

VINGRAM Enterprises Ltd. *Chemist Consultant Services for Controlled Drugs*

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“Law Enforcement and Society Can Benefit from Greater Transparency in Controlled Drug Analyses”

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The company has developed unique procedures from the perspective of chemistry in promoting balanced advocacy for the analysis of confiscated controlled drugs.

The professional experience of Vedoster Ingram is comprised of 8 years as a forensic chemist consultant of controlled drugs for VINGRAM Enterprises Ltd.; 28 years of forensic chemistry with the Drug Enforcement Administration; 3

ABSTRACT: In this article, concerns are presented from the perspective of a former Drug Enforcement Administration chemist and a practicing forensic chemist consultant about the shortcomings that law enforcement and society now face with the lack of transparency in the government analyses of controlled drugs. Balanced advocacy of confiscated drug cases in the courts appears greatly affected as demonstrated by successful challenges by the defense to government alleged controlled drug charges. Law enforcement efforts have been found compromised in instances where improper testing and case handlings were revealed in government controlled drug testing laboratories. The security that both law enforcement and government drug testing laboratories must provide for confiscated controlled drugs is required for the safety of society. However, that very security for the drug testing laboratories has constructed a wall of non-transparency to drug testing operations. With internal efforts by the forensic

years as a research chemist in colloid physics and electroanalytical chemistry at the National Institutes of Health; and 2 years as an Instructor in Pharmaceutical Analytical Chemistry at the College of Pharmacy, Howard University. Graduate research experiences involved organic/biochemistry enzyme kinetic studies; and organic syntheses and organometallic reaction studies of pyrrole compounds, the building blocks of many physiologically active compounds.

community in providing testing guidelines, such efforts may not be enough for instilling testing and handling credibility for law enforcement and society. A business market model having an innate attribute of accountability may have to exist for nurturing greater transparency and credibility issues of government controlled drug testing laboratories.

PRESENTATION: Would more transparency in the analysis of confiscated controlled drugs benefit law enforcement and society? Our experiences in the challenge of chemist report findings suggest that it would. Most chemists’ reports presented in courts for the support of findings do not stand up to defense scrutiny – such results, needless to say, have even led to the loss of cases for the government. Case losses have been experienced, ranging from the simple possession and to the nation-wide distribution of controlled drugs. Reduced charges and penalties have also occurred, even involving clandestine laboratory and mandatory sentencing cases. The

government has rightfully enjoyed autonomy, for obvious reasons of security and safety, in the confiscation and testing of controlled drugs. In such an environment, are the interests of law enforcement and society adequately supported?

In our consultations and encounters with attorneys during litigation proceedings, it is apparent that more transparency is needed in the analysis of controlled drugs. Both defense and prosecuting attorneys depend on the expert chemist for the interpretation of technical reports. As reports are normally presented, an official report of analysis is introduced into the court records for litigation without significant explanation. Only when the report of analysis is challenged by the defense do attorneys have an opportunity for acquiring explanations of a government chemist's analysis. In most cases, an attempt at disclosure or explanation of the government chemist's analysis is done with the use of another chemist, usually a defense chemist, familiar with this specific field. Beyond explaining the aspects of instrument technology and scientific terminology to attorneys, the chemist must advise on the integrity of the government analyses and the identification of the confiscated alleged controlled drugs. With the input of the defense chemist, only then is the opportunity available for viewing the shortcomings of the government chemist's analysis and handling of a case. These shortcomings have been generally based on a chemist not using sound chemical principles in testing the alleged drug and the mix-up of case samples. When such situations become apparent during the proceedings, the court is usually prompted to inquire further about these disclosures.

The court, with case management proceedings handled by the judge, requires an accurate representation of the government chemist's analysis report for a fair and just case adjudication. The inquiry of the court about the disclosure of shortcomings, as revealed in challenge by the defense chemist, in our experiences, stems from the government laboratory's resistance to inquiry of its analyses. Only through novel approaches of a chemist familiar with testing and management procedures can disclosure of government laboratory shortcomings be brought to light. Pre-trial inquiries generally fall short in such disclosures, leaving the promotion of transparency to government analyses of controlled drugs in disclosures by the testimony of a defense chemist expert.

