penalties will have no effect on my choices in the future. I have experienced previously unexplored realms of my own consciousness through them. They have sparked my creativity and heightened my appreciation of life. Yet I have never felt the tug of addiction from these substances. (A tug that I understand intimately through my long-standing addiction to tobacco.) Sometimes years will pass between uses.

I was recently told about the adolescent son of friend who was arrested with 20 MDMA tablets and was facing a significant jail sentence. It brought tears to my eyes, and is likely the reason for my writing to you at this late hour.

As you determine this policy, please remember the children, your children, and our friends' children. These drugs are powerful medicine. They will not go away by putting our children away.

Sincerely yours,

Jeff Mease
CEO
One World Enterprises
PO Box 6955
Bloomington, Indiana 47407-6955

812-339-2256

[202]

specmind

From: "Geoff Cole" <g_bonic@hotmail.com>
To: <rgb@cognitiveliberty.org>
Sent: Sunday, February 04, 2001 7:31 PM
Subject: Ecstasy

Dear U.S. Sentencing Commission,

I am writing this letter on behalf of the dancesafe newsletter sent about regarding increased punishment for the sale or use of Ecstasy. Ecstasy can not even be compared to heroin. Heroin is a very dangerous drug that often kills users due to overdosing. People do not die from Ecstasy. The Ecstasy related deaths were caused by other dangerous drugs that were said to be Ecstasy. PMA is one of the drugs responsible for deaths of at least 6 in the U.S. However, PMA is not Ecstasy at all, and should not be put into the same class as Ecstasy. PMA is a powerful hallucinogen, that can cause the body to dehydrate extremely fast. Ecstasy is not a hallucinogen. Ecstasy is a relatively safe drug, and should not be classified with other dangerous drugs. Please consider the number of innocent young adults who will be sent to jail for using a drug that is maybe safer than alcohol. Making a more severe law won't stop people from using and selling Ecstasy, it will just put more people into the already overcrowded prison system. Stop wasting resources on the war against Ecstasy, and use them to fight crime or help education. America has so many problems, and Ecstasy is the least of them. Thank you very much for your time.

Sincerely,
G

Get your FREE download of MSN Explorer at <http://explorer.msn.com>

[203]

2/5/2001

Re: Ecstasy as a Schedule I drug?

To whom it may concern

I am a 67 year old retiree who has never tried illegal drugs.

But I am a student of history, and am alarmed at how little we learned from our attempt to achieve an alcohol-free America in the 1920s. The lesson, then as now, is that no popular drug is so dangerous that it will not become worse by driving it underground, and the harder it is driven the worse it becomes.

In contrast to our alarm over this drug we see that Switzerland is treating Ecstasy as a soft drug. It is safer there because it is labeled and not adulterated - with PMA, for instance - and the kids know how to be careful.

To make Ecstasy a schedule I drug, with heroin, would compound the mistake we made when we put cannabis on schedule I. It would further discredit the criminal justice system in the eyes of young people.

For your reference, I have appended a news article about the Swiss from the Guardian, published in mid 1999 as follows . . .

Pubdate: Fri, 18 June 1999
Source: Guardian, The (UK)
Copyright: Guardian Media Group 1999
Contact: letters@guardian.co.uk
Website: <http://www.guardian.co.uk/>
Author: Jon Henley, in Paris

SWISS GO SOFT ON ECSTASY

Switzerland's highest court has flown in the face of European drug legislation and the latest US scientific evidence by ruling that ecstasy poses no big health problems and that small-scale dealing in the drug should not be a serious crime.

Effectively classifying ecstasy as a "soft" drug like cannabis, the Swiss federal tribunal overturned a one-year jail term handed to a man

convicted of selling 1,000 tablets of the drug. It confirmed a nine-month sentence given to another man for selling 1,350 tablets by a court that considered the case was not a "serious" offence.

