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. § 6B.1.4, 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

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

2001 JAN 18 AM 11:46

January 5, 2001

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

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

[2]*See* USSG § 2D1.1.

[3]*See, 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

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[4] *Id.* at 393.
[5] *See Rodriguez de Varon*, 175 F.3d at 943.
[6] *See, e.g., United States v. Carter*, 971 F.2d 597, 600 (10th Cir. 1992).
[7] *See* 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

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[8] *See id.* commentary (n.4).
[9] *See id.*
[10] 66 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

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[12]*Id.*

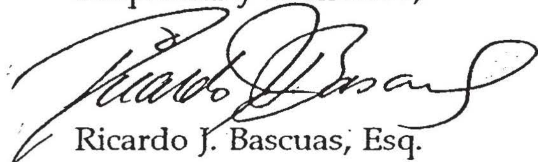
[13]*Id.* (citation omitted).

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.

[14]*See 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,



Ricardo J. Bascuas, Esq.

Summary of Public Comment

I. Amendment 1: Ecstasy

Federal Public and Community Defenders
Jon Sands, Assistant Federal Public Defender
District of Arizona
222 North Central Avenue, Suite 810
Phoenix, Arizona 85004

The Federal Public and Community Defenders (FPCD) first opposes abandoning the Commission's current distinctions among MDMA, MDA, and MDEA in the drug equivalency table. These ratios were set after hearing from various authorities, including the DEA. See 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). Nothing in the legislation or the Commission's published materials addressing amendment one suggests that the distinctions are no longer valid. Further, it has recently been discovered that concentrations in MDMA tablets can vary 70-fold.

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The FPCD also opposes treating ecstacy the same as heroin. This ignores the reality that the substances targeted by Congress have no similarity in chemical structure to heroin. Heroin is an opiate and ecstasy is a hallucinogenic amphetamine — a hybrid of the hallucinogen mescaline and the stimulant amphetamine. Moreover, unlike heroin, ecstacy is neither physically nor psychologically addictive. Also, ecstasy does not prompt the same public safety concerns as heroin because ecstasy is taken orally and is not injected intravenously. The FPCD stated that equating ecstasy penalties to those for mescaline is also inappropriate because the result would be a reduction in the conversion ratios, leading to reduced penalties.

The FPCD suggests that two factors that Congress wants taken into consideration should be discounted somewhat. First, Congress has told the Commission to ensure that the guidelines for ecstasy reflect the growing incidences of abuse. Despite this congressional assertion, the Department of Health and Human Services reports that hospital emergency episodes attributable to ecstasy and other "club drugs" are relatively infrequent, deaths associated with ecstasy and other club drugs are quite rare, and there were no notable increases in death involving club drugs from 1994 to 1998. Second, Congress has stated that the use of ecstasy can cause long-lasting, and perhaps permanent damage to the serotonin system of the brain. The FPCD states that this does not accurately reflect current scientific findings — at present, scientists do not know the long-term effects of recreational ecstasy use on humans.

The FPCD believes 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.[1] *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.*

Practitioners' Advisory Group
Co-Chairs Jim Felman & Barry Boss
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Washington, D.C. 20009

The PAG recommends that a punishment level be established for MDA at the same level as currently exists for powder cocaine. Such a punishment level recognizes the serious harm presented by the abuse of this drug but does not over-punish simply because of the drug's new-found popularity.

The PAG stated that 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. Additionally, studies show a decrease in aggression while under the influence of these drugs. The pattern of use of 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.

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 PAG also stated that one of the most disturbing things about these drugs is that they tend to be used by teenagers in group activities such as "Rave" dance parties. The danger of mass group use is that altered perceptions caused by those using the drug can lead to panic and some injuries have been reported due to trampling. There is, however, no direct link reported between the use of this drug and violence.

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[1]Using 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.

**Dr. Shytle's scientific opinion in no way reflects the views of opinions of the University of South Florida or its affiliates.*

Dr. Shytle wrote to respond to the proposed legislation under the Ecstasy Anti-Proliferation Act of 2000 that would make federal sentencing for MDMA (ecstasy) offenses the same as that of heroin. Dr. Shytle stated that he is not aware of any evidence (other than chemical homology[2]) suggesting that Ecstasy has psychological effects on the user similar to the hallucinogenic effects of mescaline. In fact, a recent scientific study suggests that MDMA creates the opposite effects as other classic hallucinogens. While it is true that MDMA has some stimulant properties that resemble amphetamine, 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 heroine. Dr. Shytle stated that there is little or no scientific basis for the proposed legislation.

