IX. Legal Analysis

The evidence of the actual abuse and acute toxicity of DPX summarized above demonstrates that the more stringent Schedule II controls are now warranted. DPX's abuse potential has been compared to that of other drugs which have been placed in Schedule I by DEA. As Dr. Theodore Cooper, then Assistant Secretary for Health admonished in a 1976 memorandum recommending that DPX be placed in Schedule IV:*

> "As with most psychoactive drugs, abuse potential of a particular drug is usually described in terms of prototype or 'reference' drugs. In this respect, propoxyphene has been compared to codeine, morphine and heroin. Such comparisons have included both acute physiological and psychological effects of propoxyphene and the chronic effects of high dose administration."[106]

Dr. Cooper acknowledges DPX's potential for abuse and acute toxicity are well recognized, and the facts of widespread actual abuse confirms Dr. Cooper's reference to the similarities between DPX and heroin and morphine. Perhaps most compelling of the evidence thus far assembled concerning the extent of DPX's actual abuse is the DAWN statistics which demonstrate that deaths involving DPX abuse in 14 major metropolitan areas occur more frequently than deaths involving heroin and morphine combined.[107]

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* Although Dr. Cooper recommended that DPX be placed in Schedule IV, it's difficult to reconcile this recommendation with his finding that DPX's potential for abuse is equivalent to substances like heroin and morphine, which have been placed in Schedule I. However, whatever reasons Dr. Cooper may have had in 1976 for not advocating more stringent controls on DPX, his recommendation was untenable in light of then existing statistics which established the unchecked actual abuse of DPX.