The tribunal said that while ecstasy was in no way harmless, medical evidence showed it was less dangerous than cocaine and heroin, largely because it was not addictive.

specmind

From: "Owl Shadow" <owlshadow@urchin.net>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 9:17 AM
Subject: MDMA scheduling

To whom it may concern,

I am very opposed to the re-scheduling of MDMA at this time. I think that the drugs' track record in terms of harm does not warrant this action. Further, it's potential use in medicine should be considered. We are condemning a substance that has not had a fair trial in the scientific community, and may be of great potential value to the community. There are numerous examples to be found of people benefiting from MDMA use in both medical and non-medical situations. Further, there is little to no evidence that shows that the drug should be treated as harmful enough to call for a stricter scheduling. I am for loosening the laws that prevent the use of MDMA, not tightening them.

Thank you,
S. M.

[206]

2/5/2001

Henry Schwan
PO Box 170711
San Francisco, CA, 94117
+1 415 626 8167 voice
owlswan@yahoo.com

Comments for the Sentencing Commission
on Ecstasy emergency re-sentencing

2 February 2001

Executive Summary: Mind altering substances have been used in human society for untold thousands of years apparently with many beneficial effects. This is still true up to the present day although the collective governments of the world have chosen to allow some substances to be considered "legal" while the vast majority have been declared illegal". While these choices have not been arbitrary, they have seemingly been illogical since the damage done by some of the "legal" substances far exceeds the damage done by all the "illegal" consciousness altering substances. Ecstasy is one of these consciousness altering substances and there is no logical reason to increase its penalty. There is even less good reason to increase the penalty as an emergency measure, thereby preventing a much larger segment of the society from having input into this very serious decision.

1. Mind altering substances have been for untold thousands of years and are still used in human society, apparently with many beneficial effects.

There is a large body of research on the ritual use of sacred substances in numerous pre and post pastoral/industrial cultures. Some of these include the shamanic use by Native Americans of both the peyote cactus (*lophophora williamsii*) and the mushrooms of the genus *psilocybe*. This

ritual use continues legally today with peyote use by the Native American Church. There are many South American plants which have an ancient tradition and continue to be in use in the present. Two of these substances are Ayahuasca/Yage (*Banisteriopsis caapi*) and iboga/Ebok (Tabernanthe iboga), which are used to see sickness and help in healing among other things

See: <<http://diseyes.lycaeum.org/dmt/dmt.htm>>

There is also and has been the use of a natural DMT containing snuff in the coming of age ceremony of certain African tribes and the continuing use of the West African cola nut which contains one of the legal mind altering substances - caffeine - and is still used today in Coca-Cola. The beneficial use of ecstasy continues to be part of this tradition. Many people who are otherwise anti-social, experience powerful psychic healing after experiencing the effects of ecstasy. While this may seem to be anecdotal, this does not make the experience less real, and what other type of knowledge can we get with research in official channels all but entirely prohibited. 2. The collective governments of the world have chosen to allow some substances to be considered "legal" while the vast majority have been declared "illegal". While these choices have not been arbitrary, they have seemingly been illogical since the damage done by some of the "legal" substances far exceeds the damage done by all the "illegal" consciousness altering substances.

Alcohol, nicotine, caffeine, and theobromine are all mind altering substances which are not only tolerated, but promoted by governments around the world. While there are prohibitionists who would probably make even some of these illegal in the US, alcohol is already illegal in

many Islamic countries. The difference in the categories in the United States seems to have been drawn in order to prohibit those substances which encourage introspection and whose use brings into question the categorization of these substances by those who prohibit them. Independent thinking seems to be the principal target. I don't think that alcohol or tobacco should be made illegal, but the collective damage their use has done to overall lifespan dwarfs any problems caused by all the illegal substances put together. "Excessive alcohol consumption leads to more than 100,000 deaths annually in the US" (From: Scientific American, December 1996). This is in opposition to: "There were 16,926 Deaths From Drug-Induced Causes in 1998 (legal and illegal drugs)" (1998) Source: National Vital Statistics Reports, Vol. 48, No. 11.