Dr. Shytle suggested that the penalty for simple possession of MDMA should be less than or comparable to that of mescaline. Additionally, he suggested that the Drug Quantity Table in §2D1.1 be revised to provide additional incremental penalties so as to punish more severely those offenders who traffic in large quantities (e.g., greater than kg quantities) and those who market to children and adolescents.

The November Coalition
Nora Callahan, *Executive Director*
795 South Cedar
Colville, WA 99114

The November Coalition believes that prison overcrowding is a serious problem in the United States and that increasing sentences for club drugs will further burden the system. The Coalition argues that the war on drugs has been a failure, and to continue to wage it on an "emergency review" basis is immoral and ineffective. As prisons become increasingly overcrowded, problems with prisoner misconduct and prisoner suicide multiply (citing April 2000 testimony of Katherine Hawk, director of the Federal Bureau of Prisons, before the Senate Subcommittee on Criminal Justice). The Coalition submits that society's goals would be better served by reexamining the war on drugs and shifting our policies from incarceration and punishment to education.

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[2] Chemical homology refers to chemical similarity. Homology in chemistry is defined as: a) the relation of the elements of a periodic family or group; or b) The relation of the organic compounds forming a homologous series.

The Center for Cognitive Liberty & Ethics
Richard Glen Boire, Esq., Director
Post Office Box 73481
Davis, California 95617-3481

The Center for Cognitive Liberty & Ethics (CCLE) 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 sets the appropriate punishment for "Ecstasy" offenses.

The CCLE believes that Congress's "findings of fact" do not provide sufficient information for the Commission to determine an appropriate sentence for MDMA offenders and that the Commission should schedule public hearings for the purpose of learning more about MDMA, MDA, MDEA, and PMA.

Specifically, Congress's findings fail to acknowledge the recommendation of DEA Administrative Law Judge Francis Young's conclusion that MDMA should be placed on Schedule III and be available for doctors to prescribe and use in therapy because: (1) MDMA has safe and accepted medical uses; and, (2) there was insufficient evidence to conclude that MDMA had a high potential for abuse. 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).

Although evidence indicates that MDMA use has increased in recent years, there appears to be no evidence linking MDMA to violent conduct. The CCLE submits that, in the absence of such evidence, it would be inappropriate for the Commission to increase the penalties for MDMA offenses. Increasing the base offense level for MDMA offenses and lowering the amount of MDMA necessary for a federal prison sentence, 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 CCLE further argues that criminal punishment for possession, manufacture, importation, exportation, or distribution of MDMA offenses violates the fundamental right of responsible adults to control their own consciousness. Any punishment related to MDMA should be strictly limited to punishing conduct that harms others, or which poses an immediate harm to others (e.g., use of MDMA to facilitate rape or another criminal offense). The CCLE believes that criminal prosecution and punishment of responsible users of psychoactive plants and chemicals is an ineffective, immoral, unsophisticated, and socially harmful drug policy, and that the Sentencing Commission should consider alternatives to the failed "zero-tolerance" Prohibition/Punishment model of drug control.

Comment from Letters solicited and forwarded by the Center for Cognitive Liberty & Ethics (only some of which are summarized):

Gary L. Bravo, M.D.
Staff Psychiatrist
Sonoma County Mental Health
3322 Chanate Road
Santa Rosa, CA

Charles S. Grob, M.D.
Director, Division of Child & Adolescent Psychiatry
Harbor-UCLA Medical Center
Professor of Psychiatry
UCLA School of Medicine

Drs. Bravo and Grob both strongly oppose the proposed new sentencing laws for MDMA. They predict that the proposed sentencing laws would result in targeting low-level dealers and users and not the high-volume traffickers for which the laws are intended.

Drs. Bravo and Grob stated that MDMA is more equivalent to mescaline in its behavioral and pharmacological effects than it is to heroin. Additionally, MDMA's potential for physical and psychological addiction is low. MDMA also shows potential 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 post-traumatic stress disorder.

David E. Nichols, Ph.D.
Professor of Medicinal Chemistry and Molecular Pharmacology, Purdue University
Department of Medicinal and Chemistry and Molecular Pharmacology
1333 Robert E. Heine Pharmacy Building
West Lafayette, IN 47907

David E. Nichols wrote to state that ecstasy is simply not similar in its hallucinogenic effect on the user to mescaline. Dr. Nichols stated that ecstasy 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 marihuana. Further, MDMA has only about 1/25th 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.

Dr. Nichols stated that he understands the concern regarding large numbers of adolescents who are apparently abusing ecstasy, and supports reasonable attempts to discourage this use, but is adamantly opposed to regulations that are not based on facts or science.

