



Office of the Deputy Attorney General
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STATEMENT

OF

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BEFORE THE

UNITED STATES SENTENCING COMMISSION

CONCERNING

PROPOSED SENTENCING GUIDELINE AMENDMENTS

MARCH 19, 2001

Testimony before U.S. Sentencing Commission
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Acting Deputy Attorney General
March 19, 2001

Thank you for allowing me this opportunity to testify on behalf of the Department of Justice regarding the proposed amendments to the sentencing guidelines. I wrote to you last month to express the Department's serious concerns over the proposed amendments; especially in the areas of white collar crime, money laundering, and immigration. I understand that the Commission staff has attempted to address some of those concerns. We believe, however, that serious problems still remain with many of the pending amendments. I will focus my brief comments today on those remaining issues.

White Collar Crime Issues

Let me begin with the proposed white collar and economic crime amendments. Simply stated, the Department believes that sentences in white collar crime cases are far too lenient and need to be increased, not decreased. Accordingly, the Department strongly supports the Commission's efforts to change the loss tables to increase sentences for mid- and high-level white collar crimes.

Unfortunately, the Commission is also considering various amendments that would significantly expand the number of white collar defendants who are eligible for probationary sentences. The Department is adamantly opposed to proposed amendments that would have the effect of reducing the sentences for this privileged group of defendants. I am confident that Congress will share this view.

In particular, the Department firmly believes that the proposals to expand Zones

B and C of the sentencing table and to allow for flexibility options in white collar cases are unwarranted and would have a severe adverse impact on white collar prosecutions. For example, under the expanded zones and flexibility options, a stock broker who stole up to \$500,000 from investors would be eligible for probation under certain circumstances. Commissioner Rossotti will discuss the devastating impact these changes would have on tax prosecutions. I have reviewed his testimony and agree completely with the points he makes. I understand some might argue that these changes would only give the sentencing judge discretion to impose probation, but my experience as a line prosecutor and U.S. Attorney has been that if white collar defendants are eligible for probation, they will likely receive probation.

At a time when vigorous white collar crime prosecution is needed, these flexibility options and changes to the sentencing zones send entirely the wrong message. After all, many white collar defendants have generally benefitted from society, have strong educational backgrounds and are often successful professionals. When these individuals break the law, they should not be excused from serving a prison sentence simply because they did not commit crimes of violence. The public has a right to expect that people with privileged backgrounds who commit crimes will not be exempt from the full force of the law and will not be treated with inappropriate leniency. Accordingly, the Department strongly opposes these amendments.

Money Laundering

The Department is also extremely concerned about many of the proposed changes to the money laundering guidelines. This is an extremely important issue that the Justice Department, the Treasury Department, and the Congress have spent much

time on over the past few years. Unfortunately, some of the changes being proposed would lower sentences for even the most serious forms of money laundering. This the Department strongly opposes.

As an initial matter, I want to make clear that the Department agrees with the Commission that prosecutors should not be using the threat of money laundering charges – which carry with it much more serious guidelines – in order to induce guilty pleas in lower-level fraud cases. Accordingly, we've been supportive of the Commission's efforts to reduce the impact of the money laundering guidelines for that category of first-party money launderers. However, the Commission's proposed amendment not only makes those appropriate changes, but also results in lower sentences for some first-party and third-party drug money launderers. That is entirely inappropriate and the Justice Department will strenuously oppose any proposal that would reduce penalties for individuals who launder drug proceeds. Again, I believe that Congress will share these views.

Immigration

Let me briefly mention my concerns about the immigration amendment. I again urge the Commission to delay consideration of this amendment until next year.

We appreciate the Commission's concern that the present guideline does not measure the seriousness of the underlying aggravated felony in illegal re-entry cases. And we agree that some distinction may be appropriate, although we also agree with Congress that the penalty for any illegal re-entrant should be substantial.

The pending amendment attempts to distinguish between aggravated felonies by considering the defendant's time served. As a practical matter, this is extremely

problematic and will result in significant delay in disposing of illegal re-entry cases while prosecutors, defense lawyers, and probation officers all attempt to determine what portion of a sentence the defendant actually served. We believe that it would be more appropriate – and would be easier to implement – if the guideline distinguished between aggravated felons based on the character of the underlying offense rather than on the sentence served or imposed. We are certainly willing to work with the Commission over the next several months to fashion such a guideline, but we oppose the amendment as it presently reads.

Narcotics

Next, I want to comment briefly on the Commission's proposed amendments dealing with ecstasy and an extension of the safety valve.

As we previously advised the Commission, the Department strongly supports the proposed amendment increasing the penalties for ecstasy. Ecstasy is a Schedule I controlled substance that has a high potential for abuse, causes widespread actual abuse, and has no acceptable medical use. The target population consists of teenagers and young adults, and the drug is quickly becoming one of the most abused drugs in the United States. Medical evidence demonstrates the serious dangers it poses to users, including the death of brain cells. The damage this drug can produce is significant and long-term. We have an opportunity to stop this growing problem before it becomes an epidemic, and the proposal put forth by the Commission would very much help with that effort. We urge its adoption.

