

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

| | | |
|----------------------------------|---|-------------|
| LESTER GRINSPOON, M.D. |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | No. 86-2007 |
| |) | |
| DRUG ENFORCEMENT ADMINISTRATION. |) | |
| |) | |
| Respondent. |) | |

PETITIONER'S RESPONSE TO ORDER
TO ADDRESS LEGAL ISSUES PERTAINING
TO 28 U.S.C. SECTIONS 813

In its order of July 10, 1987, the Court requested the parties to comment on the effect, if any, of the Controlled Substance Analogue Enforcement Act of 1986 on this case.

The definitions section of the Analogue Act provides as follows:

"(B) Such term [controlled substance analogue] does not include -

"(i) a controlled substance; . . ."

21 U.S.C. Section 802(32)(B)(i); P.L. 99-570, Subtitle E, Section 1203, 100 Stat. 3207-14. (Emphasis added)

Petitioner seeks to have MDMA placed in Schedule 3 under the Controlled Substances Act. As a Schedule 3 controlled substance, MDMA would not be subject to the provisions of the Analogue Act, by virtue of 21 U.S.C. 802(32)(B)(i) quoted above.

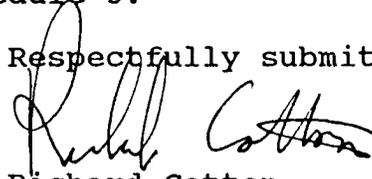
This statutory scheme makes sense. The Analogue Act treats analogues as Schedule 1 substances in order to prevent trafficking in substances that the medical community has not identified as medicinally useful and that the DEA has not had time to place within one of the schedules of the Controlled Substances Act. But once a substance has been scheduled, the Analogue Act then defers to the scheduling decision that has been made under the Controlled Substances Act. Thus, there are many substances currently in Schedules 2-5 that could be considered to be "analogues" of other controlled substances, but that does not affect their classification in Schedules 2-5.

The entire and exclusive point of the Analogue Act is to determine the treatment of substances that are not yet classified under the Controlled Substances Act. It does not say anything about how particular substances should be treated under the Controlled Substance Act and has no effect once a substance has been scheduled.

In sum, placement of MDMA in Schedule 3 would be effective under the Controlled Substances Act and would not be affected by the Analogue Act.

As a researcher with a direct, professional research stake in the regulatory treatment of MDMA, petitioner Grinspoon is affected by which schedule MDMA is placed in under the Controlled Substances Act. This Court can grant meaningful relief by vacating or reversing the DEA's classification order and by directing DEA to place MDMA in Schedule 3.¹

Respectfully submitted,



Richard Cotton
Attorney for Petitioner

Date: July 20, 1987

¹ Even if the Court were considering reversing the DEA's order totally and leaving MDMA unscheduled (and, therefore, subject to the Analogue Act), such relief would be meaningful to petitioner. Petitioner could then seek to have MDMA placed in Schedule 3 by petitioning the DEA without facing a completed adjudication by the DEA placing MDMA (erroneously) in Schedule 1. The adverse legal impact of the DEA's 1986 decision is seriously prejudiced to petitioner's ability to have MDMA reclassified and constitutes direct injury to petitioner's legal interests. Thus the Court's vacating the DEA decision would be meaningful relief from the perspective of the petitioner's protected interest in seeking Schedule 3 status for MDMA to pursue his professional research projects pursuant to regulations applicable to Schedule 3 substances.

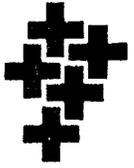
CERTIFICATE OF SERVICE

This is to certify that the undersigned on July 20, 1987, caused a copy of the foregoing to be mailed, postage paid, to the following:

Harry Harbin, Esquire
Narcotic and Dangerous Drug Section
Criminal Division
U.S. Department of Justice
P.O. Box 521
Washington, D.C. 20044

Charlotte Johnson, Esquire
Office of Chief Counsel
Drug Enforcement Administration
1401 I Street, N.W.
Washington, D.C. 20537


Richard Cotton



HCS

Innovative Medical Monitoring

July 20, 1987

The Clerk
U.S. Court of Appeals for
the First Circuit
1606 John W. McCormack
Post Office and Courthouse
Boston, MA 02109

Re: Grinspoon v. MDMA
Case No. 86-2007

Dear Sir or Madam:

Please find enclosed petitioner's response to the Court's Order filed in this case on July 10, 1987. This response is being served within 10 days of the court's order. Pursuant to conversations with your office, it is being filed prior to July 23, 1987 (allowing 3 days for service of the Order by mail).

Sincerely,

Richard Cotton
Attorney for Petitioner

Enclosure