

Intro

BIZARRO

Burton Ritchie called the cops on himself.

It was the summer of 2012 and the Drug Enforcement Administration just launched Operation Log Jam, the first nationwide synthetic-drug takedown.¹ Among the agency's targets was a Las Vegas warehouse that pumped out kilos of "spice." The drug misleadingly known as "synthetic marijuana" or "fake weed" was sold in colorful, gram-quantity packets at head shops and over the internet.² Spice was more potent than the natural plant and, oddly enough, legal. Or so it seemed. The feds would later call Zencense, the Florida-based company that ran the warehouse, one of the world's largest spice operations.³

Burton owned Zencense. His 20 percent partner was Ben Galecki.⁴ The men crossed paths at Narcotics Anonymous, of all places, when they were teenagers in the early 1990s.⁵ The industry they found themselves in decades later was shifty. Merchants marketed spice as "incense" and "pot-pourri," but no one bought the stuff to create a relaxing scent in the living room. Products were labeled "not for human consumption," but everyone consumed them.⁶

Whatever the morality of the venture—a lucrative one, to be sure—Burton and Ben were convinced the chemicals inside of their spice, called

synthetic cannabinoids, were legal. They paid for lab tests to check for controlled substances. They quarantined chemical shipments, imported from China, before getting the green light to distribute to shops around the country. They registered as an LLC and paid taxes.⁷

After the DEA raided his warehouse, Burton called a cop he knew in Pensacola, Florida, where they were headquartered. The cop put him in touch with DEA Special Agent Claude Cosey. Burton explained to Cosey over the phone that night why he thought the feds were mistaken, given the company's compliance measures. He invited the agent to visit their Pensacola facility and see for himself. Cosey accepted the invitation, telling Burton he'd come the next morning—and not to worry in the meantime.⁸

“Don't lose a minute's sleep over this,” the DEA agent told the man whose drug warehouse was raided that day. “If you had anything to worry about, we wouldn't be talking over the phone.”⁹

They met the next morning. Burton gave Cosey a tour. He handed the agent packets of Zencense spice, a vibrant array of catchy brand names, like Bizarro, with its Superman-themed purple and yellow label, marked with a backwards “S.”¹⁰

Burton told Cosey he'd shut down the business if the agent told him to. Cosey didn't. The lawman said it looked like Burton was trying to comply with the law.¹¹ Burton and Ben moved on with their lives, embarking on successful careers in film and entertainment.¹²

So how did they land in federal prison, convicted as drug kingpins, after being indicted years later in three states and taken to trial three times?¹³

The answer lies in the weirdest chapter of the War on Drugs, a synthetic saga that's unfolding to this day. It stems from a little-known Reagan-era law called the Analogue Act. The 1986 law bans substances that are “substantially similar” to controlled ones.¹⁴

But what does “substantially similar” mean? The amorphous test has left people guessing about what's legal. Unlike the traditional war against heroin, cocaine, and other well-known drugs, when it comes to new substances, the government doesn't always announce which ones it thinks are illegal before bringing charges.¹⁵ Adding to the uncertainty, the DEA's

own scientists have disagreed about which chemicals are substantially similar to others. Indeed, a senior research chemist with the agency thought the spice Burton and Ben sold was legal.¹⁶ That would have seemed to save them, but the government chemist was arrested before he could take the stand in their defense.¹⁷

1 Humpty Dumpty's Designer-Drug War

In the spring of 1990, Charles Burton Ritchie sold a foil-wrapped sugar cube to an undercover cop at a Pensacola nightclub.¹ The state prosecutor's office brought LSD charges against the nineteen-year-old addict.² The judge set bail at \$10,000.³

That was more than Burton (he goes by his middle name) could afford on his mall-store salary from Cutlery World.⁴ His mom Linda refused to bail him out. She thought her son was on the wrong path.⁵ He'd been drinking whatever liquor and taking whatever drugs he could get his hands on.⁶

Though he was charged with pushing acid, there was nothing revolutionary or spiritual about Burton's offense. That March night at *The Place* on East Intendencia Street, Burton was turning a profit, however meager.⁷ The Alabama-born hustler had what one friend called a selling-ice-to-Eskimos persuasiveness;⁸ what another called the ability to sell shit-covered popsicles to women in white gloves.⁹ The cube was just another widget for Burton, no different from the cinnamon toothpicks and lollipops he sold growing up.¹⁰