A defense chemist expert in our experiences also promotes disclosures of laboratory practices through assistance to attorneys in the preparation of motions and depositions. These efforts may involve providing insights to attorneys for revealing questionable laboratory practices to the courts. Transparency achieved through these methods can lead to considerations of appropriate testing by government chemists and laboratory management practices influencing chemists' work. Courts should be aware that tests are conducted in uncontaminated or contaminated environments. The courts should also be aware of the evaluation practices imposed upon chemists by management – whether they undercut the chemists' abilities for being objective in acquiring case findings. Without challenges by defense chemists to nontransparent government controlled drug analysis practices, the court can not be made aware of government chemists' testing procedures not accepted in the chemistry community.

Law enforcement and society should be made aware that differences can exist in testing procedures accepted by the chemistry and forensic drug chemistry communities. A basic tenet for the consideration of scientific evidence in the courts is acceptance of practices by the scientific community (Daubert Test) (1). Apparent conflicts exist in the matter of chemists' testing procedures between chemists in the chemistry and forensic drug chemistry communities. These conflicts can be concisely described as not following the basic principles of analytical chemistry – to preserve both the accepted testing and integrity of a sample or drug. In our experiences, the scientific objectivity of forensic drug chemists is generally undermined by following shortcuts in testing and compromising the accuracy of results. It is apparent that the loss of objectivity arises from management goals for analyzing cases quickly with limited chemist manpower. Without external oversight or accountability, government laboratories seem to have a greater interest in meeting the work demands for court purposes at the expense of chemistry principles. Shortcomings in the testing of confiscated controlled drugs are recognized by the creation of the Scientific Working Group for the Analysis of Seized Drugs (SWGDRUG) (2). Unfortunately, SWGDRUG is comprised of government based entities (usually forensic scientists) attempting to provide analysis or testing guidance! Wouldn't one suppose that the accountability of government chemists' analyses or testing be sought through the involvement of independent professional chemistry organizations, such as the American Chemical Society or the International Union of Pure and Applied Chemistry? The very nature of complete

autonomy of controlled drug confiscations and testing by law enforcement for security reasons apparently presents crises of credibility and integrity to itself and society.

The crises of credibility and integrity are intertwined within the fabric of the testing laboratories and chemists. Law enforcement and society place a trust in the report of findings of controlled drug analyses. Law enforcement laboratories are charged by society with the responsibility of providing reliable analysis results under secure environments. The forensic drug chemist is likewise expected to provide testing of suspected controlled drugs based on sound scientific principles while preserving the integrity of cases. Security of suspected confiscated controlled drugs drives the culture of non-transparency in their handling and testing by law enforcement laboratories. The only access to challenge of confiscated controlled drugs by the private sector is through a certification requirement by the Drug Enforcement Administration (3). One of the limitations to a private laboratory in testing confiscated controlled drugs is obvious – retesting what the government has tested without challenges to safeguards of case handling by law enforcement and the government laboratory. Further, such restrictions to outside testing provide a built in bias in favor of the government when controlled drug report findings are challenged by the defendant. Without external oversight, society presently does not have an unbiased and practical way of questioning the trust of both the forensic drug laboratories and chemists.

In our experience, law enforcement and the public may be better served by having business entities encouraging government transparency in the analysis of controlled drugs and the promotion of

balanced advocacy. Today, government laboratories are closed to public scrutiny regarding their operations and works in confiscated controlled drugs, to the extent that they surpass military defense laboratories in nondisclosure and scrutiny! Unlike public held and private laboratories that generally have a commercial objective and market accountability, government controlled drug analysis laboratories provide services to courts without outside accountability. Through our research, it is apparent that only government affiliated laboratories can independently conduct analysis of confiscated controlled drugs. For the promotion of balanced advocacy and transparency, perhaps a business model serving the interests of the defense can constructively engage the government in reporting controlled drug findings that are credible and cases handled with integrity.

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3. 21 USC Sec. 872
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