

615  
c/o AGORA/SCIENTIFIC TRUST  
SUITE 280, MOUNT PLEASANT ROAD  
TORONTO, ONTARIO, CANADA

March 10, 1993

(613) 969-6090

THE UNITED STATES SENTENCING COMMISSION  
WASHINGTON, D.C.

My name is John S. Beresford. I am a recently retired psychiatrist residing in Toronto, Canada, and a U.S. citizen. One of my projects in retirement has been a non-profit organization that aims to help the children of parents sentenced to imprisonment for possession of illicit drugs. During my inquiries I have met with instances where families have been broken up, both parents sentenced to imprisonment, and dependent children left in foster care with no prospects of seeing the parents released for periods of 10, 20 and up to 40 years. There are obviously serious repercussions to a child's development and subsequently to societal attitudes and behavior when pre-teen and teen-aged children are left to deal with the emotional problem caused by the loss of a previously secure environment and parenting, with the incarceration of both ~~parents~~ <sup>parents</sup> for not just short but protracted periods of time. (See below.)

The organization I have helped to found looks for people to assist the dependents of prisoners, their function being to serve as go-betweens in such very difficult matters as escort-visiting at institutions perhaps 1000 miles away. Officials at the John Howard Society here in Toronto have been encouraging, seeing that there are no statistics and no follow-up on children from double-incarceration families.

In the United States the focus has been on the dependents of families where the parents have been sentenced to prison for illicit drug possession. For various reasons the worst cases turn out to be those where the involvement has been with LSD. This presentation is limited to concerns that arise in connection with the sentencing provisions that apply to the LSD-offender. The contention is that as the present sentencing provisions stand, the law is administered unfairly. As will be explained below, the carrier-weight provision, through an oversight, deprives an LSD-offender of his (and her) liberty through the operation of arbitrary and capricious factors. Moreover, the length of sentence-terms imposed under the carrier-weight provision is unreasonably harsh compared with the length of prison sentence imposed when the substance LSD is distributed in a powder form or by some method that does not involve the use of blotting paper. Further, there is anecdotal evidence which suggests that arrests for trafficking in LSD lead to charges against both parents of a two-parent family more often than is the case where a stimulant or narcotic drug is the substance involved. In short, the child of the LSD-offender is particularly at risk for losing contact with two parents for excessively long (and arbitrarily determined) periods of time.

### A. FACTORS RELATED TO INCALCULABLE WEIGHT

In questioning the logic of the carrier-weight provision, attention has to be given to the particular mode of distribution that applies to LSD, namely the blotting paper route. Slips of blotting paper are frequently impregnated with drops of LSD, each circle on the paper "carrying" a certain dose, conventionally 100 micrograms. By the decision of Congress, individuals are liable to be penalized for possession of the "carrier" paper as well as the substance "carried" where LSD is the substance involved. What Congress did not stipulate, however, due no doubt to a failure to take into account the nature of this method of distributing LSD, was that offenders should be punished for possessing or trafficking in not only a precise amount of LSD but an imprecise amount of moisture and perhaps other contaminants that can result from handling blotting paper strips under varied and unpredictable conditions.

1. Moisture and adulterants: I am drawing your attention to the fact that laboratory determinations of the weight of blotting paper, LSD, atmospheric water, sweat and other substances that have been deposited and absorbed as a result of handling are like to vary from laboratory to laboratory, and conceivably by substantial amounts. Each major city in the U.S., I am told, has a laboratory where the weight of an illicit substance (and its carrier) can be determined. Please consider this. A laboratory in a coastal area, such as Maine, where the climate is moist, is liable to register a weight of a given slip of blotting paper in excess of the weight that would have been registered if this same slip of paper had been weighed in a dry environment, say in the State of Nevada. Therefore, a judge in sentencing a convicted individual will find himself unwittingly imposing a sentence based on calculations not provided for by Congress and -- again unwittingly -- acting arbitrarily.

In addition to the incalculable factor of absorbed moisture, due to the fact that blotting paper is inherently ~~and of its nature~~ a highly absorbent substance, there is the matter of sweat gland and other impurities which have been deposited in varying amounts during the process of handling. There is reason to suppose that some of this non-paper and non-LSD material may derive from the agent who has effected an arrest. In that case, a prison sentence term can be in part determined by a factor that has nothing whatever to do with the person of the prisoner who has been arrested.

2. Arbitrariness arising from non-standard paper size: Under the recent Supreme Court decision bearing on the carrier weight issue, an opinion was given that the carrier weight provision relating to LSD offences was not unconstitutional. It was said to be Congress' intention to punish LSD offenders severely. While accepting this decision, it is possible to object that judges are being drawn into pronouncing arbitrary sentences with regard to the width of the border surrounding any particular sample of blotting paper treated with LSD in a manner Congress did not specify. It is not as if strips of blotting paper come in standard sizes, like, say, playing cards. It appears there are grounds for instructing judges to take into account only that weight of blotting paper that does conform to some standard set of dimensions, and to disregard the weight of paper that might constitute an extravagantly wide margin. But of course there is no such standard size, and no instruction given to the technician

at a laboratory to trim a sample to a particular size.

