

UNITED STATES DEPARTMENT OF JUSTICE

Drug Enforcement Administration

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In The Matter of )  
 ) Docket No. 84-48  
MDMA SCHEDULING )  
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REQUEST FOR OPPORTUNITY FOR ORAL PRESENTATION  
TO THE ADMINISTRATOR

Counsel for Drs. Grinspoon, Greer, et al. respectfully requests the opportunity to appear personally before the Administrator and to make an oral presentation on the issues in this case. We recognize that this request is unusual. But the circumstances of this case are unusual.

The reasons for requesting an opportunity to appear personally before the Administrator are as follows:

(1) The Administrator has received extensive ex parte communications from DEA staff concerning the scheduling of MDMA in the context of the Administrator's decision to invoke the DEA's emergency scheduling authority under the CSA to place MDMA in Schedule I on a temporary basis. Drs. Grinspoon, Greer, et al. submit that an opportunity for a direct oral presentation to the Administrator is the minimum required to offset this extensive ex parte contact on issues directly relevant to this proceeding -- all of which occurred with the Administrator after the instant scheduling proceedings had begun;

(2) Agency counsel has engaged in an inflammatory, prejudicial and improper attack on the integrity of

the Administrative Law Judge in this proceeding. A direct oral presentation would assist in cleansing the record of this improper conduct by agency counsel.

(3) There are three critically important interpretations of law that the Administrator faces in this proceeding:

- (a) He must articulate the legal standards for distinguishing among the "high potential for abuse" needed to place drugs into Schedules I and II, the moderate "potential for abuse" needed to place drugs into Schedule III, and the lesser "potential for abuse" needed for Schedules IV and V.
- (b) He must decide on the meaning of "accepted medical use in treatment" under the CSA.
- (c) He must interpret the CSA to decide where a drug with a moderate -- not high -- potential for abuse with no accepted medical case can properly be scheduled.

With respect to the first legal issue, agency staff has refused throughout this proceeding to articulate any standards for distinguishing the "high potential for abuse of a substance in Schedules I and II from the potential of abuse of substances placed in Schedules III, IV, and V. We seek the opportunity to stress the importance of this issue to rational decisionmaking and to point out the concrete guidance available on this issue from the legislative history of the CSA.

With respect to the second legal issue, oral discussion would assist the Administrator in understanding that the agency staff's position on what the appropriate legal test should be for "accepted medical use in treatment" rep-

resents a total reversal of DEA's own position on this question when the Controlled Substances Act was passed.

(4) Participants Drs. Grinspoon, Greer, et al. deeply believe that the decision in this case will have a major impact on medical research on MDMA and seek the opportunity to emphasize this point to the Administrator in the face of the agency staff's cavalier refusal to take this problem seriously.

Oral presentation would assist the administrator in understanding that placing MDMA in Schedule III would facilitate medical research on this important but unpatentable substance, while at the same preserving every law enforcement need of DEA with respect to MDMA.

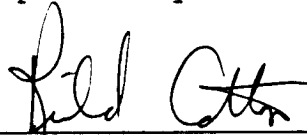
(5) Finally, the parties are so far apart on their interpretation of the record with respect to evidence on the issue of high potential for abuse that the opportunity for oral discussion on this subject would, in our judgment, greatly enhance the Administrator's ability to deal with this issue.

This is such an important proceeding involving the intersection of medical research issues and law enforcement concerns that it will be critical to the future credibility of DEA, and the external perception of DEA's integrity, in dealing with serious medical concerns.

Thus, Drs. Grinspoon, Greer et al. seek the opportunity to explain their concerns directly to the Administrator, to underline their desire to work cooperatively in a

constructive fashion with DEA, and to allow the Administrator to understand fully the alternatives posed in this case, and the consequences of the decision that he will make. For these reasons, counsel for Drs. Grinspoon, Greer et al. respectfully requests the opportunity to appear personally before the Administrator.

Respectfully submitted,



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CERTIFICATE OF SERVICE

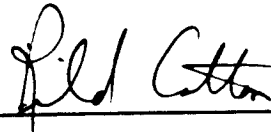
I certify that on June 27, 1986, a copy of the foregoing Response of Drs. Grinspoon and Greer, et al, to the Government's Exceptions to the Opinion of the Administrative Law Judge, Motion to Strike Portions of the Exceptions Filed by DEA Staff, and Request for Opportunity for Oral Presentation to the Administrator, on Behalf of Drs. Greer and Grinspoon, Professors Bakalar and Roberts was mailed, postage prepaid, to the following:

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