George Greer, M.D.
453 Cerrillos Road, Suite E
Santa Fe, NM 87501

Dr. Greer stated that he estimates 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 grams of marihuana. Additionally, Dr. Greer stated that of the 600 patients he has treated at a residential treatment center, 90% had a substance use disorder. None of the persons with a substance use disorder were addicted to ecstasy. The damage to their lives from methamphetamine and cocaine was so great that it simply cannot be meaningfully compared to ecstasy use, but ecstasy use was less than 1/100th as damaging as methamphetamine or cocaine abuse.

Dr. Greer strongly recommends that the Sentencing Commission bring the guidelines for MDMA in line with the actual relative damage to the lives of Americans.

Donald Gann
Johns Hopkins School of Public Health

David Gann wrote to express his 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. Given this, it should not 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. Gann stated that the increase for the MDMA penalty structure should be far smaller than proposed because MDMA does not cause the same societal harm as does cocaine and should not be punished more harshly.

David Presti, Ph.D.
Professor of Nerobiology
University of California
Life Sciences Addition
Berkeley, CA 94720

Dr. Presti wrote to express that MDMA has the potential for substantial medical benefit when used in therapeutic settings. It is anticipated that scientific and clinical research will go forth in this area. Dr. Presti believes that to classify ecstasy 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, Dr. Presti believes that the current drug-equivalency status for MDMA is an appropriate one, given the current system.

Sheigla Murphy, Ph.D.
Director, Center for Substance Abuse Studies
Community Health Works
Institute for Scientific Analysis
2595 Mission Street, Suite 200
San Francisco, CA 94110

Dr. Murphy stated that the effects of MDMA have not been sufficiently researched in order to be able to evaluate either the immediate effects on MDMA users or the potential long term effects. Dr. Murphy has discovered from her interviews with MDMA users that many particularly young drug users who experiment with MDMA do so in a relatively moderate fashion. The smaller percentage who use MDMA more regularly (more than once a week) go through a period of heavy use and then, after a few months or a year, they discontinue or greatly reduce use. For this reason, Dr. Murphy recommends that MDMA sentencing be more in line with the marihuana penalty structure.

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

Professor Kealey opposes the punishment of personal use of ecstacy on moral and philosophical grounds. He argues that the current punitive measures taken by the U.S. Government are unjustified and immoral. These policies exact a large toll on society, for instance, very high incarceration rates, while failing to accomplish their stated goals.

Professor Kealey enclosed his essay "Marijuana and Morals" about different philosophical approaches to criminal punishment for marihuana.

John Gilmore
Entrepreneur and Civil Libertarian

Mr. Gilmore submits that there is no need for an "emergency" change to the sentencing provisions for ecstacy and that Congress merely called for a review of the penalties, not a mandatory increase. He believes that if the penalties for MDMA are changed, they should be decreased. He argues that MDMA has brought benefits to millions of citizens, that penalizing ecstacy use is an unconstitutional regulation of the freedom of thought, and that this policy should be eliminated.

Joshua Denison Rabinowitz
M.D., Ph.D., Stanford University

While Dr. Rabinowitz supports reasonable, but stiff, punishments for MDMA use, but opposes equating MDMA with heroin. He argues that MDMA is approximately 1/20 as potent as heroin on a gram-per-gram basis. Therefore, under the proposal, MDMA will be punished 20 times more harshly on a gram-per-gram basis, even though MDMA has a less severe risk profile.

Mike Males, Ph.D.
P.O. Box 7842
Santa Cruz, CA 95061

Dr. Males opposes strengthening the penalties for MDMA to resemble those of heroin. Despite survey indicators that more people use MDMA than heroin, the incidence of injury and death associated with heroin so far outweighs that of MDMA so that the two drugs are not even comparable (Drug Abuse Network reports of mortality and morbidity rates from 1996-1999). Based on this comparison, Dr. Males argues that the scheduling of MDMA in the Schedule I category is questionable and that equating it with heroin is arbitrary.

Rene Alvarez, M.D.
San Francisco General Hospital
Ward 83
San Francisco, CA

Dr. Alvarez opposes equating MDMA with heroin in the Guidelines because it does not have the same dangerous effects on its users or on society. Having worked in several busy emergency rooms, Dr. Alvarez submits that ecstacy use has had virtually no impact. Her emergency rooms have, however, seen many deaths related to heroin, including overdose, soft-tissue infections, AIDS, and Hepatitis C. From a medical standpoint, equating the two drugs is untenable.