See: <<http://www.cdc.gov/nchs/fastats/druguse.htm>>

Note that this includes both illegal and legal drugs, leaving the deaths from all illegal drugs far less and the problems with ecstasy minute. The weight of the governments own statistics strongly militates against increasing the penalties for ecstasy and indeed speaks loudly for ceasing the drug war in its entirety, releasing all of its non-violent incarcerated, returning to them their civil rights and turning whatever problems remain over to the public health sector with incarceration saved for more traditional crimes like violence, robbery and tax evasion.

3. Ecstasy is a relatively benign substance and there is no logical reason to increase its penalty. There is even less good reason to increase the penalty as an emergency measure, thereby preventing a much larger segment of society from having input into this very serious decision.

There seems to be some some sort of mass hysteria surrounding the current use of ecstasy, however this is not a grassroots hysteria, but a hysteria of the opinion makers of this country. This is necessarily much more dangerous as the effects of this sort of hysteria can negatively affect exponentially larger numbers of people. Even if the argument isn't that ecstasy is inherently dangerous, but that that this proposed sentence increase is to stop younger people from using it, the argument is still illogical on its face. Incarcerating young people for using ecstasy will do immensely more harm to them than responsible use of ecstasy ever could. This is all compounded by the fact that this is an emergency action. Why is this an emergency? Are people dying en masse in the streets? Raising sentences, filling prisons, and thereby destroying peoples lives and destroying families is such a serious undertaking that it should be looked at in the cold light of day with as many people as possible talking about it. Emergency proceedings are often a way to sneak in laws so that when people hear of them they are much harder to roll back.

Request for action

With respect to my comments above I am asking you:

1. To rescind this call for emergency action so that cooler heads might prevail in the end;
2. To not only refuse to raise the sentences for ecstasy but to lower the penalties or remove them altogether;
3. To join in the call for a national forum on how to end the war on drugs, which in reality is really a war on the American people and

other
peoples of the world.

Henry Schwan is currently a webmaster and sometimes general contractor and a generalist with broad knowledge in many seemingly unrelated fields.

Formerly a First Lieutenant in the Army Infantry, he served honorably in

Vietnam. He has also been in the forefront of the organic food movement

having realized 29 years ago that putting unnecessary poison in the human

body does not make sense. Beyond that he also served 6 years 4 months in

federal prison for conspiracy to sell LSD. Having personally ingested and

having been around thousands of people who have ingested many mind altering substances he is an (unrecognised) expert on effects these substances have on the individual and on the human condition in general.

specmind

From: "nvrau" <nvrau@yahoo.com>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 11:26 PM
Subject: Sentencing Issue

This message is in regards to the new study involving the sentencing of MDMA and setting it equal to Heroin.

I am contacting your commission in an attempt to express my sincere disappointment in the direction the United States is heading with it's "Drug War" policies. We are spending too much time and money on the wrong end of the problem. Quit spending so much time and money on stopping the drug flow and start spending more time and money on the treatment of abuse and addiction or narcotics. You kill the demand and you kill the supply! If you kill the supply, you still have the demand and as long as there is a demand there will be a supply. Only now the demand raises the stakes and now it costs more, which brings me to the next point.

Increasing the sentences is not going to stop or help the "Drug War". It will however increase the price while increasing the number of dangerous drugs on the streets. When you increase the sentencing of one drug or eliminate its ability to be found knock offs pop up. Some of those knock offs result in the deaths and dangers of drug use. Increase the sentencing will also continue the deadly practice of turning dealers into pushers! If it costs more to buy, it will cost more to sell. This mean some customers will be lost and new customers will have to be found. There is a BIG difference between a dealer and a pusher. A dealer is available to those who want it, a pusher goes out and tries to fine new customers to get addicted by giving their product away. Cutting off supply creates pushers!

This brings me back to the abuse and addiction. Our government needs to help those who fuel the demand and cause problems, that's the users. We need to make treatment readily available to all, from big cities to small towns.

PLEASE; reconsider this proposal to raise sentencing. Lets start helping the needy instead of fighting this losing battle.

Earth First,

=====

B.

