

January 9, 2004

The Honorable William J. Haynes, Jr.  
U. S. District Judge  
c/o Peter J. Strianse, Esq.  
Tune, Entrekin and White, PC  
Suite 2100, AmSouth Center  
315 Deaderick Street  
Nashville, TN 37238-2100

Re: Bernard H. Ellis

Dear Judge Haynes:

I am writing this letter in support of Mr. Bernie Ellis whose sentencing hearing is to take place in your Court. Mr. Ellis is a professional colleague of mine as his important work on the epidemiology of alcoholism amongst the Navajo intersects with a multi-year research project of my own which also brought me to Navajo Nation. I do not have a long-standing personal relationship with Mr. Ellis: mutual colleagues of ours, who work in America's largest treatment center for drug and alcohol dependent Native Americans, encouraged me to reach out to Mr. Ellis and learn more about his current predicament and about his years of advocacy on behalf of those who continue to suffer from the ravages of drug addiction and his efforts to inspire real reform of our Nation's poorly functioning drug and alcohol treatment system. I do not usually write these types of letters, but I did decide to learn more about Mr. Ellis as it is even more unusual for me to receive such a request from these hard-working clinicians fighting on the front lines trying to save one Native American at a time from the destruction severe addiction brings. I am now quite glad that I was made aware of the sad circumstances that have brought this individual before your Court: I find Mr. Ellis is indeed worthy of my support in calling for you to render especial leniency in your sentencing of him.

I am sure that your review of the record and the many other statements offered on behalf of Mr. Ellis demonstrate to you that his is not a typical case of illicit drug manufacture. Had Mr. Ellis been one of those legally-savvy drug dealers, I actually wonder whether he would be before you right now. Mr. Ellis has clearly flouted federal law concerning the manufacture of Schedule 1 marijuana, but, unlike the career criminal, Mr. Ellis has acted in a forthright, honest manner (if not naïve) in his subsequent dealings with the officers and officials of the USDOJ. He accepts responsibility for his actions and has pled guilty in a negotiated plea arrangement with your

district's U.S. Attorney. Though, of course, there is no double-jeopardy issue in the punishment meted out to his property under the federal asset seizure program, clearly he is paying already a very high price for his illegal actions. That this highly accomplished, non-violent individual with no history of prior felonious behavior has had his farm seized, and, moreover, that the AUSA involved in this case is recommending any prison incarceration should show you how far prosecutorial discretion has fallen in furtherance to our government's ongoing War on Drugs.

It is true that punishment serves not only to make a criminal pay society for his/her offenses but also to serve as a preventative reminder to the community at large that our justice system does not tolerate the breaking of our laws. Wherever any of us stand on the current laws of the land regarding marijuana, Mr. Ellis had fully been within his rights to advocate for change within the system. He has done a disservice to the thrust of his argument by crossing over from exercising his protected freedom of speech with his illegal acts. I am moved that his motivation was based on compassion for the physically ill rather than for securing drug dealer type profits in complete disregard for the sanctity of life. True, he is not a physician, and marijuana currently is listed in the Controlled Substances Act of 1970 as a Schedule I drug without any proven medical benefit and purportedly is a drug of highest abuse or dependency with no established parameters for medical safety. Nevertheless, Mr. Ellis is not alone in his belief that marijuana has bona fide medical applications: as an expert in drugs of abuse (see attached CV), it is my opinion that, in time, responsible, legal research will ultimately confirm his position, though it can never condone the flouting of our laws. Please consider, as well, that the very same psychoactive drug in marijuana, delta-9-tetrahydrocannabinol, is a Schedule III medicine in the United States. Moreover, when the DEA's own Administrative Law Judge, the Hon. Francis Young, held hearings on a request to reschedule marijuana down from Schedule I, he recommended based on his findings of fact that the marijuana plant should be in Schedule III. The Chief Administrator of the DEA has the right to disregard these findings for non-scientific, political reasons, and that is exactly why marijuana was retained in Schedule I. Your Honor, the "world is not flat," yet you are being asked to ignore these pertinent issues in the decision before you now. Also, had Mr. Ellis been fortunate enough to commit his crimes within the jurisdiction of the 9<sup>th</sup> Circuit Court of Appeals, he likely would not be facing the punishment now being recommended by the prosecution.

Judge Haynes, I believe Mr. Ellis' case is one example of the critical role a Federal Judge can have in protecting the people from the egregious excesses of the State. It is my impression that Mr. Ellis will fully live up to all requests made upon him by you and by the USDOJ. His is a case that can serve as a preventative reminder to the hard-working, well-intending men and women who work in law enforcement and as prosecutors, that your Court will protect our citizens when caught up in a system being warped by asset forfeiture abuse, pervasive plea-bargained guilty verdicts, and the selective application of scientific fact. You have the opportunity to return Mr. Ellis to his true calling by sentencing him to community service rather than sending him to prison. Mr. Bernard Ellis is one of the rare individuals who is honorably accepting responsibility and has a lifetime of positive, important achievement rather than a record of felonious, sociopathic behavior. I strongly encourage you to take advantage of this case before you and remind the U.S. Attorney of the true meaning of exercising prosecutorial discretion and restraint: please consider disregarding the plea arrangement that is before you and instead weigh in with a downward departure sentence of no prison time. Ironic is it not that such

a sentence could have more positive societal benefit than to quietly acquiesce to a current system calling for incarceration of an individual like Mr. Bernard Ellis?

I hope my letter proves useful to your Court and to the furtherance of respect for the established laws of our nation.

Thank you.

Respectfully submitted,

John H. Halpern, M.D.  
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Biological Psychiatry Laboratory

Instructor in Psychiatry  
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