Burton's mom worked with his public defender to put him in a pretrial diversion program.¹¹ The judge gave him probation, accepting a no-

contest plea to the drug charge. “It appearing to the satisfaction of the Court that you are not likely again to engage in a criminal course of conduct,” the judge’s boilerplate order read, “the ends of justice and the welfare of society do not require that you should presently be adjudged guilty and suffer the penalty authorized by law.” The deal came with a laundry list of conditions, like drug testing, counseling, and paying various court fees.¹²

The arrangement kept Burton clean. He hasn’t used since he drank a celebratory beer after his release that summer.¹³ It also kept him out of prison. For a couple decades.

Meanwhile, another young entrepreneur faced drug charges out West in Colorado. The defendant there beat the case, too, but only after a strange court battle, foreshadowing one that Burton would fight years later.

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Damon Forbes was a biochemistry student at the University of Colorado.¹⁴ He ran what the feds branded a “phony” company, Isotech Labs.¹⁵ Its address was his mom’s house in Denver.¹⁶

Through his company, Forbes ordered a substance called AET.¹⁷ It was previously sold as an antidepressant, under the brand name Monase, before the “psychic energizer” was taken off shelves in 1962, following reports of negative side-effects.¹⁸

But AET still wasn’t controlled. It was available directly from chemical companies. Writing on Isotech Labs letterhead in 1989, Forbes ordered AET “for laboratory use only, not for drug, household or other uses.”¹⁹

Undercover agents bought thousands of dollars’ worth of AET from Forbes and his associates. The sellers supposedly said it was Ecstasy, but lab tests showed it was AET, not the controlled substance MDMA that’s synonymous with the euphoric drug.²⁰ But without a law on the books saying AET was illegal, what could the government do?

As it turns out, there was a law on the books saying AET—and, possibly, anything else—*might* be illegal: the Analogue Act. It punishes people who sell drugs that are “substantially similar” to controlled ones.²¹

But the DEA chemist who examined the AET in Forbes’s case didn’t think it was substantially similar to a controlled drug. That meant it

wasn't an "analogue," in the government chemist's view. In other words, he thought it was legal.

Nonetheless, the DEA brought the case to the Colorado US Attorney's Office. But after he heard about that DEA chemist's opinion, Assistant US Attorney (and future US Congressman) Ken Buck declined to prosecute in 1990.²² That would have seemed to settle the matter in Forbes's favor.

The government forged ahead. In 1992, the same US Attorney's Office charged Forbes and others (including his mom) under the Analogue Act.²³ Different prosecutors and a different DEA chemist backed the effort.²⁴

Seizing on that internal conflict, Forbes moved to dismiss the case. He argued the Analogue Act was unconstitutional, at least when it came to AET. He said the law failed to give clear notice of what's illegal. "A citizen cannot determine whether AET is a controlled substance analogue," his motion read. "Apparently the Government determines the issue depending upon which 'expert' it consults."²⁵

The government's chosen DEA expert against Forbes, Frank Sapienza, helped write the Analogue Act.²⁶ He defended the law and its application to AET. Unlike the first DEA chemist, he thought it qualified as an analogue.²⁷

The judge overseeing the case, Lewis Babcock, was appointed to the bench by Ronald Reagan, who signed the Analogue Act into law.²⁸ Judge Babcock held a hearing on the novel issue in November 1992.²⁹ Forbes subpoenaed Roger Ely, the DEA chemist who thought AET wasn't an analogue.³⁰

Testifying at the hearing, Ely explained the difficulty he faced in trying to conduct the substantial-similarity analysis. "There is no guideline," the chemist said, when pressed by the prosecutor on cross-examination. "There certainly isn't a definition of what is substantially similar in the chemistry text that I have looked in, so there's really no guidance as to how to draw that kind of a conclusion."³¹ On cross-examination by the defense, the government's expert, Sapienza, said "part of the problem here" was that "we have different people using different methodologies."³²

Judge Babcock dismissed the case. "I without any doubt conclude that the statute here under the circumstances applies no fair warning of the proscribed conduct," the judge said. "Not only is there a lack of scientific consen-