

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

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PRESENTATION: Washington Trial Lawyers

LOCATION: DC Superior Court, Court Room 202

DATE & TIME: March 18, 2009; 12:30pm

HOST: Attorney Don Dororsky

Good Afternoon –

As Don mentioned, we are here to discuss the DEA Form 7, The Report of Drug Property Collected, Purchased or Seized. However, I would like to mention that it is a document with summary results, as with other documents you routinely receive with your cases. There is a precedent case, US v. Andre Miller (F-8945-99), that was successfully defended by one of your colleagues, Attorney Richard Allen. The case served as a basis for piercing the shroud of transparency on how drug cases are analyzed by the government. By using the DEA Form 7 and documents to be mentioned later, the government chemist was found to not have carried out the controlled drug analysis of the evidence while protecting the chain of custody. I served as the defense chemist expert on controlled drug analysis procedures. In this seminal case, Mr. Allen partly qualified me through my special perspective on drug analysis based on my background experience, a background that enabled me to develop an approach for lending transparency to controlled drug analysis. As you would want to know the background of the chemist analyzing your client's case, I will share my background as a controlled drug chemist expert.

I have been involved as a chemist with controlled drug analysis about 37 years – 28 as a DEA chemist, and 9 years as a consultant. Before joining DEA, I served as an instructor of pharmaceutical analytical chemistry at the College of Pharmacy, Howard University. Pharmaceutical analytical chemistry deals with both the identification and strength determinations of drugs covered by the US Pharmacopeias. I also served as a research chemist at NIH in the area of colloid physics – wherein the tools of electro analytical chemistry were used. Graduate degrees were earned in the fields of organic-biochemistry involving enzyme

kinetic studies at Howard University; and organic chemistry involving the synthesis and study of pyrole compounds, the active subunits of many active drugs, at George Washington University.

Again, this special perspective has permitted a view of drug analysis independent of one by law enforcement, providing transparency to the review by the courts of government controlled drug analysis. This special perspective has been used in my expert testimony of other court cases, in the development and implementation of a weighing service* for drug evidence seized by the government, a presentation of a paper at an American Chemical Society national meeting, the Chemistry and Law Division, and a publication of that paper in the Law Enforcement Executive Forum journal.

Of special interest to you, today, is if you are trying to prove your client innocent of controlled drug allegations. In my opinion, as a chemist, I think that you are! Under *Brady v. Maryland*, and the Due Process Clause of the Fifth Amendment, you as defense counsel are entitled to documents related to the government analysis of the alleged controlled drug of your client. The documents you now routinely receive are summary in nature, and they provide very little information with regard to testing and handling issues of the government chemist. The DEA Form 7 provides a record of seizure, evidence transfer, and test results. The Certificate of Compliance, attests to the chemist following accepted testing procedures and protecting the chain of custody of evidence during its testing or analysis. The DEA Form 86, the chemist worksheet, front and back, reports evidence description, weights, and usually non-detailed written observations by the chemist (counter to policy of the DEA Laboratory Operations Manual). These summary documents essentially provide a wall of non transparency to you about how the chemist tests and handles your client's evidence, and these very documents, in my opinion, are used by the government in proving its case against your client! How do you counter the deleterious effect of the use of summary documents and provide a defense for your client, based upon transparency in the government testing and handling of your client's evidence?

The best way to counter the practice of summary documents solely for your review is to press the court for additional documents that were at one time provided to you routinely. Instrument charts, spectra, and data print outs are among some of the laboratory documents that should underpin the written report of the chemist, and lend substantial transparency to the testing and handling of your client's evidence. Additional documents can provide a reconstruction of the testing and handling environment that existed while the chemist worked

on your client's case. Altogether, the appropriate laboratory documents can reveal when your client's evidence was tested, whether it was handled along with other clients' cases, or even if your client's evidence was mixed up with other clients' evidence!

You must be made aware that summary documents for case considerations arose from the need of both administrative and laboratory managements for addressing the testing of burgeoning drug case loads in a timely fashion. In my opinion, turn around times were shortened and certification of results without testimony of government chemists the goal of prompt testing, even at the expense of chemists not following sound laboratory practices. This situation of unsound laboratory practices is persistent in most areas of Forensic Science in United States crime fighting, as reported recently by the National Science Foundation. In 2005, Congress requested a report from the National Science Foundation on the state of Forensic Science on crime fighting, and the National Science Foundation's National Research Council found several weeks ago that the nation's Forensic Science crime fighting apparatus needs a major overhaul. The National Research Council's top priority is the establishment of an independent federal institute to put a scientific footing under the myriad of crime-fighting disciplines (Reference: Science, vol. 323, page 1155, February 27, 2009). The report indicated that the Justice Department is not the appropriate venue for crime fighting and no other federal agency has 'the capacity or appropriate mission' to do the job.

Now, we can proceed with discussing the DEA Form 7 and other documents you routinely receive, or any other issues, especially with the challenges and opportunities provided by *Brady v. Maryland*.

*US v. Gregory Jenkins, US District Court for the District of Columbia, CR. No. 03-195(ESH)