[212]

2/4/2001

specmind

From: "Paul Lindquist" <quindlist@mindspring.com>

To: <rgb@cognitiveliberty.org>

Sent: Sunday, February 04, 2001 4:40 AM

Subject: E

I am a mother of a college kid who has taken ecstasy. I applaud any kind of control that the government can legally take to stop the proliferation of these drugs. My son was depressed, lost appetite and sleep, had small muscle tremors. How can this be good? It must be controlled. Thank you.

The Georgia Lindquists

Reply to: Quindlist@mindspring.com

[213]

2/4/2001

specmind

From: "John P. Arnone" <JUANVAN@hism.com>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 12:55 PM
Subject: Ecstasy changes

If this were to change in the sentencing of users caught in sell, or holding E. They would be facing many years for one pill. Considering that one pill is about 100 mg. I do not believe that my government has the right to tell me what I have the right to put into my body. I have used E for 2 years on a Recreational usage, 2-3 pills every 2 months. I know that all people are like this, but if it is not used in moderation then harmful things will happen. Anything used in abusive terms is not healthy. Since E uses Seritron to generate this feeling, more uses would see less of this drug in your body. I have also gotten pill for other adults, but in this if the person is under the age of 18 I will not get it for them. They are not in my eyes old enough to do this, the brain has not finished developing to some what of a mature age. I have had many children yell and scream at me for this, but I don't wish to see little children getting hurt with something that don't know anything about. Before the first time I had done E I had done 2 months of research on the drug, I have more knowledge about all drugs than the Drug police task force in my area, I had talked to 3 of the Police officers that belong to this organization, and they don't have a clue about what any of the drugs do to you aka LSD, K, Ecstasy. They have knowledge about Cocaine, and Heroin but not as much as I do. I think that it is SAD I know more being 20 years old, than most older people who are to uphold the laws of this country. This "NO" does not work, DARE does not work. I was not educated as to what drugs will do to me. I was "told" no. That is why I believe that the government is wrong in doing what they have done to drugs. I have many people that have backed me up on this. I hope that some day DARE will educate the children, perhaps. I will write more, but I wish to make the cut off time. Thank you for listening.

John P. Arnone

[214]

2/5/2001

I am writing this to correct the misleading information that appears in the amendment, I am including sources for all my information.

1. MDMA does not have a hallucinogenic effect, and definitely not similar to mescaline.
(Lycaeum organization, Dance safe organization, the vaults of Erowid)

This misconception may come from the marketing of 2c-b as MDMA or extasy.
(Lycaeum organization information on 2C-B)

2.It can elevate blood pressure and body temperature, and as with any substance (or enjoyable situation) can be psychologically addictive.

What should be noted is how many people die or are hospitalized from associated use of MDMA. When compared with the number of people that die or are hospitalized after consuming an imitation of MDMA. (DXM, PMA, 2C-B, or any other substance that has been sold as MDMA)

This should also be compared with the number of emergency room visits from adverse reactions to legal or prescription drugs. When compared objectively it is less harmful and less addictive than many other drugs. This is the reason the drug is so popular, another media misrepresentation is that these drugs are confined to the club/rave scene.

A personal suggestion would be to raise the sentence for the drugs that are the most damaging.
(responsible for the most deaths and emergency room visits)

specmind

From: "Eric F" <ericf@jump.net>
To: <rgb@cognitiveliberty.org>
Sent: Monday, February 05, 2001 5:58 AM
Subject: Attn: Sentencing Commission -- RE: MDMA sentencing

It is not necessary to increase the sentence of ecstasy to the same as heroin. First of all, heroin is a physically addictive drug that ruins thousands of lives each year. Ecstasy is a drug that has effects that can be attained through natural means, quite easily and effectively I might add. A true case of love or yearning for another person that you significantly care for can sufficiently describe the same effects that occur during an ecstasy high. This is based off of neurological evidence in the brain and the amount of serotonin released into the synapse of your brain's neurons. To sum it all up, ecstasy does not pose as great a threat to the American public that heroin does and should not be held in the same light.