With regard to an extension of the safety valve, the Department opposes any such expansion. The "safety valve" exemption from mandatory minimum sentences

was enacted to provide relief for persons who received high sentences but who were identified by Congress as the least culpable group of such offenders. The guidelines therefore reduce an otherwise severe sentence in recognition of the "safety valve" criteria. By contrast, a low-level drug dealer, whose relevant conduct results in an offense level below 26, is subject to a sentence of less than five years, even before consideration of mitigating factors that can reduce the sentence further, factors such as acceptance of responsibility and role in the offense. The proposed two-level reduction is simply not needed for this offender.

Nuclear, Biological, and Chemical Weapons

One final point I would like to make concerns the proposed amendment relating to nuclear, biological, and chemical weapons. The amendment the Commission has proposed fills a gap by addressing several relatively new statutes concerning biological and chemical weapons, for which there has been no sentencing guideline in the past. It is an excellent amendment, and we urge the Commission to adopt it.

Conclusion

In conclusion, thank you for the opportunity to express our views. We in the Department look forward to continue working with the Commission in the years ahead to ensure that the guidelines are just and fair, and that the sentences proposed by the guidelines are commensurate with the crimes committed.

Twenty-second Report

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In summary, there is no evidence, except for its structure, that *N*- α -1-3,4-methylenedioxyamphetamine has a pharmacological profile or dependence potential similar to compounds already controlled under the Convention on Psychotropic Substances. Thus, the Expert Committee was unable to make any recommendation until more information becomes available about the compound. Because of the close structural relationship of this substance to MDA, which is already controlled, the Expert Committee urged that efforts be made promptly to gather further pharmacological data on it.

2.27 5-Methoxy-3,4-methylenedioxyamphetamine

In the "spinal dog" 5-methoxy-3,4-methylenedioxyamphetamine (MDMA) has a pharmacological profile that resembles that of both LSD and amphetamine, but it also has other properties not exhibited by either drug. There are no data available on its toxicology, pharmacokinetics, dependence potential, nature and magnitude of associated public health or social problems, or epidemiology of its use and abuse. The substance is under national control in five countries. It has no known therapeutic use and no information is available concerning its production. There are some reports from the USA of minor incidences of illicit trafficking in this substance.

On the basis of the data outlined above, it was the consensus of the Expert Committee that 5-methoxy-3,4-methylenedioxyamphetamine met the criteria of article 2, paragraph 4, for control under the Convention on Psychotropic Substances. Since it has no known therapeutic use, the Expert Committee recommended that it be placed in Schedule I of the Convention.

2.28 3,4-Methylenedioxyamphetamine

In mice, 3,4-methylenedioxyamphetamine (MDMA) increases locomotor activity and produces analgesia. In dogs and monkeys the substance has a pharmacological profile similar to that of other substances already controlled under the Convention on Psychotropic Substances. There are contradictory reports of the hallucinogenic activity of this substance in man. The substance is a potent serotonin-releaser in rat whole-brain synaptosomes. Its toxicological properties have been studied extensively in animals.

The acute toxicity of this substance is about twice that of mescaline. No pharmacokinetic data are available.

3,4-Methylenedioxyamphetamine has discriminative stimulus effects in common with amphetamine but not with 2,5-dimethoxy- α -4-dimethylbenzeneethanamine (DOM). No data are available concerning its clinical abuse liability, nature and magnitude of associated public health or social problems, or epidemiology of its use and abuse. The substance is under national control in Canada and the United Kingdom and its control has been proposed in the USA.

The substance has no well defined therapeutic use, but a number of clinicians in the USA have claimed that it is potentially valuable as a psychotherapeutic agent. No data are available concerning its lawful production. Evidence of some illicit trafficking in the substance has been reported from Canada and there have been extensive seizures of the drug in the USA.

On the basis of the data outlined above, it was the consensus of the Expert Committee that 3,4-methylenedioxyamphetamine met the criteria of article 2, paragraph 4, for control under the Convention on Psychotropic Substances. Since there is insufficient evidence to indicate that the substance has therapeutic usefulness, the Expert Committee recommended that it be placed in Schedule I of the Convention.¹

It should be noted that the Expert Committee held extensive discussions concerning the reported therapeutic usefulness of 3,4-methylenedioxyamphetamine. While the Expert Committee found the reports intriguing, it felt that the studies lacked the appropriate methodological design necessary to ascertain the reliability of the observations. There was, however, sufficient interest expressed to recommend that investigations be encouraged to follow up these preliminary findings. To that end, the Expert Committee urged countries to use the provisions of article 7 of the Convention on Psychotropic Substances to facilitate research on this interesting substance.

¹ One member, Professor Paul Grof (*Chairman*), felt that the decision on the recommendation should be deferred awaiting, in particular, the data on the substance's potential therapeutic usefulness and that at this time international control is not warranted.