Reid Stuart, M.A.
225 Dolores #5
San Francisco, CA 94103

Mr. Stuart opposes increasing the marijuana equivalency of MDMA to be on par with heroin. While working as an intern substance abuse counselor while obtaining his masters in clinical psychology, he worked with users of recreational drugs. Mr. Stuart believes that equating MDMA with heroin would be unjustified because the damage caused by ecstacy does not compare with the massive damage produced by addictive drugs such as heroin, cocaine, or methamphetamine. He argues that ecstacy should instead be lowered to the same level as mescaline.

Mr. Reid predicts that one dangerous side effect of increasing the penalties for MDMA is that designer drug producers will use more dangerous chemicals, such as DMX (dextromethorphan), as substitutes. DMX was responsible for a number of hospitalizations last year when it was sold at raves under the guise of ecstacy. DMX is particularly dangerous when it is mixed with MDMA, a possibility when a user discovers that the pill they took was not actually MDMA.

Remaining 68 Letter/E-mails

The Center for Cognitive Liberty & Ethics solicited public comment concerning proposed amendment one. These letters and e-mails address public concern that the proposed penalty structure is too high. One of the sixty-eight letters supports the proposed guideline amendment (page 213). The letters raise such issues as the benefits of ecstasy for personal and medicinal use, general condemnation of stiff drug penalties, failure of the war on drugs, unreasonableness of equating MDMA with heroin or cocaine, and the non-addictive qualities of ecstacy. Several letters support equating MDMA penalties with those for marihuana.

II. Amendment 2: Amphetamine

No public comment at this time.

III. Amendment 3: Trafficking in List I Chemicals

Federal Public and Community Defenders
Jon Sands, Assistant Federal Public Defender
District of Arizona
222 North Central Avenue, Suite 810
Phoenix, Arizona 85004

In response to a congressional directive to amend the guidelines affecting ephedrine, phenylpropanolamine, and pseudoephedrine offenses to increase penalties, the Commission promulgated proposed amendment three. 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.

The FPCD believes that amendment three complies with the congressional directive. The FPCD also believes 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.

IV. Amendment 4: Human Trafficking

Federal Public and Community Defenders
Jon Sands, Assistant Federal Public Defender
District of Arizona
222 North Central Avenue, Suite 810
Phoenix, Arizona 85004

Regarding the new enhancements to §§2G1.1 and 2G2.1 for the age of the victims, the FPCD favors 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. The FPCD believes that these increases will produce appropriately severe punishment. Further, the FPCD favors designating as 10 the number of victims above which a departure would be warranted. Regarding the new base offense level for §2H4.1, the FPCD believes that level 15 best reflects the nature of the offense.

With regards to the new guideline, the FPCD believes 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).

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II. Amendment 2: Amphetamine

No public comment at this time.

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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,

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 –

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[1]Children'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.

[5]MDMA 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.

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[6]*See* § 2D1.1, comment. (backg'd).

[7]There 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).

[8]K. 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]

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

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

[11]*See* 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

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

[14]In 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 [seratonin-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 Hatzidimitrious, 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 hte present findings generalize to humans who use MDMA jfor recreational purposes.)

[15]Using 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

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[16] *Id.* at § 3651 (b)(1).

[17] *Id.* at § 3651(c).

[18] *Id.* at § 3651(d).

[19] Victims 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).

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[20] *Id.* at § 112(b)(2)(C).

PRACTITIONERS' ADVISORY GROUP
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February 5, 2001

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

RE: PAG's submission on the ecstacy amendment

Dear Judge Murphy:

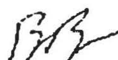
I am writing to provide the Commission with the PAG's submission on the pending amendment to the offense levels for the drug ecstacy.

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 ECSTACY

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 form 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 Ecstacy 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, norepinephrin 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 it 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

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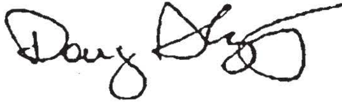
is, the consolidation of Ecstasy manufacturing, importation, and trafficking by larger more powerful organizations using methods already established for smuggling heroin, cocaine, and amphetamine will surely follow if the proposed legislation is passed.

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 marihuana 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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Nichols DE (1986) Differences between the mechanism of action of MDMA, MBDB, and the classic hallucinogens. Identification of a new therapeutic class: entactogens. J.Psychoactive Drugs 18: 305-13.

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

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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 Femo 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 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 Psychiat[illegible] 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, Univcristy of Florida, Gainsville, 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.

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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 behaviorial 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.

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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)

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