* Ecstasy in this paragraph should be noted as the chemical compound known as MDMA or MDA, not the (more dangerous) forms that can be found on the streets such as DXM, PCP, Ketamine, or, the worst, PMA.

[216]

2/5/2001

specmind

From: "Freese" <freese@antisocial.com>
To: <rgb@cognitiveliberty.org>
Sent: Sunday, February 04, 2001 4:07 PM
Subject: Ectasy Sentencing

I would just like to voice my disagreement to this proposed bill.

Free email with personality! Over 200 domains!
<http://www.MyOwnEmail.com>

[217]

2/4/2001

specmind

From: <Raveaholic101@cs.com>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 3:36 AM
Subject: Ecstasy sentencing alert

MDMA should not be treated as though it was heroine. MDMA in the past has shown to be very useful in marriage and other types of counseling. A time to reflect... I have seen enough 48 Hours television show to know that there are positive uses for the drug. Not excessive use though...

Thank you for your time

Sincerely,
Heather

[218]

2/4/2001

specmind

From: "Maroni, Joan" <maronj@cws.state.ca.us>
To: <rgb@cognitiveliberty.org>
Cc: <j_maroni@hotmail.com>
Sent: Monday, February 05, 2001 11:46 AM
Subject: ecstasy

Please do not compare ecstasy to heroin....it is not comparable and I am opposed to any legislation to prosecute people using this or any othersubstance. I am opposed to illegal drug use and alchol use...so if we ban one then let's ban them all!

Why not legislate banning alcohol at sporting events...there is much more damage caused by alcohol at those events AND people killed compared to ecstasy use....THINK ABOUT IT!!!

[219]

2/5/2001

specmind

From: <LeiaOrgana@aol.com>
<rgb@cognitiveliberty.org>
Sent: Sunday, February 04, 2001 10:54 AM
Subject: please read, my opinion-thank you

Hi, I am a girl in high school and i wanted to tell you guys a thing or two about kids. **Think this over again.** I know ecstasy is a drug, i know that it is against the law, but the **higher the risk the more it is gonna cause problems.** If you make it so high that it is up there with heroin people are going to find it more of a challenge. There will be bigger problems and **more people** will go to jail that **need help**, NOT jail time. Ecstasy is not as damaging as heroin nor as addictive. **Heroin kills people MDMA doesn't.** I think in my opinion that all drugs should be regulated..and it's current status that it is equal to LSD is high enough. Do you really want to punish all of america for having problems? for wanting to find a way out?? No kid knows where to look and you people aren't helping. **Support kids try and help them!!!!** Provide them with information, with better things to do, and they'll choose health. I did!! Not everyone is completely perfect, you need to help america's youth, provide support for places like DANCESAFE.org who try to educate NOT throw people's lives away. Did you ever try weed? I bet you or one of your friends did, what would of happened if they or you'd been put in jail for it? It the same thing. I bet by now they've stopped..they live a healthy life..**HELP PEOPLE DON'T HURT THEM!!** You are causing more problems than you are helping with this. I know your intent is for the better of america, but you aren't getting all the facts. You are biased.. **HELP DON'T HURT!!** Please!! People out there need a friendly face and help! Not jail and the ruin of their lives!! Please think it over. People turn around, people change, just help, don't hurt..thank you.

alex

[220]

2/4/2001

specmind

From: "Robby Rob" <fn128@bellsouth.net>
To: <rgb@cognitiveliberty.org>
Sent: Saturday, February 03, 2001 2:23 AM
Subject: Ecstasy Sentencing

To

Comparing ecstasy to heroin and crack. Come on guys what did all those years at Harvard and Yale do for you. Just the scientific evidence that is out there shows that there are no comparison in the both. Increasing the sentence is not going to stop the use of ecstasy I believe the proof in that is asking your self have you stopped the use of heroin and crack now? It has come to our attention (generation X) that you guys just keep coming up with more and more scare tactics and it is pretty annoying. Please educate your self on this drug MDMA, before making your decisions remember knowledge is power and power will give your our hears..

Robbyrob

[221]

2/4/2001