I believe the Commission has the right to recommend that judges not be put in the position of imposing sentences that have been erroneously determined, outside the stated intention of Congress, with regard to either:

- (a) extraneous moisture and other unspecified substances, or
- (b) non-standard margin size, or both.

#### B. HARSHNESS OF PUNISHMENT

This will be well known to members of the Commission already, but is worth inserting here as a reminder. The question of undue harshness arises from the disparity between the sentence mandated for an LSD-related offence where LSD has been distributed in powder or some other form and when the same weight of LSD has been distributed in the form in which it is "carried" on heavy blotting paper. Among the cases that have come to my attention is that of a 35 year old woman sentenced for the possession of 16 slips of blotting paper impregnated with a total of 1600 "doses" of LSD. For a fairly serious offence of this kind the sentence might ordinarily have been a 5 year prison term. Because of the weight of the paper serving as "carrier," the actual term to which she was sentenced was 24 years. A Federal prisoner, she is eligible to no parole. This individual commented to me, in a letter, that she had calculated the weight of cocaine she would have had to have in her possession to draw a comparable sentence. The figure she arrived at was 150 kilograms. It is understood that the Commission may have reservations about the extent to which it can intervene, if it should wish to intervene, in the matter of instructing judges with regard to the carrier weight provision. Nevertheless, I submit that in view of the extraordinary disparity between LSD sentences and sentences for crimes involving other drugs, and the presumption that the disparity may be attributed to the effect of the carrier weight provision, and the understanding that the carrier weight regulations contain built-in means for improper sentencing, outside the stated intentions of Congress, the Commission may wish to declare a moratorium on carrier-weight sentencing. That decision would be justified on the basis that no one at present can tell what proportion of a carrier weight sentence is within the bounds stipulated by Congress, and how much falls outside. A moratorium would relieve judges of the burden of making capricious decisions, pending a clarification of the issue by Congress.

#### C. THE PROBLEM OF DOUBLE-PARENT SENTENCING

The argument here likewise falls outside the scope with which the Commission is concerned directly, but is worth inserting to complete the picture. The issue has greater sociological and psychological consequences than legal ones. From my own research in practice and from anecdotal evidence supplied by colleagues it appears that so-called psychedelic drugs, among which LSD is included, provide for a higher conviction rate of two members of a family, wife and husband or parents living common-law, than illicit drugs belonging to the narcotic or stimulant classes, for example cocaine. The pattern of trafficking in LSD may differ from the pattern

characteristic of other illicit drug distribution. The individual involved in LSD distribution is evidently not so likely to be involved for money. There are no big profits in the LSD trade, in contrast to the case with cocaine and opiates. The LSD user is rather more likely to be involved in a friends-and-family network. This does not mitigate the offence. But it does render the offenders more liable to be arrested along with their marriage partners and so come to concern our organization. In the case of the woman mentioned about who is serving a 24 year prison term for possession with intent to sell of 16 blotter strips of LSD, the husband was sentenced to 40 years for the same offence. The couple have left two children behind, 11 and 13, who are among those we have been trying to help. Abolition of the carrier weight provision would make a large difference in this type of case.

#### D. RETROACTIVE REVIEW

Common sense and a concern for justice indicates the need for a system of review boards to consider the cases of those prisoners who currently are serving terms for LSD offences that have been determined by the carrier weight provision. A further element of arbitrariness and capriciousness would be perpetrated if future sentences were not based on this provision while past cases were allowed to stand without review. It is submitted that individuals who have completed the length of sentence that would have been imposed without the influence of the carrier weight provision but whose sentences continue because of the provision be entitled to release. There are, it has been estimated, tens of thousands of prisoners in the U.S. who would be entitled to release under this condition.

#### E. SUMMARY

On the grounds stated it is submitted that the Commission consider a recommendation to Congress which would eliminate the carrier weight provision as it applies to LSD. Too many elements of the arbitrary and capricious are inherent in the provision to make it fair that judges should be subject to its requirements. Citizens have the right to not be subject to a law which, however innocently, cannot fail to result in inequity. The LSD offender is particularly vulnerable to multiple arrest of family members, owing to the "non-commercial" nature of the trade in LSD. Tragical consequences fall to the lot of children in such cases. Should the Commission decide in favor of this recommendation, it follows naturally that a system of review boards be established for the case of those already serving sentences.

*John S. Beresford.*

John S. Beresford, M.D.